# ANALYTICAL SYNOPSIS 2012

## 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.

The different types of decisions may be identified using the letters placed after the registration number in the referral, which in turn follows the year in which the referral was registered.

Distinctions are drawn between the following decisions:

– **AR16**: article 16 of the Constitution (exceptional powers of the President of the Republic)

– **DC**: review of the constitutionality of ordinary laws, basic laws, treaties, and the regulations of the Houses of Parliament

– **LP**: review of the constitutionality of the laws of New Caledonia

– **QPC**: priority preliminary ruling on the issue of constitutionality

– **PDR**: presidential election

– **REF**: referenda

– **AN**: elections to the National Assembly

– **SEN**: elections to the Senate

– **ELEC**: miscellaneous elections: observations…

– **D**: disqualification of Members of Parliament

– **I**: incompatibility of Members of Parliament

– **L**: de-classification of legislative texts to regulatory status

– **LOM**: division of jurisdiction between the State and certain overseas territories

– **FNR**: absolute bar to proceeding with an action

– **ORGA**: decision on the organisation of the Constitutional Council

– **AUTR**: other decisions

– **NOM**: appointment of members (these are formally speaking not decisions of the Constitutional Council)

## GLOSSARY

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

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

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# CONSTITUTIONAL PROVISIONS

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

### Article 2

**Right to respect for private life**

The freedom proclaimed by Article 2 of the 1789 Declaration of the Rights of Man and the Citizen implies the right to respect for private life. Accordingly, the collection, registration, storage, consultation and disclosure of personal data must be justified by a reason of general interest and carried out in a manner which is adequate for and proportional with this objective.
*(2012-652 DC, 22 March 2012, recital 8, p. 158)*

**Right of ownership**

Private property is included under the human rights enshrined by Articles 2 and 17 of the 1789 Declaration; pursuant to Article 17: "Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified"; If a deprivation of private property occurs which does not fall under this Article, it nonetheless follows from Article 2 of the 1789 Declaration that breaches of this right must be justified by a reason of general interest and must be proportional with the objective pursued.
*(2011-208 QPC, 13 January 2012, recital 4, p. 75)*

### Article 6

**Equality in access to public-sector employment**

The legislator has jurisdiction under Article 34 of the Constitution to set the rules governing elections to local assemblies and to determine the fundamental principles of the free administration of local authorities. It may only deprive a citizen of the right to stand in an election vested in him under Article 6 of the 1789 Declaration if this is necessary in order to ensure the principle of equality in voting and to uphold the freedom of the electorate.
*(2012-230 QPC, 6 April 2012, recital 4, p. 190)*

### Article 16

**Impartiality and independence of the judiciary**

The principles of independence and impartiality resulting from Article 16 of the 1789 Declaration are inseparable from the exercise of the judicial function.
*(2012-250 QPC, 8 June 2012, recital 3, p. 281)*

### Article 17

Private ownership is one of the human rights enshrined by Articles 2 and 17 of the 1789 Declaration of the Rights of Man and the Citizen. If a deprivation of private property occurs

which does not fall under Article 17, it nonetheless follows from Article 2 of the 1789 Declaration that breaches of this right must be justified by a reason of general interest and must be proportional with the objective pursued.

It is for the legislator, which has jurisdiction pursuant to Article 34 of the Constitution to determine the fundamental principles of property law, real rights and civil and commercial obligations, to set out the rules governing the acquisition or maintenance of ownership.
*(2011-212 QPC, 20 January 2012, recitals 3 and 4, p. 84)*

## PRINCIPLES ASSERTED IN THE PREAMBLE TO THE 1946 CONSTITUTION

### Subparagraph 13 - Teaching, professional training and culture

**Public teaching service under constitutional law**

The constitutional requirement to organise secular public teaching free of charge does not apply to the State outwith the territory of the Republic.
*(2012-654 DC, 9 August 2012, recital 76, p. 461)*

## FUNDAMENTAL PRINCIPLES RECOGNISED BY THE LAWS OF THE REPUBLIC

### Principles adopted

**Special legislation applicable in the departments of Bas-Rhin, Haut-Rhin and Moselle**

Unless and until they have been replaced by the provisions of ordinary legislation or harmonised with them, the special legislative and regulatory provisions applicable to the departments of Bas-Rhin, Haut-Rhin and Moselle may remain in force. Unless they are repealed or harmonised with ordinary legislation, this special legislation may not be redrafted if the resulting differences in treatment are broader and their scope is expanded. This is the scope of the fundamental principle recognised by the laws of the Republic in relation to the special legislation applicable in the three departments concerned. This principle must also be reconciled with other requirements of constitutional law.
*(2012-274 QPC, 28 September 2012, recitals 5 and 6, p. 493)*

## THE CONSTITUTION OF 4 OCTOBER 1958

### Preamble and Article 1

**Principle that the law must promote parity (in relation to political, professional and social matters) (Article 1, subparagraph 2 - formerly Article 3, subparagraph 5)**

*Parity in relation to professional or social matters*

Organic Law no. 2012-1403 of 17 December 2012 on the programming and governance of the public finances (parity within the High Council of the Public Finances).
*(2012-658 DC, 13 December 2012, recital 43, p. 667)*

## Title I - Sovereignty

### French language (Article 2)

*Affirmation of its constitutional standing*

Pursuant to the first subparagraph of Article 2 of the Constitution: "The language of the Republic is French". Whilst the breach of the objective of constitutional standing that the law must be accessible and intelligible, as resulting from Articles 4, 5, 6 and 16 of the 1789 Declaration, cannot in itself be invoked in support of an application for a priority preliminary ruling on the issue of constitutionality on the basis of Article 61-1 of the Constitution, the breach of the objective of constitutional standing that the law should be accessible resulting from the absence of an official French-language version of a legislative provision may be invoked in support of an application for a priority preliminary ruling on the issue of constitutionality.
*(2012-285 QPC, 30 November 2012, recitals 1 to 4 and 12, p. 636)*

### Pluralism and fair representation of parties (Article 4)

It does not follow either from the principle of pluralism of ideas and opinions pursuant to Article 4 of the Constitution or from any other constitutional principle that all political groups represented within a local council must be allowed to appoint members of the electoral college for the Senate.
*(2011-4538 SEN, 12 January 2012, recital 5, p. 67)*

## Title VII - The Constitutional Council

### *Ex post* review of the constitutionality of legislation - Preliminary ruling on the issue of constitutionality (Article 61-1)

Pursuant to the first subparagraph of Article 61-1 of the Constitution: "If, during proceedings in progress before a court of law, it is claimed that a statutory provision infringes the rights and freedoms guaranteed by the Constitution, the matter may be referred by the Conseil d'État or by the Cour de Cassation to the Constitutional Council, within a determined period". The fact that the legislature has acted in excess of its powers may only be invoked in support of a preliminary ruling on the issue of constitutionality where this breach itself affects a right or freedom guaranteed under the Constitution.
*(2012-254 QPC, 18 June 2012, recital 3, p. 292)*

## Title XV - The European Communities and the European Union

### Principle of the participation of the Republic in the European Communities and the European Union (Article 88-1)

*Affirmation of the* sui generis *nature of the Community or EU legal order*

The French Republic participates in the European Union under the conditions set forth in Title XV of the Constitution. Pursuant to Article 88-1 of the Constitution: "The Republic shall participate in the European Union, constituted by States which have freely chosen to exercise some of their powers in common, by virtue of the Treaties on the European Union and on the Functioning of the European Union, as derived from the Treaty signed in Lisbon on 13 December 2007". The constituent authority thus endorsed the existence of a legal order of the European Union which is integrated into the national legal order and is distinct from the international legal order.

Whilst confirming the place of the Constitution at the pinnacle of the national legal order, these constitutional provisions enable France to participate in the creation and development of

a permanent European organisation vested with legal personality and endowed with decision making powers as a result of the transfer of competence consented to by the Member States.

However, where the commitments signed to this effect or which are closely related to this goal contain a clause which is unconstitutional, call into question the rights and freedoms guaranteed by the Constitution or run contrary to the essential conditions for the exercise of national sovereignty, authorisation to ratify them may only be granted after the Constitution has been amended.
*(2012-653 DC, 9 August 2012, recitals 8 to 10, p. 453)*

## THE ENVIRONMENTAL CHARTER

### Article 6 - Requirement to promote sustainable development

Pursuant to Article 6 of the Environmental Charter: "Public policies must promote sustainable development. To that effect, they shall reconcile the protection and exploitation of the environment, economic development and social progress". This provision does not create any right or freedom guaranteed under the Constitution. Its breach may not in itself be invoked in support of an application for a priority preliminary ruling on the issue of constitutionality on the basis of Article 61-1 of the Constitution.
*(2012-283 QPC, 23 November 2012, recital 22, p. 605)*

## OBJECTIVES OF CONSTITUTIONAL STANDING

### Findings

#### Fight against tax fraud

According to the contested provisions of Article L. 13-17 of the Code on Expropriation in the Public Interest, unless the expropriated party is able to establish that subsequent changes to the material or legal circumstances, state or occupancy of its property have vested it with added value, the judge ruling on the expropriation proceedings shall be bound by the administration's valuation if it is higher than the declaration or valuation made at the time the property was altered.

In adopting these provisions, the legislator intended to encourage owners to refrain from under-estimating the value of property which is transferred to them or from concealing part of the purchase price for these properties. It therefore pursued the goal of contrasting tax fraud, which constitutes an objective of constitutional standing.
*(2012-236 QPC, 20 April 2012, recitals 6 and 7, p. 211)*

## REFERENCE LEGISLATION NOT SELECTED AND ELEMENTS NOT TAKEN INTO CONSIDERATION

### Principles not selected in constitutional review

#### Principle according to which the body of civil servants may only be established and maintained with a view to implementing public service missions

The contested provisions contained in Articles 29, 29-1 and 29-2 of Law no. 90-568 of 2 July 1990 on the organisation of the public postal service and France Télécom, which provide for

the maintenance of the body of officials within France Télécom, whereas that company is subject in principle to the legislative provisions applicable to limited liability companies, do not violate any constitutional principle applicable to officials or any right or freedom guaranteed under the Constitution.
*(2012-281 QPC, 12 October 2012, recital 11, p. 536)*

**Principles applicable to public bodies**

According to the applicants, in subjecting to private law the associate contracts of employment for future teaching staff, the legislator breached the constitutional principles according to which natural persons who work as "contractors with legal persons governed by public law" are public agents, the acts of a public body are administrative acts, and the non-statutory staff working on behalf of an administrative public service managed by a public body are contractual agents under public law, irrespective of their employment status.

No principle of constitutional law prevents the legislator from stipulating that individuals recruited for a future teaching post involved in the provision of the public national education service shall be subject to a regime under private law. Accordingly, the challenge alleging that the legislator violated principles of constitutional law by providing that contracts concluded by those benefiting from the scheme for the employment of future teaching staff are contracts under private law must be rejected.
*(2012-656 DC, 24 October 2012, recitals 6 and 10, p. 560)*

# ORGANIC LAWS

## CONSTITUTIONAL BASIS FOR ORGANIC LAWS

### Articles 6 and 7 - Election of the President of the Republic

Organic Law no. 2012-272 of 28 February 2012 on the refund of campaign expenses for presidential elections was adopted on the basis of Article 6 of the Constitution.
*(2012-648 DC, 23 February 2012, recital 1, p. 134)*

### Article 13 - Appointment to employment or other positions

Organic Law no. 2012-1557 of 31 December 2012 on the appointment of the managing director of limited company BPI-Groupe.
*(2012-663 DC, 27 December 2012, recital 1, p. 711)*

### Article 34 - Scope of the law

The twenty-second subparagraph of Article 34 of the Constitution enables basic legislation to be adopted in order to establish the scope of programming laws on the multi-year planning of the public finances.
*(2012-653 DC, 9 August 2012, recital 24, p. 453)*

The twenty second subparagraph of Article 34 of the Constitution enables basic legislation to be adopted in order to establish the scope of programming laws on the multi-year planning of the public finances.
*(2012-658 DC, 13 December 2012, recital 8, p. 667)*

Organic Law no. 2012-1403 of 17 December 2012 on the programming and governance of public finances.
*(2012-658 DC, 13 December 2012, recitals 1 to 19 and 35 to 64, p. 667)*

### Article 39 - Tabling of draft legislation

The last subparagraph of Article 7 and the last phrase of Article 8 of Organic Law no. 2012-1403 of 17 December 2012 on the programming and governance of public finances.
*(2012-658 DC, 13 December 2012, recitals 24 to 26, p. 667)*

### Article 47 – Laws on finances

Organic Law no. 2012-1403 of 17 December 2012 on the programming and governance of public finances.
*(2012-658 DC, 13 December 2012, recitals 20 to 61, p. 667)*

### Article 47-1 - Laws on the financing of Social Security

Organic Law no. 2012-1403 of 17 December 2012 on the programming and governance of public finances.
*(2012-658 DC, 13 December 2012, recitals 20 to 61, p. 667)*

### Article 64 - Status of magistrates

Organic Law no. 2012-208 of 13 February 2012 enacting miscellaneous provisions on the status of magistrates.
*(2012-646 DC, 9 February 2012, recital 1, p. 111)*

# LEGISLATIVE AND REGULATORY PROVISIONS

## CONDITIONS GOVERNING RECOURSE TO THE LAW

### Categories of laws

#### Division between categories of laws

*Law and organic law allocation*

Chapter III of the organic law on the programming and governance of the public finances relates to the High Council of Public Finances which is required to state an opinion, in particular, on macroeconomic forecasts and the potential gross domestic product estimates on which the draft law on the programming of public finances, the draft law on finance for the year and the draft law on the financing of Social Security for the year are based. Accordingly, the provisions governing the composition, powers and rules of operation of the High Council have the status of basic legislation insofar as they relate to the conditions and procedures applicable to its participation in the budgetary process and the guarantees of competence and independence of its members.

On the contrary, the following provisions adopted in this organic law do not have the status of basic legislation:

– those stipulating that the members of the High Council appointed by the President of the National Assembly, the President of the Senate and the presidents of the finance committees of the National Assembly and the Senate "following their joint public hearing before the finance committee and the social affairs committee of the assembly concerned", as these provisions concern the operation of the assemblies;

– those promoting parity between men and women within the High Council of Public Finances;

– those stipulating the conditions under which the High Council of Public Finances may be engaged by the Government and shall state its opinion on the macroeconomic forecasts on which the draft stability programme drawn up for the purpose of coordinating the economic policies of the Member States of the European Union is based;

– those stipulating the procedures according to which the High Council is to draw up and publish its international regulations do not have the status of basic legislation [sic.].
*(2012-658 DC, 13 December 2012, recitals 36, 40, 43, 56 and 60, p. 667)*

Article 10 of the organic law on the programming and governance of public finances, concerning the debates which may be organised in the National Assembly and the Senate on documents provided by the Government and the European institutions or on the decisions of the Council of the European Union addressed to France adopted during procedures relating to excess deficits and relating to the operation of the houses of Parliament, does not have the status of basic legislation.
*(2012-658 DC, 13 December 2012, recital 62, p. 667)*

*Allocation of laws and laws on the programming of public finances*

Article 4 of the organic law on the programming and governance of the public finances provides that the law on the programming of the public finances may include "rules on the management of the public finances which do not fall under the exclusive scope of laws on finances and laws on the financing of Social Security as well as parliamentary information and control of this management".

Basic legislation may define the categories of provisions which are eligible to be included in the law on the programming of public finances, in a law on finances, a law on the financing of Social Security or any other law. In referring to "rules on the management of the public finances which do not fall under the exclusive scope of laws on finances and laws on the financing of Social Security as well as parliamentary information and control of this management",

the basic legislation defined an optional domain limited to provisions on the management of the public finances and provisions on parliamentary information and control of this management. A provision which does not fall within either of these two areas may not be included in a law on the programming of public finances.
*(2012-658 DC, 13 December 2012, recitals 15 to 17, p. 667)*

**Specific laws**

*Law on the programming of public finances*

Article 1 of the organic law on the programming and governance of public finances provides that the law on the programming of public finances shall set the medium-term objective of public administrations, stipulate the structural balance trends and the actual annual balances in the accounts of public administrations as well as the structural spending for each of the financial years falling within the programming period. This Article defines the medium-term objective of public administrations by reference to Article 3 of the European Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. It also specifies the structural balance and structural spending for the purposes of the application of the law on the programming of public finances. Article 2 completes the content of the multi-year guidelines applicable to the public finances as defined under the law on the programming of public finances. It stipulates the multi-year guidelines which are mandatory as well as those which are optional.

The multi-year guidelines thereby defined by the law on the programming of public finances do not have the effect of impinging upon the discretion and power of adaptation of the Government under Article 20 of the Constitution when establishing and conducting the policy of the Nation. They also do not have the effect of impinging upon the prerogatives of Parliament when examining and voting on draft laws on finances and draft laws on the financing of Social Security or any other draft or proposed legislation.
*(2012-658 DC, 13 December 2012, recitals 10 to 12, p. 667)*

## SCOPE AND LIMITS OF LEGISLATIVE POWERS

### Entry into force of the law

**Legislative powers**

In applying the rise in the employer contribution rate for top-hat pensions [defined-benefit supplementary pensions] only to annuities paid for pensions to be liquidated after 1 January 2013, the legislator did not intend to call into question the contribution rate applicable to annuities paid for pensions which had already been liquidated or which would be before 31 December 2012. Since the matter related to retirement pensions, the legislator's choice to render the contribution rate dependent on the liquidation date of these pensions did not breach the principle of equality.
*(2012-654 DC, 9 August 2012, recital 62, p. 461)*

### Incorrect assertion of lack of competence

**Incorrect assertion of lack of competence**

*Criminal Law and Procedure*

Identity checks and criminal procedure

The provisions of Article 706-88-2 of the Code of Criminal Procedure enable the freedom to appoint a lawyer to be suspended for the duration of detention in police custody in relation

to offences constituting acts of terrorism provided for under Articles 421-1 to 421-6 of the Criminal Code. Thus, the legislator intended to take into account the complexity and the seriousness of this category of crimes and offences as well as the need to provide, in this area, specific guarantees to the investigation secrecy.

Whilst the freedom of a suspect to choose his lawyer may be suspended on exceptional grounds for the duration of his detention in police custody in order to avoid causing prejudice to the search for the perpetrators of terrorist offences or to guarantee the security of individuals, the legislator is required to define the conditions under which and the procedures according to which such a restriction of the conditions governing the exercise of the rights of the defence may be implemented. The contested provisions are limited to stipulating, in relation to a certain category of offence, that the judge may rule that an individual detailed in police custody shall be assisted by a lawyer appointed by the president of the bar council from a list of authorised lawyers drawn up by the office of the National Bar Council, acting on proposals from each local bar council. They do not require reasons to be given for the decision and do not stipulate the particular circumstances of the investigation or inquiry and the reasons which enable such a restriction to be imposed on the rights of the defence. By adopting the contested provisions without regulating the power given to the judge to deprive a person in custody of the freedom to choose his lawyer, the legislator violated the scope of its authority in conditions which infringe the rights of the defence. Article 706-88-2 of the Code of Criminal Procedure is unconstitutional.
*(2011-223 QPC, 17 February 2012, recitals 4 to 7, p. 126)*

*Social law*

Pursuant to the first subparagraph of Article 61-1 of the Constitution: "If, during proceedings in progress before a court of law, it is claimed that a statutory provision infringes the rights and freedoms guaranteed by the Constitution, the matter may be referred by the Conseil d'État or by the Cour de Cassation to the Constitutional Council, within a determined period". The fact that the legislature has acted in excess of its powers may only be invoked in support of a preliminary ruling on the issue of constitutionality where this breach itself affects a right or freedom guaranteed under the Constitution.

In enacting Article L. 711-1 of the Social Security Code, the legislator on the one hand provided that, out of the businesses or enterprises which were already subject to a special Social Security regime on 6 October 1945, those listed in a decree issued by the Conseil d'État shall continue to remain subject to a special Social Security organisation on a provisional basis. On the other hand, that provision allowed for regulations to be adopted establishing for each of these businesses or enterprises a Social Security organisation vested with the full powers defined under Article L. 111-1 of the Code.

It is appropriate to include amongst the fundamental principles applicable to Social Security, and which as such fall within the scope of the law, the existence itself of a special Social Security regime. The same applies for the determination of the services and categories of beneficiary as well as the definition of the nature of the prerequisites required for the provision of benefits. However, in this case, the failure by the legislator to act within its powers did not deprive the requirements resulting from the eleventh subparagraph of the 1946 Preamble of legal guarantees. It did not in itself affect any right or freedom guaranteed under the Constitution. Accordingly, the challenge alleging that the legislator acted in excess of its powers must be rejected.
*(2012-254 QPC, 18 June 2012, recitals 3, 5 and 6, p. 292)*

*Other rights and freedoms*

Internet

Pursuant to Article 34 of the Constitution, it is for the law to determine the rules concerning civil rights and the fundamental guarantees granted to citizens in order to regulate the exercise of public freedoms as well as personal status and capacity. It is also to lay down the fundamental principles of civil and commercial obligations. According to the current state of means of communication and having regard to the general development of public online

communication services and the importance of these services within economic and social life, the general conditions under which the national identity card issued by the State may enable a person to identify himself on electronic communications networks and to use his electronic signature, in particular for civil and commercial purposes, have a direct impact on the aforementioned rules and principles and, accordingly, fall within the scope of the law.

Article 3 of the law on the protection of identity on the one hand allows the national identity card to include "electronic functions" enabling its holder to identify himself on electronic communications networks and to use his electronic signature, whilst on the other hand guaranteeing the optional status of these functions. The provisions of Article 3 do not specify either the nature of the "data" through which these functions may be implemented or the guarantees to ensure the integrity and confidential status of these data. They do not define any further the conditions under which individuals using these functions are to be authenticated, in particular where they are minors or subject to legal protection. Accordingly, the legislator acted in excess of its powers.
*(2012-652 DC, 22 March 2012, recitals 12 to 14, p. 158)*

Environment

The fact that the legislator has acted in excess of its powers may only be invoked in support of a preliminary ruling on the issue of constitutionality where this breach itself affects a right or freedom guaranteed under the Constitution.

The provisions of the last phrase of the first subparagraph of Article L. 512-5 of the Environmental Code stipulate that the draft rules and technical requirements applicable to classified installations subject to a requirement of authorisation are to be published, if appropriate electronically, prior to transmission to the Supreme Council for the Prevention of Technological Risks. Neither this legislation nor any other legislative provision implement the principle of public participation in the adoption of the public decisions concerned. Accordingly, in adopting the contested legislation without providing for participation by the public, the legislator acted in breach of its powers (Article 7 of the Environmental Charter).
*(2012-262 QPC, 13 July 2012, recitals 3 and 8, p. 326)*

The fact that the legislature has acted in excess of its powers may only be invoked in support of a preliminary ruling on the issue of constitutionality where this breach itself affects a right or freedom guaranteed under the Constitution.

The contested provisions of subparagraph 4 of Article L. 411-2 of the Environmental Code authorise the Conseil d'État to adopt a decree setting the conditions under which exceptions to the prohibitions referred to above may be granted. Whilst the legislator is at liberty to determine the procedures governing the implementation of the principle of participation which differ depending upon whether they apply to regulatory acts or other public decisions affecting the environment, neither the contested provisions nor any other legislative provision guarantee that the principle of public participation will be complied with during the adoption of the public decisions concerned. Accordingly, in adopting the contested legislation without providing for participation by the public, the legislator acted in breach of its powers.
*(2012-269 QPC, 27 July 2012, recitals 3 and 6, p. 445)*

The fact that the legislature has acted in excess of its powers may only be invoked in support of a preliminary ruling on the issue of constitutionality where this breach itself affects a right or freedom guaranteed under the Constitution.

On the one hand, the application for a priority preliminary ruling on the issue of constitutionality concerns the provisions of subparagraph 5 of paragraph II of Article L. 211-3 of the Environmental Code, as in force prior to the adoption of Law no. 2006-1772 of 30 December 2006 on water and aquatic environments. This version was subsequently amended by Law no. 2010-788 of 12 July 2010 setting out the national commitment for the environment. The provisions of Article L. 120-1 of the Environmental Code, which lay down the conditions and limits subject to which the principle of public participation provided for under Article 7 of the Environmental Charter is applicable to the regulatory decisions of the State and its public establishments, were enacted in accordance with Article 244 of the Law of 12 July 2010. They are not in any case applicable to the question referred to the Constitutional Council by the Conseil d'État.

On the other hand, neither the contested provisions nor any other legislative provision assures that the principle of public participation will be complied with during adoption of the public decisions concerned. Accordingly, in adopting the contested legislation without providing for participation by the public, the legislator acted in excess of its powers.
*(2012-270 QPC, 27 July 2012, recitals 3, 6 and 7, p. 449)*

**Absence of incorrect assertion of lack of competence**

*The legislator has exhausted its powers*

Pursuant to Article 13 of the 1789 Declaration: "A common contribution is essential for the maintenance of the public forces and for the cost of administration. This should be equitably distributed among all the citizens in proportion to their means"; Pursuant to Article 34 of the Constitution: "Statutes shall determine the rules concerning... the base, rates and methods of collection of all types of taxes... - Finance acts shall determine the revenue and expenditure of the State in the conditions and with the reservations provided for by an institutional act..." ; the fact that the legislature has acted in excess of its powers may only be invoked in relation to a preliminary ruling on the issue of constitutionality where a right or freedom guaranteed under the Constitution is affected.

The provisions of Article L. 632-6 of the Rural and Marine Fishing Code have the object of enabling recognised inter-professional agricultural organisations to collect contributions from all members of their constituent professions as specified in agreements drawn up according to the procedures stipulated under Articles L. 632-3 and L. 632-4 of the Code; these contributions are received by bodies governed by private law; they are used in order to finance the activities carried out on behalf of their members, within the limits stipulated by the legislator, by the inter-professional organisations established for products or groups of products; they are paid by the members of these organisations. It follows that they do not amount to taxes of any kind and the challenge alleging the breach by the legislator of the requirements set forth under Article 34 of the Constitution must be rejected.
*(2011-221 QPC, 17 February 2012, recitals 3 and 4, p. 120)*

The provisions of Article L. 520-11 of the Town Planning Code authorise the Conseil d'État to adopt a decree stipulating the surcharges applicable to the fee due for the creation of premises for use as offices in the Île-de-France region. On the one hand, since the surcharge concerned is that due in the event of late payment, the contested provisions specify the method for calculating this surcharge and set its limit at 1% per month. On the other hand, the provisions stipulate that the decree of the Conseil d'État to which they refer shall set a surcharge to the fee subject to a limit where "the breach" of legislative or regulatory provisions consists in the failure to pay all or part of the said fee. The legislator thus defined in a sufficiently clear and precise manner the sanctions which it desired to establish in order to ensure recovery of the fee concerned. It follows that the challenge alleging that the legislator acted in breach of Article 34 of the Constitution must be rejected.
*(2012-225 QPC, 30 March 2012, recital 4, p. 172)*

It follows from Articles 34 and 37 of the Constitution that the provisions governing the procedure to be followed before the courts fall under regulatory jurisdiction since they do not relate to criminal procedure and do not call into question any rules or fundamental principles reserved by the Constitution to primary legislation. Accordingly, since it did not specify the procedural consequences of the failure to pay the legal aid contribution or the fee of 150 Euros due by the parties upon appeal, the legislator did not act in breach of its powers.
*(2012-231/234 QPC, 13 April 2012, recital 12, p. 193)*

## Repeal or amendment of legislation

The legislator is at liberty at any time, when ruling on matters within its competence, to amend or repeal existing legislation and to replace it, as the case may be, with other provisions. When doing so, it must not however deprive constitutional requirements of legal guarantees; in particular, were it to impinge upon legally acquired entitlements in a manner

that is not justified by a sufficient reason of general interest, it would violate the guarantee of rights proclaimed by Article 16 of the 1789 Declaration of the Rights of Man and the Citizen.

Article 3 of the supplementary law on finances for 2012, which reforms the social insurance and tax relief associated with overtime for full-time and part-time work established under Law no. 2007-1223 of 21 August 2007 to promote work, employment and purchasing power, does not affect a legally acquired entitlement. It does not violate Article 16 of the 1789 Declaration.
*(2012-654 DC, 9 August 2012, recitals 17 and 24, p. 461)*

The provisions of Article 12 of the supplementary law on finances for 2012, which provide for the advance payment of the exceptional corporation tax levy established under Article 30 of Law no. 2011-1978 of 28 December 2011 supplementing the law on finance for 2011, do not alter the tax due in respect of the financial year ending after 31 December 2012. They do not have any retroactive effect. The legislator did not impinge upon any legally acquired entitlements. It did not violate Article 16 of the 1789 Declaration.
*(2012-654 DC, 9 August 2012, recital 46, p. 461)*

The legislator is at liberty at any time, when ruling on matters within its competence, to amend or repeal existing legislation and to replace it, as the case may be, with other provisions. When doing so, it must not deprive constitutional requirements of legal guarantees In particular, were it to impinge upon legally acquired entitlements in a manner that is not justified by a reason of sufficient general interest, it would violate the guarantee of rights proclaimed by Article 16 of the 1789 Declaration.

The provisions of Articles 22, 23 and 24 of the law on finance, amended for 2013, which are applicable to taxes due in 2013 in relation to 2012, alter the tax benefits previously granted, which no rule of constitutional law requires be maintained. They do not affect legally acquired entitlements and do not accordingly breach the guarantee of rights proclaimed by Article 16 of the 1789 Declaration.
*(2012-662 DC, 29 December 2012, recitals 107 and 108, p. 724)*

## CONDITIONS GOVERNING THE IMPLEMENTATION OF ARTICLES 37(2) AND 41 OF THE CONSTITUTION

### Constitutional of laws falling within the regulatory domain

#### Declarations of regulatory status

Whilst Article 34 and the first subparagraph of Article 37 of the Constitution provide for a separation between the statutory domain and the regulatory domain, and whilst Article 41 and the second subparagraph of Article 37 organise the specific procedures which enable the Government to ensure that the regulatory domain is protected against any encroachment by the law, the Constitution does not however intend to brand as unconstitutional any regulatory provision contained within a law. Accordingly, the applicants cannot rely on the fact that the legislator took action within the regulatory domain in order to request that the contested provision be declared to be of regulatory status.
*(2012-649 DC, 15 March 2012, recital 10, p. 142)*

### Article 37, subparagraph 2 (procedure for the revocation of legalised status)

#### Competence of the regulatory authorities

The designation: "judicial agent of the Treasury" does not call into question any fundamental principle or any rules reserved by the Constitution to primary legislation. Therefore, it has regulatory status.
*(2012-231 L, 7 June 2012, recital 1, p. 279)*

## Guarantees of public freedoms

### Judicial guarantees

*Administrative procedure*

It follows from Articles 34 and 37 of the Constitution that the provisions governing the procedure to be followed before the courts fall under regulatory jurisdiction since they do not relate to criminal procedure and do not call into question any rules or fundamental principles reserved by the Constitution to primary legislation. Accordingly, since it did not specify the procedural consequences of the failure to pay the legal aid contribution or the fee of 150 Euros due by the parties upon appeal, the legislator did not act in breach of its powers.
*(2012-231/234 QPC, 13 April 2012, recital 12, p. 193)*

*Civil Procedure*

It follows from Articles 34 and 37 of the Constitution that the provisions governing the procedure to be followed before the courts fall under regulatory jurisdiction since they do not relate to criminal procedure and do not call into question any rules or fundamental principles reserved by the Constitution to primary legislation. Accordingly, since it did not specify the procedural consequences of the failure to pay the legal aid contribution or the fee of 150 Euros due by the parties upon appeal, the legislator did not act in breach of its powers.
*(2012-231/234 QPC, 13 April 2012, recital 12, p. 193)*

## Tax base, rate and procedures governing the recovery of taxes of any nature, currency issue regimes

### Public revenues

*Mandatory levies*

Social contributions

The invalidity insurance contributions due from self-employed non-agricultural workers are contributions establishing entitlement to the benefits and advantages available under the mandatory Social Security scheme for self-employed workers. In levying these contributions on a tax base corresponding to the totality of the income of self-employed workers, the contested provisions have not altered their nature as contributions. Accordingly, these contributions do not fall within the category of "taxes of any nature" provided for under Article 34 of the Constitution. The fact that the legislator delegated the power to set their rates to secondary legislation did not amount to a breach of its powers.
*(2012-659 DC, 13 December 2012, recitals 8 and 12, p. 680)*

Taxes of any nature - Qualification

The provisions of Article L. 632-6 of the Rural and Marine Fishing Code have the object of enabling recognised inter-professional agricultural organisations to collect contributions from all members of their constituent professions as specified in agreements drawn up according to the procedures stipulated under Articles L. 632-3 and L. 632-4 of the Code. These contributions are received by bodies governed by private law; they are used in order to finance the activities carried out on behalf of their members, within the limits stipulated by the legislator, by the inter-professional organisations established for products or groups of products; they

are paid by the members of these organisations. Accordingly, they do not constitute taxes of any nature.
*(2011-221 QPC, 17 February 2012, recital 4, p. 120)*

Taxes of any nature - Procedures for recovery

Pursuant to Article 34 of the Constitution: "statutes shall determine the rules concerning... the base, rates and methods of collection of all types of taxes". It follows that when making provision for a tax, the legislator must determine the procedures for its recovery, including rules on controls, recovery, disputes, guarantees and penalties applicable to that taxation.

Article L. 520-11 of the Town Planning Code authorises the Conseil d'État to adopt a decree stipulating the surcharges applicable to the fee due for the creation of premises for use as offices in the Île-de-France region. On the one hand, since the surcharge concerned is that due in the event of late payment, the contested provisions specify the method for calculating this surcharge and set its limit at 1% per month. On the other hand, the provisions stipulate that the decree of the Conseil d'État to which they refer shall set a surcharge to the fee subject to a limit where "the breach" of legislative or regulatory provisions consists in the failure to pay all or part of the said fee. The legislator thus defined in a sufficiently clear and precise manner the sanctions which it desired to establish in order to ensure recovery of the fee concerned. It follows that the challenge alleging that the legislator acted in breach of Article 34 of the Constitution must be rejected.
*(2012-225 QPC, 30 March 2012, recital 3 and 4, p. 172)*

## Creation of categories of public establishments

### These are not rules establishing categories of public establishments

*Composition of a board vested with consultative powers*

The last subparagraph of Article L. 5322-1 of the Public Health Code concerns the scientific board of the National Agency for the Safety of Pharmaceuticals and Healthcare Products, a public State establishment. This board has the mission of overseeing the coherence of the scientific policy of this agency and is only vested with consultative powers.

The provisions of the last phrase of this subparagraph which determine the composition of this scientific board do not call into question either the rules on "the creation of categories of public establishments" which are reserved to primary legislation under Article 34 of the Constitution or any of the other principles or rules reserved under Constitution to primary legislation. Therefore, they have regulatory status.
*(2012-234 L, 11 October 2012, recitals 1 and 2, p. 527)*

*Procedures governing the exercise of powers of control*

The provisions of the first subparagraph of Article L. 756-2 of the Education Code referred to the Constitutional Council for review have the sole purpose of specifying the ministries empowered to exercise powers of control over the School of Advanced Studies in Public Health [École des hautes études en santé publique], a public State establishment of a scientific, cultural and professional nature. They do not call into question any fundamental principle or any rules reserved by the Constitution to primary legislation. Therefore, they have regulatory status.
*(2012-236 L, 22 November 2012, recitals 1, p. 594)*

## Presentation of the environment

The provisions of the second phrase of the last subparagraph of Article L. 371-2 of the Environmental Code are those in force according to Article 121 of Law no. 2012-788 of 12

July 2010. They concern the composition of the national "green and blue belt" committee associated with the drafting of the framework document entitled "national guidelines for the preservation and restoration of ecological continuity". They do not call into question any rule or principle reserved by the Constitution to primary legislation. Therefore, they have regulatory status.
*(2012-232 L, 09 August 2012, recitals 1, p. 482)*

## Labour law and Social Security law

### Social Security law

*Type of Social Security regimes*

Special or particular regimes

In enacting Article L. 711-1 of the Social Security Code, the legislator on the one hand provided that, out of the businesses or enterprises which were already subject to a special Social Security regime on 6 October 1945, those listed in a decree issued by the Conseil d'État shall continue to remain subject to a special Social Security organisation on a provisional basis. On the other hand, that provision allowed for regulations to be adopted establishing for each of these businesses or enterprises a Social Security organisation vested with the full powers defined under Article L. 111-1 of the Code.

It is appropriate to include amongst the fundamental principles applicable to Social Security, and which as such fall within the scope of the law, the existence itself of a special Social Security regime. The same applies for the determination of the services and categories of beneficiary as well as the definition of the nature of the prerequisites required for the provision of benefits. However, in this case, the failure by the legislator to act within its powers did not deprive the requirements resulting from the eleventh subparagraph of the 1946 Preamble of legal guarantees. It did not in itself affect any right or freedom guaranteed under the Constitution. Accordingly, the challenge alleging that the legislator acted in excess of its powers must be rejected. (*Ex post* review of the constitutionality of legislation. Application for a priority preliminary ruling on the issue of constitutionality).
*(2012-254 QPC, 18 June 2012, recitals 5 and 6, p. 292)*

*Functioning of Social Security bodies*

Control

The provisions designating the ministries which are competent to exercise powers of control over the operations of agricultural social mutual assistance bodies have the sole purpose of designating the authority entitled to exercise powers on behalf of the State which, under the terms of the law, fall under the competence of the executive. They do not call into question "the fundamental principles... of Social Security", which are reserved to primary legislation under Article 34 of the Constitution and have regulatory status.
*(2012-233 L, 4 October 2012, recitals 1 and 2, p. 506)*

# RIGHTS AND FREEDOMS

## THE CONCEPT OF "RIGHTS AND FREEDOMS GUARANTEED UNDER THE CONSTITUTION" (Article 61-1)

### 1789 Declaration of the Rights of Man and the Citizen

**Article 4**

Applied to political life, the principle of plurality of ideas and opinions resulting from Article 4 of the Constitution is one of the rights and freedoms guaranteed under the Constitution.
*(2011-4538 SEN, 12 January 2012, recitals 4 and 5, p. 67)*

**Article 6**

The third subparagraph of Article 64 of the Constitution provides that: "An organic law shall determine the status of members of the Judiciary". Article 6 of the 1789 Declaration of the Rights of Man and the Citizen provides that all citizens being equal in the eyes of the law, they "are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents". The rules governing the recruitment of magistrates to the judiciary laid down in basic legislation must, in particular when stipulating precise requirements as to the capacity of the interested parties, ensure respect for the principle of equal access to public-sector employment and the independence of the judiciary.
*(2012-278 QPC, 5 October 2012, recitals 3 and 4, p. 511)*

**Article 16**

The principles of the independence and impartiality of the judiciary are included in the rights and freedoms guaranteed under the Constitution and may be relied on in support of a QPC.
*(2012-250 QPC, 8 June 2012, recital 3, p. 281)*

### 1946 Preamble

**Right to the protection of health (subparagraph 11)**

Following the referral of a QPC relating in particular to Article L. 222-6 of the Code of Social Action and Families which guarantees to all women the right to request during childbirth that their identity and the fact of their admission be maintained secret and imposes the costs of their childbirth and accommodation on the general public, the Council held that these provisions did not deprive the constitutional right to protection of health of legal guarantees.
*(2012-248 QPC, 16 May 2012, recitals 6 and 8, p. 270)*

### Constitution of 4 October 1958

**Article 34**

The fact that the legislator has acted in excess of its powers may only be invoked in relation to a preliminary ruling on the issue of constitutionality where a right or freedom guaranteed under the Constitution is affected.
*(2011-223 QPC, 17 February 2012, recital 3, p. 126 ; 2012-231/234 QPC, 13 April 2012, recital 12, p. 193)*

The fact that the legislator has acted in excess of its powers may only be invoked in relation to a preliminary ruling on the issue of constitutionality where such a violation itself affected a right or freedom guaranteed under the Constitution.
*(2012-254 QPC, 18 June 2012, recital 3, p. 292)*

**Article 64**

The fact that the legislator has acted in excess of its powers may only be invoked in support of a preliminary ruling on the issue of constitutionality where this breach itself affects a right or freedom guaranteed under the Constitution.

The third subparagraph of Article 64 of the Constitution provides that: "An organic law shall determine the status of members of the Judiciary". Article 6 of the 1789 Declaration of the Rights of Man and the Citizen provides that since all citizens being equal in the eyes of the law, they "are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents". The rules governing the recruitment of magistrates to the judiciary laid down in basic legislation must, in particular when stipulating precise requirements as to the capacity of the interested parties, ensure respect for the principle of equal access to public-sector employment and the independence of the judiciary.
*(2012-278 QPC, 5 October 2012, recitals 3 and 4, p. 511)*

**Article 72**

Pursuant to the last subparagraph of Article 72 of the Constitution: "In the territorial communities of the Republic, the State representative, representing each of the members of the Government, shall be responsible for national interests, administrative supervision and compliance with the law". These constitutional requirements do not feature in the "rights and freedoms guaranteed under the Constitution" and cannot therefore be invoked in support of an application for a priority preliminary ruling on the issue of constitutionality.
*(2012-282 QPC, 23 November 2012, recital 24, p. 596)*

## Environmental Charter

**Articles 1 and 2**

Article 1 of the Environmental Charter provides that: "Every person has the right to live in a balanced environment that respects health". Article 3 provides that: "Subject to the conditions specified by law, every person shall prevent the harm that he is liable to cause to the environment or, alternatively, to limit its consequences". It is for the legislator and, insofar as specified by law, for the administrative authorities to determine, in accordance with the principles set forth in this Article, the procedure for implementing these provisions.

The Constitutional Council does not dispose of a general power of appreciation and decision making of the same nature as that of Parliament. It is not for the Council to impose its assessment in place of that of the legislator with regard to the means by which the legislator intends to implement the right of each individual to live in a balanced environment which respects his health as well as the principle that environmental damage should be prevented.
*(2012-282 QPC, 23 November 2012, recitals 7 and 8, p. 596)*

**Article 3**

Article 1 of the Environmental Charter provides that: "Every person has the right to live in a balanced environment that respects health". Article 3 provides that: "Subject to the conditions specified by law, every person shall prevent the harm that he is liable to cause to the environment or, alternatively, to limit its consequences". It is for the legislator and, insofar

as specified by law, for the administrative authorities to determine, in accordance with the principles set forth in this Article, the procedure for implementing these provisions.

The Constitutional Council does not dispose of a general power of appreciation and decision making of the same nature as that of Parliament. It is not for the Council to impose its assessment in place of that of the legislator with regard to the means by which the legislator intends to implement the right of each individual to live in a balanced environment which respects his health as well as the principle that environmental damage should be prevented.
*(2012-282 QPC, 23 November 2012, recitals 7 and 8, p. 596)*

**Article 7**

The provisions of Article 7 of the Environmental Charter are featured in the rights and freedoms guaranteed under the Constitution. It is for the legislator and, insofar as specified by law, for the administrative authorities to determine, in accordance with the principles set forth thereunder, the procedure for implementing these provisions.
*(2012-262 QPC, 13 July 2012, recital 4, p. 326)*

## Objectives of constitutional standing

The breach of the objective of constitutional standing that the law should be intelligible and accessible cannot in itself be invoked in support of an application for a priority preliminary ruling on the issue of constitutionality on the basis of Article 61-1 of the Constitution. Accordingly, the challenge alleging that this objective was disregarded is inadmissible.
*(2012-283 QPC, 23 November 2012, recital 28, p. 605)*

**Accessibility and intelligibility of the law invoked with another provision of the Constitution**

Pursuant to the first subparagraph of Article 2 of the Constitution: "The language of the Republic is French". Whilst the breach of the objective of constitutional standing that the law must be accessible and intelligible, as resulting from Articles 4, 5, 6 and 16 of the 1789 Declaration, cannot in itself be invoked in support of an application for a priority preliminary ruling on the issue of constitutionality on the basis of Article 61-1 of the Constitution, the breach of the objective of constitutional standing that the law should be accessible resulting from the absence of an official French-language version of a legislative provision may be invoked in support of an application for a priority preliminary ruling on the issue of constitutionality.
*(2012-285 QPC, 30 November 2012, recitals 12, p. 636)*

## Reference legislation or elements not taken into consideration

The fact that the legislature has acted in excess of its powers may only be invoked in relation to a preliminary ruling on the issue of constitutionality where a right or freedom guaranteed under the Constitution is affected.
*(2011-221 QPC, 17 February 2012, recital 3, p. 120)*

The breach of the objective of constitutional standing that the law should be intelligible and accessible cannot in itself be invoked in support of an application for a priority preliminary ruling on the issue of constitutionality on the basis of Article 61-1 of the Constitution.
*(2012-230 QPC, 6 April 2012, recital 6, p. 190)*

The fact that the legislature has acted in excess of its powers may only be invoked in support of a preliminary ruling on the issue of constitutionality where a right or freedom guaranteed under the Constitution is affected.

The Constitutional Council does not dispose of a general power of appreciation of the same nature as that of Parliament. In providing that engineers and agents from the rural, water and forestry service are not eligible to serve on the general council in the cantons where they perform their duties or have performed them in the previous six months, the contested provisions

reconciled in a manner not manifestly imbalanced on the one hand the right of eligibility and on the other hand equality of suffrage and the maintenance of the freedom of voters.

In enacting the provisions of subparagraph 14 of Article L. 195 of the Electoral Code, amended after the adoption of the Constitution of 4 October 1958, the legislator did not act in breach of its powers.
*(2012-230 QPC, 6 April 2012, recitals 4, 5 and 7, p. 190)*

The encroachment by the legislator into the domain reserved by the Constitution to basic legislation cannot be relied on in support of an application for a priority preliminary ruling on the issue of constitutionality on the basis of Article 61-1 of the Constitution. Accordingly, the challenge alleging that the legislative provisions applicable to judges from the commercial courts encroach upon the powers vested in the legislature competent to enact basic legislation by Article 64 of the Constitution must in any case be rejected.
*(2012-241 QPC, 4 May 2012, recital 20, p. 236)*

The Constitutional Council was referred a QPC objecting that the provisions of Article 8-2 of Ordinance no. 45-174 of 2 February 1954 on juvenile delinquency which state that, upon acceptance by the juvenile court of a request by the Public Prosecutor, the court shall refer the minor to the competent court to pass judgment within a time limit of "between one and three months" and specify moreover that, if the minor has been referred to the correctional court for minors, "this time limit may fall between ten days and one month", are unintelligible. The Council held that the provisions were not under any circumstances unintelligible.
*(2012-272 QPC, 21 September 2012, recital 5, p. 486)*

The fact that the legislature has acted in excess of its powers may only be invoked in support of a preliminary ruling on the issue of constitutionality where this breach itself affects a right or freedom guaranteed under the Constitution.

Whereas, pursuant to the third subparagraph of Article 72 of the Constitution, the local authorities "shall be self-governing through elected councils", each of them shall do so "in the conditions provided for by statute". Article 34 of the Constitution reserves to primary legislation the determination of the fundamental principles of free administration of local authorities, along with their powers and resources.

Article 20 of Law no. 2010-597 of 3 June 2010 on Greater Paris provides for the transfer of ownership or usage of the properties referred to in Article 7 owned by the Société du Grand Paris upon receipt. Paragraph I of this Article provides that the lines, works and installations shall be "consigned" to the Paris Public Transport System [Régie autonome des transports parisiens] which shall ensure their technical management and that the rolling stock is transferred to the full ownership of the Île-de-France Transport Union. Paragraph II authorises the Conseil d'État to adopt a decree specifying, in particular, the terms governing payment of remuneration to Société du Grand Paris for the use or transfer of ownership of its lines, works, installations and materials. Since they make no provision for the particular procedures applicable to financial participation which is likely to be claimed as consideration for the transfer of assets between the Société du Grand Paris and the Île-de-France Transport Union, both bodies governed by public law, the contested provisions do not have the effect of depriving of legal guarantees the requirements resulting from the constitutional principle of the free administration of the local authorities comprising the Île-de-France Transport Union.
*(2012-277 QPC, 5 October 2012, recitals 3, 4 and 6, p. 508)*

The breach of the objective of constitutional standing that the law should be intelligible and accessible cannot in itself be invoked in support of an application for a priority preliminary ruling on the issue of constitutionality on the basis of Article 61-1 of the Constitution.
*(2012-277 QPC, 05 October 2012, recital 7, p. 508)*

Accordingly, the challenge alleging that the objective was disregarded is inadmissible.
*(2012-280 QPC, 12 October 2012, recital 12, p. 529)*

The second, third and fourth subparagraphs of Article 13 of the Constitution on the powers of appointment of the President of the Republic do not establish any right or freedom guaranteed under the Constitution. Their breach therefore may not in itself be invoked in support of a preliminary ruling on the issue of constitutionality on the basis of Article 61-1 of the Constitution.
*(2012-281 QPC, 12 October 2012, recital 10, p. 536)*

The contested provisions contained in Articles 29, 29-1 and 29-2 of Law no. 90-568 of 2 July 1990 on the organisation of the public postal service and France Télécom, which provide for the maintenance of the body of officials within France Télécom, whereas that company is subject in principle to the legislative provisions applicable to limited liability companies, does not violate any constitutional principle applicable to officials or any right or freedom guaranteed under the Constitution.
*(2012-281 QPC, 12 October 2012, recital 11, p. 536)*

Pursuant to Article 6 of the Environmental Charter: "Public policies must promote sustainable development. To that effect, they shall reconcile the protection and exploitation of the environment, economic development and social progress". This provision does not create any right or freedom guaranteed under the Constitution. Its breach may not in itself be invoked in support of an application for a priority preliminary ruling on the issue of constitutionality on the basis of Article 61-1 of the Constitution.
*(2012-283 QPC, 23 November 2012, recital 22, p. 605)*

## GENERAL PRINCIPLES APPLICABLE TO RIGHTS AND FREEDOMS GUARANTEED UNDER THE CONSTITUTION

### Scope of rights and freedoms

#### Geographical application

*Foreign nationals*

The constitutional requirement to organise secular public teaching free of charge does not apply to the State outwith the territory of the Republic. The principle of equality before the law does not require the provision of free school education to French children abroad.
*(2012-654 DC, 9 August 2012, recital 76, p. 461)*

### Guarantee of rights

#### Defence rights

The requirement to respect defence rights is guaranteed under Article 16 of the 1789 Declaration.

The right granted to customs officials by Article 65 of the Customs Code to access documentation relating to transactions of relevance for their services does not in itself breach defence rights.

Whilst the contested provisions require the individuals concerned to provide customs officials with any documents requested by the latter, they do not grant these officials a power to enforce disclosure of these documents. They do not grant a general power to question or a power to conduct searches. In the absence of any prior authorisation by the judiciary, only documents which have been voluntarily disclosed to the authorities may be placed on file. Moreover, whilst these provisions do not stipulate that the individual concerned has the right to be assisted by a lawyer, they do not have the purpose or effect of hindering such assistance. Finally, they do not cause any breach of the rights of the individuals concerned to request the competent courts to review the legality of the operations carried out in accordance with the aforementioned provisions. It follows that Article 65 of the Customs Code does not breach the requirement to respect the rights of the defence.
*(2011-214 QPC, 27 January 2012, recitals 5 and 6, p. 94)*

The first phrase of the third subparagraph of Article 26-4 of the Civil Code provides that in the event of untrue statements or fraud, the time limit within which the public prosecutor may

object to the registration of a declaration for the purposes of acquiring nationality by marriage shall start to run at the time when the relevant untrue statement or fraud is discovered. These provisions do not in themselves breach the requirement to respect defence rights.

The presumption of fraud established under the second phrase of the third subparagraph of this Article consists solely in the presumption that, where it is established that a cohabitation between husband and wife having ended within twelve months of registration of the declaration provided for under Article 21-2 of the Civil Code had actually ended on the date of that declaration. This simple presumption may be objected to by the declarer by any means provided as rebuttal evidence. Under these conditions, these provisions do not in themselves breach the requirement to respect the rights of the defence.

However, the combined application of the provisions of the first and second phrase of the third subparagraph of Article 26-4 will, due to the sole fact that the cohabitation ended within one year of registration of the citizenship declaration, have the effect of establishing rules of evidence which require an individual who has acquired French nationality through marriage to be able to prove for his entire life that at the time his or her declaration was made for the purposes of obtaining citizenship, the cohabitation between husband and wife had not ended in either emotional nor material terms. The temporally unlimited benefit thus conferred on the public prosecutor, as the applicant, in the administration of evidence would result in an excessive breach of defence rights.

Accordingly, the presumption provided for under the second phrase of the third subparagraph of Article 26-4 can only apply in proceedings initiated within two years of the date of registration of the declaration. If the proceedings are initiated after this time, it will be for the public prosecutor to provide proof of the false statement or fraud alleged. Subject to this reservation, Article 26-4 of the Civil Code does not infringe the requirement to respect the rights of the defence.
*(2012-227 QPC, 30 March 2012, recitals 10 to 14, p. 175)*

**Right of appeal**

*Administrative procedure*

Article 3 of Law no. 68-1250 of 31 December 1968 provides that "The period for time barring shall have no effect against a creditor which is unable to take action, either personally or through his legal representative or on the grounds of force majeure, and shall have no effect against any individual who may be legitimately deemed to have been unaware of the existence of the debt or the debt owed to the party of which he is the legal representative".

It follows from these provisions that the legal representative of a minor must take action in order to uphold the rights of the child. These provisions establish an exception for cases in which the legal representative is unable to act and in which he is legitimately unaware of the existence of the debt. Accordingly, they do not violate the right to effective judicial relief resulting from Article 16 of the 1789 Declaration.
*(2012-256 QPC, 18 June 2012, recitals 1 and 6, p. 295)*

Article 16 of the Declaration of the Rights of Man and the Citizen of 1789 provides that: "A society in which the observance of the law is not assured, nor the separation of powers defined, has no Constitution at all"; According to this provision, no substantive encroachment may be made on the right of an interested party to seek effective relief before a court.

The contested provisions of Articles L. 341-1, L. 341-2, L. 341-3 and L. 341-6 of the Environmental Code on inclusion in the list of natural monuments and sites and on the classification of these monuments and sites do not deprive constituents of the right to initiate proceedings before the administrative courts within the time limit applicable to appeals, on the grounds that the decision to classify was *ultra vires*. Moreover, if a request for the full or partial declassification of a natural monument or classified site has been presented to the administrative authorities, any interested party may initiate proceedings before the administrative courts seeking the annulment of the refusal of that request and may, if appropriate, enclose arguments in support of an injunction along with the application. Accordingly, the challenge alleging a breach of the right to effective judicial relief must be rejected.
*(2012-283 QPC, 23 November 2012, recitals 11 and 12, p. 605)*

Whilst the last subparagraph of Article L. 7112-4 of the Labour Code on the journalists' arbitral tribunal provides that the decisions of the arbitral tribunal shall not be subject to appeal, the principle that legal proceedings should be comprised of two instances is not itself of constitutional standing. The contested provisions do not have the objective or effect of preventing any appeal against such a decision. Indeed, according to the settled case law of the Cour de Cassation, this decision may be challenged before the court of appeal in an annulment action filed according to the rules applicable to arbitration, in which consideration is given in particular to respect for the requirements of public order, the legitimacy of the procedure and the guarantee of the right to make representations. The court of appeal's judgment may be appealed to the Cour de Cassation. Having regard to the special competence of the arbitral tribunal over issues relating to the performance and breach of contracts of employment for journalists, these provisions do not breach the right to effective judicial relief.
*(2012-243/244/245/246 QPC, 14 May 2012, recitals 11 and 13, p. 263)*

Article 16 of the Declaration of the Rights of Man and the Citizen of 1789 provides that: "A society in which the observance of the law is not assured, nor the separation of powers defined, has no Constitution at all". This provision guarantees the right of interested persons to achieve effective judicial relief, the right to a fair trial and the right to make representations.

According to the contested provisions contained in Article L. 12-1 of the Code of Expropriation in the Public Interest, absent amicable agreement, ownership of property or real rights in property shall be transferred by order of the judge in the expropriation proceedings. This order is issued having regard to documentation establishing that the formal requirements provided for under chapter I of title I of the legislative part of the Code, on declarations of public utility and the official approval of expropriation, have been met. The expropriation order transfers possession of the property to the expropriating body, provided that it has complied with the provisions on the setting and payment of compensation.

On the one hand, the judge in the expropriation proceedings may only issue an order transferring ownership after a lawful declaration of public utility has been made. The declaration of public utility and the official approval of expropriation specifying the list of land parcels or real rights to be expropriated may be challenged before the administrative courts. The role of the judge in the expropriation proceedings is limited to a control that the file transmitted to him by the expropriating authority has been compiled in accordance with the requirements of the Code on Expropriation in the Public Interest. The order may be disputed by an appeal to the Cour de Cassation. Furthermore, the order issued by which the judge in the expropriation proceedings sets compensation is issued upon conclusion of a procedure in which the parties are entitled to make representations and may be subject to appeal.

On the other hand, under the terms of the contested provisions, the order transfers possession of the property to the expropriating body, provided that it has complied with the provisions of chapter III of title I of the legislative part of the Code on Expropriation in the Public Interest on the setting and payment of compensation and Article L. 15-2 of the Code specifying the conditions under which possession is to be transferred. Moreover, pursuant to the second subparagraph of Article L. 12-5 of the Code: "In the event that a declaration of public interest or official approval of expropriation is annulled by a definitive decision of the administrative courts, any expropriated party may request a ruling from the judge in the expropriation proceedings that the order requiring the transfer of ownership lacks any basis in law". No violation of the requirements set forth in Article 16 of the 1789 Declaration.
*(2012-247 DC, 16 May 2012, recitals 3 and 5 to 7, p. 267)*

Whilst by adopting the provisions of Article L. 224-8 of the Code of Social Action and Families, the legislator chose to grant standing to file an appeal with the regional court against a judgment establishing status as a ward of the State to individuals not stated in a closed list, and who consequently cannot all individually receive notice of the judgment concerned, the failure to specify the situations and conditions in which individuals with a close link with the child may effectively be able to file such an appeal would amount to a deprivation of legal guarantees for the right to effective judicial relief. The first subparagraph of Article L. 224-8 violates the requirements of the right to effective judicial relief protected under Article 16 of the 1789 Declaration.
*(2012-268 QPC, 27 July 2012, recital 9, p. 441)*

According to the contested provisions contained in Article L. 13-8 of the Code of Expropriation in the Public Interest, the judge in the expropriation proceedings shall determine the

level of compensation irrespective of any serious challenges on the merits of the right or the capacity of the claimants. If the parties submit any such challenges, shall are required to appeal "before the appropriate authorities". The same applies where difficulties arise which are not related to the determination of the level of compensation and the application of Articles L. 13-10 and L. 13-11 of the Code on requests for full expropriation and of Articles L. 13-20 and L. 14-3 of the Code on disputes relating to the re-housing of tenants and occupants.

Whilst the judge in the expropriation proceedings sets the level of compensation, he may also require the parties to apply to the competent courts if they raise objections or difficulties. He must take account of the existence of such objections or difficulties when setting compensation and, if necessary, stipulate various amounts of compensation corresponding to the different hypotheses envisaged. For each of these hypotheses, the compensation set must cover the full extent of the direct, tangible and certain detriment caused by expropriation. The order issued by which the judge in the expropriation proceedings sets compensation is issued upon conclusion of a procedure in which the parties are entitled to make representations and may be subject to appeal. The contested provisions do not prevent the judge in the expropriation proceedings from being seized once again by the parties if the decision given by the judge seized of the dispute or difficulty does not correspond to one of the hypotheses envisaged by the former judge.

The contested provisions do not violate the requirements of Article 16 or of Article 17 of the 1789 Declaration.
*(2012-275 QPC, 28 September 2012, recitals 5 to 7, p. 498)*

**Legal compliance**

*Violation of an act or of a legally acquired entitlement*

The legislator is at liberty at any time, when ruling on matters within its competence, to amend or repeal existing legislation and to replace it, as the case may be, with other provisions. When doing so, it must not deprive constitutional requirements of legal guarantees In particular, were it to impinge upon legally acquired entitlements in a manner that is not justified by a reason of sufficient general interest, it would violate the guarantee of rights proclaimed by Article 16 of the 1789 Declaration.

The provisions of Article 15 of the Supplementary Law on Finance, amended for 2012, which are applicable to taxes due in 2013 in relation to the year 2012, amend, solely with regard to sales for consideration with a specific date after 14 November 2012, a tax regime the maintenance of which is not required under any rule of constitutional law. They do not affect legally acquired entitlements and do not accordingly breach the guarantee of rights proclaimed by Article 16 of the 1789 Declaration.
*(2012-661 DC, 29 December 2012, recitals 10, 13 and 15, p. 715)*

Article 22 of the Law on Finance, amended for 2013, on the tax regime applicable to capital gains on the sale of equity interests, amends the procedure for calculating the quota representing costs and charges which is to be reincorporated into the taxable base at the normal rate of corporation tax.

Article 23 sets out, for companies subject to corporation tax, the regime on the deductibility of financial costs from their taxable profits.

Article 24 sets out the mechanism for carrying forward losses for companies subject to corporation tax.

The legislator is at liberty at any time, when ruling on matters within its competence, to amend or repeal existing legislation and to replace it, as the case may be, with other provisions. When doing so, it must not deprive constitutional requirements of legal guarantees In particular, were it to impinge upon legally acquired entitlements in a manner that is not justified by a reason of sufficient general interest, it would violate the guarantee of rights proclaimed by Article 16 of the 1789 Declaration.

The provisions of Articles 22, 23 and 24 of the Law on Finance, amended for 2013, which are applicable to taxes due in 2013 in relation to 2012, alter the tax benefits previously granted, which no rule of constitutional law requires be maintained. They do not affect legally ac-

quired entitlements and do not accordingly breach the guarantee of rights proclaimed by Article 16 of the 1789 Declaration.
*(2012-662 DC, 29 December 2012, recitals 103 to 105, 107 and 108, p. 724)*

Letter A of paragraph IV of Article 9 of the Law on Finance, amended for 2013 has the objective of subjecting to income tax for the year 2012, without exception, income from securities for which the flat-rate levies establishing exemption from income tax provided for under paragraph I of Articles 117 *quater* and 125 A of the General Tax Code have been applied with effect from 1 January 2012. Letter B of paragraph IV establishes a tax credit in respect of these levies for the purposes of income tax for the year 2012 in order to avoid the double taxation of this income.

Pursuant to letter A of paragraph IV: "With effect from 1 January 2012, the levies provided for under paragraph I of Articles 117 *quater* and 125 A of the General Tax Code shall no longer establish an exemption for the income on which they are charged". Accordingly, the provisions of paragraph IV have the effect of retroactively calling into question the exemption created by the flat-rate levies provided for under Articles 117 *quater* and 125 A of the General Tax Code.

The legislator is at liberty at any time, when ruling on matters within its competence, to amend or repeal existing legislation and to replace it, as the case may be, with other provisions. When doing so, it must not deprive constitutional requirements of legal guarantees; in particular, were it to impinge upon legally acquired entitlements in a manner that is not justified by a reason of sufficient general interest, it would violate the guarantee of rights proclaimed by Article 16 of the 1789 Declaration.

The provisions of paragraph IV would have the effect of increasing the tax payable in relation to income from securities earned in 2012 for certain taxpayers in spite of the fact that these taxpayers have already paid a tax, in accordance with the law, which exempted them from their tax obligations in relation to this income.

The legislator's desire to secure supplementary revenue in 2013 associated with the reform of the arrangements governing the taxation of income from securities does not constitute a reason of general interest which is sufficient to alter a tax retroactively for which the legislator granted an exemption and which has already been paid. Censure.
*(2012-662 DC, 29 December 2012, recitals 36, 37 and 40 to 44, p. 724)*

*Other retroactive measures*

Conditions for retroactive effect

The exceptional levy on wealth for the year 2012 has been established with reference to assets and rights held on 1 January 2012. However, the relevant circumstances establishing liability to taxation are those of the taxpayer which obtained on the date of entry into force of the Supplementary Law on Finance, amended for 2012. Only taxpayers who are alive on the date of the relevant circumstances will be liable to pay the exceptional levy on wealth. Provision has also been made that taxpayers who have left the national territory between 1 January and 4 July 2012 may deduct the value of any assets which are no longer located in France from the amount liable to the exceptional levy on wealth. The tax established does not thus have retroactive effect and does not affect any legally acquired entitlements. It does not violate the guarantee of rights proclaimed by Article 16 of the 1789 Declaration.
*(2012-654 DC, 9 August 2012, recital 36, p. 461)*

Paragraph I of Article 18 of the Supplementary Law on Finance, amended for 2012 relates to capital gains on securities, corporate rights or associated stocks or rights earned by natural persons following a contribution to a company controlled by them. In particular, it inserts Article 150-0 B *ter* into the General Tax Code replacing the tax discharge system with an optional tax deferral regime. Paragraph II of Article 18 applies paragraph I to contributions made after 14 November 2012.

The provisions of paragraph I of Article 18 were included in the draft Supplementary Law on Finance, tabled in the National Assembly on 14 November 2012. Their purpose is to put an end to certain tax optimisation transactions. In deciding that these provisions only apply to contributions with a specific date after that time, the legislator intended to avoid a situation in which the tabling of the draft law in the National Assembly created effects contrary to the objective pursued prior to entry into force of the law. Accordingly, the retroactive effect of paragraph II of Article

18 is justified by a reason of sufficient general interest. The provisions of paragraph II, which do not violate any other requirement of constitutional law, must be upheld as constitutional.
*(2012-661 DC, 29 December 2012, recitals 17 to 19, p. 715)*

Legislative validation

— Principles

Whilst the legislator may retroactively amend a rule of law or validate an administrative act or an act under private law, it may only do so if it pursues a goal of sufficient general interest and respects judicial decisions having the force of *res judicata* as well as the principle that punishment and sanctions may not have retroactive effect. Moreover, the act amended or validated may not violate any rule or any principle of constitutional standing, unless the goal of general interest targeted itself has constitutional standing. Finally, the scope of the amendment or validation must be strictly defined.
*(2011-224 QPC, 24 February 2012, recital 4, p. 136)*

According to Article 16 of the 1789 Declaration, whilst the legislator may retroactively amend a rule of law or validate an administrative act or an act under private law, it may only do so if it pursues a goal of sufficient general interest and respects judicial decisions having the force of *res judicata* as well as the principle that punishment and sanctions may not have retroactive effect. Moreover, the act amended or validated may not violate any rule or any principle of constitutional standing, unless the goal of general interest targeted itself has constitutional standing. Finally, the scope of the amendment or validation must be strictly defined.
*(2012-263 QPC, 20 July 2012, recital 3, p. 386)*

— Reason of sufficient general interest

Pursuant to Article 10 of Law no. 2011-590 of 26 May 2011 on the price of digital books: "Without prejudice to judicial decisions which have acquired the force of *res judicata*, construction permits granted in Paris shall be valid from the date of their issue where their lawfulness has been or would be contested on the grounds of failure to comply with Articles ND 6 and ND 7 of the regulation on the land use plan which returned into force following the annulment by the Conseil d'État of Articles no. 6 and no. 7 of the regulation on local town planning approved by resolution of 12 and 13 June 2006 by the Paris Council".

According to parliamentary works, in adopting the contested provision, the legislator intended to validate the decision of 8 August 2007 under which the Mayor of Paris issued a building permit to the Louis Vuitton Corporate Foundation for the construction of a building for use as a museum within the perimeter of the Jardin d'Acclimatation in Paris. It intended to carry out the implementation on public land of a project aimed at enriching national cultural heritage, enhancing attractiveness of the City of Paris for tourists and developing the Jardin d'Acclimatation. The contested provision pursues a goal of sufficient general interest.
*(2011-224 QPC, 24 February 2012, recitals 1 and 5, p. 136)*

By a decision no. 324816, 325439, 325463, 325468 and 325469 of 17 June 2011, the Conseil d'État annulled decision no. 11 of 17 December 2008 of the board provided for under Article L. 311-5 of the Intellectual Property Code setting the royalty scale for private copying. The effect of the annulment ordered was deferred for a period of six months from its date of notification to the Minister for Culture and Communication.

The payment of a royalty for private copying aims to guarantee remuneration for copyright or associated right holders as consideration for the reproduction by users for private use of works and other objects protected under associated rights. It also contributes, at a rate set under Article L. 321-9 of the Intellectual Property Code, to the financing of assistance for the creation and dissemination of live performances and training initiatives for artists.

In deferring for six months the effect of the annulment pronounced, the Conseil d'État intended to enable new rules on the amount of royalties for private copying to be adopted before this annulment took effect.

The contested provisions (paragraph I of Article 6 of Law no. 2011-1898 of 20 December 2011 on royalties for private copying) were adopted prior to the expiry of the time limit set by the Conseil d'État, whilst the board provided for under Article L. 311-5 of the Intellectual

Property Code was not able to adopt a new royalty scale for private copying within that time limit. In setting transitory rules pending the adoption of a new decision by the board within a time limit which may not under any circumstances exceed twelve months, their objective is to prevent the annulment by the Conseil d'État from producing effects which the latter had intended to prevent by deferring the effect of annulment. Accordingly, the contested provision pursues a goal of sufficient general interest.
*(2012-263 QPC, 20 July 2012, recitals 4 to 7, p. 386)*

— Lack of a reason of sufficient general interest

Dependent territory Law no. 2011-6 of 17 October 2011 validating the acts adopted pursuant to Articles 1 and 2 of resolution no. 116/CP of 26 May 2003 on the regulation of the importation of meat and offal into New Caledonia was adopted following the ruling by the administrative court of New Caledonia of 9 August 2007 and the ruling of the Paris administrative court of appeal of 1 February 2010. The contested provisions aim, on the one hand, to re-establish the monopoly established under the resolution of 26 May 2003 granting a monopoly to the office of marketing and refrigerated storage (*office de commercialisation et d'entreposage frigorifique, OCEF*) over the importation of meat and offal of bovine, suidian, ovine, caprine, equine and cervid species into New Caledonia, and on the other hand of validating steps taken in accordance with Articles 1 and 2 of this resolution.

The legislator validated regulatory and individual acts adopted in accordance with Articles 1 and 2 of the resolution of 26 May 2003 "notwithstanding that their lawfulness has been contested on the grounds that the exclusive right which the provisions grant the office of marketing and refrigerated storage over the importation of meat and offal of bovine, suidian, ovine, caprine, equine and cervid species causes an excessive breach of the principle of freedom of trade and industry which is not justified by sufficient reasons of general interest". Nevertheless, no reason of sufficient general interest justifies the applicability of these provisions to proceedings which were pending before the courts on the date of entry into force of the contested dependent territory law. Accordingly, the latter can only apply to actions initiated after that date. Subject to this reservation, the contested provisions do not violate Article 16 of the 1789 Declaration or any other right or freedom guaranteed by the Constitution.
*(2012-258 QPC, 22 June 2012, recitals 5 and 9, p. 308)*

— Scope of validation

The legislator has provided that construction permits granted in Paris shall only be valid "where their lawfulness has been or would be contested on the grounds of failure to comply with Articles ND 6 and ND 7 of the regulation on the land use plan which returned into force following the annulment by the Conseil d'État of Articles no. 6 and no. 7 of the regulation on local town planning approved by resolution of 12 and 13 June 2006 by the Paris Council". Accordingly, the legislator precisely stated the ground for illegality which it intended to remove from the construction permit. It also strictly limited the geographical area within which they had been or would be granted. Under these conditions, the scope of the validation is strictly defined.
*(2011-224 QPC, 24 February 2012, recital 6, p. 136)*

By a decision no. 324816, 325439, 325463, 325468 and 325469 of 17 June 2011, the Conseil d'État annulled decision no. 11 of 17 December 2008 of the board provided for under Article L. 311-5 of the Intellectual Property Code setting the royalty scale for private copying. The effect of the annulment ordered was deferred for a period of six months from its date of notification to the Minister for Culture and Communication.

In adopting the contested provisions (paragraph I of Article 6 of Law no. 2011-1898 of 20 December 2011 on royalties for private copying), the legislator validated the rules annulled insofar as they had been amended "by the provisions of Article L. 311-8 of the Code as in force following the enactment of this law". Paragraph II of Article L. 311-8, as in force following the enactment of the Law of 20 December 2011, provides that: "Royalty payments for private copying are not due for recordings made in particular for professional purposes where the conditions of use do not allow presumption that such use is for the purpose of private copying". Accordingly, on the one hand, the contested provisions validated the rules annulled by the Conseil d'État, whilst removing the reason which had led to this annulment. On the other hand, this validation does not have the objective of preventing these rules from being contested before the admi-

nistrative courts on other grounds. Accordingly, these provisions, which have strictly defined the scope of validation, do not contradict court decisions with the force of *res judicata*.
*(2012-263 QPC, 20 July 2012, recitals 4, 8 and 9, p. 386)*

*Application of the law over time*

In applying the rise in the employer contribution rate for top-hat pensions [defined-benefit supplementary pensions] only to annuities paid for pensions to be liquidated after 1 January 2013, the legislator did not intend to call into question the contribution rate applicable to annuities paid for pensions which had already been liquidated or which would be before 31 December 2012. Since the matter related to retirement pensions, the legislator's choice to render the contribution rate dependent on the liquidation date of these pensions did not breach the principle of equality.
*(2012-654 DC, 9 August 2012, recital 62, p. 461)*

*Stability of legal rules*

The legislator is at liberty at any time, when ruling on the matters within its jurisdiction, to amend earlier legislation or to repeal and replace it, as the case may be, with other provisions provided that, when doing so, it does not deprive constitutional requirements of legal guarantees. The provisions of Article 42 of the Supplementary Law on Finance, amended for 2012 abolish the rule that the school fees of French children educated in French establishments abroad are to be covered. These provisions do not have retroactive effect and do not call into question any legally acquired entitlements. Accordingly, the challenge alleging a breach of legal certainty must in any case be rejected.
*(2012-654 DC, 9 August 2012, recital 77, p. 461)*

## RIGHT TO LIFE AND BODILY INTEGRITY, PROTECTION OF HEALTH
(For the protection of public health, see below under Other rights and social principles)

### Sample collection

#### Cell collection

The fourth subparagraph of Article L. 1241-1 of the Public Health Code does not authorise the collection of umbilical cord or placenta blood cells or other umbilical cord or placenta cells for transplant into a family member if there is no therapeutic requirement which has been proven and duly justified upon collection. The legislator considered that if there was no such requirement, transplants of these cells into family members did not have any proven therapeutic benefit compared to other transplants.

It is not for the Constitutional Council, which does not dispose of a general power of appreciation and decision making of the same nature as that of Parliament, to call into question the provisions adopted by Parliament, having regard to the state of knowledge and of technology. The fact that it is impossible to collect umbilical cord or placenta blood cells or umbilical cord or placenta cells for the sole purposes of their conservation by the individual for possible further usage in particular within the family where it is not justified by any therapeutic necessity upon collection cannot be regarded as a breach of the principle of the protection of health as guaranteed under the 1946 Preamble.
*(2012-249 QPC, 16 May 2012, recital 8, p. 274)*

### Anonymous childbirth

The provisions of Article L. 222-6 of the Code of Social Action and Families grant all women the right to request during childbirth that their identity and the fact of their admission be

maintained secret and impose the costs of accommodation and childbirth on the public purse. In thus guaranteeing a right of anonymity and a guarantee that the costs of childbirth in a health establishment will be covered, the legislator intended to avoid the conduct of pregnancies and childbirth under conditions likely to endanger the health both of the mother as well as the child and to prevent infanticides or the abandonment of infants. It accordingly pursued the objective of constitutional standing of the protection of health.

In permitting the mother to object to the disclosure of her identity even after her death, the contested provisions seek to assure respect in an effective manner for the purposes of the protection of health of her stated intention to ensure that the fact of her admission and identity remains secret during childbirth by administering, as far as possible and using appropriate measures, access by children to information relating to their personal origins. It is not for the Constitutional Council to adopt its own assessment in place of that of the legislature regarding the balance thus set between the interests of the biological mother and those of the child. The contested provisions have not deprived the constitutional requirements relating to the protection of health of legal guarantees. They have no more violated the requirement of respect for private life and the right to lead a normal family life.
*(2012-248 QPC, 16 May 2012, recitals 6 and 8, p. 270)*

## RIGHT TO RESPECT FOR PRIVATE LIFE
(see also below, Individual freedom and Personal freedom)

### Affirmation of its constitutional standing

The freedom proclaimed under Article 2 of the 1789 Declaration implies the duty to respect private life.
*(2012-227 QPC, 30 March 2012, recital 6, p. 175)*

The freedom proclaimed under Article 2 of the 1789 Declaration implies the duty to respect private life. This freedom does not limit the powers vested in the legislator under Article 34 of the Constitution to set the rules on nationality provided that, when exercising such powers, it does not deprive constitutional requirements of legal guarantees.
*(2012-264 QPC, 13 July 2012, recital 5, p. 330)*

### Processing of personal data (see also Title 15, Independent authorities)

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 and criminal procedure. It is for the legislator, acting within the scope of its powers, to ensure that the requirements to safeguard public order and to search for the perpetrators of offences, both of which are necessary in order to protect principles and rights of constitutional standing, is reconciled with respect for other rights and freedoms protected under the Constitution. The legislator is at liberty at any time to adopt any new legislation which it considers appropriate and to amend earlier legislation or to repeal and replace it, as the case may be, with other provisions provided that, when exercising this power, it does not deprive constitutional requirements of legal guarantees.

The freedom proclaimed by Article 2 of the 1789 Declaration of the Rights of Man and the Citizen implies the right to respect for private life. Accordingly, the collection, registration, storage, consultation and disclosure of personal data must be justified by a reason of general interest and carried out in a manner which is adequate for and proportional with this objective.
*(2012-652 DC, 22 March 2012, recital 7 and 8, p. 158)*

#### Police and judicial records

*Records of identity documents*

The freedom proclaimed by Article 2 of the 1789 Declaration of the Rights of Man and the Citizen implies the right to respect for private life. Accordingly, the collection, registration,

storage, consultation and disclosure of personal data must be justified by a reason of general interest and carried out in a manner which is adequate for and proportional with this objective.

The establishment of arrangements to process personal data intended to preserve the integrity of the data necessary for the issue of identity and travel documents enables these documents to be issued securely and to enhance the efficiency of the fight against fraud. It is accordingly justified by a reason of general interest.

However, taking into account its object, this processing of personal data will involve the collection of data relating to almost the entire population of French nationality. The biometric data registered in this database, including in particular fingerprints, are particularly sensitive since they may be compared with physical traces left unintentionally by an individual or collected without his knowledge. The technical characteristics of this database as defined under the contested provisions enable it to be consulted for purposes other than the verification of an individual's identity. The provisions of the Law on the protection of identity enable this database to be consulted or searched not only in relation to the issue or renewal of identity or travel documents and the verification of the identity of the holder of such documents, but also for other purposes of the administrative or investigating police.

According to the above, having regard to the nature of the data registered, the scope of this processing, its technical characteristics and the conditions under which it may be consulted, the provisions of Article 5 violate the requirement to respect private life in a manner which may not be regarded as adequate with regards to the goal pursued. Accordingly, Articles 5 and 10 of the Law on the protection of identity must be ruled unconstitutional.
*(2012-652 DC, 22 March 2012, recitals 8 to 11, p. 158)*

**Immigration law**

Pursuant to Article 21-1 of the Civil Code: "Marriage does not have any automatic effect on nationality". However, Article 21-2 enables the spouse of a French national to acquire nationality by a declaration which may not in principle be made within less than one year of the marriage and provided that at the time this declaration is made, cohabitation between the married couple has not ceased since the marriage and that the French spouse is still a French national. Pursuant to Articles 26-1 and 26-3 of the code, the declaration of nationality must be registered. Article 26-4 provides that, even if registration is not refused, the declaration may still be contested by the public prosecutor in cases involving untrue statements or fraud within two years of time it was discovered and provides that the cessation of the cohabitation between the married couple within twelve months of the registration of the declaration will establish a presumption of fraud.

In the first place, neither the respect for private life nor any other constitutional requirement demands that the spouse of a French national may acquire French nationality on this basis. In subjecting the acquisition of nationality by the spouse of a French national to a period of marriage of one year during which the life community has not ended, Article 21-2 of the Civil Code does not violate the requirement to respect private life. In enabling the declaration made for the purposes of acquiring French nationality to be challenged by the public prosecutor if the legal requirements have not been met or in cases involving false statements or fraud, the provisions of Article 26-4 have not violated this right.

Secondly, the presumption established under Article 26-4 in the event that the cohabitation between the married couple ends within twelve months of registration of the declaration is intended to prevent nationality from being acquired through fraudulent means whilst protecting the institution of marriage against the abuse of the purposes of marriage. Given the objectives of general interest which it has asserted, in creating this presumption the legislator did not reconcile the requirements to safeguard public order and the right to respect for private life in a manner which was disproportionate.
*(2012-227 QPC, 30 March 2012, recitals 7 to 9, p. 175)*

## Situation of foreign nationals

Neither the respect for private life nor any other constitutional requirement demands that the spouse of a French national may acquire French nationality on this basis. Accordingly,

in setting at two years the uninterrupted period of cohabitation which is necessary for the spouse of a French national to obtain French nationality by marriage, in establishing a time limit of three years where the foreign national is not able to furnish proof of uninterrupted residence in France for at least one year after the marriage, in abolishing the exception to these time limits in cases involving the birth of a child, in stipulating the content of the obligation to cohabit pursuant to Article 215 of the Civil Code and in requiring the foreign spouse to furnish proof of a sufficient command of the French language, Article 21-2 of the Civil Code, as in force following the enactment of the Law of 26 November 2003, which does not prevent a foreign national from marrying a French national and establishing a family, does not in itself violate either the right to respect for private life or the right to conduct a normal family life.
*(2012-264 QPC, 13 July 2012, recital 6, p. 330)*

### Access to information regarding personal origins

Law no. 2002-93 of 22 January 2002 on access to information regarding personal origins by adopted persons and children in care redrafted Article L. 222-6 of the Code of Social Action and Families with the goal, in particular, of ensuring that women giving birth who request that their identity remain secret be informed of the legal consequences which will result for the infant as well as the importance for the latter of knowing its origins and that they be encouraged to provide information concerning their health, that of the father, the origins of the child and the circumstances of its birth. The provisions of Article L. 147-6 of the same Code, as resulting from the same Law, specify the conditions under which the requirement of secrecy may be lifted, provided that the agreement of the biological mother is obtained. This Article assigns in particular to the National Council for Access to Information regarding Personal Origins the task of tracking down the biological mother, upon request by the child, and of obtaining as the case may be the consent of the mother for her identity to be disclosed or, if she has died, of verifying that she did not express her intention to the contrary when previously requested. The legislator accordingly intended to facilitate access by children to information relating to their personal origins.

In permitting the mother to object to the disclosure of her identity even after her death, the contested provisions seek to assure respect in an effective manner for the purposes of the protection of health of her stated intention to ensure that the fact of her admission and identity remain secret during childbirth by administering, as far as possible and using appropriate measures, access by children to information relating to their personal origins. It is not for the Constitutional Council to adopt its own assessment in place of that of the legislature regarding the balance thus set between the interests of the biological mother and those of the child. The contested provisions did not violate the requirement to respect private life.
*(2012-248 QPC, 16 May 2012, recitals 7 and 8, p. 270)*

## RIGHT TO CONDUCT A NORMAL FAMILY LIFE

### Scope of the principle

Law no. 2002-93 of 22 January 2002 on access to information regarding personal origins by adopted persons and children in care redrafted Article L. 222-6 of the Code of Social Action and Families with the goal, in particular, of ensuring that women giving birth who request that their identity remain secret be informed of the legal consequences which will result for the infant as well as the importance for the latter of knowing its origins and that they be encouraged to provide information concerning their health, that of the father, the origins of the child and the circumstances of its birth. The provisions of Article L. 147-6 of the same Code, as resulting from the same Law, specify the conditions under which the requirement of secrecy may be lifted, provided that the agreement of the biological mother is obtained. This Article assigns in particular to the National Council for Access to Information regarding Personal Origins the task of tracking down the biological mother, upon request by the child,

and of obtaining as the case may be the consent of the mother for her identity to be disclosed or, if she has died, of verifying that she did not express her intention to the contrary when previously requested. The legislator accordingly intended to facilitate access by children to information relating to their personal origins.

In permitting the mother to object to the disclosure of her identity even after her death, the contested provisions seek to assure respect in an effective manner for the purposes of the protection of health of her stated intention to ensure that the fact of her admission and identity remain secret during childbirth by administering, as far as possible and using appropriate measures, access by children to information relating to their personal origins. It is not for the Constitutional Council to adopt its own assessment in place of that of the legislature regarding the balance thus set between the interests of the biological mother and those of the child. The contested provisions have not violated the right to conduct a normal family life.
*(2012-248 QPC, 16 May 2012, recitals 7 and 8, p. 270)*

Neither the respect for private life nor any other constitutional requirement demands that the spouse of a French national may acquire French nationality on this basis. Accordingly, in setting at two years the uninterrupted period of cohabitation which is necessary for the spouse of a French national to obtain French nationality by marriage, in establishing a time limit of three years where the foreign national is not able to furnish proof of uninterrupted residence in France for at least one year after the marriage, in abolishing the exception to these time limits in cases involving the birth of a child, in stipulating the content of the obligation to cohabit pursuant to Article 215 of the Civil Code and in requiring the foreign spouse to furnish proof of a sufficient command of the French language, Article 21-2 of the Civil Code, as in force following the enactment of the Law of 26 November 2003, which does not prevent a foreign national from marrying a French national and establishing a family, does not in itself violate either the right to respect for private life or the right to conduct a normal family life.
*(2012-264 QPC, 13 July 2012, recital 6, p. 330)*

## RIGHT OF OWNERSHIP

### Principle

#### Basis of the right of ownership

Private property is included under the human rights enshrined by Articles 2 and 17 of the 1789 Declaration; pursuant to Article 17: "Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified"; If a deprivation of private property occurs which does not fall under this Article, it nonetheless follows from Article 2 of the 1789 Declaration that breaches of this right must be justified by a reason of general interest and must be proportional with the objective pursued.
*(2011-208 QPC, 13 January 2012, recital 4, p. 75)*

#### Fundamental status of the right of ownership

Private ownership is one of the human rights enshrined by Articles 2 and 17 of the 1789 Declaration of the Rights of Man and the Citizen. If a deprivation of private property occurs which does not fall under Article 17, it nonetheless follows from Article 2 of the 1789 Declaration that breaches of this right must be justified by a reason of general interest and must be proportional with the objective pursued.

It is for the legislator, which has jurisdiction pursuant to Article 34 of the Constitution to determine the fundamental principles of property law, real rights and civil and commercial obligations, to set out the rules governing the acquisition or maintenance of ownership.
*(2011-212 QPC, 20 January 2012, recitals 3 and 4, p. 84)*

## Scope of protection for the right of ownership

### Holders of the right of ownership

Heirs may only become owners of the assets of the deceased by virtue of the law on succession. Accordingly, the objection alleging that the contested provision, which lays down the procedures according to which the respective rights of the recipients of gifts or legatees and statutory heirs within succession procedures are to be assessed, violated the right of ownership of the heirs must be rejected as inoperative.
*(2012-274 QPC, 28 September 2012, recital 12, p. 493)*

### Scope of application

*Moveable property*

The Constitutional Council reviews the compatibility with the right of ownership of the provisions of Article L. 211-4 of the Monetary and Financial Code which put an end to the right of companies limited by shares to issue anonymous bearer stocks and for any person to continue to hold these stocks.
*(2011-215 QPC, 27 January 2012, recital 4, p. 98)*

*Intangible property*

Industrial and commercial property

Article 57 of the Law on the financing of Social Security for 2013 amended Article L. 5112-12-1 of the Public Health Code in order to expand situations in which a temporary recommended use may be adopted for a proprietary pharmaceutical to cases in which there is a therapeutic alternative to the indication targeted. It provides that such an extension may be granted with the objective either or resolving a proven risk for public health or to avoid costs with a significant impact on the finances of sickness insurance bodies.

The constitutional protection for the right of ownership does not preclude the legislator from specifying the conditions under which the therapeutic indications of a proprietary pharmaceutical which has received marketing authorisation may be altered.
*(2012-659 DC, 13 December 2012, recital 55, p. 680)*

## Protection against distortions of the right of ownership

### Criterion of the seriousness of the breach of the right of ownership

*Absence of a breach of the right of ownership*

Article 17 of the Declaration of the Rights of Man and the Citizen of 1789 provides that: "Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified"; In order to comply with this constitutional requirement, the law may only authorise expropriation of real estate or of real rights over real estate in order to implement an operation the public interest of which has been lawfully established. The taking of possession by the expropriating body must be conditional upon prior payment of compensation. The compensation will only be fair if it covers the full extent of the direct, tangible and certain detriment caused by expropriation. In the event of disagreement on the amount of compensation, the expropriated party must be granted an appropriate right of appeal.

According to the contested provisions contained in Article L. 12-1 of the Code of Expropriation in the Public Interest, absent amicable agreement, ownership of property or real rights

in property shall be transferred by order of the judge in the expropriation proceedings. This order is issued having regard to documentation establishing that the formal requirements provided for under chapter I of title I of the legislative part of the Code, on declarations of public utility and the official approval of expropriation, have been met. The expropriation order transfers possession of the property to the expropriating body, provided that it has complied with the provisions on the setting and payment of compensation.

On the one hand, the judge in the expropriation proceedings may only issue an order transferring ownership after a lawful declaration of public utility has been made. The declaration of public utility and the official approval of expropriation specifying the list of land parcels or real rights to be expropriated may be challenged before the administrative courts. The role of the judge in the expropriation proceedings is limited to a control that the file transmitted to him by the expropriating authority has been compiled in accordance with the requirements of the Code on Expropriation in the Public Interest. The order may be disputed by an appeal to the Cour de Cassation. Furthermore, the order issued by which the judge in the expropriation proceedings sets compensation is issued upon conclusion of a procedure in which the parties are entitled to make representations and may be subject to appeal.

On the other hand, under the terms of the contested provisions, the order transfers possession of the property to the expropriating body, provided that it has complied with the provisions of chapter III of title I of the legislative part of the Code on Expropriation in the Public Interest on the setting and payment of compensation and Article L. 15-2 of the Code specifying the conditions under which possession is to be transferred. Moreover, pursuant to the second subparagraph of Article L. 12-5 of the Code: "In the event that a declaration of public interest or official approval of expropriation is annulled by a definitive decision of the administrative courts, any expropriated party may request a ruling from the judge in the expropriation proceedings that the order requiring the transfer of ownership lacks any basis in law". No violation of the requirements set forth in Article 17 of the 1789 Declaration.

*(2012-247 DC, 16 May 2012, recitals 4 to 7, p. 267)*

**Legal guarantees**

*Absence of a breach of the right of ownership*

According to the contested provisions contained in Article L. 13-8 of the Code of Expropriation in the Public Interest, the judge in the expropriation proceedings shall determine the level of compensation irrespective of any serious challenges on the merits of the right or the capacity of the claimants. If the parties submit any such challenges, shall are required to appeal "before the appropriate authorities". The same applies where difficulties arise which are not related to the determination of the level of compensation and the application of Articles L. 13-10 and L. 13-11 of the Code on requests for full expropriation and of Articles L. 13-20 and L. 14-3 of the Code on disputes relating to the re-housing of tenants and occupants.

Whilst the judge in the expropriation proceedings sets the level of compensation, he may also require the parties to apply to the competent courts if they raise objections or difficulties. He must take account of the existence of such objections or difficulties when setting compensation and, if necessary, stipulate various amounts of compensation corresponding to the different hypotheses envisaged. For each of these hypotheses, the compensation set must cover the full extent of the direct, tangible and certain detriment caused by expropriation. The order issued by which the judge in the expropriation proceedings sets compensation is issued upon conclusion of a procedure in which the parties are entitled to make representations and may be subject to appeal. The contested provisions do not prevent the judge in the expropriation proceedings from being seized once again by the parties if the decision given by the judge seized of the dispute or difficulty does not correspond to one of the hypotheses envisaged by the former judge.

The contested provisions do not violate the requirements of Article 16 or of Article 17 of the 1789 Declaration.

*(2012-275 QPC, 28 September 2012, recitals 5 to 7, p. 498)*

## Protection against deprivation of property

### Concept of deprivation of property

The holding of certain weapons and ammunition is subject to an administrative declaratory or authorisation regime due to the risk of attacks against public order or personal safety. In order to prevent such attacks, the provisions of Article L. 2336-5 of the Defence Code establish a mandatory "relinquishment" procedure for holders who may sell their weapon in accordance with the statutory conditions, return it to the State or neutralise it. If that "relinquishment" procedure is not followed, the contested legislation provides for a seizure procedure. Accordingly, this voluntary surrender or seizure does not fall within the scope of Article 17 of the 1789 Declaration.
*(2011-209 QPC, 17 January 2012, recital 5, p. 81)*

The provisions of Article L. 624-6 of the Commercial Code apply when a debtor is under administration due to insolvency ("procédure de sauvegarde") or in receivership or if a court has appointed a liquidator under the conditions provided for under the Commercial Code. They make it possible to supplement the debtor's assets with assets acquired by his or her spouse to which the debtor has made a financial contribution. Accordingly, in these particular circumstances, they have the effect of establishing as the effective owner of an asset not the person designated as such according to the rules of civil law, but the person who contributed funds permitting it to be purchased. Accordingly they do not result in a deprivation of ownership for the purposes of Article 17 of the 1789 Declaration.
*(2011-212 QPC, 20 January 2012, recital 5, p. 84)*

The provisions which put an end to the right of companies limited by shares to issue anonymous bearer stocks and for any person to continue to hold these stocks were initially adopted under Article 94 of Law no. 81-1160 of 30 December 1981, the objective of which included the fight against tax fraud and the reduction of the management costs for companies of the stocks issued by them. After further amendment, these provisions were codified within Article L. 211-4 of the Monetary and Financial Code. The fifth subparagraph of Article L. 211-4 has the objective of organising the transitory regime applicable to securities issued prior to 3 November 1984.

The first phrase of the fifth subparagraph of Article L. 211-4 renders the exercise of the rights associated with the holding of securities issued prior to 3 November 1984 conditional upon their presentation by the holders to the issuer company or to an approved intermediary in order to enable them to be officially registered. The second phrase of the subparagraph obliges the issuer companies of securities which have not been presented and which, under the terms of the law, no longer vest their holders with the rights previously associated with them, to sell the securities after 3 May 1988 and to hand over the proceeds of the same for distribution to the former holders of these stocks. Accordingly, neither the change to the conditions under which the holders of securities may continue to exercise the rights associated with these stocks, the implementation of which is not dependent upon their initiative, nor the sale by the issuer company of securities whose holders can no longer exercise the rights associated with their possession with a view to the payment of the sale price to the said holders amounts to a deprivation of property within the meaning of Article 17 of the 1789 Declaration.
*(2011-215 QPC, 27 January 2012, recitals 4 and 5, p. 98)*

Whilst the Government argues that the provisions of Article 37 of the Law on the financing of Social Security for 2013 relating in particular to the reform of the administrative management of the social agricultural mutual insurance company concern the management of the reserves of a social insurance regime, according to the wording of subparagraph 3 of paragraph III of Article 37, these provisions have the object of transferring "ownership of the reserves previously established" by the aforementioned grouping of insurers to the central fund of the social agricultural mutual insurance company. No provision ensures that the requirements laid down in Article 17 of the 1789 Declaration have not been violated. Accordingly, subparagraph 3 of paragraph III must be ruled unconstitutional. The reference in the sixth subparagraph of Article 37 to Article L. 731-30 of the Rural Code, which is not separable from the former, must also be ruled unconstitutional.
*(2012-659 DC, 13 December 2012, recital 38, p. 680)*

**Award of fair compensation which may be ascertained in advance**

*Principle*

Pursuant to Article 17 of the 1789 Declaration: "Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified"; In order to comply with this constitutional requirement, the law may only authorise expropriation of real estate or of real rights over real estate in order to implement an operation the public interest of which has been lawfully established. The taking of possession by the expropriating body must be conditional upon prior payment of compensation. The compensation will only be fair if it covers the full extent of the direct, tangible and certain detriment caused by expropriation. In the event of disagreement on the amount of compensation, the expropriated party must be granted an appropriate right of appeal.
*(2012-226 QPC, 6 April 2012, recital 3, p. 183 ; 2012-236 QPC, 20 April 2012, recital 3, p. 211)*

*Applications*

The provisions of Articles L. 15-1 and L. 15-2 on the Code on Expropriation in the Public Interest set forth the ordinary rules on the transfer of possession following expropriation in the public interest. Article L. 15-1 enables the expropriating authority to take possession of assets which have not been subject to expropriation procedures within one month either of the payment or deposit of compensation or of acceptance or confirmation of the offer of a replacement property. According to the provisions of Article L. 15-2, where the judgment setting compensation for expropriation is subject to appeal, the expropriating body may take possession of the assets, provided that it pays compensation at least equal to that proposed by it, and that it deposits the excess amount set by the judge.

Whilst the legislator may determine the particular circumstances in which the deposit is deemed to be equivalent to payment, having regard to the requirements of Article 17 of the 1789 Declaration, these requirements must in principle result in payment of compensation on the day of dispossession. If an appeal is filed against the court order setting compensation for expropriation, the contested provisions authorise the expropriating body to take possession of the expropriated assets, irrespective of the circumstances, by payment of compensation equal to that proposed by it, but lower than that set by the judge at first instance, provided that it deposits the excess amount. Accordingly, the contested provisions of Articles L. 15-1 and L. 15-2 of the Code on Expropriation in the Public Interest violate the requirement according to which no person may be deprived of his property unless fair compensation is paid in advance.
*(2012-226 QPC, 6 April 2012, recitals 4 and 5, p. 183)*

According to the contested provisions set forth in Article L. 13-17 of the Code on Expropriation in the Public Interest, the amount of the principal compensation set by the judge in the expropriation proceedings may not exceed the estimate made by the administration where a change made either free of charge or for consideration has resulted either in an administrative valuation which has become definitive for the purposes of tax legislation or in a declaration of an amount lower than that estimate. However, the administration's estimate may only be imposed on the judge in the expropriation proceedings where the change made either free of charge or for consideration occurred less than five years prior to the date of the decision to transfer ownership. Under the terms of these provisions, this estimate is not binding upon the judge in the expropriation proceedings if the expropriated party is able to establish that the changes made have provided added value to the assets expropriated with regard to their material or legal consistency, their status or the situation regarding their occupancy.

According to the contested provisions, unless the expropriated party is able to establish that subsequent changes to the material or legal circumstances, state or occupancy of his property have vested it with added value, the judge ruling on the expropriation proceedings shall be bound by the administration's valuation if it is higher than the declaration or valuation made at the time the property was altered.

In adopting these provisions, the legislator intended to encourage owners to refrain from under-estimating the value of property which is transferred to them or from concealing part

of the purchase price for these properties. It therefore pursued the goal of contrasting tax fraud, which constitutes an objective of constitutional standing. However, if contested provisions have the effect of depriving the interested party of the ability to furnish proof that the administration has not taken due account of the evolution of the real estate market, this will result in a violation of the requirements of Article 17 of the 1789 Declaration. Subject to this reservation, they do not violate the requirement according to which no person may be deprived of his property unless fair compensation is paid in advance.
*(2012-236 QPC, 20 April 2012, recitals 5 to 7, p. 211)*

## Control of encroachments on the exercise of the right of ownership

### Principle of reconciliation with objectives of general interest

If a deprivation of private property occurs which does not fall under Article 17 of the 1789 Declaration, it nonetheless follows from Article 2 of the Declaration that breaches of this right must be justified by a reason of general interest and must be proportional with the objective pursued.
*(2011-215 QPC, 27 January 2012, recital 3, p. 98)*

### Unconstitutional encroachment on the right of ownership

The provisions of Article 376 of the Customs Code prevent the owners of property seized or confiscated from claiming it; such a prohibition pursues the goal of fighting customs fraud by requiring the owners of goods to exercise greater care when choosing freight forwarders and of guaranteeing the recovery of moneys due to the public Exchequer; they accordingly pursue a goal in the general interest.

However, in depriving the owners under all circumstances of the possibility to reclaim the goods seized or confiscated, the provisions of Article 376 of the Customs Code violate the right of ownership in a manner which is disproportionate to the goal pursued.
*(2011-208 QPC, 13 January 2012, recitals 7 and 8, p. 75)*

The provisions of Article L. 624-6 of the Commercial Code apply when a debtor is under administration due to insolvency ("procédure de sauvegarde") or in receivership or if a court has appointed a liquidator under the conditions provided for under the Commercial Code. They make it possible to supplement the debtor's assets with assets acquired by his or her spouse to which the debtor has made a financial contribution. In such situations, the possibility of including in the bankruptcy estate assets owned by his or her spouse but purchased with funds which he or she provided is intended to facilitate the repayment of the debts in order to permit, depending upon the circumstances, the business to be continued or the creditors to be repaid. Accordingly it pursues a goal of general interest.

However, these provisions make it possible to contribute in kind to the assets all property acquired over the duration of the marriage with funds provided by the spouse, irrespective of the cause of this contribution, the period of time which has subsequently passed, the origin of the funds or the activity which the spouse carried out at the time of the contribution. These provisions do not give any further consideration to the proportion of this contribution towards the financing of an asset joined to the bankruptcy estate. Absent any provision enacted by the legislator in order to ensure that the conditions under which assets may be contributed are specified in greater detail, the provisions of Article L. 624-6 of the Commercial Code permit the property rights of the debtor's spouse to be encroached upon in a manner which is disproportionate having regard to the goal pursued. Accordingly they must be declared unconstitutional.
*(2011-212 QPC, 20 January 2012, recitals 5 to 7, p. 84)*

### Lack of unconstitutional encroachment on the right of ownership

According to the provisions of Article L. 2336-5 of the Defence Code, which enable the "relinquishment" of certain weapons and ammunition to be organised subject to a declaratory

or authorisation regime, the legislator intended to ensure the prevention of attacks against public order, which constitutes an objective of constitutional standing. "Relinquishment" may only be ordered by the prefect for reasons of public order or relating to individual safety and upon conclusion of a procedure guaranteeing the right to make representations, except in urgent cases; his decision may be appealed against to the administrative courts; a seizure procedure shall only be initiated under the authority and control of the Custodian Judge where the interest party has not "relinquished" his weapon. Taking account of these substantive and procedural guarantees, the breach of the right of ownership by the provisions at issue is not sufficiently serious as to distort the meaning and scope of this right.
*(2011-209 QPC, 17 January 2012, recital 6, p. 81)*

With regard to an application for a priority preliminary ruling on the issue of constitutionality concerning Article L. 211-4 of the Monetary and Financial Code, the Constitutional Council holds that the suspension of the rights associated with stocks not registered in the accounts and further sales of these stocks by the issuer company have the objective of encouraging the registration in the accounts of securities issued prior to 3 November 1984 following which the regime of non-registered bearer stocks will be abolished. They are therefore aimed both at combating tax fraud and reducing the management cost of the securities. Accordingly they pursue a goal of general interest.

Stocks may only be sold if their holder is unknown and has not presented them to the issuer company or to an authorised intermediary between 3 November 1984 and 3 May 1988 for the purpose of their registration in the accounts. Given the suspension of rights associated with the holding of securities which have not been presented in order to be registered in accounts as provided for under paragraph II of Article 94 of the aforementioned Law of 31 December 1981, the holders of these stocks could not have been unaware of the obligation incumbent upon them. Had they registered their shares before 3 May 1988, they would have been able to recover the full powers to exercise their rights and to avoid the sale of their shares by the issuer company. Finally, the contested provisions stipulate that the proceeds of the sale thereby earned shall be deposited pending their return to the entitled parties. The contested provision does not cause any disproportionate violation of the right of ownership of the holders of these securities, and accordingly does not violate Article 2 of the 1789 Declaration.
*(2011-215 QPC, 27 January 2012, recitals 6 and 7, p. 98)*

Private property is included under the human rights enshrined by Articles 2 and 17 of the 1789 Declaration. Pursuant to Article 17: "Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified"; If a deprivation of private property occurs which does not fall under this Article, it nonetheless follows from Article 2 of the 1789 Declaration that breaches of this right must be justified by a reason of general interest and must be proportional with the objective pursued.

First, according to the combined provisions of Articles L. 341-1 and L. 341-2 of the Environmental Code, the classification of a natural monument or a site is intended to ensure the conservation and preservation of locations which are of interest "from an artistic, historical, scientific, legendary or aesthetic point of view". It therefore pursues a reason of general interest.

Secondly, according to the contested provisions, the decision on classification is taken by order of the minister responsible for the sites provided that the consent of the owner has been obtained or failing which a decree of the Conseil d'État, after hearing the opinion of the Superior Board for Sites, Perspectives and Landscape [Commission supérieure des sites, perspectives et paysages]. In such cases, the classification may establish entitlement to compensation for the owner if it results in a change to the state or use of the locations which causes direct, tangible and certain detriment. Applications for compensation must be submitted within six months of the time notice is served on the owner to change the state or use of the properties in accordance with the particular requirements of the classification decision. If an amicable agreement is not reached, compensation shall be set by the judge empowered to hear expropriation proceedings. Whilst Article L. 341-13 provides that the full or partial declassification of a natural monument or a site shall be ordered, after hearing the opinion of the Superior Board for Sites, Perspectives and Landscape, by decree of the Conseil d'État and that this decree shall stipulate, acting on the advice of the Conseil d'État, whether or not there are grounds for the compensation initially paid to the owner to be returned,

this provision does not have the object or effect of requiring the owner to repay the share of compensation received corresponding to the damage which he has actually suffered for the duration of such classification.

Thirdly, pursuant to the third subparagraph of Article L. 341-9 of the Code: "Notice of any alienation of a natural monument or classified site must be served within fifteen days on the minister responsible for the sites by the party which consented to it". The resulting obligation to serve notice of the transfer of ownership does not have the object or effect of preventing the alienation of classified property.

Fourthly, pursuant to Article L. 341-10 of that Code: "The state or aspect of natural monuments or classified sites may not be destroyed or altered without special authorisation". These provisions which impose a requirement of authorisation for any improvement which is liable to alter the state of the site do not have the object or effect of preventing all conduct of fitting out, construction or economic activity within the perimeter. There was no disproportionate breach of the conditions applicable to the exercise of the right of ownership.
*(2012-283 QPC, 23 November 2012, recitals 14 and 16 to 19, p. 605)*

## CONSTITUTIONAL RIGHTS OF WORKERS

### Collective rights of workers

#### Right to strike (recital 7 of the Preamble to the 1946 Constitution)

Pursuant to the seventh recital to the 1946 Preamble: "The right to strike shall be exercised within the framework of the laws governing it". In enacting this provision, the constituent authority intended to establish that the right to strike is a principle with constitutional standing but that it is subject to limits, and authorised the legislator to lay these down by striking a necessary balance between the defence of professional interests, for which the strike is a tool, and the safeguarding of the general interest to which the strike could be detrimental. In this regard, the legislator is free to set out the dividing line between acts and conduct constituting a lawful exercise of this right and acts and conduct constituting an abuse thereof.
*(2012-650 DC, 15 March 2012, recital 6, p. 149)*

*Legislative arrangements altering the arrangements governing the right to strike which have been ruled constitutional*

Individual declaration

The law on the organisation of service and provision of information to passengers in air passenger transport undertakings and laying down miscellaneous provisions in relation to transportation requires employees in undertakings falling within the scope of the law to provide their employer with forty eight hours' advance notice of their intention to participate in the strike. According to the parliamentary works, the legislator accordingly intended to enact legislation enabling air transport undertakings and their passengers to be provided with notice in order, in particular, to ensure the proper order and safety of individuals within airports and hence the preservation of public order, which is an objective of constitutional standing. The requirement to give prior notice of any participation in a strike imposed by the provisions of the law referred is only applicable to employees "whose absence would be liable to have a direct affect on the operation of flights". It therefore only applies to employees working in on-flight roles or who personally provide any of the stopover assistance operations referred to under Article L. 1114-1 inserted into the Transport Code relating to aircraft line maintenance, airport security, fire rescue and fire fighting services or the "wildlife hazard" prevention service.

The legislator also required employees who have stated their intention to participate in a strike to provide their employer with at least twenty four hours' advance notice of their deci-

sion not to participate in order to enable the employer to allocate them and, for the same purposes, required those participating in the strike to provide their employer with at least twenty four hours' advance notice of their return to work, if the strike action continues. According to the provisions of Article L. 1114-4 inserted into the Transport Code, the legislator only allows disciplinary action to be taken against employees who abuse their right to strike and "repeatedly" fail to inform their employer either of their intention to participate in the strike or of their intention not to participate or to return to work.

The requirement for a prior declaration does not prevent an employee from joining strike action which has already commenced, in which he initially did not intend to participate or in which he had ceased to participate, provided that he has given his employer at least forty eight hours' advance notice. Moreover, the violation of these obligations to provide individual advance notice is of no consequence either for the legality of the strike or the obligation on the employer to pay salary to the employee for the duration of the period during which he is not on strike.

The legislator intended to maintain the efficacy of the mechanism for providing individual advance notice of forty eight hours prior to participation in the strike which was enacted by the law referred, whilst ensuring the reliability of these declarations for a period of twenty four hours. The adjustments thereby made to the conditions applicable to the right to strike are not disproportionate having regard to the objective pursued by the legislator.
*(2012-650 DC, 15 March 2012, recitals 7 to 10, p. 149)*

**Trade union freedom (recital 6 of the Preamble to the 1946 Constitution)**

*Collective trade union freedom*

Freedom of action of trade unions

In subjecting the appointment of a trade union representative to the works committee to the requirement that he be elected by a trade union, the legislator did not violate the principle of equality between trade union organisations, the freedom of trade unions, or any other requirement of constitutional law.
*(2011-216 QPC, 3 February 2012, recital 5, p. 101)*

## Individual rights of workers

**Right to employment (recital 5 of the Preamble to the 1946 Constitution)**

It is for the legislator, which is vested with jurisdiction pursuant to Article 34 of the Constitution to determine the fundamental principles of employment law, to establish rules capable of ensuring, in accordance with the Preamble to the 1946 Constitution, the right of each person to obtain employment whilst enabling as many people as possible to exercise this right.

In adopting the contested provisions abolishing the incentive to use overtime for full-time and part-time work, the legislator intended to promote employment. To this effect, it was free to amend the rules governing tax and Social Security relief applicable to such overtime. The contested provisions, which do not cause any breach to the freedom of enterprise, also do not violate the right of each individual to secure employment.
*(2012-654 DC, 9 August 2012, recitals 20 and 21, p. 461)*

*Applications*

Right to work and the dismissal of employees

It is for the legislator, which is competent pursuant to Article 34 of the Constitution to determine the basic principles of the labour law, to ensure that the right of each individual to

secure employment is implemented, which shall be reconciled with the freedoms guaranteed under the Constitution. These include the freedom of enterprise resulting from Article 4 of the 1789 Declaration.

Article L. 1235-11 of the Labour Code provides that if the requirements relating to the employee reclassification plan are not complied with in cases involving dismissals on economic grounds, this shall result in the continuation of the contract of employment or the nullity of the dismissal of employees and their reinstatement upon request, unless such reinstatement has become impossible. Paragraph 1 of Article L. 1235-14 of the Code nonetheless precludes the application of this provision for employees who have been in post with the company for less than two years. In setting at two years the length of service required, the legislator struck a balance between the right to obtain employment and the freedom of enterprise which is not manifestly unfair. Accordingly, it did not violate the fifth subparagraph of the 1946 Preamble.
*(2012-232 QPC, 13 April 2012, recitals 4 and 5, p. 199)*

## OTHER SOCIAL RIGHTS AND PRINCIPLES

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

Pursuant to Article 34 of the Constitution: "Statutes shall determine the rules concerning... the law... on Social Security". According to the eleventh recital of the 1946 Preamble, the Nation "shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have to the right to receive suitable means of existence from society".

In enacting Article L. 711-1 of the Social Security Code, the legislator on the one hand provided that, out of the businesses or enterprises which were already subject to a special Social Security regime on 6 October 1945, those listed in a decree issued by the Conseil d'État shall continue to remain subject to a special Social Security organisation on a provisional basis. On the other hand, that provision allowed for regulations to be adopted establishing for each of these businesses or enterprises a Social Security organisation vested with the full powers defined under Article L. 111-1 of the Code.

It is appropriate to include amongst the fundamental principles applicable to Social Security, and which as such fall within the scope of the law, the existence itself of a special Social Security regime. The same applies for the determination of the services and categories of beneficiary as well as the definition of the nature of the prerequisites required for the provision of benefits. However, in this case, the failure by the legislator to act within its powers did not deprive the requirements resulting from the eleventh subparagraph of the 1946 Preamble of legal guarantees. It did not in itself affect any right or freedom guaranteed under the Constitution. Accordingly, the challenge alleging that the legislator acted in excess of its powers must be rejected. (*Ex post* review of the constitutionality of legislation. Application for a priority preliminary ruling on the issue of constitutionality)
*(2012-254 QPC, 18 June 2012, recitals 4 to 6, p. 292)*

#### Field of application

*Sickness*

In re-establishing the rule that medical assistance is free of charge for foreign nationals who are unlawfully resident in France, the legislator did not violate the requirements set forth in the eleventh recital to the 1946 Preamble.
*(2012-654 DC, 9 August 2012, recital 71, p. 461)*

*Family*

Article 4 of the Law on Finance, amended for 2013 lowered from 2,336 to 2,000 Euros the upper limit per half-share of the reduction in tax resulting from the application of the family allowance and increased from 661 Euros to 997 Euros the tax reduction for certain taxpayers benefiting from a half-share due to social circumstances or special family circumstances. It also provided that widowed taxpayers with dependent children who benefit from a supplementary share of the family allowance shall be entitled, under certain circumstances, to a reduction in tax equal to 672 Euros for this supplementary share.

According to the very object of the family allowance mechanism and its upper limit, taxpayers with dependent children are treated differently, on the one hand from taxpayers without dependent children and on the other hand depending upon the number of dependent children. The family allowance threshold does not call into question the consideration of capacity to pay tax resulting from this difference in circumstances. In any case, Article 13 of the 1789 Declaration does not require that the consideration of charges borne by families when assessing capacity to pay tax must occur according to the family allowance mechanism. In lowering from 2,336 to 2,000 Euros the upper limit per half-share of the reduction in tax resulting from the application of the family allowance, the legislator did not violate the requirements resulting from Article 13 of the 1789 Declaration.

Article 4 does not otherwise breach the requirements resulting from the tenth subparagraph of the Preamble to the 1946 Constitution.
*(2012-662 DC, 29 December 2012, recitals 23, 26 and 27, p. 724)*

## Equal access to education and professional training (recital 13 of the Preamble to the 1946 Constitution)

The constitutional requirement to organise secular public teaching free of charge does not apply to the State outwith the territory of the Republic. The provisions of Article 42 of the Supplementary Law on Finance, amended for 2012 abolish the rule that the school fees of French children educated in French establishments abroad are to be covered. The head of the application alleging a breach of the principle of free public education is inoperative. The principle of equality before the law does not require the provision of free school education to French children abroad.
*(2012-654 DC, 9 August 2012, recital 76, p. 461)*

## Principle of the protection of public health

### Applications

*Others*

Article 57 of the Law on the financing of Social Security for 2013 amended Article L. 5112-12-1 of the Public Health Code in order to expand situations in which a temporary recommended use may be adopted for a proprietary pharmaceutical to cases in which there is a therapeutic alternative to the indication targeted. It provides that such an extension may be granted with the objective either or resolving a proven risk for public health or to avoid costs with a significant impact on the finances of sickness insurance bodies.

On the one hand, the contested provisions relate to the conditions under which medicines may be prescribed outwith the area specified in the marketing authorisation. They do not alter the principle, laid down in the aforementioned Article L. 5121-12-1, that a temporary recommended use may only issued for a proprietary pharmaceutical which has received marketing authorisation. Accordingly, they do not have the object or effect of enabling a medicine to be marketed if it has not received authorisation for that purpose.

On the other hand, the temporary recommended uses authorised under paragraph V of Article L. 5121-12-1 are established subject to the conditions provided for under paragraphs I to IV of this Article. They are laid down by the National Agency for Safety in Pharmaceuticals

and Health Products [Agence nationale de sécurité du médicament et des produits de santé], after receiving information from the holder of marketing authorisation. They are elaborated under the conditions set forth in a decree adopted by the Conseil d'État. The decree of the Conseil d'État shall in particular specify the procedure according to which the therapeutic efficacy justifying such a recommendation is to be established. Finally, the prescribing doctor shall inform the patient that the prescription of the proprietary pharmaceutical does not comply with its marketing authorisation and give reasons for its prescription in the patient's medical file.

Accordingly, the requirements set forth in the eleventh recital of the Preamble to the 1946 Constitution on the protection of health have not been breached.
*(2012-659 DC, 13 December 2012, recitals 57 and 58, p. 680)*

## ENVIRONMENT

### Duty of prevention

Article 1 of the Environmental Charter provides that: "Every person has the right to live in a balanced environment that respects health". Article 3 provides that: "Subject to the conditions specified by law, every person shall prevent the harm that he is liable to cause to the environment or, alternatively, to limit its consequences". It is for the legislator and, insofar as specified by law, for the administrative authorities to determine, in accordance with the principles set forth in this Article, the procedure for implementing these provisions.

The Constitutional Council does not dispose of a general power of appreciation and decision making of the same nature as that of Parliament. It is not for the Council to impose its assessment in place of that of the legislator with regard to the means by which the legislator intends to implement the right of each individual to live in a balanced environment which respects his health as well as the principle that environmental damage should be prevented.

The provisions of the second subparagraph of Article L. 581-9 of the Environmental Code subject the installation of tarpaulins bearing advertising and advertising signs of exceptional size associated with temporary events to a requirement of authorisation. Article L. 581-14-2 of the Code divides competence over the policing of advertising between the mayor and the prefect. These provisions do not fall within the scope of the Environmental Charter. Accordingly, the challenges alleging a violation of Articles 1 and 3 of the Environmental Charter must be rejected as inoperative.

The third subparagraph of Article L. 581-9 of the Environmental Code subjects the installation of luminous advertising signs other than those supporting projected or transparent illuminated posters to a requirement of authorisation by the competent authority. In adopting these provisions, the legislator intended to subject these advertising signs to a requirement of authorisation with the goal of protecting the natural and social environment. Article L. 581-18 stipulates that the Conseil d'État shall adopt a decree laying down general requirements relating to the installation and maintenance of signs in accordance with the procedures used, the nature of the activities and the characteristics of the properties where these activities are carried on and the nature of the location where these properties are situated. This decree shall also lay down requirements relating to luminous signs in order to prevent or limit the resulting nuisances. These provisions do not violate the requirements laid down in Articles 1 and 3 of the Environmental Charter.
*(2012-282 QPC, 23 November 2012, recitals 7 to 10, p. 596)*

### Promotion of sustainable development

Pursuant to Article 6 of the Environmental Charter: "Public policies must promote sustainable development. To that effect, they shall reconcile the protection and exploitation of the environment, economic development and social progress". This provision does not create any right or freedom guaranteed under the Constitution. Its breach may not in itself be

invoked in support of an application for a priority preliminary ruling on the issue of constitutionality on the basis of Article 61-1 of the Constitution.
*(2012-283 QPC, 23 November 2012, recital 22, p. 605)*

## Principles of information and participation

The first subparagraph of Article L. 511-1 of the Environmental Code defines classified installations as: "factories, workshops, depots, work sites and, in general, all facilities operated or owned by any public or private person or entity, which might present hazards or drawbacks, for the convenience of the neighbourhood, or for public health and safety, or for agriculture, or for the protection of nature, the environment and landscapes, or for the rational use of energy, or for the conservation of sites and monuments or elements of archaeological heritage". Accordingly, the draft rules and technical requirements which classified installations for the protection of the environment that are subject to authorisation are required to respect pursuant to Article L. 512-5 of the Code amount to public decisions with an impact on the environment.

On the one hand, the provisions of Article L. 120-1 of the Environmental Code, as in force following the enactment of Article 244 of the Law of 12 July 2010 setting out the national commitment for the environment, stipulate the conditions and limits subject to which the principle of public participation laid down in Article 7 of the Environmental Charter is applicable to the regulatory decisions of the State and its public establishments. They provide that decisions with a direct and significant impact on the environment are to be subject both to prior electronic publication of the draft decision under conditions which enable the public to submit observations, and publication of the draft decision prior to referral to a body including representatives of the categories of individuals affected by the decision concerned, consultation of which is mandatory. However, the provisions of Article L. 120-1 apply unless stated otherwise in relation to public participation. In adopting the last phrase of the first subparagraph of Article L. 512-5 of the contested Environmental Code, the legislator intended to introduce, through subparagraph 2 of paragraph I of Article 97 of the Law of 17 May 2011 on simplification and the improvement of the quality of the law, such a special provision applicable to classified installations that are subject to authorisation. Accordingly, the draft rules and technical requirements applicable to these installations cannot under any circumstances be deemed to be subject to the provisions of Article L. 120-1.

On the other hand, the contested provisions stipulate that draft rules and technical requirements applicable to classified installations subject to authorisation are to be published, as the case may be electronically, after transmission to the Supreme Council for the Prevention of Technological Risks. Neither this legislation nor any other legislative provision implement the principle of public participation in the adoption of the public decisions concerned. Accordingly, in adopting the contested provisions without requiring public participation, the legislator acted in breach of its powers, and the provisions of the last phrase of the first subparagraph of Article L. 512-5 of the Environmental Code are unconstitutional.
*(2012-262 QPC, 13 July 2012, recitals 6 to 8, p. 326)*

The provisions of Article L. 411-1 of the Environmental Code prevent any attack on wild animal or plant species and any destruction or modification or damage to their environment if their conservation is justified by a specific scientific interest or the requirements of preserving biological heritage. The exceptions from these prohibitions, in particular in the interest of protecting wild flora and fauna and conserving natural habitats, preventing large scale damage in particular to crops, livestock, forests, fisheries and waters and in the interest of public health and safety and for reasons including primordial beneficial consequences for the environment amount to public decisions with an impact on the environment.

The contested provisions of subparagraph 4 of Article L. 411-2 of the Environmental Code authorise the Conseil d'État to adopt a decree setting the conditions under which exceptions to the prohibitions referred to above may be granted. Whilst the legislator is at liberty to determine the procedures governing the implementation of the principle of participation which differ depending upon whether they apply to regulatory acts or other public decisions affecting the environment, neither the contested provisions nor any other legislative provision guarantee that the principle of public participation will be complied with during the adoption of the public decisions concerned. Accordingly, in adopting the

contested legislation without providing for participation by the public, the legislator acted in breach of its powers.
*(2012-269 QPC, 27 July 2012, recitals 5 and 6, p. 445)*

Article 211-3 of the Environmental Code provides that in addition to the general regulations on the conservation of the quality and distribution of surface water, underground water and seawater within the boundaries of territorial waters determined by a Conseil d'État decree, national or particular requirements applicable to certain parts of the territory shall be established by decree of the Conseil d'État in order to ensure the protection of the principles of the balanced and sustainable management of water resources set out in Article 211-1 of the Code. The contested provisions contained in subparagraph 5 of paragraph II of Article L. 211-3 allow regulatory authorities to determine in particular the conditions under which the administrative authorities may delimit the areas where it is necessary to ensure quantitative and qualitative protection for the feeder areas for drinking water intakes of particular importance for supply, as well as erosion zones and to establish an action plan to this effect. Accordingly, the administrative decisions delimiting these zones and establishing an action plan amount to public decisions with an impact on the environment.

On the one hand, the application for a priority preliminary ruling on the issue of constitutionality concerns the provisions of subparagraph 5 of paragraph II of Article L. 211-3 of the Environmental Code, as in force prior to the adoption of Law no. 2006-1772 of 30 December 2006 on water and aquatic environments. This version was subsequently amended by Law no. 2010-788 of 12 July 2010 setting out the national commitment for the environment. The provisions of Article L. 120-1 of the Environmental Code, which lay down the conditions and limits subject to which the principle of public participation provided for under Article 7 of the Environmental Charter is applicable to the regulatory decisions of the State and its public establishments, were enacted in accordance with Article 244 of the Law of 12 July 2010. They are not in any case applicable to the question referred to the Constitutional Council by the Conseil d'État.

On the other hand, neither the contested provisions nor any other legislative provision assures that the principle of public participation will be complied with during adoption of the public decisions concerned. Accordingly, in adopting the contested legislation without providing for participation by the public, the legislator acted in excess of its powers.
*(2012-270 QPC, 27 July 2012, recitals 5 to 7, p. 449)*

The provisions of Article L. 120-1 of the Environmental Code, as in force following the enactment of Article 244 of Law no. 2010-788 of 12 July 2010 setting out the national commitment for the environment, stipulate the conditions and limits subject to which the principle of public participation laid down in Article 7 of the Environmental Charter is applicable to the decisions of the State and its public establishments. The legislator thus excluded from the scope of Article L. 120-1 the non-regulatory decisions of the State and its public establishments, along with their regulatory decisions with an indirect or non-significant effect on the environment.

Article 7 of the Environmental Charter provides that the principle of public participation shall be exercised "subject to the conditions and limits laid down by law". In providing that only decisions which have a "direct and significant" impact on the environment are to be deemed to have "an impact on the environment", the legislator imposed limits on the principle of public participation which do not breach the requirements of Article 7 of the Environmental Charter.

The provisions of Article L. 120-1 of the Environmental Code on the general provisions governing public participation limit such participation only to the regulatory decisions of the State and its public establishments. Given the absence of special legislation, no other general legislative provision assures the implementation of this principle in relation to non-regulatory decisions which may have a direct and significant impact on the environment. Accordingly, the legislator deprived of legal guarantees the constitutional requirement laid down under Article 7 of the Environmental Charter.

The decisions relating to tarpaulin spaces used for advertising and the installation of advertising devices of exceptional size associated with temporary events do not amount to decisions with an impact on the environment within the meaning of Article 7 of the Environmental Charter. The challenge alleging the violation of these provisions invoked against the second subparagraph of Article L. 581-9 of the Environmental Code must be rejected as inoperative.

The third subparagraph of Article L. 581-9 of the Environmental Code subjects the installation of luminous advertising signs other than those supporting projected or transparent illuminated posters to a requirement of prior authorisation by the competent authority. Pursuant to Article L. 581-14-2 of the Code, this authorisation shall be issued either by the prefect, if there are no local regulations applicable to advertising, or by the mayor acting on behalf of the municipality where such regulations have been adopted. According to the first subparagraph of Article L. 581-9 of the Code, the Conseil d'État shall adopt a decree laying down the requirements with which luminous advertising must comply depending upon the processes, the devices used, the characteristics of the supports and the importance of the conglomerations concerned. Whilst the definition of the regime applicable to the installation of luminous signs amounts to a decision with an impact on the environment within the meaning of Article 7 of the Environmental Charter, the legislator was at liberty to conclude that no decision authorising the installation of these signs in itself has a significant impact on the environment, without thereby violating the requirements of that Article. In not subjecting the individual decisions adopted pursuant to the third subparagraph of Article L. 581-9 of the Environmental Code to a requirement of public participation, the legislator did not violate the requirements laid down in Article 7 of the Environmental Charter.
*(2012-282 QPC, 23 November 2012, recitals 15 to 18, 21 and 22, p. 596)*

Pursuant to Article 7 of the Environmental Charter: "Under the conditions laid down by law, every person shall have the right to access information regarding the environment which is held by public authorities and to participate in the adoption of public decisions having an impact on the environment". These provisions are included in the rights and freedoms guaranteed under the Constitution. It is for the legislator and, insofar as specified by law, for the administrative authorities to determine, in accordance with the principles thereby set forth, the procedure for implementing these provisions.

On the one hand, the classification and declassification of natural monuments or sites are public decisions with an impact on the environment.

On the other hand, Article L. 341-3 of the Environmental Code authorises the regulatory authorities to stipulate the conditions under which interested parties are invited to present their observations where a natural monument or site owned in full or in part by individuals other than the State, the departments, the municipalities or public establishments is to be subject to a classification proposal. Article L. 341-13 of the Code provides that the full or partial declassification of a classified natural monument or site shall be ordered by decree of the Conseil d'État, after obtaining a prior opinion for the Superior Committee for Sites, and that notice shall be served on the interested parties and published with the Mortgage Office for the Legal Status of Assets, under the same conditions applicable to classification.

Neither the contested provisions nor any other legislative provision assures the implementation of the principle of public participation in the adoption of the public decisions concerned. Accordingly, in refraining from amending Article L. 341-3 with a view to providing for public participation and in amending Article L. 341-13 without providing for such participation, the legislator breached the requirements of Article 7 of the Environmental Charter. Articles L. 341-3 and L. 341-13 of the Environmental Code must be ruled unconstitutional.
*(2012-283 QPC, 23 November 2012, recitals 24 to 27, p. 605)*

## FREEDOM OF CONTRACT AND THE RIGHT TO REQUIRE THE FINANCIAL EQUILIBRIUM OF LEGALLY CONCLUDED AGREEMENTS TO BE MAINTAINED

### Freedom of contract

#### Scope of the principle

The legislator is free to subject the freedom of enterprise and freedom of contract, resulting from Article 4 of the 1789 Declaration of the Rights of Man and the Citizen, to limitations

associated with constitutional requirements or justified by the general interest, provided that this does not result in harm that is disproportionate to the objective pursued.
*(2012-242 QPC, 14 May 2012, recital 6, p. 259)*

**Reconciliation of the principle**

*With requirements of general interest*

According to the preliminary works for the Law on the simplification of the law and the streamlining of administrative procedures, in stipulating that the allotment of working hours over a period of more than one week but not exceeding one year does not in itself amount to an amendment to the contract of employment which would require prior agreement with each employee, the legislator intended to reinforce collective agreements on the adjustment of working hours aimed at enabling employee working hours to be adapted in line with developments in companies' production rhythms. The possibility to allot working hours without obtaining the prior agreement of each employee is subject to the existence of a collective agreement applicable to the company which allows such an adjustment. Non-full time employees are expressly excluded from this rule. It follows that these provisions, which are based on a reason of sufficient general interest, do not cause any unconstitutional breach to the principle of freedom of contract.
*(2012-649 DC, 15 March 2012, recitals 13 and 14, p. 142)*

The provisions of subparagraph 13 of Article L. 2411-1 of the Labour Code and Articles L. 2411-3 and L. 2411-18 of the same Code stipulate that employees serving as a member of the board or director of a Social Security fund cannot be dismissed without the authorisation of the labour inspector. In granting such protection to these employees, the legislator intended to uphold their independence when serving their mandate. It accordingly pursued a goal of general interest. In subjecting the validity of the dismissal of such employees to the requirement of authorisation by the labour inspector, the contested provisions did not disproportionately violate freedom of enterprise or freedom of contract.

The dismissal of a protected employee in breach of the provisions on the administrative authorisation procedure will be automatically void. Such a dismissal exposes the employer to an obligation to reinstate the employee and to pay compensation to him as redress for the detriment suffered as a result of his unfair dismissal.

The protection guaranteed to employees under the contested provisions results from the exercise of a mandate outwith the company. Accordingly, were these provisions to enable a protected employee to invoke such protection where it has been established that he did not inform his employer at the latest in the pre-dismissal interview, this would result in a disproportionate violation of freedom of enterprise and freedom of contract. Reservation of interpretation.
*(2012-242 QPC, 14 May 2012, recitals 6, 7, 9 and 10, p. 259)*

## Right to the maintenance of the economic balance of legally concluded agreements

**Scope of the principle**

The breach by the legislator of legally concluded contracts which is not justified by a reason of sufficient general interest will result in a breach of the requirements laid down by Articles 4 and 16 of the 1789 Declaration of the Rights of Man and the Citizen and, in cases involving the participation of workers in the collective determination of their working conditions, the eighth recital to the 1946 Preamble.
*(2012-649 DC, 15 March 2012, recital 13, p. 142)*

According to the contested provisions, the legislator intended to facilitate the amicable compensation of the victims of contamination with the hepatitis B or C virus or the human T-lymphotropic virus caused by a transfusion of blood products or an injection of blood derivatives.

On this basis, it charged the National Office for the Compensation of Medical Accidents [Office national d'indemnisation des accidents médicaux (ONIAM)] with paying compensation, on the basis of national solidarity, to victims who have suffered harm from such contamination. According to parliamentary works, the legislator intended to enhance the legal certainty of the conditions under which the ONIAM is able to take direct action in place of the French Blood Institute [Établissement français du sang (EFS)] against the insurers of the old blood transfusion centres of which this Institute is the successor. The contested provisions have the sole goal of enabling the ONIAM to benefit from the guarantees set forth in the insurance contracts which the facilities taken over by the EFS had signed and which are still valid. Therefore, the contested provisions have not amended legally concluded agreements and are limited to making reference to the implementation of contracts which have already been signed. Accordingly, the legislator did not violate the requirements resulting from Articles 4 and 16 of the 1789 Declaration or, in any case, the principle of the non-retroactivity of the law.
*(2012-659 DC, 13 December 2012, recital 80, p. 680)*

## FREEDOM OF EXPRESSION AND COMMUNICATION

### Principles

#### Scope of this freedom

*Fundamental freedom*

Pursuant to Article 11 of the 1789 Declaration: "The free communication of ideas and opinions is one of the most precious of man's rights: every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law". Any restrictions on the exercise of freedom of expression must be necessary, appropriate and proportionate with the objective pursued.

The second and third subparagraphs of Article L. 581-9 of the Environmental Code establish a prior administrative authorisation regime for the installation of certain external advertising devices. These provisions do not have the object and could not have the effect of granting to an administrative authority which has received an application on the basis of this legislation the power to exercise prior control over the contents of the advertising messages which it is intended to convey. Subject to this reservation, these provisions do not violate freedom of expression.
*(2012-282 QPC, 23 November 2012, recitals 30 and 31, p. 596)*

### Freedom of expression and communication (non-media)

#### Individual freedom of speech (including the written word) and freedom of the press

Pursuant to Article 11 of the 1789 Declaration: "The free communication of ideas and opinions is one of the most precious of man's rights: every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law". Pursuant to Article 34 of the Constitution: "Statutes shall determine the rules concerning... civic rights and the fundamental guarantees granted to citizens for the exercise of their civil liberties". On this basis, the legislator is at liberty to enact rules regulating the exercise of the right of free communication, freedom of speech (including the written word) and freedom of the press; it is also at liberty on this basis to establish criminal offences punishing the abuse of the exercise of the freedom of expression and communication which cause disruption to public order and the rights of third parties. Nonetheless, freedom of expression and communication is all the more precious since its exercise is a precondition for democracy and one of the guarantees of respect for other rights and freedoms, and restrictions

imposed on the exercise of this freedom must be necessary, appropriate and proportional having regard to the objective pursued.

A legislative provision having the objective of "recognising" a crime of genocide would not itself have the normative scope which is characteristic of the law. nonetheless, Article 1 of the law on the punishment of the negation of genocides recognised by law punishes the denial or minimisation of the existence of one or more crimes of genocide "recognised as such under French law". In thereby punishing the denial of the existence and of the legal classification of crimes which the legislator itself has recognised and classified as such, the legislator has imposed an unconstitutional limitation on the exercise of freedom of expression and communication.
*(2012-647 DC, 28 February 2012, recitals 5 and 6, p. 139)*

## INDIVIDUAL FREEDOM

### Affirmation of its constitutional standing

Pursuant to Article 66 of the Constitution: "No one shall be arbitrarily detained. - The Judicial Authority, guardian of the freedom of the individual, shall ensure compliance with this principle under the conditions laid down in law"; It is for the legislator to ensure that a balance is struck between, on the one hand, the protection of health of people and the prevention of disorderly conduct in order to safeguard rights and principles with constitutional status and, on the other hand, the exercise of freedoms guaranteed under the Constitution. These include the freedom of movement, protected under Articles 2 and 4 of the 1789 Declaration of the Rights of Man and the Citizen, as well as the individual freedom, the power to protect which Article 66 of the Constitution has vested in the judicial authorities. Violations of these freedoms must be adapted to, necessary for and proportionate with the objectives pursued. When exercising this power, the legislator may determine the procedures governing the intervention by the judicial authorities that differ in line with the nature and scope of the measures affecting individual freedom that it intends to enact.
*(2012-253 QPC, 8 June 2012, recital 4, p. 289)*

### Field of application

**Measures not falling within the scope of Article 66 of the Constitution.**

Article 65 of the Customs Code lays down a list of the individuals who, due to their activities, are required to provide customs officials upon request with documents of any nature relating to the operations of interest to this agency. It also provides that these documents may be seized.

Article 66 of the Constitution outlaws arbitrary detention and charges the judicial authorities with the protection of individual freedom, under the conditions laid down by law. The procedure established under Article 65 of the Customs Code does not have any affect on individual freedom. Accordingly, the objection alleging that Article 66 of the Constitution has been violated is inoperative.
*(2011-214 QPC, 27 January 2012, recitals 3 and 4, p. 94)*

Where a person subject to psychiatric treatment without his consent is not taken into care according to full sectioning procedures, a "treatment programme" is drawn up by a psychiatrist from the establishment. The patient's opinion is obtained before it is finalised and before any change to this programme at a meeting with the psychiatrist from the receiving establishment during which the former receives the information specified under Article L. 3211-3 of the Public Health Code and is informed of the provisions of Article L. 3211-11 of the Code. The second subparagraph of Article L. 3211-11 provides that, when the psychiatrist determines that the taking into care of an individual on an out-patient basis will no longer allow, having regard in particular to the person's conduct, the provision of the treatment necessary for his situation, it shall "immediately transmit to the director of the receiving

establishment a medical certificate supported by reasons suggesting full sectioning". The last subparagraph of Article L. 3212-4 and paragraph III of Article L. 3213-3 lay down the procedures according to which a decision to take into care pursuant to Title 2 of Article L. 3211-2-1 may be amended to this effect.

According to these provisions, in enabling persons who have not been taken into care under "full sectioning" procedures to be subject to mandatory psychiatric treatment which may entail, as the case may be, stays in the establishment, the provisions of Article L. 3211-2-1 of the Public Health Code do not authorise that obligation to be enforced against the patient's will. These persons may not be administered treatment forcefully and may not be accompanied or detained forcefully in order to complete the stays in the establishment specified in the treatment programme. No measure of constraint against a person taken into care under the conditions provided for by subparagraph 2 of Article L. 3211-2-1 may be implemented unless the decision to take into care has been transformed in advance into full sectioning. Under these conditions, the objection alleging the violation of individual freedom is factually misconstrued.
*(2012-235 QPC, 20 April 2012, recitals 11 and 12, p. 202)*

## Review of measures impinging upon personal freedom

### Hospitalisation of the mentally ill without their consent

When exercising this power, the legislator may determine the procedures governing the intervention by the judicial authorities which differ in line with the nature and scope of the measures affecting individual freedom that it intends to enact.

Pursuant to the eleventh recital of the Preamble to the Constitution of 1946, the Nation is to guarantee to all the right to health protection. 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 legislator is at liberty at any time, when ruling on matters within its competence, to adopt any new legislation which it considers appropriate and to amend earlier legislation or to repeal and replace it, as the case may be, with other provisions provided that, when exercising this power, it does not deprive constitutional requirements of legal guarantees.

The sectioning of a person suffering from a mental illness without his consent must respect the principle enshrined in Article 66 of the Constitution whereby individual freedom may not be restricted to an unnecessary extent. It is for the legislator to ensure that a balance is struck between, on the one hand, the protection of health of people suffering from mental illness and the prevention of disorderly conduct in order to safeguard rights and principles with constitutional status and, on the other hand, the exercise of freedoms guaranteed under the Constitution. These include the freedom of movement and privacy, protected under Articles 2 and 4 of the 1789 Declaration of the Rights of Man and the Citizen, as well as the individual freedom the power to protect which Article 66 of the Constitution has vested in the judicial authorities. Violations of these freedoms must be adapted to, necessary for and proportionate with the objectives pursued.
*(2012-235 QPC, 20 April 2012, recitals 6 to 8, p. 202)*

Subparagraph 3 of paragraph I of Article L. 3211-12-1 of the Public Health Code provides that any hospitalisation measure ordered by a court pursuant to Article 706-135 of the Code of Criminal Procedure on which the custodial judge has already ruled under the conditions laid down by the Public Health Code may not be continued unless the judge has ruled on the measure within six months. These provisions thus require a regular review at least once every six months of the treatment without consent involving full sectioning on which a court has already ruled. The contested provisions do not prevent the custodial judge from being seized at any time with a view to ordering the immediate cessation of the treatment. Accordingly, in adopting these provisions, the legislator ensured that a reasonable balance was struck between the requirements under Article 66 of the Constitution and the objective of constitutional standing of the proper administration of justice, resulting from Articles 12, 15 and 16 of the 1789 Declaration of the Rights of Man and the Citizen.
*(2012-235 QPC, 20 April 2012, recital 17, p. 202)*

Paragraph II of Article L. 3211-12 and Article L. 3213-8 of the Public Health Code apply to persons who are or have been subject during the previous ten years to sectioning ordered by the representative of the State where these persons were also admitted to units for challenging patients during the course of their sectioning for a term set by decree of the Conseil d'Etat.

Article L. 3211-12 concerns the conditions under which the custodial judge may be seized with an application to order the immediate cessation of psychiatric treatment ordered without the patient's consent. Paragraph II provides on the one hand that the custodial judge may only issue an order after it has received an opinion from the board of care staff provided for under Article L. 3211-9 and, on the other hand, that it may not decide to revoke the measure unless it has commissioned two supplementary expert reports drawn up by two psychiatrists. Article L. 3213-8 provides, as regards the persons covered by this legislation, that the representative of the State may only decide to put an end to psychiatric treatment after it has received an opinion from the board of care staff referred to under Article L. 3211-9 along with two opinions to the same effect on the patient's mental condition provided by two psychiatrists.

Due to the specific nature of the situation of individuals who appear to be particularly dangerous during sectioning, the legislator was able to apply particular conditions to the revocation of the treatment without consent to which these persons are subject. Nevertheless, it is for the legislator to put in place the legal guarantees against the risk of arbitrary action applicable to the implementation of these particular arrangements.

Article L. 3222-3 of the Public Health Code provides that individuals who are subjected by the representative of the State to psychiatric treatment in the form of full sectioning may be taken into care in a unit for challenging patients where they "represent a danger for others which is such that the necessary treatment, surveillance and security measures can only be implemented in a specific unit". Neither this Article nor any other legislative provision regulates the procedures or specifies the conditions under which such a decision will be made by the administrative authorities. The contested provisions thus provide that sectioning within a unit for challenging patients, which is imposed without sufficient legal guarantees, may result in more stringent rules than those applicable to other persons admitted to full sectioning, in particular as regards the revocation of such treatment. Accordingly, they violate the constitutional requirements assuring the protection of individual freedom.
*(2012-235 QPC, 20 April 2012, recitals 20 to 22, 25 and 26, p. 202)*

Paragraph II of Article L. 3211-12 and Article L. 3213-8 of the Public Health Code apply to persons who are or have been subject during the previous ten years to inpatient psychiatric care in the form of full sectioning in a psychiatric establishment ordered by an investigation chamber or a trial court issuing a judgment or ruling of non-responsibility on the grounds of mental illness pursuant to Article 706-135 of the Code of Criminal Procedure.

Article L. 3211-12 concerns the conditions under which the custodial judge may be seized with an application to order the immediate cessation of psychiatric treatment ordered without the patient's consent. Paragraph II provides on the one hand that the custodial judge may only issue an order after it has received an opinion from the board of care staff provided for under Article L. 3211-9 and, on the other hand, that it may not decide to revoke the measure unless it has commissioned two supplementary expert reports drawn up by two psychiatrists. Article L. 3213-8 provides, as regards the persons covered by this legislation, that the representative of the State may only decide to put an end to psychiatric treatment after it has received an opinion from the board of care staff referred to under Article L. 3211-9 along with two opinions to the same effect on the patient's mental condition provided by two psychiatrists.

Due to the specific nature of the situation of individuals who have committed criminal offences whilst suffering from mental illness, the legislator was able to apply particular conditions to the revocation of the treatment without consent to which these persons are subject. Nevertheless, it is for the legislator to put in place the legal guarantees against the risk of arbitrary action applicable to the implementation of these particular arrangements.

The contested provisions apply where the representative of the State has ordered treatment pursuant to Article L. 3213-7 of the Public Health Code. This Article provides that, where the judicial authorities consider that the mental condition of an individual who has benefited pursuant to the first subparagraph of Article 122-1 of the Criminal Code from a ruling of *nolle*

*prosequi*, a ruling that he lacks criminal responsibility or a judgment or ruling declaring a lack of criminal responsibility requires treatment and compromises the safety of other persons or causes a serious breach to public order, they shall immediately "notify" the departmental board for psychiatric care and the representative of the State within the department. The latter may issue a ruling ordering admission for psychiatric treatment, after ordering the issue of a medical certificate on the state of the patient.

Transmission to the representative of the State by the judicial authority may occur irrespective of the gravity and nature of the offence committed whilst suffering from mental illness. The contested provisions do not require that prior notice be given to the individual concerned. Accordingly, absent particular provisions on the consideration of offences or an adapted procedure, these provisions impose more stringent rules as a result of this decision to transmit, which are not backed up by sufficient legal guarantees, than those applicable to other individuals subject to mandatory psychiatric treatment, in particular with regard to the termination of such treatment. For the same reasons, these provisions also violate the constitutional requirements assuring the protection of individual freedom.
*(2012-235 QPC, 20 April 2012, recitals 20 to 22, 25, 27 and 28, p. 202)*

**Enclosure in a detention room in the event of public drunkenness**

According to the provisions of Article L. 3341-1 of the Public Health Code, the removal of an individual found in a state of drunkenness in public to a police or gendarmerie unit and his enclosure in this unit or in a detention room until the individual has regained his senses are measures falling within the remit of the administrative police, the purpose of which is to prevent breaches of public order and to protect the individual concerned. These provisions enable police and national gendarmerie officers, as the sole officials charged with this public safety task, to implement such measures, provided that they have ascertained the state of drunkenness, which is a material fact manifesting itself in the individual's behaviour.

On the other hand, according to the same provision, the deprivation of freedom may not continue after the individual has regained his senses. The precondition thereby imposed by the legislator has the object and effect of limiting this deprivation of freedom to a maximum of several hours. Moreover, the provision authorises an officer of the investigating police to decide not to enclose the individual in a detention room and to entrust him to a third party acting as guarantor for him, if it does not appear to be necessary to question the individual after he has regained his senses. Since it is provided for, organised and limited by law, enclosure in a detention room does not amount to arbitrary detention. Depending upon the circumstances, any errors committed by police or national gendarmerie officials during the exercise of their powers will establish liability for the public authorities before the competent courts.

Accordingly, the provisions of Article L. 3341-1 of the Public Health Code do not violate the requirement that any deprivation of freedom must be necessary for, suited to and proportionate with the objectives pursued by them of maintaining public order and protecting health.

Secondly, having regard to the brevity of this deprivation of freedom organised by the contested provisions for the purposes of administrative policing, the absence of any involvement by the judicial authorities does not violate the requirements of Article 66 of the Constitution.

However, where the individual has been detained in police custody following a deprivation of his freedom pursuant to the first subparagraph of Article L. 3341-1 of the Public Health Code, the constitutional protection of individual freedom by the judicial authorities requires that the duration of enclosure in a detention room, which must be effected under all circumstances by police or national gendarmerie agents, be taken into account for the purposes of calculating the duration of detention in police custody.
*(2012-253 QPC, 8 June 2012, recitals 5 to 10, p. 289)*

## Personal freedom and freedom of marriage

Freedom of marriage, which is a component of personal liberty, results from Articles 2 and 4 of the Declaration of the Rights of Man and the Citizen of 1789. This freedom does not restrict the competence of the legislator under Article 34 of the Constitution to determine the conditions of marriage, provided that in exercising this competence he does not deprive constitutional requirements of legal guarantees. It also does not prevent the legislator from adopting measures to prevent or combat marriages contracted for purposes extraneous to matrimonial union.
*(2012-261 QPC, 22 June 2012, recital 5, p. 312)*

Article 146 of the Civil Code subjects the validity of marriage to the married couple's consent. According to the settled case law of the Cour de Cassation, a marriage shall be void on the grounds of defective consent where the married couple only decided to conclude the ceremony with a view to achieving a result extraneous to matrimonial union. The constitutional protection of the freedom of marriage does not establish the right to contract marriage for purposes extraneous to matrimonial union. Accordingly, the objection alleging that Article 146 of the Civil Code breaches this freedom must be rejected.
*(2012-261 QPC, 22 June 2012, recitals 5 to 7, p. 312)*

Article 175-1 of the Civil Code provides that the Public Prosecutor may object to a marriage in cases in which he may request that it be annulled. Such cases, including that provided for under Article 146 of the Civil Code, are listed in Article 184 of the Code. Pursuant to Article 176 of the Civil Code, a notice of opposition must be supported by reasons and reproduce the text on which it is based, failing which it will be invalid. An opposition by the public prosecutor only ceases to have effect if ordered by the courts. Articles 177 and 178 of the Civil Code provide that the future married couple may request its cancellation by the regional court, which shall pass judgment within ten days. In the event of an appeal, the court of appeal shall rule within the same time limit. In any case, it is for the public prosecutor who has based his opposition on Article 146 of the Civil Code, alleging that the marriage is a sham, to furnish proof that its celebration is only intended for purposes extraneous to the matrimonial union. Taking account of the guarantees thereby created, the power granted to the public prosecutor under Article 175-1 of the Civil Code to object to marriages which are alleged to be celebrated in breach of the rules on public order may not be deemed to impose an excessive limitation on the freedom of marriage.
*(2012-261 QPC, 22 June 2012, recitals 5, 8 and 9, p. 312)*

Article 180 of the Civil Code provides that consent to marriage is defective in the event that coercion is used on one or both spouses or in cases involving a mistake as to the individual or the essential qualities of the individual. Whilst in the event of a mistake, only the spouse which was the victim of that mistake may request that it be annulled, a marriage contracted without the free consent of either or both spouses may also be challenged by the public prosecutor. These provisions accordingly enable the public prosecutor to object to a marriage, or to seek its annulment, in cases involving coercion. Far from breaching the principle of freedom of marriage, these provisions are intended to ensure that it is protected.
*(2012-261 QPC, 22 June 2012, recitals 4, 10 and 11, p. 312)*

Freedom of marriage, which is a component of personal liberty, results from Articles 2 and 4 of the Declaration of the Rights of Man and the Citizen of 1789. This freedom does not restrict the competence of the legislator under Article 34 of the Constitution to determine the conditions of marriage, provided that in exercising this competence he does not deprive constitutional requirements of legal guarantees. The legislator is also at liberty to subject this freedom to limitations strictly related to constitutional requirements or which are justified by the general interest, provided that this does not result in breaches of rights which are disproportionate having regard to the objective pursued.
*(2012-260 QPC, 29 June 2012, recital 4, p. 323)*

Pursuant to Article 415 of the Civil Code, all individuals who have reached the age of majority shall receive protection with respect to their person and their assets which may be necessary due to their status or circumstances. This protection is established and assured in accordance with individual freedoms, fundamental rights and personal dignity. It aims for the interest

of the individual protected and favours, as far as possible, the autonomy of the individual. Article 428 of the Code provides that protection may only be ordered by a court in the event of necessity, provided that sufficient provision may not be made for the interests of the individual under the rules of ordinary legislation through a different less stringent measure of judicial relief or through an ongoing power of attorney. It must also be proportionate and individually tailored to the degree of alteration of the personal faculties of the interested party. Guardianship is one of the judicial measures for providing relief which may be ordered pursuant to Article 425 of the Civil Code in relation to an individual suffering from a "medically established alteration of his mental faculties or of his bodily faculties of such a nature as to prevent him from expressing his intention". Article 440 of the Code provides that the court may place under guardianship "any individual who, notwithstanding that they are not incapacitated, require ongoing assistance of control in relation to important acts of civil life on one of the grounds provided for under Article 425".

Article 460 of the Civil Code, which is the subject matter of the application for a priority preliminary ruling on the issue of constitutionality, does not prevent an individual under guardianship from marrying. Marriage is permitted with the approval of the guardian. Any refusal by the guardian may be reversed with the authorisation of the guardianship judge, whose decision shall be issued after hearing the parties and must be supported by reasons relating to the interested party's capacity to consent to marriage. Such court rulings may be subject to appeal. The ward is provided with the necessary guarantees for the effective exercise of such an appeal.

Having regard to the resulting personal and pecuniary obligations, marriage is "an important act of civil life". In subjecting marriage by an individual under guardianship to the requirement of authorisation by the guardian or, if it is not granted, by a court, the legislator did not deprive the freedom of marriage of legal guarantees. The restrictions which it imposed upon the exercise of that freedom, in order to protect the interests of the individual concerned, have not disproportionately infringed this freedom.
*(2012-260 QPC, 29 June 2012, recitals 5 to 8, p. 323)*

### Individual freedom and the administrative police

The administrative policing measures liable to affect the exercise of freedoms guaranteed under the Constitution, including the freedom of movement, comprising the personal freedom protected under Articles 2 and 4 of the 1789 Declaration, must be justified by the requirement to safeguard public order and must be proportional with this objective.

Articles 2 to 6 of the Law of 3 January 1969 on the exercise of ambulatory activities and the arrangements applicable to persons travelling in France without a fixed place of abode or residence regulate the arrangements governing circulation permits which must be obtained by individuals who have not had a fixed place of abode or residence for more than six months. According to the combined provisions of the first subparagraph of Article 2 and Article 3 of the aforementioned Law of 3 January 1969, these provisions are applicable on the one hand to "individuals who have not had a fixed place of abode or residence within a Member State of the European Union for more than six months", individuals older than sixteen years of age accompanying them and their employees, and on the other hand "individuals older than sixteen years of age" other than those referred to above who "have not had a place of abode or residence for more than six months" and "who permanently live in a vehicle, a trailer or any other mobile unit".

In imposing on all of these individuals the requirement for a circulation permit, the legislator intended to enable, for private law, social, administrative or judicial purposes, those who cannot be found at a fixed place of abode or residence for a certain period of time to be identified and located, whilst providing, for the same purposes, a means of communication with them. These provisions are based on a difference between the situation of individuals who have had a fixed place of residence or abode for more than six months and those who have not, irrespective of their nationality or origin. Therefore the distinction is based on objective and rational criteria directly related with the goal stipulated by the legislator. The resulting violation of the freedom of movement is justified by the need to protect public order and is proportional with this objective.
*(2012-279 QPC, 5 October 2012, recitals 15, 17 and 18, p. 514)*

The Law of 3 January 1969 on the exercise of ambulatory activities and the arrangements applicable to persons travelling in France without a fixed place of abode or residence requires that such individuals circulating in France without a fixed place of abode or residence for more than six months hold a circulation permit. It thus intended to enable, for private law, social, administrative or judicial purposes, those who cannot be found at a fixed place of abode or residence for a certain period of time to be identified and located, whilst assuring, for the same purposes, a means of communication with them.

Pursuant to Article 2 of the Law, individuals who have not had a fixed place of abode or residence for more than six months in a Member State of the European Union, individuals accompanying them and the employees of the latter, are required to obtain a special circulation book if they are older than sixteen years of age and have not had a fixed place of residence or abode in France for more than six months. Article 3 provides that individuals other than those referred to above who have not had a fixed place of abode or residence for more than six months and who permanently live in a vehicle, a trailer or any other mobile unit must obtain, as a prerequisite for their right to move within France, either a circulation book or a circulation booklet. It results from the combined provisions of Articles 2 and 3 of the law, only circulation permits which are issued to individuals living in a mobile unit must be validated by the administrative authorities at regular intervals. Having regard to the object of the law, the regular obligation to extend the validity of these permits provided for under Article 6 does not violate freedom of movement in a manner incompatible with the Constitution.
*(2012-279 QPC, 5 October 2012, recitals 15, 18 and 19, p. 514)*

The Law of 3 January 1969 on the exercise of ambulatory activities and the arrangements applicable to persons travelling in France without a fixed place of abode or residence requires that such individuals circulating in France without a fixed place of abode or residence for more than six months hold a circulation permit. It thus intended to enable, for private law, social, administrative or judicial purposes, those who cannot be found at a fixed place of abode or residence for a certain period of time to be identified and located, whilst assuring, for the same purposes, a means of communication with them.

According to the combined provisions of Articles 4 and 5 of the Law of 3 January 1969, individuals older than sixteen years of age who have not had a fixed place of abode or residence for more than six months and who permanently live in a vehicle, a trailer or any other mobile unit, are required to obtain, as a prerequisite for the right to circulate within France, either, if they are able to furnish proof of regular income guaranteeing them normal living conditions, in particular through the conduct of salaried employment, a circulation book which must be validated by the administrative authorities at intervals specified by regulation which may not be shorter than three months, or, if they are not able to furnish proof of such regular income, a circulation booklet which must be validated by the administrative authorities every three calendar months. Moreover, according to the second subparagraph of Article 5 of the Law of 3 January 1969, any person who circulates without having previously obtained a circulation booklet is liable to a term of imprisonment of one year.

By requiring that the circulation booklet be validated by the administrative authorities every three months and by punishing with a term of imprisonment any individual travelling without a circulation booklet, the provisions of Article 5 of the Law of 3 January 1969 violate the freedom of movement in a manner which is disproportionate having regard to the goal pursued.
*(2012-279 QPC, 5 October 2012, recitals 15, 21 and 23, p. 514)*

Article 7 of the Law of 3 January 1969 on the exercise of ambulatory activities and the arrangements applicable to persons travelling in France without a fixed place of abode or residence provides that any individual who applies for a circulation permit shall be required to specify the municipality with which he wishes to be associated. The declaration of association shall be issued by the prefect or deputy prefect upon receipt of an opinion supported by reasons from the mayor. Article 8 provides that the number of individuals holding a circulation permit without a fixed place of abode or residence who are attached to any given municipality may not exceed 3% of the municipal population as calculated during the most recent census. The prefect may nonetheless grant exceptions to this rule "in particular in order to ensure family unity". Article 9 stipulates that the choice of a municipality of association shall be made for a minimum term of two years. Pursuant to Article 10, this association produces all or part of the effects associated with the place of abode, residence or work, under the conditions laid

down in this Article, with regard in particular to the celebration of marriage, inclusion in the electoral register, compliance with obligations under tax law and those provided for under Social Security law and the law on assistance to unemployed workers as well as the obligation to complete national service.

The requirement of association with a municipality imposed upon individuals who have not had a fixed place of abode or residence for more than six months is intended to remedy the fact that it is impossible for them to comply with the conditions laid down for the exercise of certain rights and to comply with certain duties. This obligation does not limit the freedom of movement of the interested parties, the freedom to choose a fixed or mobile form of accommodation or the freedom to decide on the place of their temporary establishment. It does not limit their ability to determine a fixed place of abode or residence for more than six months. It does not entail any obligation to reside within the municipality of association. Accordingly, the objections alleging that Articles 7 to 10 of the Law of 3 January 1969 violate the freedom of movement and the right to respect for private life must be rejected.
*(2012-279 QPC, 5 October 2012, recitals 25 and 27, p. 514)*

### Personal freedom and health protection

According to the combined provisions of Article L. 3211-2-1 and Articles L. 3212-1 and L. 3213-1, a person suffering from mental illness may not be subject to treatment provided without its consent by a psychiatric establishment, even under conditions of full sectioning, unless "his mental illness means that he is not able to provide his consent" to treatment whilst "his mental condition calls for immediate treatment associated with constant medical surveillance" or where these disturbances "require treatment and compromise the safety of other persons or cause serious disruption to public order". Under all circumstances, the custodial judge may be seized at any time, under the conditions set forth in Article L. 3211-12 of the Code, to issue a summary order requiring the immediate cessation of that measure. In adopting these provisions, the legislator ensured that a balance was struck which is not manifestly unreasonable between the protection of health and the protection of public order on the one hand, and individual freedom, protected by Articles 2 and 4 of the 1789 Declaration on the other hand.
*(2012-235 QPC, 20 April 2012, recital 13, p. 202)*

### Personal freedom and collection of biological material

The legislation in force prior to the enactment of Law no. 2011-814 of 7 July 2011 on bioethics subjected the collection of umbilical cord or placenta blood cells or of umbilical cord or placenta cells to the regime applicable to the collection of surgical residues regulated under Article L. 1245-2 of the Public Health Code.

In enacting the contested provisions, the legislator endorsed the principle of the anonymous donation of these cells for no charge and intended to prevent the collection of umbilical cord or placenta blood cells or of umbilical cord or placenta cells with a view to their conservation by the individual for possible further usage, in particular within the family. The legislator's choice to make the collection of these cells subject to the prior written consent of the woman being did not have the purpose of conferring rights on those cells.

It is not for the Constitutional Council, which does not dispose of a general power of appreciation and decision making of the same nature as that of Parliament, to impose its assessment in place of that of the legislator with regard to the conditions under which these cells may be collected and the manner in which they may be used. Accordingly, the objection alleging the violation of personal freedom must be rejected.
*(2012-249 QPC, 16 May 2012, recital 7, p. 274)*

## Freedom of enterprise

### Scope of the principle

The legislator is free to subject the freedom of enterprise and freedom of contract, resulting from Article 4 of the 1789 Declaration of the Rights of Man and the Citizen, to limitations associated with constitutional requirements or justified by the general interest, provided that this does not result in harm that is disproportionate to the objective pursued.
*(2012-242 QPC, 14 May 2012, recital 6, p. 259)*

Article 57 of the Law on the financing of Social Security for 2013 amended Article L. 5112-12-1 of the Public Health Code in order to expand situations in which a temporary recommended use may be adopted for a proprietary pharmaceutical to cases in which there is a therapeutic alternative to the indication targeted. It provides that such an extension may be granted with the objective either or resolving a proven risk for public health or to avoid costs with a significant impact on the finances of sickness insurance bodies.

The constitutional protection for freedom of enterprise does not preclude the legislator from specifying the conditions under which the therapeutic indications of a proprietary pharmaceutical which has received marketing authorisation may be altered.
*(2012-659 DC, 13 December 2012, recital 55, p. 680)*

### Scope of the principle

Freedom of enterprise stems from Article 4 of the 1789 Declaration. However, the legislator is free to subject this freedom to limitations associated with constitutional requirements or justified by the general interest, provided that this does not result in harm that is disproportionate in relation to the objective pursued.

In adopting the contested provisions set forth in Article 3 of the Supplementary Law on finances, amended for 2012 abolishing the incentive to use overtime for full-time and part-time work, the legislator intended to promote employment. To this effect, it was free to amend the rules governing tax and Social Security relief applicable to such overtime. The contested provisions, which do not cause any breach to the freedom of enterprise, also do not violate the right of each individual to secure employment.
*(2012-654 DC, 9 August 2012, recitals 18 and 21, p. 461)*

The legislator is free to subject freedom of enterprise, as resulting from Article 4 of the 1789 Declaration, to limitations associated with constitutional requirements or justified by the general interest, provided that this does not result in harm that is disproportionate in relation to the objective pursued.

In adopting the provisions of the second and third subparagraphs of Article L. 581-9 of the Environmental Code, the legislator in particular sought to ensure protection for the living environment against harm liable to result from external advertising devices. To this effect, it subjected tarpaulin spaces, devices of exceptional size and the installation of luminous advertising devices to a requirement of authorisation. Pursuant to the first subparagraph of Article L. 581-9 of the Code, advertising must comply with the requirements laid down by decree of the Conseil d'État depending upon the processes, the devices used, the characteristics of the supports and the importance of the conglomerations concerned, in particular with regard to location, density, surface, height, maintenance and, for luminous advertising, energy efficiency and the prevention of light nuisance. In establishing this administrative authorisation regime, the legislator did not infringe the principle of freedom of enterprise in a manner which was not justified by the objectives which it had set or was not proportionate with that goal.
*(2012-282 QPC, 23 November 2012, recitals 26 and 27, p. 596)*

**Reconciliation of the principle**

*With the general interest*

The provisions of subparagraph 13 of Article L. 2411-1 of the Labour Code and Articles L. 2411-3 and L. 2411-18 of the same Code stipulate that employees serving as a member of the board or director of a Social Security fund cannot be dismissed without the authorisation of the labour inspector. In granting such protection to these employees, the legislator intended to uphold their independence when serving their mandate. It accordingly pursued a goal of general interest. In subjecting the validity of the dismissal of such employees to the requirement of authorisation by the labour inspector, the contested provisions did not disproportionately violate freedom of enterprise or freedom of contract.

The dismissal of a protected employee in breach of the provisions on the administrative authorisation procedure will be automatically void. Such a dismissal exposes the employer to an obligation to reinstate the employee and to pay compensation to him as redress for the detriment suffered as a result of his unfair dismissal.

The protection guaranteed to employees under the contested provisions results from the exercise of a mandate outwith the company. Accordingly, were these provisions to enable a protected employee to invoke such protection where it has been established that he did not inform his employer at the latest in the pre-dismissal interview, this would result in a disproportionate violation of freedom of enterprise and freedom of contract. Reservation of interpretation.
*(2012-242 QPC, 14 May 2012, recitals 6, 7, 9 and 10, p. 259)*

Dependent territory Law no. 2011-6 of 17 October 2011 validating the acts adopted pursuant to Articles 1 and 2 of resolution no. 116/CP of 26 May 2003 on the regulation of the importation of meat and offal into New Caledonia was adopted following the judgment by the administrative court of New Caledonia of 9 August 2007 and the judgment of the Paris administrative court of appeal of 1 February 2010. The contested provisions of this law have the objective, on the one hand, of re-establishing the monopoly established under the aforementioned resolution granting a monopoly to the office of marketing and refrigerated storage (office de commercialisation et d'entreposage frigorifique, OCEF) over the importation of meat and offal of bovine, suidian, ovine, caprine, equine and cervid species into New Caledonia, and on the other hand of validating acts taken in accordance with Articles 1 and 2 of this resolution.

Freedom of enterprise stems from Article 4 of the Declaration of the Rights of Man and the Citizen of 1789. However the legislator is free to subject this freedom to limitations associated with constitutional requirements or justified by the general interest, in the condition that this does not result in harm that is disproportionate in relation to the pursued goal.

The OCEF is a public industrial and commercial establishment charged with a "public service mission of regulating the market for meat in New Caledonia". Its creation in 1963 was intended to protect local meat production and to assure the proper supply of the territory's populace. Within the ambit of this mission, the aforementioned resolution of 26 May 2003 also granted the OCEF a monopoly over the importation of meat. Having regard to the particular circumstances of New Caledonia and the supply needs of the local market, the violation of the freedom of enterprise by the monopoly granted to the OCEF in furtherance of its public service mission under the resolution of 26 May 2003 is not disproportionate. Accordingly, the objection alleging the violation of the freedom of enterprise must be rejected.
*(2012-258 QPC, 22 June 2012, recitals 5, 6 and 8, p. 308)*

The provisions of Article L. 6362-5 of the Labour Code lay down the control procedures for bodies providing ongoing professional training services for civil servants. Such controls are intended to establish that the amounts paid by public bodies for professional training or by employers in relation to their obligation to contribute to the financing of ongoing professional training are made for this sole purpose. The legislator accordingly pursued a goal of general interest. Neither the freedom of enterprise nor any other requirement of constitutional standing prevents the providers of ongoing professional training services from being subject to controls of their activities and expenditure by the administrative authorities. Accordingly, the infringement of the freedom of enterprise by the provisions of Article L. 6362-5 of the Labour Code is not disproportionate having regard to the objective pursued.
*(2012-273 QPC, 21 September 2012, recital 8, p. 489)*

The legislator is free to subject the freedom of enterprise, resulting from Article 4 of the 1789 Declaration of the Rights of Man and the Citizen, to limitations associated with constitutional requirements or justified by the general interest, provided that this does not result in harm that is disproportionate to the objective pursued.

In adopting the provisions of paragraph IV of Article L. 430-8 of the Commercial Code, the legislator granted the Competition Authority the power, in the event of a failure to comply with an order, requirement or commitment contained in a decision authorising a concentration operation, to withdraw the decision authorising the completion of the concentration operation and to impose a financial penalty on the parties on which the unfulfilled obligation was incumbent. The withdrawal of the decision authorising the concentration operation is only applicable when this authorisation was granted subject to conditions. If the decision authorising the operation is withdrawn, unless the situation is returned to the state prevailing prior to the concentration, the parties are required to notify the concentration again to the Competition Authority within one month from the withdrawal of authorisation, failing which they will be liable to other penalties. According to these provisions, the legislator sought to ensure effective compliance with the orders, requirements or commitments associated with concentration authorisations.

The penalties provided for under paragraph IV of Article L. 430-8 of the Commercial Code will only be incurred if a concentration operation has been authorised "subject to a requirement on the parties to take all suitable measures in order to ensure sufficient competition or an obligation upon them to comply with requirements of such a nature as to make a sufficient contribution to economic progress in order to offset the anti-competitive effects". Moreover, pursuant to Article L. 462-7 of the Code: "The Authority may not be seized in relation to circumstances dating back longer than five years unless an attempt has been made to investigate, establish or punish them". Finally, the decisions adopted by the Competition Authority on the basis of paragraph IV of Article L. 430-8 may be challenged through the courts, and it is for the court seized of any such challenge to satisfy itself that the decision is well-founded.

The provisions of paragraph IV of Article L. 430-8 of the Commercial Code on the control of concentration operations have the objective of assuring the competitive operation of the market within a specific sector. In adopting them, the legislator did not breach the principle of freedom of enterprise in a manner which was not justified by the objectives of upholding the economic public order which it has allocated to itself and which was not proportionate having regard to this goal. Accordingly, the challenge objecting to the breach of the freedom of enterprise must be rejected.
*(2012-280 QPC, 12 October 2012, recitals 8 to 11, p. 529)*

Freedom of enterprise stems from Article 4 of the 1789 Declaration. However, the legislator is free to subject this freedom to limitations associated with constitutional requirements or justified by the general interest, provided that this does not result in harm that is disproportionate in relation to the objective pursued.

Pursuant to Article 341-10 of the Environmental Code: "The state or aspect of natural monuments or classified sites may not be destroyed or altered without special authorisation". These provisions which impose a requirement of authorisation for any improvement which is liable to alter the state of the site do not have the object or effect of preventing all conduct of fitting out, construction or economic activity within the perimeter. No disproportionate breach of freedom of enterprise.
*(2012-283 QPC, 23 November 2012, recitals 15 and 19, p. 605)*

*With rules, principles or objectives of constitutional standing*

Article L. 1235-11 of the Labour Code provides that if the requirements relating to the employee reclassification plan are not complied with in cases involving dismissals on economic grounds, this shall result in the continuation of the contract of employment or the nullity of the dismissal of employees and their reinstatement upon request, unless such reinstatement has become impossible. Paragraph 1 of Article L. 1235-14 of the Code nonetheless precludes the application of this provision for employees who have been in post with the company for less than two years. In setting at two years the length of service required, the legislator struck a balance between the right to obtain employment and the freedom of enterprise which is not manifestly unfair. Accordingly, it did not violate the fifth subparagraph of the 1946 Preamble.
*(2012-232 QPC, 13 April 2012, recitals 5, p. 199)*

### Freedom to practise a profession or conduct an economic activity

Freedom of enterprise covers not only the freedom to access a profession or economic activity but also freedom within the practise of this profession or conduct of this activity. Accordingly, the fact that mandatory membership of a corporation does not condition the practise of a profession, but results from it, does not have the effect of rendering the objection alleging the breach of freedom of enterprise inoperative.
*(2012-285 QPC, 30 November 2012, recital 7, p. 636)*

The first subparagraph of Article 100 of the Code of Professions applicable within the departments of Haut-Rhin, Bas-Rhin and Moselle provides that the administrative authorities shall order, upon request by the majority of the operators concerned, that membership of a corporation shall be mandatory where this is necessary in order to preserve the common interests of artisanal undertakings.

Pursuant to Article 81 *a* of the Code, the legal mission of corporations shall be to foster a spirit of professional solidarity and to maintain and enhance the professional honour of their members, to promote profitable relations between company directors and their staff, to provide assistance in relation to questions of housing and placement, to complete the regulation of apprenticeships and to monitor technical and professional training and the moral education of apprentices, without prejudice to the general provisions applicable to such matters. Article 81 *b* sets out the optional actions which the corporations may carry out.

Where a mandatory corporation is established, the professional regulations resulting from the provisions governing mandatory corporations shall apply to all craft industry companies, irrespective of activities carried out. Artisans who are automatically members of such a corporation shall be required to pay the fees due in respect of this membership. According to the first subparagraph of Article 88 of the Code of Professions, corporations may require their members to comply with obligations relating to the missions pursued by them. Article 92 *c* provides that the managing bodies of corporations shall be entitled to impose disciplinary sanctions on their members, including in particular fines in the event of breaches of the terms of their charters. Article 94 *c* enables corporations to appoint agents to monitor compliance by their member establishments with legal requirements of the terms of their charters, and in particular to inspect the state of workplace installations.

In the departments of Haut-Rhin, Bas-Rhin and Moselle, artisans are included in a register held by the Chambers of Trades, which ensure that the general interests of the artisanal sector are represented. The nature of artisanal activities does not justify the maintenance of professional regulations in addition to those relating to the chambers of trades requiring all farm managers or heads of artisanal undertakings to be grouped together according to corporation in line with their activities, and thereby subjected to the aforementioned constraints. Accordingly, the contested provisions on the requirement of membership of corporations violate freedom of enterprise. Article 100 *f* and the third subparagraph of Article 100 *s* of the Code of Professions applicable within the departments of Haut-Rhin, Bas-Rhin and Moselle must be ruled unconstitutional.
*(2012-285 QPC, 30 November 2012, recitals 8 to 11, p. 636)*

### Freedom of competition

No rule or principle of constitutional standing requires that different persons be charged for a fixed term with the conception, construction, fitting out and operation or maintenance of equipment necessary for public service.
*(2012-651 DC, 22 March 2012, recital 4, p. 155)*

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

### Sanction of a punitive nature

*Criteria*

It is shown from an established case law of the Conseil d'État that, for a soldier, the loss of his grade is a punishment. The principle of the individual nature of penalties which arises from Article 8 of the 1789 Declaration implies that this penalty may only be imposed if the judge expressly stated it, taking into account the particular circumstances of each case.
*(2011-218 QPC, 3 February 2012, recital 6, p. 107)*

The principles stated in Article 8 of the 1789 Declaration apply not only to sentences handed down by the repressive jurisdictions but also to any sanction of a punitive nature. An increased charge for creating office space in the Ile de France area is payable in case of breach of legislative or regulatory provisions in relation to the payment of the charge, which tends to sanction persons who evade the payment of the charge, is of a punitive nature.
*(2012-225 QPC, 30 March 2012, recitals 5 and 6, p. 172)*

The fines and penalties which tend to act against the behaviour of persons who failed to observe their tax obligations must be considered as sanctions of a punitive nature. The principle according to which no one can only be punished because of his own action is therefore applicable.
*(2012-239 QPC, 4 May 2012, recital 5, p. 230)*

*Disabilities*

The purpose of the definitive prohibition for registration on the electoral lists provided by the third paragraph of Article 4 of decree no. 45-1418 of 28 June 1945, laying down the regulations applicable to notaries and some members of the legal profession is not to guarantee the integrity or the morality necessary to the exercise of the public officer or member of legal profession functions. As a result, it must be considered as a sanction of a punitive nature.
*(2011-211 QPC, 27 January 2012, recital 5, p. 87)*

### Measures of no punitive nature

*Police measures*

The prohibition imposed on people subject to a "divestiture" or an attachment order procedure provided for by Article L. 2336-5 of the defence code to acquire or hold weapons subject to the authorisation or declaration regime is not a sanction of a punitive nature in the sense of Article 8 of the 1789 Declaration.
*(2011-209 QPC, 17 January 2012, recital 7, p. 81)*

*Other measures of no punitive nature*

The final ineligibility to chambers, organisations and councils, provided for in the second paragraph of Article 4 of decree no. 45-1418 of 28 June 1945, laying down the regulations applicable to the discipline of notaries and some members of the legal profession is attached ipso jure to the adoption of a ban or a removal. However, the purpose of this ineligibility is not to ensure an additional repression for the member of the profession against whom a disciplinary measure has been ordered but, on the one hand, to draw the consequences of the loss of title, and on the other hand, to guarantee the integrity and the morality of the member of the profession within the representative bodies of the profession excluding those members who have been subject to the most stringent disciplinary sentences. As a result, the ineligibility provided for in the second paragraph does not constitute a sentence of a punitive nature. Therefore, the objections alleging a violation of Article 8 of the 1789 Declaration are irrelevant in that respect.
*(2011-211 QPC, 27 January 2012, recital 4, p. 87)*

The increased charge relating to the creation of office space in the Ile de France area in case of late payment is to compensate for the loss suffered by the State as a result of the late payment of the charge and does not constitute a sentence.
*(2012-225 QPC, 30 March 2012, recital 6, p. 172)*

Under Article 1754 chapter IV of the General Tax Code, the heirs or liquidators are held responsible for "the fines, increases and interests owed by the deceased or the dissolved company". The increases and interests for late payment, the only purpose of which is to repair the prejudice suffered by the State because of the late payment of the tax are not of a punitive nature. Accordingly, the objection alleging the violation of Articles 8 and 9 of the 1789 Declaration is groundless in that respect.
*(2012-239 QPC, 4 May 2012, recital 4, p. 230)*

**Transposition of administrative repression**

The principles stated in Article 8 of the 1789 Declaration apply not only to sentences handed down by the criminal jurisdictions but also to any sentence of a punitive nature.

Applied outwith the criminal law, the requirement to define punishable breaches is satisfied, as a matter of administrative law, by reference to the obligations to which the holder of the public office is subject according to law and regulations.

As a result of the established case law of the Conseil d'État, the purpose of the provisions of Article L. 2122-16 of the General Local Authorities Code is to fight against the severe and repeated shortcomings of mayors and therefore to put an end to behaviours the seriousness of which is well established. In these conditions, if these provisions establish a sanction of a punitive nature, the absence of any express reference to obligations to which the mayors are subject to as a result of theirs functions does not infringe the principle that offences must be defined by law.
*(2011-210 QPC, 13 January 2012, recitals 3 to 5, p. 78)*

It results from the settled case law of the Conseil d'État that the compensation paid out in case of an administrative decision to slaughter sick animals, pursuant to Article L. 221-2 of the Rural and Maritime Fishing Code constitutes a right for their owner. This right, arising out of the decision to slaughter, may be taken away in full or in part from the owner who has committed an offence with regard to the provisions of Title II of Book II of the Rural and Maritime Fishing Code and to the rules governing their application. The administrative decision to withdraw compensation constitutes a sanction of a punitive nature.

Applied outwith of the criminal law, the requirement to define punishable offences is satisfied, as a matter of administrative law, when the applicable texts refer to the obligations to which the interested parties must comply with by virtue of the activity they carry out, the profession of which they are a member or the institutional role which they perform or of their quality.
*(2012-266 QPC, 20 July 2012, recitals 5 and 6, p. 390)*

The provisions of Article L. 6362-5 of the Labour Code impose on the organisations providing ongoing vocational training, obligations the violation of which, pursuant to Articles L. 6362-7 and L. 6362-10 of the Labour Code, entail the disallowing of expenditures with respect to the ongoing vocational training as well as the obligation to pay to the Treasury a fine equal to the amount of the disallowed expenditures. These provisions institute a sanction of a punitive nature. The principles of Article 8 of the 1789 Declaration are applicable thereof.
*(2012-273 QPC, 21 September 2012, recital 10, p. 489)*

## Principle that offences and penalties must be defined by law

**Jurisdiction of the legislator**

*Applications*

Lack of breach of the legislator's jurisdiction

As a result of the established case law of the Conseil d'État, the purpose of the provisions of Article L. 2122-16 of the General Local Authorities Code is to fight against the severe and

repeated shortcomings of mayors and therefore to put an end to behaviours the seriousness of which is well established. In these conditions, if these provisions establish a sanction of a punitive nature, the absence of any express reference to obligations to which the mayors are subject to as a result of theirs functions does not infringe the principle that offences must be defined by law.
*(2011-210 QPC, 13 January 2012, recital 5, p. 78)*

Applied outwith the criminal law, the requirement that punishable offences be defined is satisfied, in relation to administrative matters, when the applicable texts refer to the obligations to which the interested parties are subject by virtue of the activity which they carry out, the profession of which they are a member or the position they hold.

The contested provisions of Article L. 221-2 of the Rural and Maritime Fishing Code specifically refer to animal health regulations in Title II of Book II of the Rural and Maritime Fishing Code and in the implementation of regulations to which the owner of animals must comply with due to their position. As a result, the contested provisions do not breach the requirement for a clear and concise definition of punishable offences.
*(2012-266 QPC, 20 July 2012, recitals 6 and 7, p. 390)*

By sanctioning the absence of documents and materials presentation, establishing the origin of the products and the funds received as well as the nature and the actual expenditures to perform the activities pursuant to ongoing vocational training, required by sub-paragraph 1 of Article L. 6362-5 of the Labour Code, and the non-substantiation of the connection of these expenditures to their activities, imposed by sub-paragraph 2 of Article L. 6362-5, the legislator precisely defined the obligation to which the vocational training organisations are subject to and which breach is sanctioned by the challenged provisions. The provisions of sub-paragraph 2 of Article L. 6362-5, also impose to the organisations providing ongoing vocational training, the obligation to substantiate the merits of the expenditures incurred as part of ongoing vocational training.

The purpose of this requirement is to impose that these expenditures be useful to vocational training actions. The scope of these obligations whose breach, as a result, are sanctioned is defined in a very precise manner and does not breach the principle that offences must be defined by law.
*(2012-273 QPC, 21 September 2012, recital 11, p. 489)*

By sanctioning the non-substantiation of the compliance of the use of these funds to the legal provisions regulating the on-going vocational training activities, required by sub-paragraph 2 of Article L. 6362-5 of the Labour Code, the legislator intended to sanction a non-compliance of the use of these funds only to the provisions specifically regulating the activities of on-going vocational training and not to the entire applicable regulatory provisions. In these conditions, the obligation to substantiate the "compliance of the use of the funds received to the legal provisions regulating these activities" does not breach the principle that offences must be defined by law.
*(2012-273 QPC, 21 September 2012, recital 12, p. 489)*

Breach of the legislator's jurisdiction

The legislator derives from Article 34 of the Constitution, as well as from the principle that offences and penalties must be defined by law resulting from Article 8 of the 1789 Declaration of the Rights of Man and the Citizen, the obligation to determine the scope of criminal law and to define criminal offences and other offences in sufficiently clear and precise terms.

As the Constitutional Council ruled in its decision no. 2011-163 QPC of 16 September 2011 regarding "incestuous" rapes and sexual assaults, whilst the legislator had the discretion to establish a particular criminal law qualification to classify sexual acts as incestuous, he could not refrain from precisely specifying the persons who must be considered as family members under that classification without infringing the principle of the legality of offences and punishments. As a result, the definition of incestuous sexual assaults provided by Article 227-27-2 of the Criminal Code is unconstitutional.
*(2011-222 QPC, 17 February 2012, recitals 3 and 4, p. 123)*

The legislator derives from Article 34 of the Constitution, as well as from the principle that offences and penalties must be defined by law resulting from Article 8 of the 1789 Declaration of the Rights of Man and the Citizen, the obligation to determine the scope

of criminal law and to define criminal offences and other offences in sufficiently clear and precise terms.

As in force following the enactment of Law no. 92-624 of 22 July 1992, sexual harassment, provided for and sanctioned under Article 222-33 of the New Criminal Code, was defined as "the fact of harassing another person, using orders, threats or constraints, with the aim to obtain favours of a sexual nature, by a person abusing his or her authority as part of his position". Article 11 of Law no. 98-468 of 17 June 1998 gave a new definition of this offence, by changing the words "using orders, threats or constraints", into the words : "by giving orders, threatening, imposing constraints or applying serious pressure". Article 179 of Law no. 2002-73 of 17 January 2002 further modified the definition of the sexual harassment offence by applying to Article 222-33 of the Criminal Code the challenged wordings.

According to the above, Article 222-33 of the Criminal Code, which represses "the act of harassing another person with the aim of obtaining favours of a sexual nature" be punishable without precisely defining the constituent elements of the offence. Therefore, these provisions violate the principle that offences and penalties must be defined by law and must be ruled unconstitutional.
*(2012-240 QPC, 4 May 2012, recitals 3 to 5, p. 233)*

## Principles of necessity and proportionality

### Nature of the Constitutional Council control

*Control of manifest error of appraisal*

Considering that Article 8 of the Declaration of the Rights of Man and the Citizen of 1789 provides: "The law must only establish punishments that are strictly and obviously necessary". Article 61-1 of the Constitution does not confer to the Constitutional Council the same discretionary or decision power than the one conferred to the Parliament, but only gives him the power to rule on the conformity of legal provisions submitted for its consideration to rights and freedoms guaranteed by the Constitution. If the punishments attached to the infringement fall within the discretion of the legislator, it is the responsibility of the Constitutional Council to ensure that there is no clear disproportion between the infringement and the punishment.
*(2011-217 QPC, 3 February 2012, recital 4, p. 104)*

*Conciliation with public order and other constitutional requirements*

Article 61-1 of the Constitution does not confer to the Constitutional Council the same discretionary or decision power than the one conferred to the Parliament, but only gives him the power to rule on the conformity of legal provisions submitted for its consideration to rights and freedoms guaranteed by the Constitution. If the punishments attached to the infringement fall within the discretion of the legislator, it is the responsibility of the Constitutional Council to ensure that there is no clear disproportion between the infringement and the punishment.

By sanctioning the breach of obligations, provided for by Article 240 in 1 of Article 242 *ter* and in Article 242 *ter* B of the General Tax Code, to communicate to the tax administration all information in relation to the sums paid out to other taxpayers, the 1 of I of Article 1736 of that same Code sanctions the non-compliance of reporting declarations allowing the tax administration to cross-check this information in order to make sure that the beneficiaries of the sums mentioned thereof have complied with their tax obligations.

By fixing the fine incurred by the perpetrator of the payments in proportion with the sums paid out, the goal of the legislator was to act against tax fraud which constitutes an objective with a constitutional status. The chosen 50% rate is not manifestly disproportionate. No infringement to the principle that punishments must be necessary.
*(2012-267 QPC, 20 July 2012, recitals 3 to 5, p. 394)*

**Lack of breach of the principles that punishments must be necessary and proportionate**

*Determination of offences and punishments*

Pursuant to Article L. 621-1 of the Code on the Entry and Residence of Foreigners and the Right of Asylum, any foreign national who has entered into or resided in France in breach of the provisions of Articles L. 211-1 and L. 311-1 of the same Code or who has remained in France in excess of the period authorised by visa shall be punished to a term of imprisonment of one year and a fine of 3,750 Euros. Moreover, the court may prohibit a foreign national who has been convicted of the offence from entering into or residing in France for a period of up to three years, this territorial ban automatically entailing the deportation of the convicted individual, if appropriate, upon conclusion of his term of imprisonment. Having regard to the nature of the offence for which they have been established, the penalties thereby laid down, which are not manifestly disproportionate, do not violate Article 8 of the 1789 Declaration.
*(2011-217 QPC, 3 February 2012, recital 5, p. 104)*

Article 1759 of the General Tax Code establishes, for the recovery of the tax, a fixed increase of 40% of the amount of duty owed by the taxpayers living in France in case of breach of the reporting declarations in relation to possession or use of foreign bank accounts or to transfers of funds towards or coming from abroad. The aim of the legislator is therefore to improve prevention and reinforce the repression of concealments of foreign bank accounts or funds transfers towards or coming from abroad, by these taxpayers. He establishes a proportionate financial punishment, the nature of which is directly related to that of the failure to comply. The 40% rate suggested in Article 1759 of the General Tax Code is obviously not disproportionate.
*(2011-220 QPC, 10 February 2012, recitals 4 and 5, p. 115)*

**Non-accumulation of sentences**

The contested provisions of Article L. 221-2 of the Rural and Marine Fishing Code establish an administrative penalty which can be accumulated with the criminal penalties provided for under Articles L. 228-1 and R. 228-1 of the Rural and Marine Fishing Code. The principle of such a combination is not, in itself, contrary to the principle of the proportionality of sentences guaranteed by Article 8 of the 1789 Declaration.

However, when an administrative penalty which can be accumulated with a criminal penalty, the principle of proportionality means that, in any event, the overall amount of the penalties that may be pronounced cannot exceed the highest amount of one of the penalties incurred. It will therefore be up to the competent administrative and judicial authorities to make sure that this requirement is complied with. Subject to this reservation, Article L. 221-2 of the Code Rural of Maritime Fishing is not contrary to the principle of proportionality of sentences.
*(2012-266 QPC, 20 July 2012, recitals 8 to 10, p. 390)*

## Principle that punishments must be individually determined

**Constitutional status**

*Connection with Article 8 of the 1789 Declaration*

The principle that punishments must be individually determined which arises from Article 8 of the 1789 Declaration implies that a penalty depriving an individual of its civil rights may only be applied pursuant to the express ruling of a court, taking into account the individual circumstances specific to each case.

The purpose of the definitive registration prohibition on the electoral lists provided by the third paragraph of Article 4 of the order no. 45-1418 of 28 June 1945, in relation to

the profession of notaries and some members of the legal profession is a direct result of the decision to remove from office, without the judge having to issue a ruling. This prohibition, which is definitive in nature, cannot be reversed. Accordingly, this third paragraph violates the principle that sentences must be individually determined and must be declared unconstitutional.
*(2011-211 QPC, 27 January 2012, recitals 6 and 7, p. 87)*

Considering that Article 8 of the 1789 Declaration provides: "The law must only establish punishments that are strictly and obviously necessary, and no one shall suffer punishments except it be legally inflicted in virtue of a law passed and promulgated before the commission of the offence". As a result, these principles only apply to punishments and sanctions of a punitive nature.

It is shown from an established case law of the Conseil d'État that, for a soldier, the loss of his grade is a punishment. The principle that punishment must be individually determined which arises from Article 8 of the 1789 Declaration implies that this punishment may only be imposed if the judge expressly stated it, taking into account the particular circumstances of each case.

The contested provisions of Article L. 311-7 of the Code of Military Justice in the version prior to Law no. 2011-1862 of 13 December 2011 on the allocation of disputes and the streamlining of certain judicial procedures, provide that any conviction for a criminal offence ("crime") shall entail automatic demotion, that any sentencing to a penalty of a term of imprisonment of at least three months, including suspended sentences, shall entail demotion if it is issued in respect of certain minor offences ("délits") and that the same shall apply if the penalty is shorter than three months' imprisonment but is accompanied either by a ban on residence or a withdrawal or all of part of the offender's political, civil or family rights or if the sentence orders that the convicted individual shall be ineligible for any public office. The punishment of demotion, which is definitive and entails the loss of military status, is an automatic consequence of various criminal convictions and does not require an express order by the court. Whilst the court has the right, when passing sentence, to expressly order that it not be included in certificate no. 2 of the criminal records office, in accordance with the provisions of Article 775–1 of the Code of Criminal Procedure, this right is not capable in itself of guaranteeing that the requirements resulting from the principle that punishments must be individually determined are respected. Accordingly, Article L. 311–7 of the Code of Military Justice, as in force prior to the enactment of the aforementioned Law of 13 December 2011, must be ruled unconstitutional.
*(2011-218 QPC, 3 February 2012, recitals 5 to 7, p. 107)*

Article 1759 of the General Tax Code establishes, for the recovery of the tax, a fixed increase of 40% of the amount of duty owed by the taxpayers living in France in case of breach of the reporting declarations in relation to possession or use of foreign bank accounts or to transfers of funds towards or coming from abroad.

On the one hand, Article 1729 of the General Tax Code establishes an increase of duties owed in case of inaccuracy or omission of declarations, made in bad faith or using fraudulent means or abuse of rights. This increase can be combined with the one provided for by Article 1759 of the same code. Therefore, the legislator ensures a modulation of sentences depending on the seriousness of the punished behaviours. On the other hand, the judge decides, in each case, after having exercised complete control on the facts claimed and the classification under the administration either to maintain the 40% increase charge provided for by Article 1759 of the General Tax Code, or exempting the taxpayer from it if he considers that the latter brings the proof that the sums, titles and values transferred to or from abroad, in breach of the reporting declarations do not constitute taxable incomes. The judge can therefore calculate the penalties taking into account the nature and the seriousness of the acts perpetrated by the taxpayer. The objection alleging the violation of the principles that punishments must be individually determined is rejected.
*(2011-220 QPC, 10 February 2012, recitals 4 and 5, p. 115)*

The principle that sentences must be individually determined which arises from Article 8 of the 1789 Declaration implies that this punishment may only be imposed if the administration, under the control of the judge, expressly stated it, taking into account the particular circumstances of each case. It cannot however, forbid the legislator to set regulations ensuring the effective punishment of the violation of tax obligations.

By sanctioning the breach of obligations, provided for by Article 240 in 1 of Article 242 *ter* and in Article 242 *ter* B of the General Tax Code, to communicate to the tax administration all information in relation to the sums paid out to other taxpayers, the 1 of I of Article 1736 of that code sanctions the non-compliance of reporting declarations allowing the tax administration to cross check this information in order to make sure that the beneficiaries of these sums mentioned thereof have complied with their tax obligations.

By fixing the fine incurred by the perpetrator of the payments in proportion with the sums paid out, the goal of the legislator was to act against tax fraud which constitutes an objective with a constitutional status. He calculated the sanction proportionate to the seriousness of the sanctioned shortcomings due to the importance of the undeclared sums. No infringement to the principle that punishments must be individually determined.
*(2012-267 QPC, 20 July 2012, recitals 3 to 5, p. 394)*

## Juvenile criminal justice system

### Fundamental principle recognised by the laws of the Republic with regard to juvenile criminal justice system

The mitigation of juvenile criminal responsibility, depending on the age, as well as the need to raise educational and moral levels of juvenile delinquents through measures adapted to their age and their personality, ruled by a specialised jurisdiction or according to appropriate procedures, have been constantly recognised by the laws of the Republic since the beginning of the 20th century. These principles find their expression in the law of 12 April 1906, on the criminal majority of juveniles, the law of 22 July 1912 on the Juvenile courts and the order of 2 February 1945 on juvenile delinquency. However, Republican legislation before the coming into force of the Constitution of 1946 did not establish any rule according to which binding measures or sanctions should always be avoided in favour of purely educational measures. In particular, the original provisions of the order of 2 February 1945 did not rule out the criminal responsibility of minors and did not exclude, if necessary, measures being imposed on them such as fostering, supervision, detention or, for minors older than thirteen years of age, custody. Such is the scope of the fundamental principle recognised by the laws of the Republic in terms of juvenile justice.
*(2012-272 QPC, 21 September 2012, recital 3, p. 486)*

### Control of measures appropriate for the juvenile criminal justice system

*Control on the basis of the fundamental principle*

Other provisions

The provisions of Article 8-2 of Ordinance no. 45-174 of 2 February 1954 concerning juvenile delinquency provides the Public Prosecutor, at any time during the proceedings, to request the juvenile judge to return the minor before the appropriate juvenile court to know the offences which he has been charged with. The decision to bring the case to trial is for the juvenile court, which only complies with the request of the prosecutor if it considers that "the personality of the minor has been investigated thoroughly, and as the case may be, during a previous proceeding and that investigations on the facts are not or no longer required". Should this not occur, it is up to him to continue the preliminary investigation after rejecting the request from the Public Prosecutor through an order subject to appeal before the president of the special minors' division of the court of appeal or his replacement. In these conditions, the contested provisions do not prevent the minors to be judged according to a procedure suitable to their educational rehabilitation. As a result, they do not violate the fundamental principle recognised by the laws of the Republic in terms of juvenile justice.
*(2012-272 QPC, 21 September 2012, recital 4, p. 486)*

## Criminal responsibility

### Principle of personal responsibility

Pursuant to the terms of Article 8 of the 1789 Declaration, "the law ought only to establish penalties that are strictly and obviously necessary, and no one can be punished except by virtue of a law passed and promulgated prior to the offence and legally applied". According to Article 9, all persons are "to be presumed innocent until proven guilty". The results of these articles is that no one shall be punishable only for his own action. This principle applies not only to sentences handed down by the repressive jurisdictions but also to any sentence of a punitive nature.

The fines and penalties which tend to act against the behaviour of persons who failed to observe their tax obligations must be considered as sanctions of a punitive nature. The principle according to which no one is punishable only for his own action is therefore applicable thereof.

The IV of Article 1754 of the General Tax Code provides for the communication of tax penalties only when they are due by the deceased or the dissolved company on the day of the death or the dissolution. As a result, it does not allow for fines and increases sanctioning the behaviour of the taxpayer offender to be given directly against the heirs of this offender or of the dissolution of the dissolved company.

These punishments are given by the administration after a fair hearing administrative procedure to which the taxpayer or the company has been part of. These are due as soon as they have been announced. In case of death of the taxpayer or the dissolution of the company, the heirs or the successors may, if they still have the time to do so, initiate a dispute or a transaction, or if it has already been initiated, carry on with it. This dispute or this transaction cannot have the consequence to lead to any increase of the sanction initially announced. As a result, by providing that these punishments of a fiscal nature, entering into the taxpayer's or the company's assets before the death or the dissolution, are borne by the succession or the liquidation, the contested provisions do not violate the principle according to which no one is punishable only for his own action.
*(2012-239 QPC, 4 May 2012, recitals 3, 5 to 7, p. 230)*

### Intentional element of the offence

*Principle*

If the provisions of title III of book IV of the second part of the Labour Code provides for offences repressed by tort sentences when the dismissal of a protected employee is not carried out in compliance with the provisions of the administrative authorisation procedure for dismissal, these provisions do not deviate from the principle, provided for by Article 121-3 of the criminal code, according to which there is no offence without intent. As a result, the provisions of sub-paragraph 13 of Article L. 2411-1 of the Labour Code and Articles L. 2411-3 and L. 2411-18 of that code do not expose employers to criminal sanctions repressing the non-compliance of obligations to which they may ignore to be submitted to.
*(2012-242 QPC, 14 May 2012, recital 8, p. 259)*

## Presumption of innocence

### Regime

Article 65 of the Customs Code does not violate the principle according to which no one is to be compelled to accuse himself, which derives from Article 9 of the 1789 Declaration.
*(2011-214 QPC, 27 January 2012, recital 7, p. 94)*

## Respect of defence rights, right to a fair trial and right to an effective judicial remedy in criminal matters

### Jurisdiction of the legislator

The legislator has the obligation pursuant to Article 34 of the Constitution to set the scope of criminal law himself. Concerning the criminal procedure, this is necessary especially to avoid an unnecessary rigour to find perpetrators.

It is up to the legislator to ensure the reconciliation between, on the one hand, the prevention of public order breaches, in particular for the safety of persons and goods, and the search of perpetrators, both of them necessary to safeguard the rights and principles of constitutional value, and on the other hand, the right of freedoms guaranteed by the Constitution. Among these there is the respect for defence rights, which derives from Article 16 of the Declaration of the Rights of Man and Citizen of 1789.
*(2011-223 QPC, 17 February 2012, recitals 4 and 5, p. 126)*

### Provisions relating to the procedure for inquiry and investigation

*Investigation acts*

By inserting in the Criminal Procedure Code Articles 64-1 and 116-1, Law no. 2007-291 of 5 March 2007 provided for the recording of the person in police custody or the accused interrogated for criminal matters. However, the contested provisions (the seventh sub-paragraph of each of these articles) provide that the guarantees of both articles are not applicable to investigations and to instructions for crimes set forth in Article 706-73 of that code or those provided and repressed by titles I and II of book IV of the Criminal Code, unless the Public Prosecutor or the investigative judge orders the recording. As a result of the parliamentary works of the Law of 5th March 2007, by thus limiting the number of investigations or instructions subject to the obligation of interrogation recording of persons suspected of having committed a crime, the purpose of the legislator was to reconcile this new procedural rule with the particular features of investigations and instructions on organised crimes or prejudice to the fundamental rights of the nation.

Firstly, the contested provisions are in no way justified neither in the difficulty to apprehend the perpetrators acting in an organised manner, nor in the objective to preserve the secret of the investigation or the instruction.

Secondly, the recording of auditions or examinations of persons suspected of having committed a crime is not a constitutional requirement. However, by allowing such recordings, the purpose of the legislator was to make possible, through consultation of the latter, the verification of comments transcribed in reports of hearing or interrogations of the persons suspected of having committed a crime. Accordingly, with regard to the objective being pursued, the difference in treatment between the persons suspected of having committed one of the crimes under the contested provisions and the persons who are heard or interrogated while they are being suspected of having committed other crimes entails an unjustified discrimination. Accordingly, these provisions violate the principle of equality and must be declared unconstitutional.
*(2012-228/229 QPC, 6 April 2012, recitals 7 to 9, p. 186)*

By imposing that any person summoned by a criminal investigation police officer must attend, and by providing that the criminal investigation police officer may, with the prior approval of the Public Prosecutor, impose this appearance with the help of the law enforcement authority for persons who did not answer to the appearance or which we may fear that they will not answer to it, the legislator ensured a conciliation that is not unbalanced between the prevention of disorderly conduct and the search for perpetrators, on the one hand, and the exercise of freedoms guaranteed by the Constitution on the other hand.
*(2012-257 QPC, 18 June 2012, recital 7, p. 298)*

It necessarily follows that the provisions of the first paragraph of Article 78 of the Code of Criminal Procedure, following the enactment of Law no. 2004-204 of 9 March 2004, that a

person against whom it appears to exist reasonable suspicion that he or she has committed or tried to commit a crime may be heard by the investigators outside of police custody when he or she is not kept at their disposal under coercion.

However, respecting the rights of the defence requires that a person about whom it seems, before he/she is interviewed or during the interview, that there are plausible reasons to suspect that he/she has committed or attempted to commit an offence, can only be interviewed or continue to be interviewed by the officers in charge of the investigation if he/she has been advised of the nature and the date of the offence that he/she is suspected of having committed and of his/her right the leave the police or gendarmerie premises at any time. Subject to this reservation applicable to hearings conducted after the publication of this decision, the provisions of the first paragraph of Article 78 of the Code of Criminal Procedure do not violate the rights of the defence.
*(2012-257 QPC, 18 June 2012, recitals 8 and 9, p. 298)*

The legislator derives from Article 34 of the Constitution, as well as from the principle that offences and penalties must be defined by law resulting from Article 8 of the 1789 Declaration of the Rights of Man and the Citizen, the obligation to determine the scope of criminal law and to define criminal offences and other offences in sufficiently clear and precise terms. This requirement is necessary not only to exclude arbitrariness in sentencing but also to avoid unnecessary rigour in the search for perpetrators.

It is up to the legislator to ensure the reconciliation between, on the one hand, the prevention of disorderly conduct and the search of perpetrators, both of them necessary to safeguard the rights and principles of constitutional value, and on the other hand, the right of freedoms guaranteed by the Constitution. Amongst these we can find the protection of privacy which derives from Article 2 of the 1789 Declaration and habeas corpus that Article 66 of the Constitution puts under the protection of the judicial authority.

By allowing, in Article 28-2 of the Code of Criminal Procedure, that some tax officers may, if requisitioned by the judicial authority and under the control of the latter, open judicial investigations and receive letters rogatory when there are clear presumptions that tax abuses are the result of a "manoeuvre intended to side track the administration", the legislator, by adopting the 2 of paragraph VII or Article 11 of the third LFR for 2012, has completed the list of circumstances in which the minister, in agreement with the tax abuses commission may file a complaint and did not modify the procedures and guarantees which surround the tax judicial enquiry. Thus, he has ensured a reconciliation which is not unbalanced between the prevention of disorderly conduct and the search for perpetrators, on the one hand, and the exercise of freedoms guaranteed by the Constitution, on the other hand. In addition, he did not violate the protection of individual freedom guaranteed by the Constitution. The contested provisions are free of unintelligibility. Accordingly, they must be ruled constitutional.
*(2012-661 DC, 29 December 2012, recitals 7 to 9, p. 715)*

*Police custody*

The provisions of Article 706-88-2 of the Code of Criminal Procedure provide that the right of free choice of a lawyer be suspended during the police custody for crimes and offences that constitute an act of terrorism provided for by Article 421-1 to 421-6 of the Criminal Code. Thus, the legislator intended to take into account the complexity and the seriousness of this category of crimes and offences as well as the need to provide, in this area, specific guarantees to the investigation secrecy.

If the freedom, for the suspected person, to choose his lawyer, may on an exceptional basis, be deferred during the custody in order not to compromise the search of perpetrators of acts of terrorism or to guarantee the safety of persons, it is up to the legislator to define the conditions and the arrangements according to which such an infringement to the conditions of exercise of the rights of the defence might be implemented. The contested provisions are limited to stipulating, in relation to a certain category of offence, that the judge may rule that an individual detailed in police custody shall be assisted by a lawyer appointed by the president of the bar council from a list of authorised lawyers drawn up by the office of the National Bar Council, acting on proposals from each local bar council. They do not require reasons to be given for the decision and do not stipulate the particular circumstances of the investigation or inquiry and the reasons which enable such a restriction to be imposed on the rights of

the defence. By adopting the contested provisions without regulating the power given to the judge to deprive a person in custody of the freedom to choose his lawyer, the legislator violated the scope of its authority in conditions which infringe the rights of the defence. Article 706-88-2 of the Code of Criminal Procedure is unconstitutional.
*(2011-223 QPC, 17 February 2012, recitals 6 and 7, p. 126)*

*Instruction*

It follows from Articles 6 and 16 of the 1789 Declaration that, if the legislator may provide for procedural rules which differ depending upon the circumstances, the situations and persons to which they apply, this is conditional upon the requirement that the differences do not create any unjustified distinctions and that equal guarantees be afforded to the parties to the trial, in particular as regards the principle of the right to make representations and respect of the right to a defence.

The contested provisions provide for the notification to the Public Prosecutor and to the lawyers of the parties of the decision of the investigating court ordering an expertise so that the recipients of this notification are able to, within the deadline, ask the judge to modify or to complete the questions asked to the expert or to add an expert of their own choosing. In the absence of such a notification, the parties non-assisted by a lawyer cannot exercise this right. The difference in treatment thus instituted between the parties whether they are represented or not by a lawyer is not justified in the protection of privacy, the safeguard of the public order or the objective of search for perpetrators, which serve the secret of the instruction. It is not further compensated by the ability, granted to all parties by the third paragraph of Article 167 of the Code of Criminal Procedure, to ask for an additional expertise or a second opinion. Articles 80-2, 80-3 and 116 of the Code of Criminal Procedure guarantee the right of the indicted persons and the plaintiffs to benefit from, during the pre-trial proceedings, the assistance of a lawyer, as the case may be, an officially designated lawyer. However, since the freedom to choose his lawyer or the right to defend themselves is recognised to all parties, the respect of the principles of the right to make representations and the rights to a defence impose that the copy of the decision ordering the expertise be brought to the attention of all the parties. In the first paragraph of Article 161-1 of the Code of Criminal Procedure, the words: "lawyers of" have the effect to reserve to the lawyers assisting the parties the notification of the copy of the decision ordering the expertise and the ability to ask the judge to appoint an additional expert or to modify or complete the questions being asked to him. Accordingly, they must be ruled unconstitutional.
*(2012-284 QPC, 23 November 2012, recitals 3 and 4, p. 613)*

# EQUALITY

## EQUALITY BEFORE THE LAW

### Forbidden discriminations

The provisions of the Law of 3 January 1969 on the exercise of itinerant activities and on the regime applicable to persons travelling in France without fixed abode or residence do not institute any discrimination based on an ethnic origin.
*(2012-279 QPC, 5 October 2012, recital 18, p. 514)*

### Observance of the principle of equality: absence of unjustified discrimination

#### Civil law

*Nationality law*

With Article 3 of the order of 7 March 1944 pursuant to the status of French Muslims from Algeria, the legislator intended to grant, because of their merits, to some French Muslims from Algeria of personal status, identical political rights to those exercised by French nationals enjoying ordinary civil status residing in Algeria. When Algeria gained independence, Article 1st of decree no. 62-825 of 21 July 1962, subsequently consolidated in Article 32-1 of the Civil Code, provided: "French nationals who enjoy the ordinary civil status and who reside in Algeria on the date of the official announcement of the results on the self-determination vote keep their French nationality regardless of their situation with regard to the Algerian nationality". The access to French citizenship, on a personal basis, pursuant to Article 3 of order of 7 March 1944, does not allow, order to keep French nationality, to benefit from the application of Article 32-1 of the Civil Code which only applies to French nationals of ordinary civil status residing in Algeria on 3 July 1962.

The principle of equality did not impose that persons benefiting from identical political rights be subject to the same rules with regard to the retention of the French nationality.

Article 3 of the 7 March 1944 decree does not have the effect to adopt a different treatment for those persons in an identical situation. Therefore the legislators did not violate the principle of equality before the law.
*(2012-259 QPC, 29 June 2012, recitals 4 and 5, p. 320)*

*Status and legal ability of persons*

With Article 3 of the order of 7 March 1944 pursuant to the status of French Muslims from Algeria, the legislator intended to grant, because of their merits, to some French Muslims from Algeria of personal status, identical political rights to those exercised by French nationals enjoying ordinary civil status residing in Algeria.

The principle of equality did not impose that persons benefiting from identical political rights be subject to the same civil status.

Article 3 of the 7 March 1944 decree does not have the effect to adopt a different treatment for those persons in an identical situation. Therefore the legislators did not violate the principle of equality before the law.
*(2012-259 QPC, 29 June 2012, recitals 4 and 5, p. 320)*

#### Insurance law

Insurers who are liable because of contaminations by the hepatitis B or C virus or the human T-Lymphotropic virus caused by a blood transfusion or an injection of drugs derived from

blood and those who cover another medical risk are not in the same situation with regard to the law which purpose was to facilitate the amicable indemnification of victims contaminated by these virus caused by a blood transfusion or an injection of drugs derived from blood. The objection alleging the violation of the principle of equality before the law and the payment of public dues must be rejected.
*(2012-659 DC, 13 December 2012, recital 81, p. 680)*

**Tax law**

By applying the increase of the employer's contribution rate on supplementary pensions only to the pensions paid under the claimed pensions as from 1st January 2013, the legislator intended not to question the contribution rate applicable to the pensions paid under claimed pensions or which might be claimed by 31 December 2012. As regards retirement pensions, the fact that the legislator chose to link the contribution rate to the liquidation date of these pensions does not violate the principle of equality.
*(2012-654 DC, 9 August 2012, recital 62, p. 461)*

It follows that the underlying scope of the family allowance mechanism and its cap that taxpayers responsible for children are treated differently, on the one hand, than taxpayers without children, and on the other hand, according to the number of children under their responsibility. The limiting of the family allowance does not invalidate the consideration of the contribution abilities which results from this difference in situation.
*(2012-662 DC, 29 December 2012, recital 26, p. 724)*

**Criminal Law and Procedure**

The first paragraph of Article 521-1 of the Criminal Code especially addresses serious injuries and acts of cruelty towards a domestic animal or an animal kept in captivity. The first sentence of the seventh paragraph of this article excludes the application of these provisions for bulls races. This exemption is however limited to cases where an uninterrupted local tradition may be invoked. By restricting the exemption of the criminal responsibility, the legislator intended that the provisions of the first paragraph of Article 521-1 of the Criminal Code cannot lead to challenging some traditional practices which do not violate any constitutional right. The exemption of the criminal responsibility instituted by the contested provisions is only applicable to areas of the national territory where the existence of such an uninterrupted tradition is established and only for the acts which derive from this tradition. Accordingly, the difference in treatment introduced by the legislator between actions of the same nature accomplished in different geographical areas has a direct link to the object of the law establishing it. In addition, if it is up to the relevant jurisdiction to assess the factual situations complying with the uninterrupted local tradition, this notion which is not equivocal, is precise enough to guarantee against the risk of arbitrary treatment.
*(2012-271 QPC, 21 September 2012, recital 5, p. 483)*

**Social law**

*Labour law and trade union law*

The provisions of sub-paragraph 13 of Article L. 2411-1 of the Labour Code and Articles L. 2411-3 and L. 2411-18 of the same code, which do not subject to different rules the persons placed in an identical situation, do not violate the principle of equality before the law.
*(2012-242 QPC, 14 May 2012, recital 11, p. 259)*

*Social Security*

French nationals, and also foreign nationals lawfully resident in France whose financial means are lower than the threshold set by decree pursuant to Article L. 861-1 of the Social Security Code receive, according to that article, complementary cover without any corresponding

duty to contribute. It results from Article L. 322-4 of the Code, that the contribution referred to in paragraph II of Article L. 322-2 of the Code and the healthcare excesses provided for under paragraph III are not required from the recipients of this complementary protection. Accordingly, the means formulated against the provisions of Article 41 of the amended Law on finances for 2012 which reinstate free access to State medical aid and challenging the difference in treatment between individuals in receipt of State medical assistance and the individuals in receipt of universal complementary health cover lacks a factual basis.
*(2012-654 DC, 9 August 2012, recital 70, p. 461)*

Article 28 of the Law on Financing Social Security for 2013 which amends Articles L. 245-2 and L. 245-5-2 of the Social Security Code seeks to expend the contribution base on drugs and medical devices promotion expenditures to expenditures for scientific or advertising congresses and similar events, including the accompanying direct or indirect expenditures for accommodation and transportation. It also expends this contribution to the recognised expenses for outsourced services of the same nature than those mentioned in sub-paragraph 1 to 3 of the above mentioned articles.

By expending the contribution base on drugs and medical devices advertising expenditures to expenditures for "scientific or advertising" congresses and other "events of a similar nature", the legislator intended to consider the total advertising expenditures, whether they are direct or indirect. Therefore, he has subjected to the same rules the whole range of events during which the promotion of a drug or a health product eligible for refund takes place. Therefore, he violated neither the principle of equality before the law nor the principle of equality in the payment of public dues.
*(2012-659 DC, 13 December 2012, recitals 28 and 30, p. 680)*

**Elections**

*Elected person qualified to make nomination for the presidential election*

The fifth paragraph of paragraph I of Article 3 of Law no. 62-1292 of 6 November 1962 on the election of the President of the Republic by universal suffrage provides that the publication of candidate nomination at the presidential election is limited to five hundred presentations required to be candidate and includes neither over-abundance of presentations nor the presentations granted to persons who did not obtained the required number of presentations to be candidate. According to a decision of the Constitutional Council of 24 February 1981, the published presentations are chosen by drawing lots. By limiting to five hundred the number of presentations made public, the legislator intended for the list of candidates to be established on the basis of the same number of presentations for each candidates. If there is a difference of treatment between the citizens who have presented a candidate, in that the probability to see their names and quality published varies depending on the number of presentations of the candidates, this difference in treatment is directly related with the objective pursued by the legislator to ensure the greatest equality between the candidates on the list of the Constitutional Council. The contested provision does not violate the principle of equality before the law.
*(2012-233 QPC, 21 February 2012, recital 9, p. 130)*

## Observance of the principle of equality: difference in treatment justified by a difference in situation

The difference in treatment resulting from the changeover between two legal regimes over time is not in itself contrary to the principle of equality. Article 3 of the amended Law on finances for 2012 cancels the income tax exemptions on salaries received for additional hours of work which had been implemented by Law no. 2007-1223 of 21 August 2007 to support work, employment and purchasing power. The differences in treatment between employees depending on whether they had worked additional hours before or after the 1st August 2012, with regard to the cancellation of tax exemptions, result from the succession of two legal regimes in time. Accordingly, they do not violate the principle of equality.
*(2012-654 DC, 9 August 2012, recital 23, p. 461)*

**Administrative Law**

No constitutional requirement imposes that debts on public-law person be subject to the same rules than the civil debts. In establishing a specific regime applicable to debts against some public-law persons, the Law no. 68-1250 of 31 December 1968, may have provided for grounds for suspension of limitation period different than those applicable to the relationship between private persons. Therefore, the difference in treatment provided by Article 3 of the law of 31 December 1968 between a non-emancipated minor creditor subject to the provisions of the Civil Code and those who invoke a debt against a public-law person covered by the first article of the aforementioned law is based on a difference in situation in direct relation with the object of the law establishing it. The objection alleging the violation of the principle of equality must be ruled unconstitutional.
*(2012-256 QPC, 18 June 2012, recitals 4 and 5, p. 295)*

**Civil law**

*Persons and family law*

Are called to the succession, on the one hand the heirs according to the law and on the other hand the legatees according to donations. If the principle of equality before the succession law imposes that the heirs in an identical situation benefit from equal rights in the succession, it does not preclude the law to authorise the donor or the testator to offer an advantage to one of his heirs through a voluntary action.

By providing that the reduced compensation of a donation exceeding the available allocation, when it covers an agricultural holdings given to a person entitled to directly inherit, is calculated according to the net average revenue of the agricultural holdings, when the succession was open, the object of the provisions of the third paragraph of Article 73 of the law of 1st June 1924, enacting the French civil legislation in the Bas-Rhin, Haut-Rhin and Moselle districts, is to prevent the payment of this indemnity to aggravate the economic sustainability of the agricultural holdings. Therefore the legislator intended to promote the transmission of agricultural holdings to direct descendants preventing their sale or fragmentation. The contested provisions apply only to assets given or bequeathed which constitute an agricultural holdings on the date of the opening of the succession. The methods of valuation of the agricultural holdings value establish a difference in treatment in direct relation with the object of the law. Accordingly, the objection alleging the violation of the principle of equality between these heirs must be rejected.
*(2012-274 QPC, 28 September 2012, recitals 9 and 10, p. 493)*

The contested provisions of Article L. 123-7 of the Code of Intellectual Property reserve the transmission of the resale right on original plastic and graphic works to the heirs of the author of these works.

Are called to the succession the heirs in virtue of the law as well as the legatees in virtue of the donations. Article 731 of the Civil Code provides that "succession is conferred by law to the parents and spouses entitled to inherit from the deceased" in the conditions defined by the provisions of the Civil Code pertaining to the heirs. By establishing the resale right, the legislator intended to allow the authors of original plastic and graphic works to benefit from the revaluation of their works after their first sale. By providing the inalienable nature of this right and by ensuring its transmission to the heirs of the author, the contested provisions are to comfort this protection and to extend it to the family of the artist after his death.

By reserving the transmission of the resale right after the death of the author to the heirs, and for the usufruct, to the spouse excluding the legatees and other successors in title, the legislator provided a difference in treatment between persons in different situations. This difference in treatment is in direct link with the objective of the law. Therefore, Article L. 123-7 of the Code of Intellectual Property does not violate the principle of equality.
*(2012-276 QPC, 28 September 2012, recitals 4 to 8, p. 501)*

**Tax law**

The contested provisions pursuant to the methods of calculation of the base of the employment competitiveness tax credit excludes from the text companies under a flat-rate taxation

scheme. Their aim is not to treat differently persons in an identical situation. Accordingly, the objection alleging the violation of the principle of equality before the law must be rejected.
*(2012-661 DC, 29 December 2012, cons 37, p. 715)*

**Rural Law**

Whilst the decision to withdraw the compensation paid in the event of an administrative decision to slaughter sick animals in accordance with Article L. 221-2 of the Rural and Marine Fishing Code could be the result of a breach, by the owner, of the animal health rules without such a breach having contributed to the situation which was the reason for his/her animals being slaughtered, two owners having committed the same breach of those rules were apparently treated differently for a reason not related to the behaviour of one of them which led to the animals being slaughtered. Such an interpretation was contrary to the principle of equality before the law.

It follows that the decision of the loss of compensation could only be pronounced against an owner if it is established that the breach of the animal health rules justifying that that decision contributed to the situation which was the reason for the animals being slaughtered. Subject to this reservation, Article L. 221-2 of the Code Rural of Maritime Fishing does not breach the principle of equality.
*(2012-266 QPC, 20 July 2012, recitals 12 and 13, p. 390)*

**Social law**

*Labour law and trade union law*

The mission of union representation to the works council and that of union delegate are different. Accordingly, it is up to the legislator to fix the different rules of implementation for the provisions of Law no. 2008-789 of 20 August 2008 pursuant to the nominations of the union delegates and for those in relation to the nomination of union representatives to the works council.

Article L. 2324-2 of the Labour Code such as interpreted by the Cour de Cassation organises a progressive transition between two successive regimes of union representation to the works council. The difference in treatment resulting from this article between union organisations, whether they have elected members in the works council or not or whether they have nominated a representative to the works council or not before the date of implementation of the law, is based on different situations directly related to the object of the law.
*(2011-216 QPC, 3 February 2012, cons 6 and 7, p. 101)*

The principle of equality does not prevent the legislator from regulating different situations in different ways, nor does it depart from equality in the general interest, provided that in both cases the resulting difference in treatment is directly related to the subject matter of the law providing for the different treatment.

Article L. 1235-11 of the Labour Code provides that the lack of respect of the requirements with regard to the reclassification of employees in case of dismissal procedure for economical reason would result in the continuation of the employment contract or the nullity of the dismissal and a reintegration of these employees at their request, unless this reintegration has become impossible. Paragraph 1 of Article L. 1235-14 of the Code nonetheless precludes the application of this provision for employees who have been in post with the company for less than two years. By choosing the criteria of employee seniority in the company, the legislator based his reasoning on an objective and rational criteria in direct relation with the object of the law. Therefore, he did not violate the principle of equality before the law.
*(2012-232 QPC, 13 April 2012, recitals 3 and 5, p. 199)*

With the law of 29 March 1935 pursuant to the professional status of journalists, which forms the provisions of Article L. 7112-3 of the Labour Code, the legislator implemented a specific regime for journalists who, considering the specific nature of their work, are placed in a different situation than that of other employees. The contested provisions, concerning the compensation of professional staff journalists, intend to address the specific conditions in which they carry out their profession. Accordingly, the legislator had the discretion, without violating

the principle of equality before the law, to introduce a method for assessing the compensation in case of breach of contract applicable only to journalists excluding other employees.
*(2012-243/244/245/246 QPC, 14 May 2012, recital 7, p. 263)*

*Social Security*

Article 3 of the second supplementary law on finances for 2012 reforms the Social Security and tax relief for overtime and part-time established by Law no. 2007-1223 of 21 August 2007, to support work, employment and purchase power. The difference in treatment between employees regarding Social Security contributions provided for under Article 3 of the law referred to, according to which "the calculation period" for their working hours shall or shall not correspond "to the calendar month", is justified by the difference in situation of these employees.

The difference in treatment resulting from the changeover between two legal regimes over time is not in itself contrary to the principle of equality. The different in treatment between employees whether they have worked overtime or part-time before or after the 1st September 2012, with regard to the removal of reduced social contributions, is a result of the succession of two judicial regimes over time. Accordingly, they do not violate the principle of equality.
*(2012-654 DC, 9 August 2012, recitals 22 and 23, p. 461)*

The contributions which base is modified by the contested provisions are a result of the mandatory Social Security affiliation scheme of non-agricultural independent workers. The difference in treatment between self-employed and employees with regard to Social Security tax liability contributions is intrinsically linked to the procedure according to which social insurance has progressively developed in France, to the corresponding diversity of regimes as well as the choice to share the obligation of payment of social contributions between employers and employees. Accordingly, the objection alleging the violation of the principle of equality between these two categories of persons must be rejected.
*(2012-659 DC, 13 December 2012, recitals 9 and 13, p. 680)*

By making some of those under a French health insurance scheme subject to special arrangements for the rate of contributions, the second sentence of the second paragraph of Article L. 131-9 of the Social Security Code infringes the principle of equality between those insured in the same scheme which is not based on a difference in situation in line with the purpose of the Social Security contribution. Accordingly, the provisions of the second sentence of the second sub-paragraph of Article L. 131-9 of the Social Security Code must be ruled unconstitutional.
*(2012-659 DC, 13 December 2012, recitals 9, 14 and 15, p. 680)*

**Administrative police**

The law of 3 January 1969, on the exercise of itinerant activities and on the regime applicable to individuals travelling in France without a fixed place of abode or residence imposes on these individuals who circulate in France without a fixed place of abode or residence for more than six months to hold a circulation permit. Therefore it intended to provide, for social, administrative, judicial or private law goals, for the identification and the search of those which cannot be found in a fixed place of abode or residence for a certain period of time, always ensuring, for the same remedy, means to communicate with these individuals. These provisions are based on a difference in situation between individuals, irrespective of their nationality and their origin, who have a fixed place of abode or residence for more than six months and those lacking them. Therefore the distinction is based on objective and rational criteria directly related with the goal stipulated by the legislator. They do not establish any discrimination on the grounds of ethnic origin. Accordingly, in requiring the individuals concerned to obtain a circulation permit, the legislator did not breach the principle of equality.
*(2012-279 QPC, 5 October 2012, recital 18, p. 514)*

Pursuant to Article 2 of the law of 3 January 1969, individuals who have not had a fixed place of abode or residence for more than six months in a Member State of the European Union, individuals accompanying them, and the employees of the latter, are required to obtain a special circulation book if they are older than sixteen years of age and have not had a fixed place of residence or abode in France for more than six months. Article 3 provides that individuals other than those referred to above who have not had a fixed place of abode or

residence for more than six months and who permanently live in a vehicle, a trailer or any other mobile unit must obtain, as a prerequisite for their right to move within France, either a circulation book or a circulation booklet. It results from the combined provisions of Articles 2 and 3 of the law, only circulation permits which are issued to individuals living in a mobile unit must be validated by the administrative authorities at regular intervals. In providing for different treatment, within the class of individuals who have not had a fixed place of abode or residence for more than six months, for those who conduct an itinerant lifestyle and live permanently in a mobile unit by submitting them to special rules governing the issue and validation of circulation permits, these provisions establish a difference in treatment based on different circumstances which is directly related to the object of the law providing for that difference, and accordingly does not breach the principle of equality.
*(2012-279 QPC, 5 October 2012, recitals 18 and 19, p. 514)*

**Status of the judiciary**

The first sub-paragraph of Article L. 724-3 of the Commercial Code reserves to the Minister for Justice the power to refer the matter to the disciplinary national committee of commercial court judges. Whilst the tenth paragraph of Article 65 of the Constitution provides that a litigant may refer a case to the Supreme Council of the Judiciary under the conditions specified in an organic law, the commercial court judges exercising an elected public role are not subject to the rules governing magistrates and are not in a situation identical to that of magistrates. Accordingly, the objection that the disciplinary action regime applicable to commercial courts judges is not identical to that applicable to magistrates must be rejected.
*(2012-241 QPC, 4 May 2012, recital 35, p. 236)*

**Right to health**

The fourth sub-paragraph of Article L. 1241-1 of the Public Health Code reserved the possibility to collect umbilical cord or placenta blood cells or umbilical cord or placenta cells for usage within the family solely to cases in which it is justified by certified therapeutic necessity which is known upon collection. These provisions, that may lead to members of the same family being treated differently, do not subject to different regulations individuals who find themselves in an identical situation. The principle of equality before the law has therefore not been violated.
*(2012-249 QPC, 16 May 2012, recital 9, p. 274)*

## Consideration of general interest justifying a difference in treatment

**Economic law**

*Public procurement*

No rule and no principle of a constitutional value impose to give to different persons, for a given period, the design, the construction, the development as well as the operation or the maintenance of equipment necessary to public service.

The object of Article 2 of the programming law with regard to the enforcement of penalties, which extends the missions framework that may be given to one contractor, within the scope of a design-execution market of a prison, to the operation or the maintenance of these prisons, is to facilitate and accelerate the execution of new prisons building program while maintaining public management.
*(2012-651 DC, 22 March 2012, recitals 4 and 5, p. 155)*

**Employment**

Under the terms of Article 6 of the 1789 Declaration: "The law… must be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally eli-

gible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents".

The principle of equality before the law does not prevent the legislator from regulating different situations in different ways, nor does it depart from equality in the general interest, provided that in both cases the resulting difference in treatment is directly related to the subject matter of the law providing for the different treatment. No principle as well as no rule of a constitutional value forbids the legislator to take measures for the sole purpose to help a certain category of disadvantaged people, as long as the resulting differences in treatment comply with the general interest that is left to the legislator to assess.

By making available to students holding an award for higher education the mechanism of future oriented teaching employments, under certain conditions of age and level of studies, and by allowing those who carry out their studies in an academy or a discipline with specific difficulties of recruitment and who, have either resided in a sensitive urban areas, in a rural development area or in France's overseas departments and in some overseas communities, or carried out a portion of their secondary education, in an establishment situated in one of these areas or within the priority education, to benefit from a priority access to the social aid mechanism in place, the legislator based his reasoning on objective and rational criteria directly related to the general interest that has been assigned to him. Therefore, he did not violate the principle of equality before the law.
*(2012-656 DC, 24 October 2012, recitals 2, 3 and 9, p. 560)*

## Violation of the principle of equality

### Criminal Law and Procedure

By inserting in the Criminal Procedure Code Articles 64-1 and 116-1 of the Criminal Procedure Code, Law no. 2007-291 of 5 March 2007 provided for the recording of the person in police custody or the accused interrogated for criminal matters. However, the contested provisions (the seventh sub-paragraph of each of these articles) provide that the guarantees of both articles are not applicable to investigations and to instructions for crimes set forth in Article 706-73 of that code or those provided and repressed by titles I and II of book IV of the Criminal Code, unless the Public Prosecutor or the investigative judge orders the recording. As a result of the parliamentary works of the Law of 5th March 2007, by thus limiting the number of investigations or instructions subject to the obligation of interrogation recording of persons suspected of having committed a crime, the purpose of the legislator was to reconcile this new procedural rule with the particular features of investigations and instructions on organised crimes or prejudice to the fundamental rights of the nation.

Firstly, the contested provisions are in no way justified neither in the difficulty to apprehend the perpetrators acting in an organised manner nor in the objective to preserve the secret of the investigation or the instruction.

Secondly, the recording of auditions or examinations of persons suspected of having committed a crime is not a constitutional requirement. However, by allowing such recordings, the purpose of the legislator was to make possible, through consultation of the latter, the verification of comments transcribed in reports of hearing or interrogations of the persons suspected of having committed a crime. Accordingly, with regard to the objective being pursued, the difference in treatment between the persons suspected of having committed one of the crimes under the contested provisions and the persons who are heard or interrogated while they are being suspected of having committed other crimes entails an unjustified discrimination. Accordingly, these provisions violate the principle of equality and must be declared unconstitutional.
*(2012-228/229 QPC, 6 April 2012, recitals 7 to 9, p. 186)*

### Administrative police

The law of 3 January 1969, on the exercise of itinerant activities and on the regime applicable to individuals travelling in France without a fixed place of abode or residence imposes on these individuals who circulate in France without a fixed place of abode or residence for

more than six months to hold a circulation permit. Therefore, it intended to enable, for social, administrative, judicial or private law purposes, those who cannot be found in a fixed place of abode or residence for a certain period of time to be identified and located, whilst ensuring, for the same purpose, a mean to communicate with them.

According to the combined provisions of Article 4 and 5 of the Law of 3 January 1969, the individuals older than sixteen years of age who have not had a fixed place of abode or residence for more than six months and who permanently live in a vehicle, a trailer or any other mobile unit are required to obtain, as a prerequisite for the right to circulate within France, either, if they are able to furnish proof of regular income guaranteeing them normal living conditions, in particular through the conduct of salaried employment, a circulation boom which must be validated by the administrative authorities at intervals specified by regulation which may not be shorter than three months, or, if they are able to furnish proof of such regular income, a circulation booklet which must be validated by the administrative authorities every three calendar months. Moreover, according to the second subparagraph of Article 5 of the Law of 3 January 1969, any person who circulates without having previously obtained a circulation booklet is liable to a term of imprisonment of one year.

These provisions impose two titles of circulation subject to different regimes applicable to individuals who permanently reside in a vehicle, a trailer or other mobile unit. Depending on whether they are able to furnish or not a proof of regular income, they are subject to different obligations with regard to the validation by the administrative authorities of the circulation permit issued to them. Such a difference in treatment is not directly related to the private law, social, administrative or judicial goals pursued by the law. Accordingly, it must be ruled unconstitutional.
*(2012-279 QPC, 05 October 2012, recitals 18, 21 and 22, p. 514)*

## Provisions specific to the Bas-Rhin, Haut-Rhin and Moselle departments

### Fundamental principle recognised by the laws of the Republic

As long as they have not been replaced by the provisions of common right or harmonised with them, the legislative and statutory measures particular to the Departments of Bas-Rhin, Haut-Rhin and Moselle may remain in force. Unless they are repealed or harmonised with ordinary legislation, this special legislation may not be redrafted if the resulting differences in treatment are broader and their scope is expanded. This is the scope of the fundamental principle recognised by the laws of the Republic in relation to the special legislation applicable in the three departments concerned. This principle must also be reconciled with other requirements of constitutional law.
*(2012-274 QPC, 28 September 2012, recitals 4, 5 and 7, p. 493)*

### Applications

*Civil law*

The provisions of the third sub-paragraph of Article 73 of the law of 1st June 1924 enacting the French civil legislation in the Bas-Rhin, Haut-Rhin and Moselle departments, have been adopted to keep in these departments inheritance rules applicable before 1919. These provisions apply when the donation covers an agricultural holdings and has been approved by a person coming from Alsace-Lorraine to a person entitled to directly inherit. If Article 5 of the aforementioned law of 24 July 1921 stipulates that "successions are regulated, without distinction between the movable and the immovable assets, by the law which determines the state and the ability of the deceased at the time of death", the quality of Alsacien-Lorrain cannot be transmitted after the first generation of descendant of individuals born before 11 November 1918. According to the above, the objection alleging the breach of principle of equality between heirs depending on whether or not the succession is regulated by the contested provisions must be rejected.
*(2012-274 QPC, 28 September 2012, recitals 6 and 7, p. 493)*

## Equality and rights - Guarantees of the litigants

### Judicial control of the conditions of employee's dismissal

The arbitral committee of journalists, established by Article L. 7112-4 of the Labour Code, is the appropriate jurisdiction to assess the compensation due to a journalist, member of staff, with more than fifteen years of seniority. It is also appropriate to reduce or cancel the compensation in all cases of serious or repeated misconducts of a journalist. To this effect, the arbitral committee of journalists, composed of an equal number of arbitrators nominated by the professional organisations of employers and employees, is chaired by a civil servant or by an active or retired magistrate. By entrusting the evaluation of this severance pay to this specialised court made up mainly of individuals appointed by professional organisations, the legislator intended to take account of the specific nature of that profession for assessing, when the employment contract is terminated, the sums due to journalists with the longest services or those accused of gross negligence or recurrent misconduct. Accordingly, the objection alleging the undermining of equality before the law must be rejected.
*(2012-243/244/245/246 QPC, 14 May 2012, recitals 10 and 12, p. 263)*

### Equality and procedural rules

*Balance between the rights of parties in the procedure*

If the legislator can provide for different procedure rules according to the facts, the situation and the persons to which they apply, it is on the condition that these differences do not stem from an unjustified distinction and that equal guarantees be assured to litigants, in particular with regard to the respect of the principle of the rights of the defence, which imply, in particular, the existence of a fair and equitable procedure guaranteeing the balance of the rights of parties.
*(2011-213 QPC, 27 January 2012, recital 3, p. 90)*

The provisions of Article 100 of the Law no. 97-1267 of 30 December 1997 of finance for 1998, benefit to repatriated French nationals, as defined under Article 1st of the Law no. 61-1439 of 26 December 1961, who exercise a non-salaried profession or have ceased their professional activity or sold their business, as well as certain members of their families and the companies held by them. They are applicable when these persons have filed an application requesting that the special debt relief procedure for repatriated citizens be applied to them.

It results from these provisions that, as soon as such an application has been filed, irrespective of the state of the procedure, the court must rule that proceedings against such persons be suspended. Such a suspension applied to court actions seeking confirmation of any debt, irrespective of its origin. It also applies to collective creditor proceedings and prohibits the implementation of interim or enforcement measures, except in relation to fiscal debts. The creditor does not have any means of appeal in order to object to it. The suspension of proceedings is prolonged until the decision by the competent administrative authority, the non-judicial appeal against it or, in the event of a judicial appeal, the definitive decision of the competent body.

After the territories previously placed under the sovereignty or protection of France or which were French protectorates gained independence, the legislator enacted, as a matter of national solidarity, measures in order to provide assistance to French citizens who were required or considered that they were required to leave these territories, including in particular the provisions permitting the provisional suspension of legal proceedings against repatriated citizens.

However, Article 100 of the law on finances for 1998, restructured these arrangements governing the suspension of proceedings and established them with the scope resulting from

the aforementioned provisions. Taking account of the period of time which has passed since the events which gave rise to these provisions as well as the effect, scope and duration of the suspension which does not apply solely to debts associated with the reception and reintegration of the interested parties, the contested provisions violate the principle of equality before the law. Censure.
*(2011-213 QPC, 27 January 2012, recitals 4 to 8, p. 90)*

It follows from Articles 6 and 16 of the 1789 Declaration that, if the legislator may provide for procedural rules which differ depending upon the circumstances, the situations and persons to which they apply, this is conditional upon the requirement that the differences do not create any unjustified distinctions and that equal guarantees be afforded to the parties to the trial, in particular as regards the principle of the right to make representations and respect of the right to a defence.

The contested provisions provide for the notification to the Public Prosecutor and to the lawyers of the parties of the decision of the investigating court ordering an expertise so that the recipients of this notification are able to, within the deadline, ask the judge to modify or to complete the questions asked to the expert or to add an expert of their own choosing. In the absence of such a notification, the parties non-assisted by a lawyer cannot exercise this right. The difference in treatment thus instituted between the parties whether they are represented or not by a lawyer is not justified in the protection of privacy, the safeguard of the public order or the objective of search for perpetrators, which serve the secret of the instruction. It is not further compensated by the ability, granted to all parties by the third paragraph of Article 167 of the Code of Criminal procedure, to ask for an additional expertise or a second opinion. Articles 80-2, 80-3 and 116 of the Code of Criminal procedure guarantee the right of the indicted persons and the plaintiffs to benefit from, during the pre-trial proceedings, the assistance of a lawyer, as the case may be, an officially designated lawyer. However, since the freedom to choose his lawyer or the right to defend themselves is recognised to all parties, the respect of the principles of the right to make representations and the rights to a defence impose that the copy of the decision ordering the expertise be brought to the attention of all the parties. In the first paragraph of Article 161-1 of the Code of Criminal Procedure, the words: "lawyers of" have the effect to reserve to the lawyers assisting the parties the notification of the copy of the decision ordering the expertise and the ability to ask the judge to appoint an additional expert or to modify or complete the questions being asked to him. Accordingly, they must be ruled unconstitutional.
*(2012-284 QPC, 23 November 2012, recitals 3 and 4, p. 613)*

## EQUALITY BEFORE THE PUBLIC DUES

### The meaning of the principle

#### Prohibition of excessive comparisons

To avoid a clear breach to the principle of equality in the payment of public dues, after creating the solidarity tax on wealth with the law of 23 December 1988 on finances for 1989, the legislator included within the regime governing the tax certain rules establishing ceilings which do not involve a tax by tax calculation and limit the amount of the solidarity tax on wealth and the taxes due on income and capital gains from the previous year to a total fraction of net income from the previous year. Whilst under the Law of 29 July 2011 on finances, as amended for 2011, the legislator was able to repeal with effect from 2012 Article 885 V *bis* of the General Tax Code on the ceiling for the solidarity tax on wealth without violating the Constitution, this was due to the parallel significant fall in the rates of this tax. Parliament cannot determine the band of the solidarity tax on wealth such as that in force prior to the year 2012 without accompanying it with a ceiling rule or generating equivalent effects intended to avoid a clear breach of the principle of equality in the payment of public dues.
*(2012-654 DC, 9 August 2012, recital 33, p. 461)*

## Scope of the principle

### Subject matter of the legislation

The object of the provisions of Article L. 632-6 of the Code Rural and Maritime Fishing is to allow recognised agricultural inter professional organisations to draw, on all the members of professions constituting them, contributions resulting from extended agreements according to measures set by Articles L,632-3 and L. 632-4 of the same code; these contributions, received by private entities, are for the funding of activities carried out, in favour of their members and in the scope defined by the legislator, by the interprofessional organisations constituted by products or group of products. They are paid by the members of these organisations. Accordingly, they do not constitute taxes of any natures and the objection alleging the breach by the legislator of requirements of Article 34 of the Constitution must be rejected.

The provisions of Article L. 632-6 of the Code Rural and Maritime Fishing do not infringe, in themselves, the principle of equality before the public dues.
*(2011-221 QPC, 17 February 2012, recitals 4 and 5, p. 120)*

### Equality with regard to taxes of any nature

*Advantages, reduction and tax credits*

The A of paragraph I of Article 73 of the law on finances for 2013 reforms the 1 of Article 200-0 A of the General Tax Code in relation to the global limitation of the tax benefit resulting from some deductions, reductions and tax credits. The first sub-paragraph of this 1 sets at 10,000 Euros the ceiling of the income tax reduction that some tax benefits may give rise to. However, the tax benefits mentioned in Articles 199 *undecies* A, 199 *undecies* B, 199 *undecies* C and 199 *unvicies*, are not included in this ceiling, as they are applicable to tax reductions granted in relation to, respectively, real estate investments in France's overseas departments, productive investment in France's overseas department and social housing investment in France's overseas departments and investment in public limited companies which exclusive activity is the capital funding of audio-visual and cinematographic works. For these four exceptions, the second sub-paragraph of 1 provides an increase of the ceiling of an amount of 18,000 Euros and an amount of 4% of the taxable income. Moreover, some tax benefits stay excluded from any global limit. The same is true, especially, with regard to tax reduction provided for by Article 199 *tervicies* granted for expenses borne for completely restoring a building in a preserved district, degraded historical districts and protected areas (mechanism called "Malraux") and subject to its own flat-rate ceiling.

It results from the preparatory works that the law on finances for 2013, that by adopting Article 73 of the law on finances for 2013, the legislator intended to reinforce the fairness of this mechanism and to better ensure the tax graduation. At the same time, he did not wish to weaken the incentive effect of some tax reductions and credit mechanisms intended to promote, especially, the development of employment as well as the social housing in overseas departments and the restoring of buildings.

The legislator has the discretion to set, depending on the goals he proposes, different limits to tax benefits he instituted on the condition that he bases his assessment on objective and rational criteria having regard to the goals pursued and that, as a result, there will be no breach of equality before the public dues.

However, on the one hand, the law referred provides for a substantial increase of the income tax. On the other hand, the first sub-paragraph of 1 of Article 200-0 A, as it results from Article 73, sets the global ceiling of most tax benefits to a flat-rate amount. By allowing, at the same time, a proportional ceiling to the taxable income applicable to two categories of tax benefits for investments transactions, the legislator allowed some taxpayers to limit the income tax graduation in conditions which lead to a clear breach of equality before the public dues. As a consequence, the Council declares unconstitutional the provisions placing an upper limit to the total amount of the tax benefit resulting from some tax reductions to 4% of the taxable income.
*(2012-662 DC, 29 December 2012, recitals 116, 117, 120 to 123, p. 724)*

*Contribution of France Télécom*

By changing the procedures for calculating the payments which France Télécom must make to the State as consideration for the assumption by the latter of responsibility for its officials' pensions, the contested provisions of Article 20 of the second law on finances, as amended for 2012, have the sole object of "equalising the levels of Social Security and tax due on salaries from France Télécom and other companies from the telecommunications industry" Therefore, the legislator intended to comply with the final decision C(2011) 9403 of the European Commission of 20 December 2011 pending the judgement of the Court of Justice of the European Union before which this decision has been contested. France Télécom would be entitled, depending on this order, to demand the repayment of the amounts paid in accordance with the contested provisions. In themselves, these provisions do not breach the constitutional requirements resulting from Articles 6 and 13 of the 1789 Declaration. La Poste and France Télécom are not in an identical situation. No constitutional requirement demands that these companies be subject to the same rules.
*(2012-654 DC, 9 August 2012, recital 50, p. 461)*

*Exceptional contribution on stocks value of oil products*

The exceptional contribution on the stocks value of oil products which is established by Article 10 of the second law on finances, as amended for 2012 is payable by companies which own, as at 4 July 2012, oil products under one of the tax suspension regimes provided for in Articles 158A and 165 of the customs code. The base of this contribution is the average value of volumes defined thereof which taxpayers owned on the last day of each of the last three months of the year 2011. The base of the tax is determined from the stock volume owned on the last day of each of the last three months for the year 2011 in order to take into account the average volume of oil products stocks owned under a tax suspension regime. The definition of the average value of oil products is the one which has been set on a flat-rate basis for the last quarter of the year 2011, pursuant to sub-paragraph 1 of 2 of Article 298 of the General Tax Code. The definition of this average value for petroleum gas and other gaseous hydrocarbons is calculated from the cost price of these products as of 31 December 2011. The tax base includes strategic stocks which must be constituted and kept pursuant to Article L. 642-2 of the Energy Code.

The legislator intended to draw additional revenues on companies from the oil sector at the rate of the stocks they owned under a tax suspension regime during the last quarter of 2011. The Constitutional Council does not have the same discretionary or decision power than the one conferred to the Parliament. It may not, under any circumstances, consider whether the goals which the legislator set himself could have been achieved in another manner, unless the procedures stipulated by law are manifestly inappropriate for the objective pursued. In taxing ownership of oil products subject to a tax suspension regime irrespective of the reason for these stocks, the legislator stipulated a taxable act and established liability to taxation which was in keeping with the capacity to pay tax of businesses from the oil industry.

The legislator excluded from the contribution scope companies which do not own any volume of oil products under a tax suspension regime as of 4 July 2012. He intended to exempt from the contribution companies who own as at 4 July 2012 volumes of oil products under a tax suspension regime which would have suspended their activities during a continuous period of more than three months during the first quarter of 2012. Therefore he intended to take into account the situation of companies which were in difficulty, including in particular refineries which had transferred ownership of their oil products or temporarily ceased operations. In drawing a distinction between the circumstances of owners of oil products which ceased their operations for a continuous period exceeding three months as well as those of businesses which transferred ownership over their oil products, the legislator based his assessment on objective and rational criteria having regard to the goals pursued. All owners of oil products as at 4 July 2012 which held stocks on 31 December 2011 and have not ceased operations for more than three months will be liable to pay the tax under the same conditions.

According to the above, the objection alleging the violation of the principle of equality before the public dues must be rejected. Article 10 is not unconstitutional.
*(2012-654 DC, 9 August 2012, recitals 40 and 43, p. 461)*

*Employee's contribution on acquisition gains and benefits of "stock options" and free shares*

The object of the sub-paragraph 2 of D of paragraph II of Article 11 of the law on finances for 2013 is to bring the rate of the employee's contribution provided for in Article L. 137-14 of the Social Security Code to 17.5% and, if the acquired shares are not unavailable for a certain period of time, to 22.5%. The gains and benefits corresponding to the exercise of an option to subscribe to or purchase shares or to the allocation of shares free of charge are, in addition, taxed in the category of remuneration and salaries pursuant to Articles 80 *bis* and 80 *quaterdecies* of the General Tax Code, as amended respectively by the *a* of sub-paragraph 1 of A of paragraph I and B of paragraph I of Article 11. These benefits, are, in addition, subject to the general social contribution pursuant to Articles L. 136-2, L. 136-5 and L. 136-6 of the Social Security Code as amended by A, B and C of paragraph II of Article 11 and, as a consequence, to the contribution for the reimbursement of the social debt provided by Article 14 of decree no. 96-50 of 24 January 1996.

The rates of 17.5% and 22.5% provided for respectively in the second and third sub-paragraph of 2 of D of paragraph II of Article 11, combined to all the other tax rates on gains and benefits corresponding to the exercise of an option to subscribe or to purchase or to the allocation of shares free of charge, are designed, after the consideration of the deductibility of a fraction of the general social contribution of the income tax base, to bring the top marginal tax rate of these gains and benefits respectively to 72% and 77%.

When the other incomes of the taxpayer subject to the band of income tax exceeds 150,000 Euros for an unmarried taxpayer, the income tax rate of these gains and benefits will amount to at least 68.2% or 73.2%.

As a consequence, the new levels of tax rate which results from the increase of the contribution provided for by Article L. 137-14 of the Social Security Code impose on taxpayers an undue burden having regard to this ability to pay. They are in breach of the principle of equality before the public dues. Therefore, the entire modifications of Article L. 137-14 of the Social Security Code, provided by D of paragraph II of Article 11 must be ruled unconstitutional.
*(2012-662 DC, 29 December 2012, recitals 80 and 81, p. 724)*

*General Social Contribution*

Article 29 of the second law on finances, as amended for 2012 subjects to the social levy on income from wealth, the social charge on income from wealth, the additional levy to this social charge and the levy for repayment of the health service debt the revenue from real estate located in France or from the rights relating to such properties earned after 1st January 2012 in respect of natural persons domiciled outwith France. It subjects to the social levy on investment income, the social charge on investment income, the additional levy to this social charge and the levy for repayment of the health service debt any capital gains on the sale of assets or rights over real estate or by real estate companies earned by natural persons domiciled outwith France after the publication of the Law.

These provisions, which purpose is not to impose a double taxation, do not violate any constitutional requirement.
*(2012-654 DC, 9 August 2012, recitals 55 and 59, p. 461)*

Sub-paragraph 2 of G of paragraph I of Article 9 of the law on finances for 2013, lowers from 5.8% to 5.1% the general social contribution portion on income from wealth and investment products, accepted as a deduction of the taxable income in the year it is paid. The deductibility rate is therefore identical to the general social contribution rate on earnings even though the rate of the general social contribution on income from wealth and investment products is still 0.7% higher than the rate of the general social contribution on earnings.

The principle of equality before the public dues does not preclude the legislator, in the exercise of powers he derives from Article 34 of the Constitution, from making a base tax deductible from another tax or changes this deductibility, as when amending the levy applicable to taxpayers, it does not lead to a breach of equality between them

In this case, the reduction of the portion of the general social contribution on income from wealth and investment products admitted as a deduction of the base tax on income has the effect to increase the tax revenue and raise the progressive nature of global income taxation on income from wealth and investment products of natural persons. This deductibility

reduction, which only covers the general social contribution on income from wealth and investment products, remains limited. Its impact on the increase of tax rate from income from wealth and investment products subject to the band of income tax, cannot, accordingly, be regarded as leading to a breach of equality before the public dues.
*(2012-662 DC, 29 December 2012, recitals 36, 38, 45 to 47, p. 724)*

*Company social solidarity contribution*

Firstly, the company social solidarity contribution to be borne by companies in the insurance sector concerns a modified base which includes, in particular, the annual positive net result, on the one hand, of their transactions on currencies, and, on the other hand, of their adjustments on variable capital transactions. The legislator intended to draw additional revenues on companies from the insurance sector by including in the base of the company social solidarity contribution the annual net results corresponding to certain specific transactions regularly carried out by insurance companies. The Constitutional Council does not have the same discretionary or decision power than the one conferred to the Parliament. It may not, under any circumstances, consider whether the goals which the legislator set himself could have been achieved in another manner, unless the procedures stipulated by law are manifestly inappropriate for the objective pursued. By expanding the base of the company social solidarity contribution for companies in the insurance sector, the legislator established a base in relation with the contribution ability of these companies.

Secondly, the company social solidarity contribution is annual. Its base corresponds to the turnover of companies subject to it every year. With regard to companies from the insurance sector, the definition of the turnover is the one stipulated in 1 of paragraph VI of Article 1586 *sexies* of the General Tax Code. By adding to this definition a requirement to consider the annual net positive result of some transactions, the legislator has laid down objective and rational criteria in relation with the annual nature of the taxation and with the definition of the other portion of the base subject to this contribution.

According to the above, the objections alleging a violation of the principle of equality before the public dues must be rejected.
*(2012-659 DC, 13 December 2012, recitals 18, 20 and 21, p. 680)*

*Contribution on energy drinks*

Article 25 of the law on the financing of Social Security for 2013 includes in section VI of chapter I of title III of the first part of book I of the General Tax Code an Article 520D which established a contribution received on "energy drinks" packaged in containers intended for retail sale and human consumption. This contribution which rate is set at 50 Euros per hectolitre is mainly payable by producers of these drinks established in France, their importers and the persons who carry out intra-community acquisitions, on all the quantity delivered against payment or free of charge.

Its product shall be used to finance health insurance, disability and maternity of the social protection system of non-agricultural workers benefits

As a result of the parliamentary works that by establishing this specific contribution the legislator intended to limit the consumption of "energy drinks" rich in caffeine or in taurine which, when mixed with alcohol, would have adverse health impact on consumers, in particular, the youngest. In taxing drinks with no alcohol in order to fight against the consumption of alcoholic drinks by young persons, the legislator established a taxation which is not based on objective and rational criteria in relation with the objective being pursued. Accordingly, he violated the requirements of Article 13 of the 1789 Declaration.
*(2012-659 DC, 13 December 2012, recitals 23, 24 and 26, p. 680)*

*Transfer tax*

Article 14 of the law on finances for 2013 amends Articles 641 *bis*, 750 *bis* A, 1135 and 1135 *bis* of the General Tax Code to extend from three to five years the provisions which lead to an exemption of transfer taxes for buildings included in successions and situated in Corsica.

The maintenance of the exceptional tax regime applicable to successions on buildings situated in the Corsica Departments leads to the situation where, without reasonable cause, the

transmission of these buildings can be exempted from the payment of the transfer tax. The new extension of this exceptional regime violates the principle of equality before the law and the public dues. Accordingly, Article 14 must be ruled unconstitutional.
*(2012-662 DC, 29 December 2012, recitals 129 and 133, p. 724)*

*Taxation of wealth (IGF and ISF)*

Article 4 of the second law on finances as amended for 2012 provides for an exceptional contribution on wealth. Firstly, in establishing the exceptional levy on wealth, the legislator intended to put in place a differentiated tax regime compared to the solidarity tax on wealth due for the year 2012. He determined the amount liable to taxation according to the rules applicable to the latter tax. He provided for tax brackets and rates which, taking into account both the exceptional levy and the solidarity tax on wealth, could ensure the progressive nature of these taxes paid in 2012 in relation to the possession of certain assets and the holding of certain rights

Secondly, the legislator increased the number of tax brackets and raised the rate of taxation applicable to the holding of wealth in 2012 in order to increase taxation on the holders of this wealth and to extract new tax revenue He raised the level of these taxes whilst maintaining the threshold above which it would fall due at EUR 1.3 million and leaving numerous assets and rights outwith the scope of this tax. He set the higher marginal rate for wealth in excess of EUR 16.79 million at 1.8% The Constitutional Council does not have a general power of assessment and decision-making of the same nature as that of the Parliament. It may not, under any circumstances, consider whether the goals which the legislator set himself could have been achieved in another manner, unless the procedures stipulated by law are manifestly inappropriate for the objective pursued. In increasing the levy applicable to certain taxpayers whilst reinforcing the progressive nature of tax paid in 2012 in relation to the possession of certain assets and the holding of certain rights, the legislator based his assessment on objective and rational criteria having regard to the goals pursued The exceptional levy on wealth, combined with the solidarity tax on wealth for 2012, does not impose an excessive burden on a category of taxpayers having regard to the capacity to pay tax which the possession of certain assets and the holding of certain rights confers.

Thirdly, to avoid a breach in the principle of equality in the payment of public dues, the legislator has, after creating the solidarity tax on wealth by the law of 23 December 1988, of finance for 1989, included within the regime governing the tax certain rules establishing ceilings which do not involve a tax by tax calculation and limit the amount of the solidarity tax on wealth and the taxes due on income and capital gains from the previous year to a total fraction of net income from the previous year. Whilst under the Law of 29 July 2011 on finances, as amended for 2011, the legislator was able to repeal with effect from 2012 Article 885 V *bis* of the General Tax Code on the ceiling for the solidarity tax on wealth without violating the Constitution, this was due to the parallel significant fall in the rates of this tax. The legislator cannot determine the band of the solidarity tax on wealth like the one in force prior to the year 2012 without accompanying it with a ceiling system or generating equivalent effects intended to avoid a clear breach of the principle of equality in the payment of public dues.

However, the law on finances as amended for 2012, implements new tax provisions over the course of the year including, on a non-renewable basis, the establishment of an exceptional levy on wealth which may only be levied in the year 2012. This levy is to be determined after deducting the amount of the solidarity tax on wealth due for the year 2012. The gross amount of this tax is deducted without taking into account the reductions claimed by the taxpayer on the solidarity tax on wealth. Moreover, in applying to the solidarity tax on wealth due in respect of the year 2012 from taxpayers liable to pay this tax, the right of restitution acquired pursuant to Articles 1 and 1649-0 A of the General Tax Code in relation to taxes pertaining to income earned in 2010 has an effect on the solidarity tax on wealth due in 2012. Under these circumstances, the breach of the principle of equality in the payment of public dues resulting from the lack of a ceiling system or which generates equivalent effects cannot lead to the conclusion that this exceptional levy is unconstitutional.

According to the above that the objections against Article 4 of the Law on finances as amended for 2012 alleging a breach of the principle of equality in the payment of public dues guaranteed by Articles 6 and 13 of the 1789 Declaration must be rejected.
*(2012-654 DC, 9 August 2012, recitals 31 to 35, p. 461)*

The solidarity tax on wealth is not included under the income taxes. By establishing such a tax, the legislator intended to strike the contribution ability that confers the possession of certain assets and the holding of certain rights. The consideration of this contribution ability does not imply that only the assets productive of revenue be included in the base of the solidarity tax and that this tax be paid only by means of taxable assets revenue.

If, in the Law on finances for 2013, the legislator was able to increase the number of brackets and raise the tax rates on wealth while he subjected, at the same time, the revenues on capital to the tax band on revenue and that he maintained the particular rates of social contributions on capital revenues, it is because the rate of 1.5% was set as the top marginal tax and the maintenance of the total or partial exclusion of numerous assets or rights outwith the scope of this tax. In these conditions, the rate of 1.5% applicable only to the fraction of the net taxable value of the wealth above ten millions Euro, considers the contribution abilities of individuals holding such wealth. Especially, contrary to what the Members of Parliament argue, it does not result, through its effects on wealth, in a violation to their right of property.
*(2012-662 DC, 29 December 2012, recitals 90 and 91, p. 724)*

By creating the solidarity tax on wealth, the legislator considered that the composition of the household, for the determination of its contribution ability, did not have the same consequence than the one with regard to income tax. He chose the principle of a tax per household without considering the family allowance mechanism. By considering the contribution abilities according to other procedures, he violated the requirement resulting from Article 13 of the 1789 Declaration, which does not impose the existence of a family allowance. Accordingly, by repealing Article 885V of the General Tax Code which provided for a tax reduction of 300 Euros per dependent, he did not violate the principle of equality before the public dues.
*(2012-662 DC, 29 December 2012, recital 92, p. 724)*

By reinstating, in Article 885 V *bis* of the General Tax Code, rules establishing ceilings which do not involve a tax by tax calculation and limit the amount of the solidarity tax on wealth and the taxes due on income and capital gains from the previous year to a total fraction of net income from the previous year, the legislator intended to avoid a clear breach to the principle of equality in the payment of public dues which would result from the absence of such a ceiling. By setting this fraction at 75%, he did not violate the constitutional requirements of consideration of the contribution abilities.

For the calculation of the ceiling, the provisions of paragraph II of Article 885 V *bis* include in the taxpayer's income from interests and capitalised products, the distributable profits of financial companies and the capital gains or gains which have been granted a delay of payment or a taxation postponement.

However, by thus including, in the taxpayer's income for the calculation of the ceiling of the solidarity tax on wealth and the total amount of income tax due, sums which do not correspond to profits or revenues the taxpayer realised or which he could enjoy during the same year, the legislator based his reasoning on criteria which violate the requirement for consideration of contribution abilities. Accordingly, the third to sixteenth sub-paragraphs of F of paragraph I or Article 13 of the Law on finances for 2013 must be ruled unconstitutional.
*(2012-662 DC, 29 December 2012, recitals 93 and 95, p. 724)*

If, to determine the non-professional wealth of taxpayers, the legislator was able to consider the fraction of the value of shares or portions corresponding to the assets of companies which are not necessary to the commercial, industrial, craft, agricultural or liberal activity of the company, he could not base the solidarity tax on wealth on these company's assets up to the percentage held in the latter even though it is not established that these assets are not, in fact, at the disposal of the shareholder or the partner. By doing so, the legislator defined a base without any relation to the contribution abilities. Accordingly, the C of paragraph I or Article 13 of the Law on finances for 2013 must be ruled unconstitutional.
*(2012-662 DC, 29 December 2012, recital 96, p. 724)*

*Taxation of capital gains on immovable property*

It results from the preparatory works that the legislator intended to modify the taxation regime of capital gains on immovable realised on the sale of building lands in order to increase the fiscal revenues and to fight against the retention, by owners, of land resources. For these

purposes, he subjected the capital gains on sales of building lands realised as from 1st January 2015 to the tax income ban and not to a flat-rate of 19%. He cancelled all allowance for length of detention as from 1st January 2013 excluding sales for which a commitment to sell with a set date was made before that date and the sale agreement is signed before 1st January 2015.

However, the capital gains on building lands will be subject to the income tax band as amended by Article 3 of the law referred, to the exceptional contribution on high incomes, pursuant to Article 223 *sexies* of the General tax Code, to the social levy provided by Article 16 of the decree no. 96-50 of 24 January 1996, by Article L. 14-10-4 of the Social Work and Family Code, by Article 1600-0 F *bis* of the General Tax Code and by Articles L. 136-7 and L. 245-15 of the Social Security Code, to the statutory tax paid to the Agency for services and payments pursuant to Article 1605 *nonies* of the General Tax Code as well as, as the case may be, to one of the alternative voluntary taxes which the districts may institute pursuant to Article 1529 of that code or the urban transport authority, under the terms of Article 1609 *nonies* F of that code. These provisions may lead, after deduction of a fraction of the general social contribution, to a top marginal rate of income of 82% which would put pressure on a category of taxpayers an excessive burden with regard to this contribution ability. In these conditions, the provisions of Article 15 of the Law on finances for 2013 violate the principle of equality in payment of the public dues.
*(2012-662 DC, 29 December 2012, recitals 100 and 101, p. 724)*

*Taxation of capital gains on movable property*

The sub-paragraph 1 of N of paragraph 1 of Article 10 of the Law on finances for 2013 amends the 2 of Article 200A of the General Tax Code, to subject the capital gains on the sale of securities and social rights to the income tax band. The E of paragraph 1 of Article 10 provides in 1 of Article 150-0D of that code, a progressive allowance on the amount of net gains on sale of securities subject to the income tax bank according to the possession duration of securities at the date on their sale, This allowance may reach 40% of the amount of net gains from sale when the shares, portions, rights or titles are held for at least six months. The combination between the liability to the income tax band and the allowance for possession duration has the effect of reducing the increase of the taxation which results from the provision of Article 10 in great proportions.

Accordingly, by increasing the taxation applicable on the capital gains on sale of securities whilst at the same time considering the possession duration of these securities to decrease the amount liable to income taxation, the legislator did not provide taxation measures which violate the contribution abilities.
*(2012-662 DC, 29 December 2012, recitals 53, 54, 57 to 58, p. 724)*

The sub-paragraph 2 of N of paragraph 1 of Article 10 of the Law on finances for 2013, maintains in 2 *bis* of Article 200A of the General Tax Code, a taxation on option at a flat rate of 19% of the capital gains on sale of titles or rights of companies exercising an industrial, commercial, craft, agricultural of liberal activity, excluding activities bringing guaranteed revenues, financial activities, real estate property management activities and immovable activities. The transferor must have held titles or rights corresponding to at least 10% of the voting rights or rights in social benefits, directly or through an intermediary or through the intermediary of individuals belonging to his or her family, for at least two years during the ten years prior to the sale and must still hold at least 2% of the voting rights or rights in the social benefits at the date of the sale. The transferor must have held in a continuous manner during the five years prior to the sale executive functions or a salaried employment within the company.

It results from the parliamentary works after which this mechanism was introduced in Article 10 that, by establishing this derogatory regime, the legislator intended to enact incentive rules for the development of economic activities by applying objective and rational criteria depending on the pursued goals. The Constitutional Council does not have the same discretionary or decision power than the one conferred to the Parliament. It may not, under any circumstances, consider whether the goals which the legislator set himself could have been achieved in another manner, unless the procedures stipulated by law are manifestly inappropriate for the objective pursued. The criteria chosen to benefit from the flat rate taxation regime of 19% are in relation with the activity of the company which titles or rights are sold, the

possession duration of these titles, the proportion of these titles in the voting rights or rights in the social benefits of the company and the exercise of executive function or a salaried employment within the company for five year prior to the sale, These criteria, which are not unintelligible, are objective and rational. They are in relation with the objective pursued by the legislator. The derogatory taxation mechanism open to taxpayers fulfilling the conditions mentioned above is not in addition with the allowance mechanism for the possession duration provided by 1 of Article 150-0D of the General Tax Code, even though it is contingent upon conditions of possession duration. Accordingly, this more favourable tax regime does not appear to be disproportionate with regard to the pursued objective.

In these conditions, the provisions of sub-paragraph 2 of N of paragraph 1 of Article 10 do not violate the principle of equality in the payment of public dues.
*(2012-662 DC, 29 December 2012, recitals 53, 55, 59 to 62, p. 724)*

*Income tax (for individuals)*

The employees are not in an identical situation than independent workers for the determination of the income tax base. Accordingly, the objection alleging that the procedures to determine professional expenditures being deducted from remuneration and salaries cannot be applicable to non-salaried workers must be rejected.
*(2012-662 DC, 29 December 2012, recital 30, p. 724)*

It follows that the underlying scope of the family allowance mechanism and its cap that taxpayers responsible for children are treated differently, on the one hand, than taxpayers without children, and on the other hand, according to the number of children under their responsibility. The family allowance threshold does not call into question the consideration of capacity to pay tax resulting from this difference in circumstances. In any case, Article 13 of the 1789 Declaration does not require that the consideration of charges borne by families when assessing capacity to pay tax must occur according to the family allowance mechanism. By reducing from 2,336 to 2,000 Euros the amount ceiling per half portion of the tax reduction resulting from the application of the family allowance, the legislator did not violate the requirements resulting from Article 13 of the 1789 Declaration.
*(2012-662 DC, 29 December 2012, recital 26, p. 724)*

In establishing the solidarity exception contribution on the very high incomes, the legislator implemented, for revenues of 2012 and 2013, a tax based only on the professional activity incomes. He chose for this exception contribution, as an extension to the tax credit, a tax rate of 18% applied on the fraction of these revenues exceeding the threshold of one million Euros per natural person.

The professional activity incomes taken into account to establish this exception contribution include the remuneration and salaries defined in Article 79 of the General Tax Code, excluding the unemployment and pre-retirement benefits and distributions of gains mentioned in Article 80 *quindecies* of the General Tax Code, the remuneration allocated to managers and shareholders in limited liability companies and similar undertakings, the industrial or commercial benefits, the non-commercial benefits and the agricultural benefits when they come from an activity exercised professionally, the benefits resulting from the free allocation of shares and gains from the exercise of an option to purchase or subscribe, except those for which the share attributed as from 16 October 2007, are subject to the contribution of Article L. 137-14 of the Social Security Code. These revenues are already subject to the income tax of the fiscal household.

The legislator chose the principle of an income tax per natural person without considering the existence of the fiscal household. Because of this exceptional contribution based on professional activity incomes of natural persons above one million Euro, two fiscal households with the same level of income from a professional activity could be subject to this contribution or on the contrary be exempt from it, depending upon the distribution of incomes between the taxpayers within this household. Therefore, by submitting to this exceptional contribution incomes from natural persons, without considering, as for the taxation of the entire income and the exceptional contribution provided for by Article 223 *sexies* of the General tax Code, the existence of the fiscal household, the legislator violated the requirement to consider the contribution abilities. Therefore, he violated the principle of equality for the payment of public dues.
*(2012-662 DC, 29 December 2012, recitals 71 and 73, p. 724)*

The implementation, by Article 3 of the Law on finances for 2013, of a new tax marginal band at the rate of 45% for the fraction of income subject to the tax band on income higher than 150,000 Euros per share increases the fiscal revenues as well as the graduation of the income taxation. In itself, it does not impose on taxpayers an excessive burden with regard to their contribution ability and does not create a clear breach of equality in the payment of the public dues. *(2012-662 DC, 29 December 2012, 12, 13 and 16, p. 724)*

According to the B, the sub-paragraph 1 of E and the sub-paragraph 1 of H of paragraph 1 of Article 9 of the Law on finances for 2013, the dividends paid by companies and the investment products are subject to the income tax band. As it follows from the preparatory works, the legislator intended to create an alignment of the dividends income taxation and investment products on the activity income taxation.

If the legislator did not amend the social levies on these incomes which rate are higher than those on the activity incomes, he provided for, in sub-paragraph 2 of E of paragraph I, the possibility to deviate from the taxation of the income tax band preferring a levy at a flat rate of 24% for the fiscal households which investment products do not exceed, for one year, 2,000 Euros. If he deleted, in sub-paragraph 2 of H of paragraph I, the annual allowance on distributed revenues per companies provided for by sub-paragraph 5 of 3 of Article 158 of the General Tax Code, he maintained the 40% allowance on the gross amount of distributed revenues provided for by sub-paragraph 2 of 3 of this Article 158. The Constitutional Council does not have the same discretionary or decision power than the one conferred to the Parliament. It may not, under any circumstances, consider whether the goals which the legislator set himself could have been achieved in another manner, unless the procedures stipulated by law are manifestly inappropriate for the objective pursued. The income tax band liability of investment incomes is accompanied by a certain number of derogatory adjustments and mechanisms. In thus amending the levy applicable to taxpayers receiving investment incomes, the legislator did not create a clear breach of equality in the payment of public dues. *(2012-662 DC, 29 December 2012, recitals 36, 39, 48 to 50, p. 724)*

The sub-paragraph 1 of N of paragraph 1 of Article 10 of the Law on finances for 2013 amends the 2 of Article 200A of the General Tax Code, to subject the capital gains on the sale of securities and social rights to the income tax band. It follows from the preparatory works that by taxing the capital gains of movables property sale to the income tax band, the legislator intended to create an alignment of the dividends income taxation coming from these capital gains on the activity revenues taxation.

If the legislator did not amend the social levies on these incomes which rate are higher than those of the activity incomes, he provided for, in E of paragraph I, a gradual allowance mechanism for the income tax according to the possession duration of shares, portions, rights or titles sold. He also reorganised, in F of paragraph I, a mechanism to postpone the tax on income tax provided for by Article 150-0D *bis* of the General tax Code. He extended the effects, in B of paragraph III, for an allowance mechanism provided for by Article 150-0D *ter* of that code. Finally, he created, in sub-paragraph 2 of N of paragraph I creating a 2 *bis* in Article 200A of that code, a tax derogatory mechanism with a flat rate of 19% when certain conditions are met. The Constitutional Council does not have the same discretionary or decision power than the one conferred to the Parliament. It may not, under any circumstances, consider whether the goals which the legislator set himself could have been achieved in another manner, unless the procedures stipulated by law are manifestly inappropriate for the objective pursued. The extension of the income tax band to capital gains on securities sale is accompanied by a certain number of derogatory adjustments and mechanisms. In thus amending the levy applicable to taxpayers receiving capital gains for securities sale, the legislator did not create a breach a clear breach of equality in the payment of public dues. *(2012-662 DC, 29 December 2012, recitals 53, 56, 63 to 65, p. 724)*

Article 11 of the Law on finances for 2013 amends the taxation of gains and benefits coming from the exercise of an option to subscribe or purchase actions or the acquisition of shares free of charge attributed as from 28 September 2012 to subject them to the income tax band.

It follows from the preparatory works that by subjecting gains and benefits arising out of the exercise of an option to subscribe or purchase shares or the acquisition of shares free of charge attributed as from 28 September 2012 to the income tax band, the legislator intended to create an alignment of the income taxation coming from these gains and benefits on the activity revenues taxation. The legislator has, at the same time, amended the social levies

on these gains and benefits. The A of paragraph II of Article 11 subject them to the general social contribution on activity incomes provided for in Article L. 136-1 of the Social Security Code and not to the social levies on wealth and investment products revenues. The D of paragraph II of Article 11 amends the rate of the employee's contribution on allocations of options to subscribe or to purchase actions and on the allocations of shares free of charge. The sub-paragraph 5 of A and B of paragraph I of Article 11 maintain the deduction of capital losses arising out of the gains and benefits corresponding to shares acquisition. The Constitutional Council does not have the same discretionary or decision power than the one conferred to the Parliament. It may not, under any circumstances, consider whether the goals which the legislator set himself could have been achieved in another manner, unless the procedures stipulated by law are manifestly inappropriate for the objective pursued. The income tax band liability of benefits from the exercise of an option to subscribe or to purchase shares or the acquisition of shares free of charge is accompanied by a certain number of adjustments. In thus amending the levy applicable to taxpayers receiving gains and benefits arising out of the exercise of an option to subscribe or the purchase of actions or the acquisition of shares free of charge attributed as from 28 September 2012, the legislator did not create a clear breach of equality in the payment of public dues.
*(2012-662 DC, 29 December 2012, 75 to 79, p. 724)*

*Tax on shows, games and entertainments*

Article 1559 of the General tax Code is to establish a tax on shows, games and entertainments. Are included in the scope of this tax the sports meetings, on the one hand, and the gaming circles and gambling dens, on the other hand, Pursuant to the first sub-paragraph of *b* of 3 of Article 1561, sports competitions specified by ministerial decree are exempt from this tax.

These two provisions create differences in treatment between, respectively, shows of a different nature and competitions in relation to different sporting activities. They do not introduce a difference in treatment between persons in the same situation. Neither the tax band nor the exemption of competitions in relation with certain sporting activities create, in themselves, a clear breach of equality in the payment of public dues.
*(2012-238 QPC, 20 April 2012, recitals 8 and 9, p. 214)*

The second sub-paragraph of *b* of sub-paragraph 3 of Article 1561 of the General Tax Code provides for the municipalities who wish to exempt from tax on shows, games and entertainments all sporting activities competitions organised on their territory or only some categories of sporting activities competitions organised on their territory by approved sporting associations. These voluntary exemptions allow the municipalities who wish to help the development of sporting events taking place on their territory, as the case may be, without being deprived from revenues coming from tax on shows, games and entertainments.

This tax, which base is locale, is exclusively for the benefit of the municipalities. The voluntary exemption of all the sporting activities organised on the territory of a municipality is decided by the city council. The legislator may have provided for grounds for such a voluntary exemption without violating the principle of equality.

The voluntary exemption of some sporting competitions must be about one or numerous "categories of sporting competitions", defined by the city council. It cannot be about sporting competitions organised by approved sporting associations. As a result, the difference in treatment between different sporting competitions taking place on the territory of the same municipality is based on objective and rational criteria depending on the goal pursued by the legislator. It does not result in a clear breach of equality in payment of the public dues.
*(2012-238 QPC, 20 April 2012, recitals 10 to 12, p. 214)*

*Pensions*

The revenues of annuities paid within the scope of defined benefit pension plans (called "supplementary pension plan"), which are subject to income tax provided by 1 of paragraph I of Article 197 of the General Tax Code amended by Article 3 of the Law on Finances for 2013, are also subject to the exceptional levy on these high incomes pursuant to Article 223 *sexies* of the General Tax Code, to the general social contribution pursuant to Article L. 136-1 of the Social Security Code, to the social debt reimbursement contribution pursuant to Article 14 of

order no. 96-50 of 24 January 1996 as well as the contribution provided by Article L. 137-11-1 of the Social Security Code. The annuities paid as from 2013 are also subject to the contribution provided by Article L. 14-10-4 of the Code of Social Action and Families.

On the one hand, if there is a need, in order to assess the compliance of the principle of equality in the payment of public dues, to take into account all these taxes on the same income and paid by the same taxpayer, instead, the contribution provided for by Article L. 137-11 of the Social Security Code is a tax to be paid by the employer which is not to be deducted from the amount of the annuities paid. Therefore, there is no need to take into account this assessment.

On the other hand, the top marginal tax rate on annuities paid within the defined benefit pension plan regime, is of 75.04% for annuities received in 2012 and of 75.34% for annuities received as from 2013, because of the amendment provided for by Article 3 and after the consideration of the deductibility of a fraction of the general social contribution as well as a fraction of the contribution provided for by Article L. 137-11-1 of the Social Security Code of the income tax base. This new tax level brings an excessive burden on taxpayers with regard to their contribution abilities. It violates the principle of equality for the payment of public dues.
*(2012-662 DC, 29 December 2012, recitals 12, 13, 17 to 19, p. 724)*

*Tax on capitalisation reserve of insurance companies*

It follows from the preparatory works that by establishing the additional contribution to the taxation of capitalisation reserves of insurance companies, the legislator intended to increase the tax revenues coming from the taxation of insurance companies. With the provisions of Article 25 of the Law on finances for 2013, he defined the base, the rate and the recovery procedures of this new tax. By subjecting to this tax all insurance companies mentioned in sub-paragraphs 1 to 6 of B of paragraph I of Article L. 612-2 of the Monetary and Financial Code, which operate a company in France, he did not subject to different rules individuals in an identical situation. These provisions are free of unintelligibility.
*(2012-662 DC, 29 December 2012, recital 112, p. 724)*

*Value added tax*

The sole objective of Article 28 of the second Law on finances, as amended for 2012, is to reduce from 7% to 5.5% the rate of value added tax on certain performances, whilst maintaining an exclusion for variety performances from the reduced rate when they are played in establishments where it is customary to consume food and drink during shows. This exclusion creates a difference in treatment between performances given under different conditions. They do not introduce difference in treatment between persons in the same situation. It does not result in a clear breach of equality in the payment of the public dues. The second sub-paragraph of b) of sub-paragraph 1 and a) of sub-paragraph 3 of paragraph I of Article 28 must be ruled constitutional.
*(2012-654 DC, 9 August 2012, recital 54, p. 461)*

*Tax on sewage sludge*

By inserting an Article L. 425-1 in the Insurance Code, Law no. 2006-1772 of 30 December 2006 introduced a fund guaranteeing risks associated with the agricultural spreading of urban and industrial sludge. By creating this fund, the legislator intended to encourage the elimination of sludge by means of agricultural spreading by guaranteeing compensation to farmers and land owners for the ecological damage associated with the spreading which was not foreseeable and is not covered under the third party liability policies of the producer of the sludge spread. Paragraph II of Article L. 425-1 provides that this compensation fund is "financed by an annual tax due by the producers of sewage sludge and which base is the quantity of dry sludge produced".

Firstly, the Constitutional Council does not have the same discretionary power than the one conferred to the Parliament. It is not up to him to question the choice of the legislator to help the removal of sewage sludge through spreading.

Secondly, it results from the parliamentary works of the Law of 30 December 2006, that by basing the tax on quantity of sludge produced and not in the quantity of sludge spread, the legislator in-

tended, whilst ensuring that this compensation fund had enough resources, to prevent the tax to discourage producers of sludge to use spreading. Thus, the difference established between sludge able to be spread which the producer is authorised to spread and other waste which it produces and which can only be disposed of by storage or incineration is directly linked to the purpose of the tax. The same does not apply to sludge able to be spread but which the producer is not authorised to spread. Whilst the tax introduced by subsection II of Article L. 425-1 of the Insurance Code was also based on the sludge which the producer is not authorised to spread, it would involve a difference in treatment not directly linked to the purpose of the tax and, consequently, contrary to the principle of equality in the payment of public dues. Accordingly, this tax cannot be based only on the sewage sludge the producer has the right to spread. Subject to this reservation, the contested provisions do not violate the principle of equality for the payment of public dues.
*(2012-251 QPC, 8 June 2012, recitals 4 to 7, p. 285)*

*Taxes on court of law*

To ensure the respect of the principle of equality for the payment of public dues, the legislators must base his reasoning on objective and rational criteria according to the proposed objectives. However, this appreciation must not result in a clear breach of equality for the payment of the public dues.

On the one hand, by inserting in the General Tax Code Article 1635 *bis* Q, Article 54 of the amended Law on finances no. 2011-900 of 29 July 2011 for 2011 established a contribution for the legal aid of 35 Euros charged per proceeding. The legislator intended to establish financial solidarity between the parties to the trial to ensure the financing of the police custody reform arising from the aforementioned law of 14 April 2011 and, in particular, the resultant cost, in respect of legal assistance, for the involvement of the lawyer during the police custody. This contribution is due for any civil, commercial, labour, social or rural proceeding before a judicial jurisdiction or for any proceeding introduced before an administrative jurisdiction. The legislator defined exemptions in favour of individuals who benefit from the legal aid as well as certain kinds of disputes for which he believed that free access to justice must be ensured. The income of this contribution is paid to the National Council of Bars to be distributed between the bars according to criteria defined with regard to legal matters.

On the other hand, by inserting in the General Tax Code Article 1635 *bis* P, the Article 54 of the amended law on finances no. 2009-1674 of 30 December 2009 for 2009 established a tax of an amount of 150 Euros payable by the parties to the appeal proceeding when the representation by a lawyer is mandatory before the court of appeal. The legislator thus intended to ensure the financing of the payment of solicitors at appeal courts, as stipulated by Law no. 2011-94 of 25 January 2011 regarding the reform of representation before appeal courts, the purpose of which was to simplify and modernise the rules of representation before those courts. This right apply to appeal as from 1st January 2012. Only parties to proceedings with compulsory representation before an appeal court have to pay it. This right is not due by individuals who benefit from the legal aid. The income from this right is allocated to the compensation fund of the attorneys at law profession.

By establishing the contribution for legal aid and the payment of 150 Euros due by the parties to an appeal proceeding, the legislator based his reasoning on objective and rational criteria. He considered the contribution abilities of taxpayers subject to the payment of these rights. If the income of the 150 Euros payment is to be allocated to the compensation of attorneys at law, the principle of equality in the payment of the tax and the public dues was reserved to proceedings only before the courts of appeal where the monopoly representation by the attorneys at law has been cancelled pursuant to the law of 25 January 2011. None of these contributions result in a clear breach of equality in payment of the public dues.
*(2012-231/234 QPC, 13 April 2012, recitals 6, 8 and 10, p. 193)*

*Taxes on empty housings*

Paragraph I of Article 16 of the Law on finances for 2013 amends Article 232 of the General Tax Code with regard to the tax on empty housings. Its sub-paragraph 1 reforms the first sentence of the first sub-paragraph of this article, with regard to the definition of urban areas in which this tax may be established. It alleviates the criteria which regulate the establishment of this tax and extends its application to municipalities of more than two hundred and fifty

thousands and less than two hundred thousand inhabitants. Its sub-paragraph 2 brings from two to one year the vacancy deadline. Its sub-paragraph 3 amends the tariff and increases the rate of this tax to 12.5% of the renting value on the first tax year and 25% as from the second tax year. The sub-paragraph 4 brings from thirty to ninety consecutive days per year the duration of housing occupation below which this latter is regarded as empty.

The object of the tax established by the provisions of Article 232 of the General Tax Code is to encourage the persons liable of this tax to rent housing likely to be rented. It results from the constitutional principles of equality before the law and the public dues that the difference in tax treatment established by this article with regard to persons liable of this tax is unconstitutional only if the chosen liability criteria is directly related to the pursued objective. The said tax cannot, therefore, strike only habitable and empty housings and which vacancy depends only on the willingness of their owner.

Firstly, dwellings which could only be made habitable if significant work, which would have to be paid for by the proprietor, is carried out, cannot be liable to this tax.

Secondly, furnished dwellings used for housing purposes and, as such, subject, under point 1° of subsection I of Article 1407 of the General Tax Code, to housing tax, cannot be regarded as vacant.

Thirdly, dwellings which are vacant for a reason outside of the lessor's control, preventing their prolonged occupation, for valuable consideration or free of charge, in normal conditions of habitation, or not allowing their occupation, for valuable consideration, in normal conditions of remuneration of the lessor, cannot be liable to this tax. Thus, dwellings intended, in the near future, to disappear or be subject to work as part of town planning, restoration or demolition operations, or dwellings made available for rent or sale but for which no lessee or purchaser has been found must, inter alia, be exempt from this tax. Reservations of interpretation.
*(2012-662 DC, 29 December 2012, recitals 134 to 138, p. 724)*

**Equality outwith to taxes of any natures**

*Local Authorities*

In Article L. 3334-18 of the General Local Authorities Code, the legislator introduced a mechanism for sharing revenue emanating from the departmental share of transfer tax where there has been valuable consideration. The legislator thus intended to ensure a redistribution of this revenue which is split very unequally nationally. To establish the list of departments which must contribute to the national Funds of equalisation of transfer duties for a fee as well as the amount of the levy on a fraction of these revenues, the contested provisions use only criteria based on inequalities affecting the amount and the increase of revenues of transfer duties for a fee of departments. The only criteria defined to choose the departments which should benefit from the payments of the Funds is the financial potential of departments. The criteria defined to establish the amount of payments is also that of the financial potential, partially weighted by the criteria of departmental population and the criteria of product from transfer duties for a fee received in each department. The criteria for determining the contributing and the beneficiary departments and also the redistribution criteria used are objective and rational. They are directly linked to the objective sought by the legislator to redistribute the revenue emanating from the departmental share of transfer tax where there has been valuable consideration. It does not result in a clear breach of equality of local authorities in the payment of the public dues.
*(2012-255/265 QPC, 29 June 2012, recital 8, p. 315)*

## Control of the principle - Conditions of the control

**Scope of the legislative authority**

*The determination of levy attributes*

The principle of equality before the public dues does not preclude the legislator, in the exercise of powers he derives from Article 34 of the Constitution, from making a base tax deduct-

ible from another tax or changes this deductibility, as when amending the levy applicable to taxpayers, it does not lead to a clear breach of equality between them.
*(2012-662 DC, 29 December 2012, recital 46, p. 724)*

*Determination of the objective pursued*

Incentive objective

It follows from the parliamentary works after which the derogatory tax mechanism of capital gains on securities sold which may benefit taxpayers fulfilling certain conditions was introduced that, by establishing this derogatory regime, the legislator intended to enact incentive rules for the development of economic activities by applying objective and rational criteria depending on the pursued goal.
*(2012-662 DC, 29 December 2012, recital 60, p. 724)*

**Scope of the principle assessment**

There is a need, to assess the compliance of the principle of equality in the payment of public dues, to consider all these taxes in relation to the same income and paid by the same taxpayer.
*(2012-662 DC, 29 December 2012, recital 18, p. 724)*

## Control of the principle - Exercise of the control

**Adequacy of legislative provisions**

Paragraph I of Article 19 of the third Law on finance as amended for 2013 provides that the chosen value to assess the net gain on sale, contribution, reimbursement or cancellation of securities which were subject to donations or manual donations within eighteen months prior to the sale, contribution, reimbursement or cancellation is the acquisition value of these securities by the owner, increased of the expenses incurred on acquisition free of charge. Paragraph II of Article 19 applies to these new provisions during a transfer of tax residence outside of France taking place within eighteen months as from the donation or the manual donation. Paragraph III of Article 19 makes paragraph I and II applicable to donations and manual donations realised as from 14 November 2012.

It follows from the preparatory works that the legislator intended to prevent legal mechanisms intended to evade the tax on capital gains on securities sale. To this effect, he provided to subject the donor of securities sold for a fee within eighteen months after the donation to the tax on capital gains, choosing as a reference value, not the value of titles on free transfer right, but the value of these titles on acquisition or subscription by the donor, increased by the expenses incurred on free acquisition, except when this value is lower than the one chosen on donation. He excluded the application of these new provisions for securities subject to a donation as a result of a collective commitment of conservation pursuant to Article 787B or 787C of the General Tax Code. He also provided for exceptions to the application of these new provisions in favour of donors with disabilities corresponding to the second or third category provided for in Article L. 341-4 of the Social Security Code, or when the donor or its spouse or partner bound by a civil solidarity pact subject to common tax is laid off or dies.

The contested provisions impose on donors of securities an additional tax not directly related to their situation but related to the enrichment of the donor before the transfer of securities ownership. The criteria of the duration between the donation and the sale for a fee of securities is in itself sufficient to irrefutably presume that the succession of these two transactions took place only to evade the payment of the capital gains tax. Therefore, the legislator did not choose objective and rational criteria related to the pursued objective. Accordingly, he violated the requirements of Article 13 of the 1789 Declaration. Censure.
*(2012-661 DC, 29 December 2012, recitals 20 and 25, p. 715)*

**Proportionality of legislative provisions**

*Proportionality in relation to the contribution abilities (excessive tax)*

The top marginal tax rate on annuities paid within the defined benefit pension plan regime (called supplementary pension plan), is of 75.04% for annuities received in 2012 and of 75.34% for annuities received as from 2013, because of the amendment provided for by Article 3 of the Law on finances for 2013 and after the consideration of the deductibility of a fraction of the general social contribution as well as a fraction of the contribution provided for by Article L. 137-11-1 of the Social Security Code of the income tax base. This new tax level brings an excessive burden on taxpayers with regard to their contribution abilities. It violates the principle of equality for the payment of public dues.
*(2012-662 DC, 29 December 2012, recital 19, p. 724)*

The capital gains on immovable property on building lands will be subject to the income tax band as amended by Article 3 of the law on finances for 2013, to the exceptional contribution on high incomes, pursuant to Article 223 *sexies* of the General Tax Code, to the social levy provided by Article 16 of the order no. 96-50 of 24 January 1996, by Article L. 14-10-4 of the Social Work and Family Code, by Article 1600-0 F *bis* of the General Tax Code and by Articles L. 136-7 and L. 245-15 of the Social Security Code, to the statutory tax paid to the Agency for services and payments pursuant to Article 1605 *nonies* of the General Tax Code as well as, as the case may be, to one of the alternative voluntary taxes which may institute the districts pursuant to Article 1529 of that code or the urban transport authority, under the terms of Article 1609 *nonies* F of that code. These provisions may lead, after deduction of a fraction of the general social contribution, to a top marginal rate of income of 82% which would put pressure on a category of taxpayers an excessive burden with regard to this contribution ability. In these conditions, the provisions of Article 15 of the Law on finances for 2013 violate the principle of equality in payment of the public dues.
*(2012-662 DC, 29 December 2012, recital 101, p. 724)*

The *e* and *h* of sub-paragraph 5 of E of paragraph I of Article 9 of the Law on finances for 2013 is to increase the rate of the levy in discharge provided for by Article 125A of the General Tax Code which apply to products of stocks and other certificates for which the identity of the beneficiary is not communicated to the tax administration. These stock and certificates are, moreover, subject to the social levy on income from investment provided for by Article 16 of decree no. 96-50 of 24 January 1996, by Article L. 14-10-4 of the Code of Social Action and Family, by Article 1600-0 F *bis* of the General Tax Code and by Articles L. 136-7 and L. 245-15 of the Social Security Code. The amendment of the rate on the levy on discharge provided for by Article 125A of the General Tax Code has the effect of bringing the tax rate on incomes from these stocks and certificate to 90.5%. Accordingly, this amendment imposes on owners of stocks and certificates which identity is not communicated to the tax administration an excessive burden with regard to this contribution ability and violate the principle of equality in the payment of public dues.
*(2012-662 DC, 29 December 2012, recitals 51 and 52, p. 724)*

The effect of the rates of 17.5% and 22.5% of the employee's contribution on acquisitions gains and benefits of "stock options" and free shares, provided for respectively in the second and third sub-paragraph of 2 of D of paragraph II of Article 11 of the Law on finances for 2013, combined to all the other tax rates on gains and benefits corresponding to the exercise of an option to subscribe or to purchase or to the allocation of shares free of charge, after the consideration of the deductibility of a fraction of the general social contribution of the income tax base, to bring the top marginal tax rate of these gains and benefits respectively to 72% and 77%.

When the other incomes of the taxpayer subject to the band of income tax exceeds 150,000 Euros for an unmarried taxpayer, the income tax rate of these gains and benefits will amount to at least 68.2% or 73.2%.

As a consequence, the new levels of tax rate which results from the increase of the contribution provided for by Article L. 137-14 of the Social Security Code impose on taxpayers an undue burden having regard to this ability to pay. They breach the principle of equality for the payment of public dues.
*(2012-662 DC, 29 December 2012, recital 81, p. 724)*

*Proportionality with regard to the objective of the legislator*

The derogatory taxation mechanism of capital gains on securities sale open to taxpayers fulfilling certain conditions is not in addition to the allowance mechanism for the possession duration provided by 1 of Article 150-0D of the General Tax Code, even though it is contingent upon conditions of possession duration. Accordingly, this more favourable tax regime does not appear to be disproportionate with regard to the pursued objective.
*(2012-662 DC, 29 December 2012, recital 61, p. 724)*

## EQUALITY IN PUBLIC EMPLOYMENT

### Scope of the principle

Articles 1 and 11 of the law regarding the creation of future oriented jobs include in the Labour Code and in the Labour Code applicable to Mayotte, provisions establishing these agreements which purpose are to "facilitate the employability and the access to qualification for jobless teenagers of sixteen to twenty five years of age at the time of the signature of the employment contract either without qualification, or under-qualified and faced with specific difficulties with access to employment. Individuals who have been recognised as being disabled can access a future-oriented job when they are less than thirty years old. These jobs are aimed "as a priority" at young people who live in certain areas with specific difficulties with access to employment. The local authorities and their groups as well as other public-law bodies, except the State can use future oriented jobs. The employment contract associated to a future oriented job can be an indefinite or a fixed term of thirty-six months employment contract. The law provides that the beneficiary of a future oriented job should have a full time employment and determines the cases where the weekly periodic participation can be agreed upon.

With regard to their characteristics, if the employment contracts associated to a future oriented job were agreed upon by public law bodies for an indefinite term, these future oriented jobs would constitute, pursuant to Article 6 of the 1789 Declaration, public jobs which can only be filled taking into account the ability, virtues and talents. It is not the same in the case of a fixed term employment contract executed pursuant to the social mechanism aimed at facilitating the employability of beneficiaries provided for Article L. 5134-114 of the Labour Code and by Article L. 322-49 of the Labour Code applicable to Mayotte. Therefore, the access to a future-oriented job being reserved for young people without qualification, the public law bodies could only use future oriented jobs within the framework of fixed term employment contracts.
*(2012-656 DC, 24 October 2012, recitals 12 and 16, p. 560)*

By virtue of the law referred concerning the creation of future-oriented jobs, the future oriented jobs for teachers are for individuals preparing for the "teaching profession". The contracts associated to these jobs are agreed for duration of twelve months renewable, limited to a total duration of thirty six months, so that their beneficiaries may hold an educational support activity compatible with the pursuit of their studies and the preparation to competitions. These students commit themselves to pursue their training in a higher educational establishment and to participate to one of the teachers recruitment competitions of the primary or secondary level organised by the State. In case of success to one of these competitions, the contract is automatically terminated before its due termination date. The beneficiaries of such an employment perform a weekly working time adapted to the pursuit of their studies and the preparation to competitions for which they are being trained. The remuneration paid for a future oriented job as a teacher is in addition to awards from higher education.

It follows from the characteristics of these "future-oriented jobs for teacher" that the legislator implemented, on top of the awards of higher education, a local system facilitating teaching employment to facilitate employability and the social promotion of students preparing to the teaching profession. Therefore, he did not create public employments within the meaning of Article 6 of the 1789 Declaration. Accordingly, the objection alleging the violation of equal access to public employment must be rejected.
*(2012-656 DC, 24 October 2012, recitals 7 and 8, p. 560)*

## Equal eligibility to public employments

### Access to the judiciary

The third sub-paragraph of Article 64 of the Constitution provides that: "An organic law shall determine the status of members of the Judiciary". Article 6 of the 1789 Declaration of the Rights of Man and the Citizen provides that all citizens being equal in the eyes of the law, they "are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents". The rules for recruiting judges from the ordinary courts fixed by the organic legislator must, in particular, by setting precise requirements as to the ability of the interested parties, ensure the compliance of the principle of equal access to public employments and support the independence of the judicial authority.

Article 16 of the Ordinance of 22 December 1958 relating to the rules governing the Judiciary sets the conditions required for applicants to one of the means of access to the National School for the Judiciary, in particular those relating to nationality, the enjoyment of civic rights, diplomas and physical fitness. The sub-paragraph 3 of this article also specifies that these candidates must "be morally virtuous". The purpose of the contested provisions is to allow the administrative authority to make sure that the applicants have the necessary guarantees to carry out the functions of magistrates and, in particular, to comply with the duties relating to their status. It is therefore up to the administrative authority, under the supervision of the administrative judge, to assess the facts that might seriously cast doubt over the existence of those guarantees. The requirements of Article 6 of the 1789 Declaration do not force the organic legislator to specify the nature of these facts and the procedures by which they are assessed. Accordingly, the objection alleging that the organic legislator violated the extent of his competence must be rejected.
*(2012-278 QPC, 5 October 2012, recitals 4 and 5, p. 511)*

### Rules for recruiting in public employment

*Recruitment without diplomas*

Articles 1 and 11 of the law regarding the creation of future oriented jobs include in the Labour Code and in the Labour Code applicable to Mayotte, provisions establishing these agreements which purpose are to "facilitate the employability and the access to qualification for jobless teenagers of sixteen to twenty five years of age at the time of the signature of the employment contract either without qualification, or under-qualified and faced with specific difficulties with access to employment. Individuals who have been recognised as being disabled can access a future-oriented job when they are less than thirty years old. These jobs are aimed "as a priority" at young people who live in certain areas with specific difficulties with access to employment. The local authorities and their groups as well as other public-law bodies, except the State can use future oriented jobs pursuant to the provisions of the Labour Code applicable to a special employment contract. The employment contract associated to a future-oriented job can be an indefinite or a fixed term of thirty-six months employment contract. The law provides that the beneficiary of a future oriented job should have a full time employment and determines the cases where the weekly periodic participation can be agreed upon.

With regard to their characteristics, if the employment contracts associated to a future oriented job were agreed upon by public law bodies for an indefinite term, these future oriented jobs would constitute, pursuant to Article 6 of the 1789 Declaration, public jobs which can only be filled taking into account the ability, virtues and talents. It is not the same in the case of a fixed term employment contract executed pursuant to the social mechanism aimed at facilitating the employability of beneficiaries provided for Article L. 5134-114 of the Labour Code and by Article L. 322-49 of the Labour Code applicable to Mayotte. Therefore, the access to a future oriented job being reserved for young people without qualification, the public law bodies could only use future oriented jobs within the framework of fixed term employment contracts.

The same reasoning leads to formulate an identical reservation on the provision of the Labour Code in force with regard to the special employment contract (Articles L. 5134-21 and L. 5134-24 of the Labour Code and L. 322-7 and L. 322-13 of the Labour Code applicable to Mayotte).
*(2012-656 DC, 24 October 2012, recitals 12 and 19, p. 560)*

# PUBLIC FINANCES

## BUDGETARY AND FISCAL PRINCIPLES

### Principle of annuality

**Content**

The twenty second sub-paragraph of Article 34 of the Constitution enables an institutional act to be enacted in order to specify the framework of programming laws in relation to multi annual guidelines for public finances. On this basis and on the basis of the eighteenth and nineteenth sub-paragraph of Article 34 of the Constitution with regard to the laws on finances and the laws on the financing of Social Security, the organic legislator may adopt provisions applicable to these relative laws in order to ensure that the rules laid down in paragraph 1 of Article 3 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union signed on 2 March 2012 in Brussels take effect in the conditions provided for under the second alternative provided for by the first sentence of paragraph 2 or Article 3, in particular with the medium-term objective as well as the adjustment path for the fiscal situation of general government, the corrective mechanism for the latter and the independent institutions throughout the budgetary process.
*(2012-653 DC, 9 August 2012, recitals 13 and 24, p. 453)*

### Principle of balance

**Content**

The twenty second sub-paragraph of Article 34 of the Constitution enables an institutional act to be enacted in order to specify the framework of programming laws in relation to multi annual guidelines for public finances. On this basis and on the basis of the eighteenth and nineteenth sub-paragraph of Article 34 of the Constitution with regard to the laws on finances and the laws on the financing of Social Security, the organic legislator may adopt provisions applicable to these relative laws in order to ensure that the rules laid down in paragraph 1 of Article 3 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union signed on 2 March 2012 in Brussels take effect in the conditions provided for under this second alternative provided for by the first sentence of paragraph 2 or Article 3, in particular with the medium-term objective as well as the adjustment path for the fiscal situation of general government, the corrective mechanism for the latter and the independent institutions throughout the budgetary process.
*(2012-653 DC, 9 August 2012, recital 24, p. 453)*

### Principle of sincerity

**Law on Finances**

*Regime of Organic Law with regard to the laws on finances of 2001*

According to Article 14 and 15 of the 1789 Declaration, the State's revenues and expenditures must be presented in a sincere manner.

The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union signed on 2 March 2012 in Brussels provides that independent institutions must verify the compliance of all the balance rules of public finances stipulated in paragraph 1 of Article

3 of the Treaty. They will state their opinion on the compliance of budgetary balance rules and, as the case may be, on the correction mechanism "triggered automatically". No constitutional requirement precludes one or more independent institutions from being in charge, on national level, to monitor adherence to the rules set forth in paragraph 1 of Article 3 of the Treaty.

The Constitutional Council shall be responsible for overseeing the conformity guaranteed by the Constitution of the programming laws in relation to multi annual guidelines for public finances, the laws on finances and the laws on the financing of Social Security. When seized pursuant to Article 61 of the Constitution, it must, in particular, ensure that these laws have genuinely been enacted for this purpose. It must conduct its review taking into account of the opinions of independent institutions established in advance.
*(2012-653 DC, 9 August 2012, recitals 13, 26 and 27, p. 453)*

Article 32 of the organic law of 1 August 2001 on the laws on finances provides that : "The laws on finances present in a sincere manner all of the State's revenues and expenditures. Their sincerity is assessed taking into account the information available and the predictions which can reasonably arise from them". It results that the sincerity of an amended law on finances is characterised by the absence of intention to distort the basic balance it determines.

On the one hand, the provisions of Article 66 of the third law on finances as amended for 2012 establishing the employment competitiveness tax credit which will only come into force on 1 January 2013, cannot have the effect of impacting the budgetary balance of the year 2012. On the other hand, the legislator believed that the tax credit did not affect the budgetary balance of the year 2013. In any case, if the development of expenditures or revenues was such that it could modify the basic balance of the budgetary balance, it will be up to the Government to submit to Parliament a new project to amend the law on finances.
*(2012-661 DC, 29 December 2012, recitals 35 and 36, p. 715)*

The sincerity of the law on finances for the year is characterised by the absence of intention to distort the basic balance it determines.

It does not follow from the elements submitted to the Constitutional Council that the economic assumptions on which is based the law on finances for 2013 are encumbered of an intention to distort the basic balance of the law referred.

The legislator believed that the tax credit inserted in Article 24 *bis*, which became Article 66 of the third project of law on finances as amended for 2012, did not affect the budgetary balance of the year 2013. In any case, if the development of expenditures or revenues was such that it could modify the basic balance of the budgetary balance, it will be up to the Government to submit to Parliament a project to amend the law on finances.
*(2012-662 DC, 29 December 2012, recitals 8 to 10, p. 724)*

**Law on the financing of Social Security**

In the first sentence of the sub-paragraph 2 of C of paragraph I or Article L.O. 111-3 of the Social Security Code, the law on the financing of Social Security "determines for the year to come, in a sincere manner, the general conditions of the financial balance of the Social Security, taking into account, in particular the general economic conditions and their predictable development". It results that the sincerity of the law on the financing of Social Security of the year is characterised by the absence of intention to distort the basic balance it determines.

It does not follow form the elements submitted to the Constitutional Council that the economic assumptions on which is based the law on the financing of Social Security are encumbered of an intention to distort the basic balance of the law referred.
*(2012-659 DC, 13 December 2012, recitals 4 and 5, p. 680)*

## High Council of Public Finances

### Composition and Functioning of the High Council

Are constitutional the provisions of the organic law in relation to the policy and governance of public finances, on the composition of the High Council of Public Finances, and which:

– Establish guarantees of competence and independence of the members of the High Council by providing that active magistrates of the Court of Auditors as well as individuals recognised for their competences in the area of macroeconomic predictions and public finances are nominated in the High Council, and by forbidding the latter to hold elective public office;

– Establish rules in order to support the parity between men and women within the High Council of public finances. It is up to the regulatory power, under the control of the Conseil d'État, to establish the procedures of the drawing lots in order to permanently ensure the compliance of this objective. However, they do not have a basic nature;

– provide that the members of the High Council of Public Finances are not remunerated, establish the different duration of service of these members, provide that, in the exercise of their duties, the members of the High Council cannot request or receive any instruction from the Government or any other public or private person, provide for the conditions to replace a member of the High Council in case of death or resignation, establish the procedures according to which, in case of permanent physical incapacity or in case of serious breach of obligations of one of the member of the High Council designated in sub-paragraphs 1, 2 and 3 of Article 11, the term of office may be terminated.
*(2012-658 DC, 13 December 2012, recitals 41 and 44, p. 667)*

The principle of the separation of powers precludes, in the absence of constitutional disposition allowing it, the power to nominate by an administrative or legal authority, to be contingent upon the audition by the parliamentary assemblies of the persons which appointment is envisaged. By requiring the hearing, by the finance committees and the social affairs committees of both the National Assembly and the Senate, of the magistrates of the Cour des Comptes appointed by the first president of that court and of the member appointed par le president of the Economic, Social and Environmental Council, the provisions of points 1° and 3° of Article 11 of the organic law concerning the programming and the governance of public finances were contrary to the requirements resulting from the separation of powers. Accordingly, in Article 11, the words "these members are appointed after their public hearing by the finance committee and the social affairs committee of the National Assembly and the Senate" in sub-paragraph 1 as well as the words: "this member is appointed after public hearing by the finance committees and the social affairs committees of the National Assembly and the Senate" in sub-paragraph 3 must be ruled unconstitutional.

By providing for the members of the High Council appointed by the president of the National Assembly, the president of the Senate as well as the presidents of finance committees of the National Assembly and the Senate" to be appointed after joint public hearing of the finance committees and the social affairs committee of the assembly concerned, the legislator adopted provisions with regard to the functioning of assemblies which do not have an basic nature.
*(2012-658 DC, 13 December 2012, recitals 39 and 40, p. 667)*

The provisions of Articles 18 to 22 of the organic law on programming and governance of public finances relating to the functioning of the High Council of Public Finances are constitutional. They are of a basic nature except the ones mentioned in the last sub-paragraph of Article 21 according to which the High Council establishes and publishes its internal regulations.
*(2012-658 DC, 13 December 2012, recitals 58 and 61, p. 667)*

### Consultation of the High Council

The sincerity of the law on the programming of public finances must in particular be assessed taking account of the opinion of the High Council for public finances. The same will apply to

the assessment of the sincerity of the laws on finances and the laws on the financing of Social Security. Accordingly, Article 39 of the Constitution imposes that this opinion on the project to amend the law on the programming of public finances, the project to amend the law on finances for the year and the project to amend the law on the financing of Social Security for the year be delivered before the Conseil d'État issues its final advice. By providing that the opinion will be attached to the bill when it is referred to the Conseil d'État, the provisions of Articles 13 and 14 of the organic law concerning the programming and the governance of public finances did not infringe those requirements.

By allowing the opinion of the High Council only to be given before the National Assembly adopts the amending finance bill or the amending bill on the financing of Social Security on the first reading, the organic legislator infringed those requirements. Therefore, the last sentence of Article 15 must be ruled to be unconstitutional.

If, according to the circumstances, the opinion of the High Council of public finances was to be delivered after the opinion of the Conseil d'État, the Constitutional Council would assess, as the case may be, the compliance of provisions of Article 13, 14 and 15 with regard to the requirements that the life of the nation continues.
*(2012-658 DC, 13 December 2012, recitals 52 and 54, p. 667)*

## Structure of the law

### Creation of a mission within the State's budget

*Structures of missions*

Article 22 of the organic law on programming and governance of public finances provides that: "The president of the High Council of public finances manages the funds necessary in order to accomplish his missions". These funds are grouped within a specific programme of the mission "Council and Control of the State". These provisions, which deviate in the second sub-paragraph of paragraph I of Article 7 of the Organic Law no. 2001-692 of 1st August 2001 on laws on finances, are not unconstitutional.
*(2012-658 DC, 13 December 2012, recital 61, p. 667)*

## Right to parliamentary amendment (Article 40)

### Review procedure for the financial admissibility of amendments

In order for the Constitutional Council to be able to examine its compatibility with Article 40 of the Constitution, any question regarding the financial admissibility of an amendment of parliamentary origin must have been raised before the first house which was apprised of the matter. In this case, the admissibility of the amendment which resulted in the enactment of sub-paragraph 3 of paragraph I of Article 41 of the second amended law on finances for 2012, adopted during its first reading in the Senate, was not contested pursuant to Article 40 of the Constitution. Since the question concerning the financial admissibility of the amendment was not raised before the Senate, it cannot be invoked directly by the applicant Members of Parliament before the Constitutional Council.
*(2012-654 DC, 9 August 2012, recital 66, p. 461)*

## Perimeter of the laws

### Optional area

*Law on Finances*

Article 44 of the second law on Finances as amended for 2012 defers until 1st January 2013 the relevant date laid down by Article 49 of the Law of 10 August 2007 on freedoms and responsibilities of universities after which the universities will be required to apply the provisions of chapter Ist of title III of the aforementioned Law of 10 August 2007. The provisions which appliance is deferred by Article 44 are in relation with responsibilities of universities with regard to the budget and human resources management. In particular they seek to amend the distribution of the State's credits intended to universities. Therefore, they have a direct affect on the budgetary expenditures for the year. Accordingly, Article 44 of the law referred instead in the amended law on finances.
*(2012-654 DC, 09 August 2012, recitals 7 and 13, p. 461)*

Article 41 of the second law on finances as amended for 2012 relates to medical aid from the State. The sub-paragraph 1 of paragraph I or Article 41 cancels, in Article L. 251-1 of the Code of Social Action and Families, the requirements of payment of an annual fee in order to gain eligibility for medical assistance provided by the State. Sub-paragraph 2 of the paragraph removes from Article L. 251-2 of the Code the requirement for prior approval of the provision of certain forms of hospital care to individuals receiving this aid. Sub-paragraph 3 of the same paragraph amends within Article L. 252-1 of the Code the list of bodies with which an application relating to this assistance may be filed. Sub-paragraph 4 also of that paragraph repeals Article L. 253-3-1 of the Code on the National fund for State medical aid. Paragraph II abolishes Article 968 E of the General Tax Code establishing this fee. Paragraph III specifies the conditions for the application of this reform. All of these provisions of Article 41 in relation to the conditions of access to the State medical aid, have a direct effect on State budget expenditures. Therefore, these provisions can be included in the amended law on finances.
*(2012-654 DC, 9 August 2012, recitals 63 and 65, p. 461)*

Article 31 of the second law on finances as amended for 2012, which increases the rate of the employer's contribution as well as the employee's contribution on allocations of shares to subscribe or purchase and on allocations of shares free of charge, Article 33 which increases the rate of the mentioned contribution in Article L. 137-15 of the Social Security Code, Article 45 which amends the rate of the mandatory contribution rate paid to the National Centre for the local public service, are articles relating to the tax rates which do not have any effect on the State's budgetary balance. Therefore, these articles can be included in the amended law on finances.
*(2012-654 DC, 9 August 2012, recitals 5, 6, 8 to 11, p. 461)*

Article 29, of the second law on finances as amended for 2012 which subject to the social levy on income from wealth, the social charge on income from wealth, the additional levy to this social charge and the levy for repayment of the social service debt the revenues from real estate located in France or from the rights relating to such properties earned by natural persons domiciled outwith France; that it subjects to the social levy on investment income, the social charge on investment income, the additional levy to this social charge and the levy for repayment of the health service debt any capital gains on the sale of assets or rights over real estate or by real estate companies earned by natural persons domiciled outwith France, is in relation with the tax base of any nature. Therefore, this article can be included in the amended law on finances.
*(2012-654 DC, 9 August 2012, recitals 55 and 57, p. 461)*

**Forbidden area (horse riders)**

*Law on Finances*

Regime of Organic Law with regard to the laws on finances

The principal objective of paragraph I of Article 11 of the second law on finances as amended for 2012, is to amend Article 42-3 of the law of 30 September 1986 on freedom of communication, in order to establish a requirement for approval by the Supreme Audio-visual Council in case involving the direct or indirect control of a company which holds authorisation to broadcast over the radio spectrum. Paragraph II of that Article introduces into the General Tax Code a new Article 235 *b* ZG which imposes a tax on the transfer of the accreditation of an audio-visual communication service broadcaster. Paragraph III of that Article specifies the scope of paragraphs I and II of that Article.

Firstly, paragraph I of Article 11, which provides for the introduction of a procedure for the requirement of approval in case of transfer of shares of a company which holds an authorisation of an audio-visual communication service broadcaster, does not belong to the amended law on finances area as it results from the organic law of 1st August 2001. It has been adopted according to an unconstitutional procedure.

Secondly that paragraph II of Article 11 establishes a tax on the transfer of the accreditation of an audio-visual communication service broadcaster; that it provides that the amount liable to this tax shall be comprised of the sum total of contributions, transfers or exchanges of accreditations, which cumulatively over six months result in the transfer of control over a company which holds a licence to use the radio spectrum; that it however subjects payment of the tax to the prerequisite that the contribution, transfer or exchange of accreditation have been approved in advance by the Supreme Audio-visual Council in accordance with the procedure laid down under paragraph I of that Article; Accordingly, the provisions of paragraph II of Article 11, which cannot be separated from paragraph I, have no place in a supplementary law on finances

Accordingly, Article 11 referred must be ruled unconstitutional.
*(2012-654 DC, 9 August 2012, recitals 84 to 87, p. 461)*

Article 28 of the third supplementary law on finances for 2012 amends Article L. 135-D of the book of tax procedures to amend the rules for third parties to access fiscal information protected by professional secrecy for scientific research purposes.

The provisions of Article 28 do not belong to the law on finances area as it results from the organic law of 1st August 2001 on laws on finances. Censure.
*(2012-661 DC, 29 December 2012, recitals 2 to 4, p. 715)*

Paragraph I of Article 8 of the law on finances for 2013, which provides for an amendment of the first sub-paragraph of Article 11-4 of the Law no. 88-227 of 11 March 1988 to forbid the same natural person to give more than 7,500 Euros to one or more political parties during the same year, does not belong to the law on finances area as it results from the organic law of 1st August 2001 on laws on finances. This paragraph has been adopted according to an unconstitutional procedure.

Secondly, paragraph II of Article 8 sets at 7,500 Euros the maximum amount for donations to political parties conferring a right to a reduction in income tax pursuant to Article 200 of the General Tax Code. However, it does not modify the limit of donations and contributions to political parties conferring the rights to a reduction in income tax pursuant to Article 200 of the General Tax Code, whose limit is still set at 15,000 Euros. Accordingly, the provisions of paragraph II of Article 8, which cannot be separated from paragraph I, have no place in a supplementary law on finances.

Article 8 in its entirety must be ruled unconstitutional.
*(2012-662 DC, 29 December 2012, recitals 31 to 35, p. 724)*

Sub-paragraph 1 of paragraph I of Article 51 of the law on finances for 2013 introduces a new Article L. 3211-5-1 in the General Code on Public Property which amends the legal regime of the sale of real estate property built in the State and situated in a national forest. Sub-paragraph 2 of paragraph I completes Article L. 3211-21 of that code to define the procedures of exchange of state's woods and forests and real estate assets built in the States situated in these forests.

Paragraph I of Article 51 which provides an amendment to the rules on conditions in which real estate properties of the States can be disposed of or exchanged, applies to the State's resources. Therefore, this article can be included in the law on finances.
*(2012-662 DC, 29 December 2012, recitals 113 and 115, p. 724)*

Paragraph I of Article 104 of the law on finances for 2013 introduces a new paragraph I *a* in Article L. 515-19 of the Environmental Code, which establishes the conditions in which, in areas for which a Technological Risk Prevention Plans is approved, the owners of the installations causing the risk and the local authorities or their groups participate to the financing of the work prescribed to the home owners natural persons. Paragraph II modifies Article 200 *c* A of the General Tax Code to neutralise the effect of this contributions on expenditures which could benefit from the tax credit provided for by this article as well as the recovery of the reimbursements.

Firstly, paragraph I of Article 104 which defines the conditions of contribution of private persons and local authorities or their groups to the financing of works on housings, does not belong to the area of the laws on finances as it results from the organic law of 1st August 2001 on laws on finances. This paragraph has been adopted according to an unconstitutional procedure.

Secondly, paragraph II of Article 104 modifies Article 200 *c* A of the General Tax Code to infer the consequences of the new provisions provided for by paragraph I. Accordingly, the provisions of paragraph II of Article 104, which cannot be separated from paragraph I, are inappropriate in the law on finances.

Article 104 in its entirety must be ruled unconstitutional.
*(2012-662 DC, 29 December 2012, recitals 124 to 128, p. 724)*

Article 44 of the law on finances for 2013, which modifies the missions given to the Agency for the management and the recovery of seized assets and Article 95 creates a new Article L. 4424-33-1 in the General Code of Local Authorities on the transfer of competences of production and proliferation of forestry plants to the local authorities of Corsica are inappropriate to the area of the laws on finances as it results from the organic law of 1st August 2001 on the laws on finances.
*(2012-662 DC, 29 December 2012, recitals 140 and 142, p. 724)*

*Law on the financing of Social Security*

Regime of Organic Law with regard to the laws on finances amended in 2005

The objective of paragraphs I and II of Article 55 of the law on the financing of Social Security for 2013 is to prohibit advertising in favour of drugs which name is the same as a drug refundable by the mandatory health insurance regimes. Its paragraph III introduces an exception to the prohibition of advertising in favour of medical systems covered or financed, even partially, by mandatory health insurance regimes. Its paragraph IV creates a financial punishment applicable in case of violation of the rules on withdrawal of advertising authorisation or prohibition of advertising in favour of medical systems. Its paragraph V specifies the procedures for implementation of paragraphs I and II. Paragraph I of Article 58 establishes new rules restricting information through doorstep seller and prospecting activities for health products in health establishments. Its paragraphs I and II respectively assign to director of public health establishment and to the legal representative of private health establishment the definition of arrangements for information through doorstep sellers or prospecting activities for health products. Its paragraph IV provides for the submission to the Parliament of a report drawing up the new legislation. Its paragraph V deletes the experiment with regard to information through doorstep sellers or through prospecting activities for health products provided for in paragraph I of Article 30 of the Law no. 2011-2012 of 29 December 2011. Article 54 authorises an experiment of full third-party payment system for students of three university cities. The objective of Article 66 is to amend the rules on prescriptions applicable to invoices of medical-social establishments for disabled persons. Article 92 authorises an experiment of the third-party payment system for the payment of the benefits for childcare. These provisions have no effect, or have an effect that is too direct on expenditures of basic mandatory regimes or organisations contributing to their financing and have not been classified in accordance with the other categories mentioned in paragraph

V of Article L.O. 111-3 of the Social Security Code Accordingly, they are not appropriate in a law on the financing of Social Security.
*(2012-659 DC, 13 December 2012, recitals 40, 42, 62, 64, 88 and 89, p. 680)*

The objective of Article 39 of the law on the financing of Social Security for 2013 is to establish the certification of accounts of the Independent-Living Support Fund. Article 61 modifies Article L. 213-3 of the financial and monetary code in order to allow the regional hospitals which list is set by decree to authorise the issue of treasury bills, in the limit of a global issue ceiling set for each of them by the same decree. These provisions concern the cash flow and the accounting of the organisations which manage the expenditures with regard to the national objective of health insurance expenditures. Although the provisions on organisations which manage the expenditures with regard to the national objective of health insurance expenditures may be contained in the law on the financing of Social Security, however, the provisions on cash flow and accounting of these organisations are not appropriate in a law on the financing of Social Security. Accordingly, Articles 39 and 61 are not appropriate in a law on the financing of Social Security.
*(2012-659 DC, 13 December 2012, recitals 71, 73, 84 and 85, p. 680)*

Paragraph IV of Article 24 of the law on the financing of Social Security for 2013 provides for the submission of a report to Parliament on conditions of implementation of a para fiscal system consistent with all alcoholic beverages. Article 74 provides for the submission to Parliament of a report setting out the results of an audit on the reporting of the personal medical file and its management by the Shared Healthcare Information Systems Agency. The objective of these provisions is not to improve information and control of Parliament on the implementation of the laws on the financing of Social Security. Accordingly, they are not appropriate in a law on the financing of Social Security.
*(2012-659 DC, 13 December 2012, recitals 86 and 87, p. 680)*

Article 57 of the law on the financing of Social Security for 2013 modifies Article L. 5112-12-1 of the Public Health Code to extend the possibility to adopt a temporary recommendation of use for a pharmaceutical speciality to cases where a therapeutic alternative to an indication referred to exists. It provides that such an extension may be granted with the objective either or resolving a proven risk for public health or to avoid costs with a significant impact on the finances of sickness insurance bodies.

It results from the parliamentary works that in adopting the contested provisions, the legislator intended to prevent some anti-competitive practices, from the applicant's point of view or the holder of an authorisation to market, to limit the therapeutic indications defined by this authorisation or to refuse their extension. The effect of these practices, is in particular, to worsen health insurance expenditures. Therefore, the legislator pursued the objective to control these expenditures.

Considering the consequence expected from these contested provisions on health insurance expenditures, these provisions are appropriate in the law on the financing of Social Security.
*(2012-659 DC, 13 December 2012, recitals 53 and 54, p. 680)*

The allergens prepared specifically for one person (APSI) defined in Article L. 4211-6 of the Public Health Code are drugs authorised by the National Security Agency for drugs and health products after opinion of the National Academy of Medicine. These allergens are not, like the other drugs, assessed by the transparency committee of the Health High Authority before their registration for reimbursement. The object of the contested provisions of Article 56 of the law on the financing of Social Security for 2013 is to establish the procedure and the terms of their price setting. These provisions refer the task of setting, in particular, the rules according to which certain of these allergens may not be covered by the health insurance to a decree of the Conseil d'État. Therefore these provisions have a direct effect on the expenditures of these mandatory basic Social Security regimes or organisations contributing to their financing. Accordingly, they are not inappropriate to the area of laws on the financing of Social Security.
*(2012-659 DC, 13 December 2012, recital 48, p. 680)*

## Taxable income, rate and methods of recovery of taxes of any nature, non-obligatory resources and special taxes (see Title 3 Legislative and regulatory provisions - Division of powers according to area of law - Tax base, rate… of taxes of any nature)

Pursuant to Article 34 of the Constitution "the law lays down the rules concerning… the taxable income, the rate and the methods of recovery of taxes of any nature". It follows that when making provision for a tax, Parliament must determine the procedures for its recovery, including rules on controls, recovery, disputes, guarantees and penalties applicable to that taxation.

Article L. 520-11 of the Town Planning Code authorises the Conseil d'État to adopt a decree stipulating the surcharges applicable to the fee due for the creation of premises for use as offices in the Île-de-France region. On the one hand, as regards increase due in the event of delay of payment, the disputed provisions determine the method used to calculate this increase and set its ceiling at 1% per month. On the other hand, the provisions stipulate that the decree of the Conseil d'État to which they refer shall set a surcharge to the fee subject to a limit where "the breach" of legislative or regulatory provisions consists in the failure to pay all or part of the said fee. Parliament thus defined in a sufficiently clear and precise manner the sanctions which it desired to establish in order to ensure recovery of the fee concerned. It follows that the challenge alleging that Parliament acted in breach of Article 34 of the Constitution must be rejected.
*(2012-225 QPC, 30 March 2012, recital 3 and 4, p. 172)*

Article 31 of the second supplementary law on finances for 2012 increases the rate of employers' contribution as well as wage contribution on allocations of options of subscription or purchase of shares and on allocations of bonus shares, for the authorized options and allocations made from July 11, 2012. These contributions are intended to finance the expenditure of the mandatory regimes of Social Security and of bodies contributing to the financing of these regimes and do not constitute contributions establishing rights to services and benefits offered by these regimes. Consequently, the provisions of Article 31 relate to the tax rate which does not affect the balance in the budget of the State. They thus have their place in the supplementary law on finances.
*(2012-654 DC, August 9, 2012, recitals 5 and 11, p. 461)*

Article 33 of the second supplementary law on finances for 2012 increases the rate of the contribution mentioned in Article L. 137-15 of the Social Security code for remunerations or profits paid from August 1, 2012 and also modifies the distribution of the proceeds of this contribution. This contribution is intended to finance the expenditure of the mandatory regimes of Social Security and of the bodies contributing to the financing of these regimes and does not constitute a contribution establishing rights to services and benefits offered by these regimes. Consequently, the provisions of Article 33 relate to the tax rate which does not affect the balance in the budget of the State. They thus have their place in the supplementary law on finances.
*(2012-654 DC, August 9, 2012, recitals 6 and 11, p. 461)*

Article 45 of the second supplementary law on finances for 2012 changes the rate of mandatory contribution paid to the National centre for the local public service by municipalities, departments, regions, their public establishments and departmental homes for the disabled for the financial year 2013. Consequently, the provisions of Article 45 relate to the tax rate which does not affect the balance in the budget of the State. They thus have their place in the supplementary law on finances.
*(2012-654 DC, August 9, 2012, recitals 8 and 11, p. 461)*

Article 29 of the second supplementary law on finances for 2012 subjects to the social levy on income from wealth, the social charge on income from wealth, the additional levy to this social charge and the levy for repayment of the social debt the revenue from real estate located in France or from the rights relating to such properties earned after January 1, 2012 by individuals domiciled out of France. It subjects to the social levy on investment income, the social charge on investment income, the additional levy to this social charge and the levy

for repayment of the health service debt any capital gains on the sale of assets or rights over real estate or by real estate companies earned by natural persons domiciled outwith France after the publication of the Law. The social levies on incomes from wealth and investment incomes, the social charges on income from wealth and investment incomes and the levy for the repayment of the social debt are intended to finance the expenditure of the compulsory plans of Social Security and the bodies contributing to the financing of these plans or the paying off of their debt and do not constitute contributions establishing rights to services and benefits offered by these regimes. The additional levy to the social charges on income from wealth and investment, intended to finance the national fund of active solidarity, further does not constitute a contribution establishing rights to services paid by this fund. Consequently, the provisions of Article 29 relate to the taxable income of taxes of any nature. They thus have their place in the supplementary law on finances.
*(2012-654 DC, August 9, 2012, recitals 55 and 57, p. 461)*

# INTERNATIONAL LAW AND EUROPEAN UNION LAW

## GENERAL PRINCIPLES OF INTERNATIONAL LAW

### International public law

***Pacta sunt servanda***

Those provisions of the Treaty which restate commitments previously made by France are not subject to constitutional conformity review.

Referred by the President of the Republic based on Article 54 of the Constitution of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed on March 2, 2012 in Brussels, the Council recalls that France is already bound to observe the requirements resulting from Article 126 of the Treaty on the Operation of the European Union, relating to the fight against excessive deficits of States as well as protocol no. 12, appended to the treaties on the European Union, on the procedure relating to excessive deficits. These requirements include a reference value set at 3% for the ratio between planned or effective public deficit and the gross domestic product at market price.
*(2012-653 DC, August 9, 2012, recitals 11 and 15, p. 453)*

The provisions of paragraph 1 of Article 3 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union signed on March 2, 2012 in Brussels restates the provisions provided for by the European regulations of July 7, 1997 modified by the regulations of June 27, 2005 and of November 16, 2011. These provisions lower, moreover, from - 1% to – 0.5% of the gross domestic product the medium term goal of structural balance. Thus, these provisions reassert by strengthening the provisions implementing the commitment of the Member States of the European Union to coordinate their economic policies pursuant to Articles 120 to 126 of the Treaty on the Operation of the European Union.

Since France will have ratified the Treaty and it will have come into effect, the rules appearing in paragraph 1 of Article 3 will apply to it. France will be, pursuant to the "Pacta sunt servanda" rule, bound by these stipulations which it should apply in good faith. The budget situation of public administrations should be in balance or surplus under the conditions provided for in the Treaty.
*(2012-653 DC, August 9, 2012, recitals 16 and 18, p. 453)*

## RATIFICATION OR APPROVAL OF INTERNATIONAL TREATIES AND AGREEMENTS

### Characteristics of *ex ante* constitutional review

**Bases of review**

*Direct review (Article 54 C)*

Referred by the President of the Republic based on Article 54 of the Constitution, the Council has examined the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union signed on March 2, 2012 in Brussels and estimated that it did not comprise a clause contrary to the Constitution.
*(2012-653 DC, August 9, 2012, recital 1, p. 453)*

**Standards of reference of the review**

*Standards of reference taken into account*

Principle

Referred by the President of the Republic based on Article 54 of the Constitution, of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union signed on March 2, 2012 in Brussels, the Constitutional Council recalls the standards of reference of the review that it is free to exert when it is referred on this base: the preamble of the Constitution of 1958, Article 3 of the Declaration of human rights and that of the citizen, the first subparagraph of Article 3 of the Constitution of 1958, the fourteenth and fifteenth subparagraphs of the preamble to the Constitution of 1946, Article 53 of the Constitution and Article 88-1 of the Constitution.

When the commitments signed in order to create or develop the European Union or which are closely related to this goal contain a clause which is unconstitutional, call into question the rights and freedoms guaranteed by the Constitution or run contrary to the essential conditions for the exercise of national sovereignty, authorisation to ratify them may only be granted after the Constitution has been amended.

It is taking into consideration this principle that it is up to the Constitutional Council to examine the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union which, "taking for base" the treaties on which the European Union is based, is not among these treaties. However those provisions of the Treaty which restate commitments previously made by France are not subject to constitutional conformity review.

Being moreover a treaty which introduces rules of budgetary discipline and balance of public finances, the Council bases in particular the constitutional review of the conformity of the Treaty on the first subparagraph of Article 20 of the Constitution, the first subparagraph of its Article 39, Article 14 of the Declaration of 1789, the principle of fairness of the laws on finances, Articles 47 and 47-1 of the Constitution as well as subparagraphs 18,19, 21 and 22 of Article 34 of the Constitution.
*(2012-653 DC, August 9, 2012, recitals 4 to 8, 12 and 13, p. 453)*

## Examination of conformity to Constitution

**Need for a revision of the Constitution**

*Contrariety to the Constitution or to rights and freedoms guaranteed constitutionally*

Prerogatives of the Government and the Parliament in the development and adoption of laws on finances

The provisions of paragraph 1 of Article 3 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union signed on March 2, 2012 in Brussels restates the provisions provided for by the European regulations of July 7, 1997 modified by the regulations of June 27, 2005 and of November 16, 2011. These provisions lower, moreover, from - 1% to – 0.5% of the gross domestic product the medium term goal of structural balance. Thus, these provisions reassert by strengthening the provisions implementing the commitment of the Member States of the European Union to coordinate their economic policies pursuant to Articles 120 to 126 of the Treaty on the Operation of the European Union.

The provisions of paragraph 2 of Article 3 stipulate an alternative whereby the contracting States undertake to ensure that the rules laid down in paragraph 1 of Article 3 take effect under national law either "through provisions of binding force and permanent character, preferably constitutional" or through provisions "otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes".

In the first part of this alternative, rules relating to the balance of public finances must take effect by means of "provisions of binding force and permanent character". This option im-

poses directly introducing these rules in the internal legal order so that they are essential consequently on the laws on finances and the laws on the financing of Social Security.

The Constitution lays down the prerogatives of the Government and the Parliament in the development and the adoption of the laws on finances and the laws on the financing of Social Security. The principle of the yearly voting of the laws on finances follows from Articles 34 and 47 of the Constitution and applies within the framework of the calendar year. Directly introduce provisions of binding force and permanent character imposing respect of the rules relating to the balance of public finances requires the modification of these constitutional provisions. Consequently, if France chooses to ensure the taking of effect of rules stated in paragraph 1 of Article 3 by means of provisions of binding force and permanent character, the authorization to ratify the Treaty should be granted only after the Constitution has been amended.
*(2012-653 DC, August 9, 2012, recitals 19 to 21, p. 453)*

**Absence of need for amending the Constitution**

*Balance of public finances*

France already has to respect the requirements resulting from Article 126 of the Treaty on the Operation of the European Union, relating to the fight against excessive deficits of the States, as well as protocol no. 12, annexed to the treaties on the European Union, on the procedure relating to excessive deficits. These requirements include a reference value set at 3% for the ratio between planned or effective public deficit and the gross domestic product at market price.

The provisions of paragraph 1 of Article 3 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union signed on March 2, 2012 in Brussels restates the provisions provided for by the European regulations of July 7, 1997 modified by the regulations of June 27, 2005 and of November 16, 2011. These provisions lower, moreover, from - 1% to – 0.5% of the gross domestic product the medium term goal of structural balance. Thus, these provisions reassert by strengthening the provisions implementing the commitment of the Member States of the European Union to coordinate their economic policies pursuant to Articles 120 to 126 of the Treaty on the Operation of the European Union. They do not carry out transfers of competence as regards economic or budgetary policy and do not authorise such transfers. No more than the former commitments of budgetary discipline, that of complying with these new rules does not undermine the essential conditions of exercise of national sovereignty.
*(2012-653 DC, August 9, 2012, recitals 15 and 16, p. 453)*

The provisions of paragraph 1 of Article 3 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union signed on March 2, 2012 in Brussels restates the provisions provided for by the European regulations of July 7, 1997 modified by the regulations of June 27, 2005 and of November 16, 2011. These provisions lower, moreover, from - 1% to – 0.5% of the gross domestic product the medium term goal of structural balance. Thus, these provisions reassert by strengthening the provisions implementing the commitment of the Member States of the European Union to coordinate their economic policies pursuant to Articles 120 to 126 of the Treaty on the Operation of the European Union.

Since France will have ratified the Treaty and it will have come into effect, the rules appearing in paragraph 1 of Article 3 will apply to it. France will be, pursuant to the "Pacta sunt servanda" rule, bound by these stipulations which it should apply in good faith. The budget situation of public administrations should be in balance or surplus under the conditions provided for in the Treaty. Pursuant to Article 55 of the Constitution, its authority will be higher than that of the laws. It is up to the various bodies of the State to monitor within the framework of their respective competences the application of this treaty. The legislator must in particular respect the provisions during the adoption of the laws on finances and the laws on the financing of Social Security. Paragraph 2 of Article 3 imposes, moreover, that provisions are adopted in the national law so that the rules stated in paragraph 1 of this article take effect.

The provisions of paragraph 2 of Article 3 stipulate an alternative whereby the contracting States undertake to ensure that the rules laid down in paragraph 1 of Article 3 take effect

under national law either "through provisions of binding force and permanent character, preferably constitutional" or through provisions "otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes".

In the second part of the alternative, the above mentioned stipulations give the States freedom to determine the provisions whose full respected and strict adherence guarantee "in any other manner" that the rules relating to the balance of public finances take effect in the national law. In this case, the compliance of the rules appearing in paragraph 1 of Article 3 is not guaranteed by "binding" provisions. On the one hand, it is up to the States to determine, so that their commitment is complied with, the provisions having the effect imposed by paragraph 2. On the other hand, the Treaty provides that the compliance of rules appearing in paragraph 1 of Article 3 is thus not guaranteed in the national law by means of a standard of an authority higher than that of the laws.

This second part of the alternative implies that the provisions adopted to ensure the taking of effect of the stipulations of paragraph 1 of Article 3 apply "throughout the budgetary processes". They must thus be of permanent nature. They must moreover relate to the whole of "public administrations".

The twenty-second subparagraph of Article 34 of the Constitution allows that measures of basic nature are taken to set the framework of the programming laws relating to the multiannual orientations of public finances. On this base and on that of the eighteenth and nineteenth sub paragraphs of Article 34 of the Constitution with regard to laws on finances and laws on the financing of Social Security, the institutional act may adopt provisions applicable to these relative laws in order to ensure that the rules laid down in paragraph 1 of Article 3 of the Treaty take effect subject to the conditions provided for under this second alternative, in particular with the medium-term objective as well as the adjustment path for the fiscal situation of general government, the corrective mechanism for the latter and the independent institutions throughout the budgetary process.

The "corrective mechanism" envisaged by e) of paragraph 1 of Article 3 of the Treaty, that the States undertake to set up, must be "started automatically if significant variations are noted in relation to the medium term objective or to the trajectory of adjustment suitable to allow its realization" and must comprise "the obligation for the contracting party concerned to implement measures aiming at correcting these variations over a given period". The stipulations of the Treaty indicate that the implementation of this correction mechanism leads to measures concerning all of the public administrations, especially the State, the local authorities and the Social Security. These stipulations define neither the methods according to which this mechanism must be started nor the measures in the implementation of which it must lead. They consequently allow the States the freedom to define these methods and these measures complying with their constitutional requirements. It follows from the last sentence of paragraph 2 that this corrective mechanism cannot undermine the prerogatives of the national parliaments. It is not contrary either to free administration of territorial collectivities or to the above mentioned constitutional requirements.

The independent institutions provided for in the Treaty must check the respect of all rules appearing in paragraph 1 of Article 3. Their opinion will relate to the compliance with the rules of balance in the budget and, if necessary, to the corrective mechanism "started automatically". No constitutional requirement precludes one or more independent institutions from being in charge, on national level, to monitor adherence to the rules set forth in paragraph 1 of Article 3 of the Treaty.

The Constitutional Council must check the conformity to the Constitution of programming laws relating to multiannual orientations of public finances, laws on finances and laws on the financing of Social Security. When seized pursuant to Article 61 of the Constitution, it must, in particular, ensure that these laws have genuinely been enacted for this purpose. It will have to exert this check by taking account of the opinion of independent institutions set up beforehand.

From the foregoing it results that, if in order to comply with the commitment stated in paragraph 1 of Article 3 France chooses to adopt an institutional act having the effect required under paragraph 2, in line with the second alternative stated in the first phrase of paragraph 2 of Article 3, authorisation to ratify the Treaty may only be granted after the Constitution has been amended.

*(2012-653 DC, August 9, 2012, recitals 18 to 28, p. 453)*

*Competence of the Court of justice of the European Union*

Article 8 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union defines the cases and conditions under which, as per a report of the European Commission which concludes that a party did not comply with paragraph 2 of Article 3 of the Treaty, the Court of justice of the European Union can be referred by one or more parties to the Treaty. The last sentence of paragraph 1 of Article 8 lays out that "the judgment of the Court of justice is binding with regard to the parties in the proceedings, which take the necessary measures to comply with the aforementioned judgment within a period to be determined by the Court of justice". In the event of disregard of the prescriptions of the Court, the Court can still be referred by a party to the Treaty in order to impose financial sanctions against this State.

Paragraph 2 of Article 3 of the Treaty not imposing that the Constitution should be amended, the stipulations of Article 8 do not in any way authorise the Court of justice of the European Union to assess, within this framework, the conformity of provisions of the Constitution to the stipulations of this treaty. Consequently, if France decides to ensure the taking of effect of rules stated in paragraph 1 of Article 3 of the Treaty according to the methods laid down in the second part of the alternative of the first sentence of paragraph 2 of Article 3, Article 8 does not undermine the essential conditions of exercise of national sovereignty.
*(2012-653 DC, August 9, 2012, recitals 29 and 30, p. 453)*

## INTERNATIONAL TREATIES AND AGREEMENTS IN FORCE

### Primacy of treaties and agreements (Article 55)

**Binding power of international treaties and agreements in force**

The provisions of paragraph 1 of Article 3 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union signed on March 2, 2012 in Brussels restates the provisions provided for by the European regulations of July 7, 1997 modified by the regulations of June 27, 2005 and of November 16, 2011. These provisions lower, moreover, from - 1% to - 0.5% of the gross domestic product the medium term goal of structural balance. Thus, these provisions reassert by strengthening the provisions implementing the commitment of the Member States of the European Union to coordinate their economic policies pursuant to Articles 120 to 126 of the Treaty on the Operation of the European Union.

From the moment France will have ratified the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union signed on March 2, 2012 in Brussels and it will have come into effect, the rules appearing in paragraph 1 of Article 3 of the Treaty will apply to it. Pursuant to Article 55 of the Constitution, the authority of the Treaty will be higher than that of the laws. It is up to the various bodies of the State to monitor within the framework of their respective competences the application of this treaty. The legislator must in particular respect the stipulations during the adoption of the laws on finances and the laws on the financing of Social Security.
*(2012-653 DC, August 9, 2012, recitals 16 and 18, p. 453)*

### Competence of the Constitutional Council

**Incompetence in theory of the Constitutional Council to check the conventionality of the laws**

An objection alleging lack of compatibility of a legislative measure with international and European commitments of France could not be considered as an objection of unconstitutionality. Consequently, the Constitutional Council, having received an application pursuant to Article 61-1 of the Constitution, does not have to examine the compatibility of the disputed

provisions with the treaties or EU law. The examination of such an objection falls within the competence of the administrative and legal jurisdictions.
*(2011-217 QPC, February 3, 2012, recital 3, p. 104)*

If the provisions of Article 55 of the Constitution confer on the treaties, under the conditions which they define, an authority higher than that of the laws, they do not prescribe or imply that the compliance of this principle must be ensured within the framework of the review of the conformity of the laws to the Constitution. The means alleging lack of compatibility of a legislative measure to international and European commitments of France could not be considered as an objection of unconstitutionality. The examination of such an objection based on the treaties or the European Union law falls within competence of administrative and legal jurisdictions.
*(2012-654 DC, 09 August 2012, recital 58, p. 461)*

## QUESTIONS SPECIFIC TO EC LAW OR EU LAW

### Specificity of the constitutional bases

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

The French Republic participates in the European Union under the conditions set forth in Title XV of the Constitution. Pursuant to Article 88-1 of the Constitution: "The Republic shall participate in the European Union, constituted by States which have freely chosen to exercise some of their powers in common, by virtue of the treaties on the European Union and on the Functioning of the European Union, as derived from the Treaty signed in Lisbon on 13 December 2007". The constituent authority thus endorsed the existence of a legal order of the European Union which is integrated into the national legal order and is distinct from the international legal order.

Whilst confirming the place of the Constitution at the pinnacle of the national legal order, these constitutional provisions enable France to participate in the creation and development of a permanent European organisation vested with legal personality and endowed with decision making powers as a result of the transfer of competence consented to by the Member States.

However, where the commitments signed to this effect or which are closely related to this goal contain a clause which is unconstitutional, call into question the rights and freedoms guaranteed by the Constitution or run contrary to the essential conditions for the exercise of national sovereignty, authorisation to ratify them may only be granted after the Constitution has been amended.
*(2012-653 DC, 9 August 2012, recitals 8 to 10, p. 453)*

### Laws transposing EC or EU directives

#### Concept of law of transposition

Article 57 of the Law on the financing of Social Security for 2013 amended Article L. 5112-12-1 of the Public Health Code in order to expand situations in which a temporary recommended use may be adopted for a proprietary pharmaceutical to cases in which there is a therapeutic alternative to the indication targeted. It provides that such an extension may be granted with the objective either or resolving a proven risk for public health or to avoid costs with a significant impact on the finances of sickness insurance bodies.

These provisions do not intend to provide the transposition of directive 2001/83/CE of Parliament and of the Council of November 06, 2001. Consequently, the objection alleging violation of Article 88-1 of the Constitution must be set aside.
*(2012-659 DC, December 13, 2012, recitals 51 and 56, p. 680)*

# ELECTIONS

## PRINCIPLES OF ELECTORAL LAW

### Rights and freedoms of the voter

#### Exercise of the right of vote

*Capacity to exercise the right to vote*

Prevention of the exercise of the right to vote

Comparing Article 3 of the Constitution and Article 6 of the Declaration of 1789, it results that the quality of citizen gives the right to vote and eligibility under identical conditions to all those who are not excluded from it on account of age, incapacity or nationality, or for a reason tending to preserve the freedom of the voter or the independence of the elected official. These principles of constitutional value are against any division by categories of voters or eligible ones.

While imposing on people travelling in France without fixed abode or residence to justify three years of uninterrupted attachment in the same municipality for their registration on the electoral register, the provisions of the third subparagraph of Article 10 of the law of January 3, 1969 relating to the exercise of ambulatory activities and the arrangements applicable to people travelling in France without fixed abode or residence are contrary to the constitutional principles pointed out above. They must be declared unconstitutional.
*(2012-279 QPC, October 5, 2012, recitals 28 to 30, p. 514)*

#### Freedom of the voter

*Freedom of vote*

Parliament has jurisdiction under Article 34 of the Constitution to set the rules governing elections to local assemblies and to determine the fundamental principles of the free administration of local authorities. It may only deprive a citizen of the right to stand in an election vested in him under Article 6 of the 1789 Declaration if this is necessary in order to ensure the principle of equality in voting and to uphold the freedom of the electorate.
*(2012-230 QPC, 6 April 2012, recital 4, p. 190)*

### Rights and freedoms of the candidate

#### Right of eligibility

Under Article 6 of the 1789 Declaration the law "must be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents". The legislator has the power, under Article 34 of the Constitution, to set the rules concerning the electoral system for local assemblies and to determine the fundamental principles of the freedom of administration of local authorities. It may only deprive a citizen of the right to stand in an election vested in him under Article 6 of the 1789 Declaration if this is necessary in order to ensure the principle of equality in voting and to uphold the freedom of the electorate.
*(2012-230 QPC, 6 April 2012, recital 4, p. 190)*

## Rights and freedoms of parties and political organizations

### Pluralism (see also: Title 4 Rights and freedoms – Freedom of expression and communication)

It results neither from the provisions of Article 4 of the Constitution nor from any constitutional principle that all the political groups represented within a town council should have representatives at the conclusion of the nomination of the senatorial voters. The specific effect of the choice of a method for appointing these delegates, in municipalities of more than 3,500 inhabitants, in accordance with the proportional representation system, is to ensure a greater representation of minority groups from municipal councils. By opting for the application of the highest average rule, the legislator has not in any way infringed the principle of pluralism of thinking and opinion trends. Article L. 289 of the Electoral Code is not contrary to any other right or freedom guaranteed by the Constitution. Consequently, it must be declared in conformity with the Constitution.
*(2011-4538 SEN, January 12, 2012, recital 5, p. 67)*

The fifth subparagraph of paragraph I of Article 3 of Law no. 62-1292 of November 6, 1962 relating to the election of the President of the Republic by universal suffrage provides publicity for the choices of candidate proposal for presidential election by the competent elected citizens. By introducing such publicity, the legislator intended to support the transparency of the procedure of presentation of candidates for presidential election. This publicity could not in itself disregard the principle of pluralism of intellectual and opinion trends.
*(2012-233 QPC, February 21, 2012, recital 8, p. 130)*

## Ballot fairness, honesty and dignity

### Applications of the ballot fairness principle

*Ballot fairness principle applied to the presidential election (examples)*

If some of the candidates were proposed in the election of the President of the Republic under a first name or a last name which is neither that of their civil status nor that of which they are authorised to use by law, this circumstance would not, in the absence of any possible confusion about their identity, be considered as being able to mislead the electorate.
*(2012-152 PDR, April 25, 2012, recital 1, p. 218)*

# PRESIDENTIAL ELECTION

## Candidacies

### Submission of candidacies

*Conditions of submission of candidacies*

The fifth subparagraph of paragraph I of Article 3 of Law no. 62-1292 of November 6, 1962 relating to the election of the President of the Republic by universal suffrage determines some methods depending on which the Constitutional Council establishes, prior to the holding of the presidential election, the list of candidates to this election. The proposal of candidates by the competent elected citizens could not be similar to the casting of a vote. Consequently, the objection alleging that the disputed provisions would disregard, with regard to these elected citizens, the principles of equality and secrecy of vote is inoperative.
*(2012-233 QPC, February 21, 2012, recital 7, p. 130)*

The fifth subparagraph of paragraph I of Article 3 of Law no. 62-1292 of November 6, 1962 relating to the election of the President of the Republic by universal suffrage provides publicity for the choices of candidate proposal for presidential election by the competent elected citizens. The publication of the proposals of candidates to presidential election is limited to five hundred necessary presentations to be candidate and includes neither the superabundant proposals nor the proposals granted to people not having obtained the necessary number of proposals to be candidate. These provisions disregard neither the principle of pluralism of currents of ideas and opinions nor the principle of equality before the law and are not contrary to any other right or freedom which the Constitution guarantees.
*(2012-233 QPC, February 21, 2012, recitals 7 to 10, p. 130)*

**Claim filed against the list of candidates before the Constitutional Council**

*Apprisal of the Constitutional Council*

Claims tending to dispute the list of candidates in the election of the President of the Republic formulated during electoral operations with disregard of Article 8 of the decree of March 8, 2001 taken for the application of the law of November 6, 1962 relating to the election of the President of the Republic in universal franchise are rejected as inadmissible.
*(2012-152 PDR, April 25, 2012, signature, p. 218)*

## Financing

**Contents of the campaign account**

*Expenditure*

General principles

1° of Article 112 of Law no. 2011-1977 of December 28, 2011 of finances for 2012 supplemented the last subparagraph of Article L. 52-11 of the Electoral Code by two sentences according to which limits of electoral expenditure were not updated "as from 2012 and until the year in which the public deficit of public administrations is null. This deficit is noted under the conditions envisaged in the second subparagraph of Article 3 of regulation (CE) no. 479/2009 of the Council, of May 25, 2009, relating to the application of the protocol on the procedure concerning excessive deficits annexed to the Treaty establishing the European Community". 3° of the unique article of the organic law concerning the refunding of expenditure of the presidential election campaign modifies Article 4 of Law no. 62-1292 of November 6, 1962 relating to the election of the president of the Republic by universal suffrage to render this modification of Article L. 52-11 of the Electoral Code applicable to the election of the President of the Republic. It is not unconstitutional.
*(2012-648 DC, 23 February 2012, recital 4, p. 134)*

2° of the unique article of the organic law concerning the refunding of expenditure of the presidential election campaign modifies the drafting of the second sentence of the second last subparagraph of paragraph V of Article 3 of Law no. 62-1292 of November 6, 1962 relating to the election of the president of the Republic by universal suffrage. It sets the term of the time during which the candidates to the presidential election must file their campaign account with the National Commission of campaign accounts and the political financings on the eleventh Friday following the first ballot at 6 p.m. It is not unconstitutional.
*(2012-648 DC, February 23, 2012, recital 3, p. 134)*

**Refund by the State**

2° of Article 112 of Law no. 2011-1977 of December 28, 2011 of finances for 2012 modified the Article L. 52-11-1 of the Electoral Code to reduce by 5% the amount of the lump sum

refund of the State to candidates to the election of deputies, French representatives to the European Parliament, regional advisers as well as general or municipal advisers of cantons or municipalities of 9000 inhabitants or more. 1° of the unique article of the organic law concerning the refund of expenditure of the presidential election campaign modifies the first sentence of the third subparagraph of paragraph V of Article 3 of Law no. 62-1292 of November 6, 1962 relating to the election of the president of the Republic by universal suffrage to also reduce by 5% the amount of the campaign expenditure refunded on a lump sum basis to the candidates to the presidential election. It is not unconstitutional.
*(2012-648 DC, 23 February 2012, recital 2, p. 134)*

## Electoral operations

### Polling station

*Presidency of the polling station*

In the municipality of Artigue (Haute-Garonne), in which 33 votes were cast, the delegate of the Constitutional Council noticed that only the president of the polling station was present most of the day, that he signed in the place of some voters and only had the keys of the ballot box, in disregard of the provisions of Articles R. 42, L. 62-1 and L. 63 of the Electoral Code. Consequently, it is necessary to cancel all votes issued in the municipality.
*(2012-154 PDR, 10 May 2012, recital 4, p. 246)*

### Delegates of the Constitutional Council

*Obstacle to the functions*

The president of the polling station of the municipality of Pont-sur-Seine (Aube) does not agree that the deputy magistrate of the Constitutional Council responsible for following local electoral operations, accomplished the mission entrusted to him. This magistrate could access the polling station and the official report of voting operations only at the end of the day, accompanied by the police. Thus, the Constitutional Council could not check that, in this municipality, the poll proceeded in accordance with the regulations of the Electoral Code. Consequently, it is necessary to cancel all votes issued in the municipality.
*(2012-152 PDR, April 25, 2012, recital 2, p. 218)*

### Course of the poll

*Providing ballot papers to the voters*

In a polling station of the municipality of Limoges (Haute-Vienne), the ballot papers in the name of one of the candidates were only provided, in a visible manner, late to the voters. This prolonged absence having undermined the free casting of vote, it is necessary to cancel all votes issued in this polling station.
*(2012-152 PDR, April 25, 2012, recital 6, p. 218)*

*Polling booths*

Cancellation of all votes issued in the municipality of Bourg d'Oueil (Haute-Garonne) where no polling booth was provided for voters, in violation of Article L. 62 of the Electoral Code.
*(2012-152 PDR, April 25, 2012, recital 3, p. 218)*

*Voting machine*

A voter asserts that the use of a voting machine, in the polling station no. 85 of the municipality of Mans (Sarthe), where 754 votes were cast, did not guarantee the secrecy of the vote.

However, he does not offer any element tending to establish the disregard in this specific case, of technical specifications which are imposed on the voting machines, certification which is applicable to them and checks to which they are subject. Consequently, the objection alleging the attack on the secrecy of the vote must be set aside.
*(2012-154 PDR, May 10 2012, recital 1, p. 246)*

*Various irregularities*

Several voters mention disclosure of estimates or partial results of the poll before its closing. They believe this disclosure was of such nature as to falsify the fairness of the poll. Such disclosure, however regrettable it may be, could not be regarded, in this case, as having exerted a determining influence on the result of the poll. Consequently, the objection alleging the attack on the fairness of the poll must be set aside.
*(2012-154 PDR, 10 May 2012, recital 2, p. 246)*

**Counting**

*Counting procedure*

Cancellation of all votes issued in a polling station of the municipality of Anglet (Pyrenees-Atlantic) where counting of votes was done behind closed doors, in disregard of Article L. 65 of the Electoral Code.
*(2012-152 PDR, April 25, 2012, recital 5, p. 218)*

In polling stations no. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of Papeete (French Polynesia), in which, respectively, 755, 708, 587, 867, 631, 768, 771, 576, 496, 736 and 724 votes were cast, the delegate of the Constitutional Council has noted that vote counting was not done in the forms envisaged by Article L. 65 of the Electoral Code. This irregularity was likely to involve errors and could lead to frauds. In the face of this disregard of provisions intended to ensure the fairness of the poll, it is necessary to cancel all votes issued in this polling station.
*(2012-154 PDR, 10 May 2012, recital 6, p. 246)*

*Conflict between signatures and ballot papers*

In the municipality of Jozerand (Puy-de-Dôme), which comprises 346 registered voters, significant and unexplained conflicts were noted between the number of ballot papers found in the ballot box, the number of votes cast and the number of voters. The Constitutional Council not being able to exert its control on the regularity of votes, it is necessary to cancel all votes issued in the municipality.
*(2012-154 PDR, 10 May 2012, recital 3, p. 246)*

*Other conflicts*

In the polling station of the municipality of Bouéni (Mayotte) which comprises 230 registered voters, only 50 voters were recorded while 115 electoral cards were distributed to the polling station on the day of the poll. If the number of voters is 50, only 30 votes were cast. The 20 ballot papers declared blank or null were not communicated to the census commission and could not be checked. With regard to the inconsistency between these figures and impossibility of checking the ballot papers declared blank or null, it is necessary to cancel all votes issued in this polling station.
*(2012-152 PDR, April 25, 2012, recital 7, p. 218)*

**Irregularities relating to the official reports and the accompanying documents**

Cancellation of all votes issued in the municipality of Lissac (Haute-Loire) whose attendance list of voters was not transmitted to the prefecture after the counting of the votes, in disregard of Article L. 68 of the Electoral Code.
*(2012-152 PDR, April 25, 2012, recital 4, p. 218)*

The attendance list of voters of the municipality of Saint-Rémy-sur-Creuse (Vienna), in which 282 votes were cast, as well as those of the municipalities of Villar-d'Arêne and Barret-sur-Méouge (Hautes-Alpes), in which respectively 203 and 139 votes were cast, were not transmitted to the prefecture after the counting of the votes in disregard of Article L. 68 of the Electoral Code. This failure makes it impossible to check the regularity and the fairness of the poll. Consequently, it is necessary to cancel all votes issued in these municipalities.
*(2012-154 PDR, May 10, 2012, recital 5, p. 246)*

## Litigation

### Complaint procedure

*Capacity to act*

Complaints relating to the regularity of electoral operations directly reached the Constitutional Council in disregard of the first subparagraph of Article 30 of the decree of March 8, 2001 taken for the application of the law of November 6, 1962 relating to the election of the President of the Republic in universal suffrage are rejected as inadmissible. A voter can dispute the operations only while mentioning his claim in the official report of voting operations.
*(2012-152 PDR, 25 April 2012, sol. imp,. p. 218)*

# LEGISLATIVE ELECTIONS

## Operations prior to voting

### Electoral rolls

*Drawing up of electoral rolls*

Registrations

The Constitutional Council, judge of the election, is not required to come to a conclusion about the regularity of the registrations on the electoral register, except if there was a ploy likely to undermine the fairness of the poll. If Mr. PEMEZEC has referred, on January 28 and March 15, 2011, the prefect of the Hauts-de-Seine by a request for revision of the electoral rolls of the municipality of Clamart, with the pled reason for the irregular presence of at least 785 voters, and if the commission responsible for this revision has struck off 134 voters, these circumstances are not likely to establish an irregularity of registrations on the electoral rolls of this municipality resulting from a fraudulent scheme.
*(2012-4617 AN, December 14, 2012, recital 4, p. 698)*

*Contesting the revision of the electoral register*

Competence of the magistrates' court

The Constitutional Council, in the absence of ploys, isn't required to come to a conclusion about the regularity of an electoral register.
*(2012-4581 AN, July 13, 2012, recital 2, p. 368)*

### Others

The request must be deemed as tending to the cancellation of the order of the prefect of the Val-de-Marne dated May 18, 2012 as this order has adopted the candidacy of Mr. Henri

PLAGNOL, titular candidate, and of Mr. Jacques LEROY, replacing candidate, in the first ballot of elections of June 10 and 17, 2012 for the election of a deputy in the 1st constituency of the Val-de-Marne.

According to the checking mission pertaining to the regularity of elections of deputies and senators which is conferred to it by Article 59 of the Constitution, the Constitutional Council may exceptionally make a decision on requests challenging the elections to come, whenever the inadmissibility which would be opposed to these requests would be likely to seriously compromise the effectiveness of its control of election of deputies and of senators, would vitiate the general course of electoral operations or would undermine the normal functioning of public authorities. Such is not the case in this specific case. Consequently, the request must be rejected.
*(2012-25 ELEC, 07 June 2012, recitals 1 and 2, p. 277)*

## Candidacies

### Conditions of eligibility

*Strict character of ineligibility*

Mr. PEMEZEC asserts that Mrs. GOURIET, replacing Mr. GERMAIN, was in one of the cases envisaged by Article L.O. 145 of the Electoral Code and, consequently, would be ineligible. However, the provisions of this article relate to the regime of parliamentary incompatibilities. Consequently, Mr. PEMEZEC cannot usefully call upon these provisions in support of his objection alleging ineligibility of the candidate or of his replacement.
*(2012-4617 AN, December 14, 2012, recital 2, p. 698)*

*Replacements*

Mr. SIFFREDI appeared on a list of candidates in the senatorial elections which took place in the department of Hauts-de-Seine on September 25, 2011, immediately after the last candidate proclaimed elected. Pursuant to the provisions of Article L.O. 320 of the Electoral Code, Mr. SIFFREDI thus had the capacity as replacement of a senator as per Article L.O. 134 of the same code under the terms of which: "A deputy, a senator or a replacement of a member of a parliamentary assembly may not act as a replacement for a candidate to the National Assembly"; He could not, consequently, be a replacement for a candidate in the 13th constituency of the Hauts-de-Seine during the legislative elections of June 10 and 17, 2012.

The capacity as a replacement of a member of parliament does not confer to this replacement a position from which he could resign. No text allows him/her to waive, in advance, his/her right to exercise his/her mandate should the seat become vacant. Consequently, if Mr. SIFFREDI has sent to the president of the Senate, to the president of the Constitutional Council and to the prefect of the Hauts-de-Seine, a letter on May 7, 2012, wherein he informed these authorities of his decision "to resign" from his post as replacement, this circumstance is without incidence on the application of Article L.O. 134 of the Electoral Code.

According to Article L.O. 189 of the Electoral Code, the Constitutional Council "makes a decision on the regularity of the election of the holder as well as the replacement". Because of the ineligibility of Mr. SIFFREDI, it is necessary to cancel the election of the elected deputy whom he is replacing.
*(2012-4563/4600 AN, 18 October 2012, recitals 7 to 10, p. 543)*

Mr. LEROY appeared on a list of candidates in the senatorial elections which took place in the department of Val-de-Marne on September 25, 2011, immediately after the last candidate proclaimed elected. Pursuant to the provisions of Article L.O. 320 of the Electoral Code, he thus had the capacity as replacement of a senator as per Article L.O. 134 of the same code under the terms of which: "A deputy, a senator or a replacement of a member of a parliamentary assembly may not act as a replacement for a candidate to the National Assembly"; He could not, consequently, replace a candidate in the 1st constituency of the Valley-of-Marne during the legislative elections of June 10 and 17, 2012.

According to Article L.O. 189 of the Electoral Code, the Constitutional Council "makes a decision on the regularity of the election of the holder as well as the replacement". Because of the ineligibility of Mr. LEROY, it is necessary to cancel the election of the elected deputy whom he is replacing.
*(2012-4565/4567/4568/4574/4575/4576/4577 AN, October 18, 2012, recitals 7 and 8, p. 546)*

The ineligibility instituted by Article L.O. 134 of the Electoral Code aims to ensure the permanent availability of the person called to replace the member of Parliament whose seat becomes vacant. If this ineligibility prevents a candidate in the National Assembly from choosing as replacement the person who, in the event of vacancy of the seat of a senator, immediately would have to replace him, it could not be extended to other people only entitled to be a replacement.
*(2012-4578 AN, December 07, 2012, recital 20, p. 645)*

The applicant asserts that Mr. MAGGI, replacement for Mr. FERRAND, elected deputy, has the capacity as replacement of a senator and was, consequently, ineligible pursuant to the provisions of Article L.O. 134 of the Electoral Code. Mr. MAGGI appeared in the ninth position on a list of candidates in the senatorial elections which took place on September 21, 2008 in the department of Bouches-du-Rhône. Mr. MAGGI would have to replace the senators of his list only after three other replacements who preceded him on the list. On the day of the election, he did not have the capacity of "replacement" of a senator as per Article L.O. 134 of the Electoral Code. Consequently, he could be introduced as replacement of Mr. FERRAND, candidate in the 8th constituency of the Bouches-du-Rhône during the legislative elections of June 10 and 17, 2012.
*(2012-4578 AN, December 07, 2012, recitals 19 and 21, p. 645)*

**Declaration of candidacy**

From the receipts drawn up by the prefecture of the Hauts-de-Seine one can conclude that, on the one hand, Mrs. GOURIET, who had submitted her candidacy in the 12th constituency of the Hauts-de-Seine, had withdrawn her candidacy before the lodging of the candidacy of Mr. GERMAIN in the same constituency, which she had then agreed to be its replacement and that, on the other hand, Mr. GERMAIN had lodged his candidacy for the second turn before the deadline fixed by Article L. 162 of the Electoral Code. The objection relating to the irregularity of the candidacy of Mr. GERMAIN thus lacks in fact.
*(2012-4617 AN, December 14, 2012, recital 1, p. 698)*

## Election campaign - Means of propaganda

**Posters**

*Location of the posters*

Mr. ÉPINEAU asserts that posters of Mr. GORGES were posted at the Baulieu community centre. This posting disregards the provisions of the third subparagraph of Article L. 51 of the Electoral Code. The applicant does not however offer any piece of evidence in support of his allegation.
*(2012-4601 AN, November 29, 2012, recital 13, p. 627)*

If Mr. DJELLIL asserts that Mr. MENNUCCI put posters outside the official locations, in disregard of Article L. 51 of the Electoral Code, it does not result from the statement, and in particular from the documents produced by the applicant, that this posting, which was also practiced by other candidates, was of a massive nature. If a poster of Mr. MENNUCCI was affixed on the windows of a commercial establishment in Marseilles, this posting which lasted only a few days, in the middle of the month of May 2012, results from the initiative of an employee of this establishment.
*(2012-4628 AN, December 14, 2012, recital 2, p. 701)*

Mrs. VASSEUR denounces the affixing of posters in favour of Mr. KRABAL outside the lawful locations. However, it results from the statement that the number of irregularly affixed posters

is limited and that, in addition, irregularities of posting were also made by competitors of the elected candidate. These irregularities, however regrettable they may be, cannot be looked at like having affected the results of the poll.
*(2012-4637 AN, December 14, 2012, recital 4, p. 704)*

*Date and place of affixing of the posters*

Mr. ÉPINEAU objects to Mr. GORGES having continued affixing electoral posters on the morning of the poll. It is not established that Mr. GORGES got new posters affixed as from the day before of the poll at midnight.
*(2012-4601 AN, November 29, 2012, recitals 6 and 7, p. 627)*

The applicant asserts that irregular postings would have taken place in the town of Villemomble during the campaign. It does not result from the statement that this posting has been massive, prolonged or repeated.
*(2012-4616 AN, November 29, 2012, recital 4, p. 634)*

The applicant makes the point that Mr. FERRAND would have continued with the affixing of electoral posters the day before the second ballot on the place of the town hall of Salon-de-Provence in disregard of the provisions of Articles L. 51 and L. 90 of the Electoral Code. If posters were affixed on mobile supports, they were set up only in limited number and for a short length of time. Consequently, this irregular posting could not, in the circumstances of this case, affect the results of the poll.
*(2012-4578 AN, December 07, 2012, recitals 7 and 8, p. 645)*

*Covered or slashed posters*

If the applicant denounces defacement of election hoardings, these facts, even if established, are unlikely to have exerted an influence on the outcome of the poll, in view of the difference of votes.
*(2012-4560 AN, July 13 2012, recital 4, p. 358)*

If posters in favour of four candidates in the first ballot were affixed on the locations allotted to other candidates, in disregard of Article L. 51 of the Electoral Code, these facts could not have an influence on the result of the poll, considering the differences of votes, in the first round, separating both candidates leading from other candidates.
*(2012-4566 AN, 13 July 2012, recital 2, p. 360)*

If the applicant asserts that posters of Mrs. Sophie CERQUEIRA, affixed on official hoardings, would have been slashed, it does not offer any element as to extent or the systematic character of these defacements and does not even argue that they would be ascribable to the elected candidate. In addition, the candidate establishes that, in a municipality, its official posters were systematically destroyed. Thus, even if established, the allegations cannot be considered as having an impact on the election results.
*(2012-4605 AN, December 07, 2012, recital 4, p. 659)*

Mrs. LATRÈCHE denounces the defacing, the day before the first ballot, of all her electoral posters in the municipalities of Bobigny and Drancy, in violation of the Article L. 48 of the Electoral Code.

If it results from the statement that during the election campaign, posters of the candidate were defaced, she does not offer any element as for the extent or the systematic character of these defacements and does not demonstrate that she would have been unable to replace the damaged posters. Consequently, considering the differences of votes, this circumstance could not be considered as having impact on the election results.
*(2012-4630 AN, December 07, 2012, recitals 6 and 7, p. 664)*

*Poster contents*

It results from the statement that small posters were affixed in disregard of the provisions of Articles L. 49 and L. 51 of the Electoral Code on two display hoardings of the municipality. Contradictory certificates produced by the parties do not allow establishing the duration during which this posting was visible during the day of June 17, 2012. The posted message related to an old question which was already discussed and did not exceed the limits of the

controversial election. Consequently, the noted irregularity cannot, in the circumstances of this case, be considered as having alone tampered the fairness of the election. The request can only be rejected.
*(2012-4610 AN, October 11, 2012, recital 2, p. 525)*

The applicants assert that the logotype of the socialist party was affixed over the election posters of Mr. BRAILLARD, the day before and the day of the first ballot. This fact, whose massive character was not reported, was not likely to affect the fairness of the poll.
*(2012-4636 AN, November 20, 2012, recital 5, p. 578)*

The applicant criticises the mayor for having both displayed official signs of the election campaign in his municipality, on Friday, June 15 and distributed, in the form of leaflet, a message appealing to vote for Mr. GERMAIN and calling into question the proximity of Mr. PEMEZEC with the National Front. On the one hand, the extent of the distribution of this leaflet is not established and, on the other hand, if the affixing of these posters constitutes a violation of Article L. 51 of the Electoral Code, Mr. PEMEZEC could answer to the contents of these posters. This irregularity, all the more regrettable as it emanates from the mayor, could not, in the circumstances of this case, considering the differences of votes, be likely to affect the fairness of the poll.
*(2012-4617 AN, December 14, 2012, recital 3, p. 698)*

It is established that, in connection with the presidential campaign, posters representing Mr. KRABAL at the sides of Mr. François HOLLANDE and evoking the candidacy of Mr. KRABAL for the legislative elections were affixed in the constituency. If this poster campaign must, to some extent, be considered as participant of the operations of this the electoral campaign of Mr. KRABAL, this circumstance does not constitute a disregard of the provisions of the Electoral Code relating to posting for the campaign of the legislative elections.
*(2012-4637 AN, December 14, 2012, recital 5, p. 704)*

*Various irregularities*

Irregular posting before the first ballot in disregard of the provisions of Article L. 51 of the Electoral Code. In view of significant differences of votes noted in the first ballot, these facts, even if established, are not likely to affect the fairness of the poll.
*(2012-4581 AN, 13 July 2012, recital 3, p. 368)*

Irregularities reported relating to electoral billposting of the elected candidate and the violation of the provisions of Article L. 49 of the Electoral Code relating to the distribution of documents of propaganda of the candidate elected the day before the second round, unlikely to have affected the fairness of the poll.
*(2012-4622 AN, July 20, 2012, recital 3, p. 423)*

**Ballot papers**

*Content and format of the ballot papers*

Under Article R. 66-2 of the Electoral Code: "The following are null and are not taken into account in the result of the counting: ... ballot papers comprising one or more names other than that of the candidates or their possible replacements". The disregard of these provisions justifies the cancellation of the ballot papers when the addition of one or more names to those listed exhaustively by this text was likely to involve confusion in the mind of the voters and thus presents the character of a ploy intended to mislead the electorate. In this specific case, the information "supported by the Mayor of Lyon" appeared on the ballot papers of Mr. BRAILLARD. However regrettable it may be, this addition to the names exhaustively listed by Article R. 66-2 was not likely to affect the fairness of the poll.
*(2012-4636 AN, November 20, 2012, recital 4, p. 578)*

The applicant asserts that the ballot papers of Mr. DORD introduced Mr. Claude GIROUD, his replacement, as exerting the functions of first vice-president of the general council whereas this was no longer the case since March 2011. This erroneous presentation constituted, according to him, a ploy with respect to the voters.

The ballot papers must comprise mentions necessary for the identification of the candidate and his replacement. The mentions must be such that they do not cause confusion. In this

specific case, the ballot papers distributed for the second ballot did not comprise this mention. This same mention did not appear on the documents of electioneering propaganda. The will to mislead some of the electorate is not established.
*(2012-4645 AN, November 20, 2012, recitals 10 and 11, p. 584)*

The applicant asserts that during the first ballot, Mrs. ANDRIEUX took unduly advantage, on her ballot papers and professions of faith, of the nomination of the socialist party, whereas it had been withdrawn.

On the one hand, if it is established that the socialist party had withdrawn its nomination to Mrs. ANDRIEUX ten days before the poll, it does not result from the statement that the maintenance, on the ballot papers and the professions of faith printed for the first round, of the mention of the initials and the logo of this party would have constituted a ploy likely to influence the results of the poll, for the concerned party which did not besides maintain these mentions on the documents printed for the second round. On the other hand, because of the wide-ranging public debate which took place on political supports of this candidate, the absence of a candidate invested by the socialist party in this constituency and differences of votes separating the candidates in the first round, the allegations by Mr. RAVIER cannot be considered as having been likely to affect the fairness of the poll.
*(2012-4598 AN, December 07, 2012, recitals 2 and 3, p. 657)*

**Circulars**

*Sending and distribution of the circulars*

The circumstance that some voters would not have received, before the second ballot, circulars and ballot papers of the three candidates present in the second round could not, in this specific case, have an impact on the results of the poll.
*(2012-4578 AN, December 07, 2012, recitals 1 and 2, p. 645)*

*Contents of the circulars*

The presence of the colours blue, white and red on the circular which the elected candidate addressed to the voters for the second round of the poll did not constitute, in this specific case, a combination of the three colours prohibited by Article R. 27 of the Electoral Code.
*(2012-4616 AN, November 29, 2012, recital 5, p. 634)*

**Phone canvassing**

Mrs. LATRÈCHE alleges that the campaign team of Mr. LAGARDE has broadcast phone messages, on the day of the first ballot, calling voters to vote for her, in violation of Article L. 49 of the Electoral Code. Neither the source nor the contents of the alleged message are established.
*(2012-4630 AN, December 07, 2012, recital 5, p. 664)*

**Files**

*Use of commercial files*

Mr. ÉPINEAU contends that Mr. GORGES would have used the file of a sports club sponsored by the city of Chartres of which Mr. GORGES is the mayor, to relay messages of propaganda. This circumstance however is not established.
*(2012-4601 AN, November 29, 2012, recital 8, p. 627)*

**Internet**

*Websites*

Dissemination on the Internet, on June 15, 2012 in the morning, of negative opinions concerning Mr. GROSPERRIN did not exceed the limits of election controversy. The candidate

in question could answer to it. Consequently, this dissemination was not likely to affect the fairness of the poll.
*(2012-4596 AN, November 29, 2012, recital 3, p. 623)*

Mr. ÉPINEAU alleges that Mr. GORGES has disseminated on his website, on Friday, on June 15, 2012, a communiqué by which it was implied that an activist favourable to Mr. LEBON would have damaged the posters of Mr. GORGES. This communiqué would constitute a last minute ploy likely to affect the fairness of the poll.

The communiqué in question, disseminated on Friday, June 15, 2012, did not attribute directly to Mr. LEBON the damaging of the posters. Mr. LEBON could reply to it, which he moreover did. Thus the dissemination of this statement could not affect the fairness of the poll.
*(2012-4601 AN, November 29, 2012, recitals 4 and 5, p. 627)*

The dissemination, on the website of an association, of the mail addressed to its president by the elected candidate does not constitute a legal entity's donation or benefit to the financing of the campaign of the concerned person.
*(2012-4616 AN, November 29, 2012, recital 6, p. 634)*

The applicant candidate challenges the creation, on the Internet, of a homonymous site which would have obstructed her from creating her own site and which would have disseminated information likely to harm her candidacy. She believes that this site was likely to confuse voters.

If the existence, from May 06, 2012, of a website usurping the identity of Mrs. LATRÈCHE and disseminating information intended to discredit her candidacy, must be looked at as a ploy exceeding the limits of the controversial election, this circumstance, in the absence of any element on the audience of this site, could not, in view of the differences of votes, affect the results of the poll.
*(2012-4630 AN, December 07, 2012, recitals 3 and 4, p. 664)*

*E-mails*

The investigation revealed that a long anonymous e-mail particularly including a critical presentation of the political career of Mr. LOVISOLO and innuendo relating to his honesty and that of his family, as well as an invitation to massively forward it to other correspondents, was released on or before the day after the first ballot. If this message was likely to discredit the applicant in the mind of the voters, it is however not alleged that it would have been disseminated in the form of printed leaflets nor established that its dissemination by electronic means would have been significant. Consequently, in view of the difference of votes between the applicant and the elected candidate, its dissemination, contrary to what is contended, was not likely to affect the fairness of the poll.
*(2012-4599 AN, October 04, 2012, recital 1, p. 504)*

Mr. ÉPINEAU alleges Mr. GORGES of having disseminated through one of his mediums a propaganda message via the Internet on the morning of the poll in contradiction with Article L. 49 of the Electoral Code. It is not established that the dissemination of the propaganda message calling to vote for Mr. GORGES on the morning of the poll was of a massive nature. Thus, however regrettable it may be, this dissemination could not affect the fairness of the poll.
*(2012-4601 AN, November 29, 2012, recitals 6 and 7, p. 627)*

A large number of computer messages in the nature of election propaganda materials were disseminated June 16 and 17, the day before and the day of the second ballot, in violation of Article L. 49 of the Electoral Code which prohibits, starting from the day before the poll at zero hour, to distribute or arrange for distributions of bulletins, circulars and other documents as well as, by electronic means, any message in the nature of election propaganda. However, this irregularity, however regrettable it may be, could not, taking into account the differences of votes, have an impact on the results of the poll.
*(2012-4589 AN, December 07, 2012, recitals 5 and 7, p. 654)*

*Social networks*

Dissemination on social networks, on June 15, 2012 in the morning, of negative opinions concerning Mr. GROSPERRIN did not exceed the limits of the controversial election. The

candidate in question could answer to it. Consequently, this dissemination was not likely to affect the fairness of the poll.
*(2012-4596 AN, November 29, 2012, recital 3, p. 623)*

**Letters**

*Sending or mailing of letters in favour of candidates*

Letters originating from members of the Government

Mrs. GIRARDIN publicly availed, on June 06, 2012, a letter addressed to her the day before by the Chief of staff of the Minister of Overseas, confirming the commitment of the State to finance the purchase of equipment intended for the new fisheries Company of Miquelon. Even if established, the circumstance according to which the applicant would not have been in a position to reply in good time to this notice, cannot, in any event, have affected the result of the poll, taking into account the number of votes obtained by each candidate.
*(2012-4558 AN November 29, 2012, recital 2, p. 619)*

Letters of elected officials

The applicant candidate challenges a letter of the mayor of Toul, dated June 13, 2012, falsely accusing him to be the cause of the cancellation of the "garage sale" of the "Regina Village" district, which should have taken place on Sunday, June 10. This ploy, to which the candidate could have answered, would have undermined the fairness of the poll. It does not result from the statement that this letter, intended to inform the cancellation of this event, would be an election propaganda material. Consequently, its dissemination cannot be considered as a ploy likely to affect the fairness of the poll.
*(2012-4589 AN December 07, 2012, recitals 1 and 2, p. 654)*

If the mayor of the municipality of Saint-Thibault-des-Vignes has made public a mail to his voters which mentions his support for Mr. ALBARELLO, as well as "that of the majority of the town council" while this town council did not give its opinion on such a support, this circumstance, which Mr. ALBARELLO did not avail in the campaign, is without impact on the outcome of the poll.
*(2012-4605 AN, December 07, 2012, recital 3, p. 659)*

**Press**

*Political standpoints of the print media*

The print media is free to report, as it understands it, of the campaign of the different candidates like taking a stand in favour of one of them. Consequently, even if established, the objection alleging that the "Écho républicain" has taken position against the applicant in the electoral campaign must be set aside.
*(2012-4552 AN, July 13, 2012, recital 2, p. 346)*

It is not established that the publication of an article in a parish newsletter, which reports discussions between the members of an association and Mr. ALAUZET, constitutes an act of propaganda favouring the candidate. In any event the press agencies are free to report on the campaign of the various candidates.
*(2012-4596 AN, November 29, 2012, recital 16, p. 623)*

The applicant makes the point that Mr. FERRAND benefitted from numerous articles in national and regional daily newspapers. However, the newspapers are free in the manner in which they report on the campaign of the various candidates.
*(2012-4578 AN, December 07, 2012, recitals 3 and 4, p. 645)*

*Various irregularities*

If Mr. ROUILLON blames Mr. LE MENER, elected candidate, of having used the remarks of a journalist in an article of the newspaper "Le Maine libre", dated March 17, 2012, to

denounce his sectarianism, it results from the statement that Mr. ROUILLON was able to rebut the presentation of this article. Consequently, the facts alleged are not likely to affect the fairness of the poll.
*(2012-4647 AN, December 14, 2012, recital 8, p. 707)*

**Municipal publications**

Application challenging the municipal news bulletins of the mayor, elected proclaimed candidate. These bulletins, which did not contain any allusion to the coming electoral campaign, could not be looked at as having been done in violation of the regulations of the Electoral Code. They could not affect the fairness of the poll.
*(2012-4635 AN, July 20, 2012, recitals 2 and 3, p. 433)*

The lack of space to express reserved for the municipal opposition in the issues of the months of April and May 2012 of the newsletter of the municipality, whose elected candidate is the mayor, results from the application of the rules of procedure, approved on December 22, 2008 by the town council, which had adopted a quarterly frequency of these political opinions, which have to be only published in the issues of March, June, September and December. The objection alleging a ploy of the elected candidate must be set aside.
*(2012-4593 AN, October 11, 2012, recital 8, p. 522)*

The various articles published in the municipal newspaper of the city of Béziers which invokes Mrs. ROQUÉ are not likely to be considered, in view of their contents or their date of publication, as elements of electioneering propaganda in favour of Mr. ABOUD which could be comparable to donations coming from the municipality, legal entity, as per provisions of Article L. 52-8 of the Electoral Code.
*(2012-4590 AN, October 24, 2012, recital 7, p. 566)*

The editorials of the two municipal bulletins in question did not evoke precisely the campaign topics of a candidate, further they did not contain elements of controversial election. Moreover, the elected candidate has entered in his campaign account the expenditure corresponding to the expenses of the occasional publication titled "La lettre du maire".
*(2012-4587 AN, November 20, 2012, recitals 1 and 2, p. 575)*

The applicant contends that articles relating to the action of Mrs. GIRARDIN were published in the municipal newspaper of the municipality of Saint-Pierre, "L'Écho des caps", during the period preceding the disputed election, in disregard of the first subparagraph of Article L. 52-1 of the Electoral Code. The investigation showed that these articles were of a primarily informative nature and could not be comparable to a process of commercial publicity for purposes of electioneering propaganda. The objection alleging that provisions of the first subparagraph of Article L. 52-1 of the Electoral Code were disregarded must be set aside and Mrs. GIRARDIN cannot be considered as having profited from this initiative by a donation of the municipality prohibited by Article L. 52-8 of the same code.
*(2012-4558 AN, November 29, 2012, recital 1, p. 619)*

**Advertising promotion campaign of the achievements or the management of a community (Article L. 52-1, subparagraph 2, of the Electoral Code)**

If the applicant contends that a "vast promotion campaign of Mr. Frederic CUVILLIER" was organised on the whole of the territory of the constituency by means of an exhibition sponsored by the urban community of Boulonnais and the town council of Boulogne-sur-Mer, he does not justify that the organisation of this exhibition was of the nature of a promotion campaign of a candidate. Consequently, this objection must be rejected.
*(2012-4560 AN, July 13, 2012, recital 2, p. 358)*

Mr. ÉPINEAU contends that a newsletter distributed by a departmental councillor, in addition support of Mr. GORGES, constitutes a violation of Article L. 52-1 of the Electoral Code. It results from the statement that the letter of the departmental councillor cited by the applicant does not refer to Mr. GORGES or the legislative ballot and restricts itself to present the files of cantonal interest. It cannot thus be regarded as an advertising promotion campaign for the benefit of Mr. GORGES.
*(2012-4601 AN, November 29, 2012, recitals 14 and 15, p. 627)*

**Radio-television**

Despite the reputation of Mr. HAMON and its inevitable consequences as for the attention that the audio-visual communication departments have paid to his candidacy, it is advisable to examine whether the TV programs and radio broadcasts disputed by the applicant reveal a discriminatory treatment likely to have affected the fairness of the results of the poll.

It does not result from the statement that, in the broadcasts mentioned, Mr. HAMON would have contributed on topics other than those of national policy. As appropriate, he only briefly mentioned the constituency where he was candidate, without elements of propaganda or of local controversial election.
*(2012-4587 AN, 20 November 2012, recitals 7 to 9, p. 575)*

The applicant argues that Mr. FERRAND has hosted a weekly television program on the LCI channel and took part in many programs broadcast by TV channels and national radio broadcasts under conditions involving a breach of equality with other candidates before the communication means. Despite the interest that the audio-visual communication departments contributed to the candidacy of Mr. FERRAND because of his reputation, it does not result from the statement that, in the programs cited, Mr. FERRAND would have contributed on topics relating to electoral campaign in the 8th constituency of the Bouches-du-Rhône.
*(2012-4578 AN, December 07, 2012, recital 3, p. 645)*

The applicant contends that the report on the electoral campaign in the 11th district of the Pas-de-Calais, which was released on June 14, 2012 in connection with the television program "Envoyé spécial" on France 2, did not comply with the equality of speaking time between candidates, Mrs. Marine LE PEN not having being questioned in it. The investigation revealed that Mrs. LE PEN has expressed herself during other programs and in particular, as of the following day during the regional edition of the newscast "19/20" of France 3. Thus the existence of a discriminatory treatment of candidates likely to have affected the fairness of the results of the poll was not established.
*(2012-4588 AN, December 7, 2012, recital 8, p. 650)*

Where Mr. ROUILLON criticised Mr. LE MENER, elected candidate, for having called into question his "republican behaviour" while claiming, on a local radio station on June 15, 2012, that he was never invited in the municipality of which Mr. ROUILLON is the mayor, these remarks have not exceeded the limits of election controversy. Consequently, the facts alleged are not likely to affect the fairness of the poll.
*(2012-4647 AN, December 14, 2012, recital 8, p. 707)*

**Electoral meetings**

The applicant contests the holding of a meeting of electioneering propaganda the day before the second ballot in disregard of the provisions of Articles L. 48-1, L. 48-2 and L. 49 of the Electoral Code. Pursuant to Article R. 26 of the Electoral Code, the election campaign is closed for propaganda only on the day before the poll at midnight. The election propaganda event that took place the day before the election towards the end of the afternoon was thus not of irregular nature.
*(2012-4578 AN, December 07, 2012, recitals 7 and 8, p. 645)*

**Leaflets**

*Irregularities without impact on the results of the election*

Date of distribution of the leaflets

The fact that leaflets in favour of the elected candidate were thrown in front of the polling stations of many municipalities in the night preceding the second ballot, in violation of Article L. 49 of the Electoral Code, cannot be looked at as being able to affect the fairness of the poll, in view of the difference in votes.
*(2012-4569/4570/4571 AN, July 20, 2012, recitals 3 and 4, p. 405)*

The applicant does not offer proof that the leaflet containing defamatory remarks against a candidate was distributed the day before the poll in disregard of the provisions of the Electoral Code. On the contrary, the investigation revealed that its first distribution took place two days before the second ballot. This leaflet, whose damaging character as a result of its distribution is not shown, did not contain any new element and did not exceed the limits of election controversy.
*(2012-4620 AN, October 18, 2012, recitals 1 and 2, p. 552)*

Mr. FOURGOUS had the required time to reply to the allegations contained in the leaflet which a "UMP local councillor" of the town of Élancourt printed in 20,000 specimens and distributed before the first ballot and which contained allegations tending to discredit his candidacy.
*(2012-4587 AN, November 20, 2012, recital 5, p. 575)*

Leaflet distribution methods

Mr. ISNARD calls into question a leaflet of defamatory nature concerning him which was allegedly distributed the day before and on the day of the poll. Where this leaflet exceeded the limits of election controversy, neither its source nor the duration or scope of its distribution have been established. Consequently, the distribution of such a document, however regrettable it may be, cannot, in the circumstances of this specific case, be looked at as having affected the fairness of the poll.
*(2012-4578 AN, December 07, 2012, recital 9, p. 645)*

Contents and scope of the leaflets

Elected candidate who is not responsible for a leaflet which, moreover, was not favourable to her.
*(2012-4591 AN, November 29, 2012, recital 5, p. 621)*

Mr. KOKOUENDO contends that the elected candidate has improperly relied on, in a leaflet distributed on June 7, 2012, support of several elected officials. It results however from the statement that, in both cases which he denounces, the voters have taken an informed decision since these people could deny this allegation in good time.
*(2012-4605 AN, December 7, 2012, recital 2, p. 659)*

Untrue or malicious information

Defamatory remarks made against one of the candidates present in the second ballot by another candidate present in the second ballot, both not elected, cannot be looked at as having been able to affect the fairness of the poll, in view of differences of votes.
*(2012-4569/4570/4571 AN, July 20, 2012, recitals 3 and 4, p. 405)*

Mr. ISNARD calls into question a leaflet of defamatory nature concerning him which was allegedly distributed the day before and on the day of the poll. Where this leaflet exceeded the limits of election controversy, neither its source nor the duration or scope of its distribution have been established. Consequently, the distribution of such a document, however regrettable it may be, cannot, in the circumstances of this specific case, be looked at as having affected the fairness of the poll.
*(2012-4578 AN, December 07, 2012, recital 9, p. 645)*

*Absence of irregularities*

The applicants criticise Mr. SCELLIER for having, in the context of his profession of faith and in a leaflet distributed between both polls, exaggeratedly portrayed the support of mayors and elected officials from the constituency municipalities, while he actually only benefitted from moderate support from that group. The leaflet would have been distributed within a time not allowing the competing candidate or the aforementioned elected officials to re-establish the reality of the facts and the mention of the support of all the elected officials would constitute a ploy.

The investigation revealed that this leaflet was distributed as of June 13, or a date by which the concerned parties could re-establish the reality of facts.
*(2012-4619 AN, December 07, 2012, recitals 1 and 2, p. 662)*

Contents not exceeding the limits of election controversy

The leaflet originating from a local councillor of Mesnil-Saint-Denis and presenting ambiguously the position of the applicant on several questions of local interest, distributed in this municipality in the days preceding the second poll, did not contain any new element of election controversy. The extent of its distribution has not been established. Consequently, such distribution, even late, could not exert a determining influence on the poll.
*(2012-4587 AN, November 20, 2012, recital 6, p. 575)*

A leaflet, distributed by Mr. ALAUZET as of Friday 15 June and in particular comprising a negative presentation of the "assessment of the outgoing UMP" did not contain any new element of election controversy and did not constitute a last-hour ploy to which Mr. GROSPERRIN would not have been able to reply. Consequently the objection alleging the violation of Articles L. 48-2 and L. 49 of the Electoral Code must be rejected.
*(2012-4596 AN, November 29, 2012, recital 2, p. 623)*

Mr. ÉPINEAU criticises Mr. GORGES for affixing leaflets indicating the position of a local political personality on Mr. LEBON's posters, the former belonging to the same political party as the latter, and mentioning that he did not want to vote for Mr. LEBON. This standpoint was also distributed in the letterboxes of the constituency. The applicant also objects to Mr. GORGES having distributed a leaflet by which another local political personality, who had acted as a replacement for a former deputy of the constituency, also took a stand which was not in favour of Mr. LEBON. These leaflets would comprise critical elements against Mr. LEBON. The applicant contends that they are ploys likely to affect the result of the poll.

It results from the statement that the positions of the political personalities concerned did not constitute last minute ploys which Mr. LEBON could not reply to. They did not exceed the limits of election controversy. They thus did not constitute a ploy likely to affect the fairness of the poll.
*(2012-4601 AN, November 29, 2012, recitals 1 and 2, p. 627)*

**Various irregularities of propaganda**

The applicant denounces the imbalance of treatment of the candidates in the audio-visual mediums in favour of the elected candidate and practices of posting in favour of several candidates in disregard of Article L. 51 of the Electoral Code. In view of the differences of votes, these irregularities, even if established, could not affect the fairness of the poll. Request rejected.
*(2012-4608/4609 AN, July 20, 2012, recital 3, p. 413)*

The applicants criticise Mr. SCELLIER for having, in the context of his profession of faith and in a leaflet distributed between both polls, exaggeratedly portrayed the support of mayors and elected officials from the constituency municipalities, while he actually only benefitted from moderate support from that group. The leaflet would have been distributed within a time not allowing the competing candidate or the aforementioned elected officials to re-establish the reality of the facts and the mention of the support of all the elected officials would constitute a ploy.

The investigation revealed that this leaflet was distributed on June 13 and that moreover, the profession of faith of Mr. SCELLIER only mentioned the support which the mayors of the municipalities of the constituency and their municipal majority gave him. Existence of a ploy not demonstrated.
*(2012-4619 AN, December 07, 2012, recitals 1 and 2, p. 662)*

## Electoral campaign - Pressures, interventions, ploys

**Nature of the pressures, interventions, ploys**

*Interventions of official authorities*

Members of the Government

The applicant challenges the support of members of the government for the elected candidate. However, he does not establish that the support of members of the Government of

which Mr. FERRAND availed would have constituted a ploy likely to distort the results of the election.
*(2012-4578 AN, December 07, 2012, recitals 5 and 6, p. 645)*

*Interventions of official authorities - Absence of ploy*

The applicant contends that the outgoing deputy and candidate elected in the first ballot benefited from a platform in the programme of a sporting event by using the logo of the departmental council. He does not produce however any element likely to establish that this platform could be looked at as a promotion campaign of advertising matter as per the provisions of Article L. 52-1 of the Electoral Code.
*(2012-4552 AN, July 13, 2012, recital 3, p. 346)*

If candidacies for the presidential election or the legislative elections in the 1st constituency of Indre-et-Loire were supported, in particular by ministers, and campaign material was distributed in some of these occasions, these events do not pertain to operations of electioneering propaganda carried out by Mrs. GREFF for the legislative election in the 2nd constituency of Indre-et-Loire.
*(2012-4591 AN, November 29, 2012, recital 2, p. 621)*

While Mr. BRIOIS relied on the irregular distribution, by the agents of the municipality of Carvin, on Friday 15 and Saturday 16 June, of leaflets compromising National Front activists, the investigation revealed that these "leaflets" are actually a document distributed by the town hall following damaging of public goods in order to condemn these acts, without their authors being identified, nor a link with the electoral campaign made. This official statement of the municipality thus is not in the nature of a document of electioneering propaganda.
*(2012-4588 AN, December 07, 2012, recital 11, p. 650)*

*Interventions of various organisations*

Associations

Mr. LOVISOLO makes the point that the association "Vallée d'Aigues Nature", created by opponents to a project of waste collection centre which he supported with other elected officials, disseminated disagreeable remarks against him and his wife, in particular in a letter and an editorial of its president in October 2010 and May 2012. The investigation however revealed that these documents restrict to pointing out the technical and financial arguments which lead the association to ask for the abandonment of this project and to indicate that its managers were not received by Mr. LOVISOLO. Consequently it follows that the objection alleging that the distribution of these documents would be constitutive of a ploy likely to affect the fairness of the poll must be rejected.
*(2012-4599 AN, October 4, 2012, recital 2, p. 504)*

The continued presence, on the elected candidate's website, of information relating to the association of his friends would not, in view of their contents, be looked at as an advertising promotion campaign as per Article L. 52-1 of the Electoral Code or an electioneering propaganda action envisaged by the prohibition stated in its Article L. 49. It moreover results from the statement that this association did not participate in the financing of the campaign of Mr. GINÉSY.
*(2012-4639 AN, November 20, 2012, recital 4, p. 581)*

*Use by a candidate of official functions*

Application challenging the speech made during the ceremony of vows by the mayor of the eighteenth district of Paris, candidate proclaimed elected. This speech, which did not contain any allusion to the coming electoral campaign, could not be looked at as having been done in violation of the regulations of the Electoral Code. It could not affect the fairness of the poll.
*(2012-4635 AN, July 20, 2012, recitals 2 and 3, p. 433)*

If the participation of Mrs. GREFF in the various events staged in connection with her ministerial functions or in those to which she was invited by communities and associations of

Indre-et-Loire were actually reported in the local daily press, it does not result from the statement that her candidacy for the legislative elections would have been mentioned on this occasion.
*(2012-4591 AN, November 29, 2012, recital 2, p. 621)*

Case law posterior to the Organic Law no. 2011-410 of April 14, 2011.

It results from the statement that the Departmental council of Loir-et-Cher published on April 14, May 12 and June 02, 2012 in the regional newspaper "La Nouvelle République" three advertising inserts showing a picture and a quotation from Mr. LEROY pointing out his commitment to the support of several categories of economic contributors of the department.

These inserts promoted selected achievements in the municipalities of the 3rd constituency of Loir-et-Cher. This presentation tended to emphasize the person of the president of the Departmental council of Loir-et-Cher. In view of their contents and the proximity of the poll, these publications must be deemed as having an electoral purpose and, consequently, disregard the provisions of Article L. 52-8 of the Electoral Code. This disregard justifies the rejection of the account of Mr. LEROY's campaign.

In view of the significance of the difference of votes separating Mr. LEROY from the candidate eliminated in the second ballot, this disregard of provisions of the Electoral Code, however regrettable it may be, did not have a determining influence on the result of the poll.

Under the terms of the third subparagraph of Article L.O. 136-1 of the Electoral Code, in its drafting resulting from the law referred to above of April 14, 2011 relating to the election of deputies and senators, the Constitutional Council "also pronounces the ineligibility of the candidate whose campaign account was rejected justifiably in the event of will of fraud or failure of specific seriousness to the rules relating to the financing of electoral campaigns". The investigation didn't reveal that the disregard of Article L. 52-8 reveals in this specific case an intent to fraud. Moreover, in view of the number of publications, these actions cannot be looked at as a failure of a specific seriousness to the rules relating to the financing of the electoral campaigns. Consequently it is not necessary to declare the ineligibility of the candidate.
*(2012-4603 AN, November 29, 2012, recitals 3 to 5, p. 631)*

The investigation revealed that the meal organised in the home for the elderly in the municipality of Laforest, to which Mr. KEMEL participated on June 5, 2012, was actually organised every month in the municipality. The mayor of the Laforest municipality, who was also the replacement for Mr. KEMEL, has, during this meal, simply recalled Mr. KEMEL's candidacy for the legislative elections. It is not disputed that Mr. KEMEL did not speak. Thus his participation in the monthly meal of a home for elderly people of a municipality adjoining that of which he is mayor does not reveal the existence of a ploy intended to undermine the fairness of the poll.
*(2012-4588 AN, December 07, 2012, recital 9, p. 650)*

The meal in which Mr. KEMEL participated, on June 5, 2012, in the home for the elderly of Laforest municipality, which it was recalled is a usual meeting, did not constitute a benefit authorised by this municipality to his candidacy as per Article L. 52-8 of the Electoral Code.

The official statement of the municipality of Carvin denouncing the damages made to the goods of the municipality does not comprise any reference to the electoral campaign. It cannot, consequently, be looked at as a benefit authorized by this municipality, of which Mr. KEMEL is mayor, to his electoral campaign.
*(2012-4588 AN, December 07, 2012, recitals 13 and 14, p. 650)*

If the applicant mentions the deliberation dated May 25, 2012 by which the Departmental council of Provence-Alpes-Côte d'Azur proceeded with the distribution of subsidies to associations intervening in the field of culture, this deliberation was restricted to renew subsidies granted before and to make corrections rendered necessary by errors or changes of situation of associations which were their beneficiaries. Consequently, the circumstances that Mr. MENNUCCI is the vice-president of the departmental council in charge of culture and that some associations having benefitted from these subsidies have their head office in the 4th constituency of the Bouches-du-Rhône could not alone be deemed as having constituted an irregularity or a pressure likely to affect the fairness of the poll.
*(2012-4628 AN, December 14, 2012, recital 3, p. 701)*

Mrs. VASSEUR criticises Mr. KRABAL's mention of his capacity as vice-president of the Departmental council of Aisne in letters dated too late for him to avail of this function. It does

not result from the statement that this post, which appears on letters sent on September 14, 2011, would appear later on the campaign documents of Mr. KRABAL. Consequently, it is not proven that he would have wrongly taken advantage of the post in question in order to distort the results of the election.
*(2012-4637 AN, December 14, 2012, recital 2, p. 704)*

Mr. ROUILLON indicates that Mr. LE MENER, elected candidate, has used, in his campaign newspapers, pictures of left-wing elected officials as well as that of a former prefect of Sarthe, to create confusion on the extent of his supports. The investigation revealed that these pictures were taken during the exercise by Mr. LE MENER of his term of vice-president of the Departmental council of Sarthe and local councillor of Montmirail. Their use in documents of the electoral campaign of Mr. LE MENER was not likely to affect the fairness of the poll.
*(2012-4647 AN, December 14, 2012, recital 9, p. 707)*

*Use of means of the administration*

Premises

While Mr. GINÉSY was able to use free of charge for an electoral meeting, the cinema hall of the municipality of La Gaude, the mayor of this municipality attests that this hall was available, under the same conditions, for all the candidates. The elected candidate thus did not benefit from this fact, an assistance from this municipality prohibited by Article L. 52-8 of the Electoral Code.
*(2012-4639 AN, November 20, 2012, recital 6, p. 581)*

While Mr. ALAUZET could use free of charge a municipal theatre, the investigation revealed that the municipality of Besançon has authorised the use of this kind of equipment free of charge from 2010 for all political parties.
*(2012-4596 AN, November 29, 2012, recital 15, p. 623)*

Equipment

While the applicant contends that Mr. GINÉSY, who was first vice-president of the Departmental council of Alpes-Maritimes, mayor of the municipality of Péone-Valberg and president of the community of Cians-Var municipalities, has used his official vehicle and its driver of the departmental council during the electoral campaign, he does not offer any convincing element to the support of this objection. In any event, it results from the statement that the disputed travelling related to the exercise by the elected candidate of his local mandates.
*(2012-4639 AN, November 20, 2012, recital 2, p. 581)*

The investigation revealed that Mr. DORD used an official vehicle to go to protocol events where he was invited as mayor as well as MP. For travelling for election purpose, he used two personal vehicles, identified in the campaign account as assistance in kind provided by the candidate.
*(2012-4645 AN, November 20, 2012, recital 5, p. 584)*

Mr. ÉPINEAU contends that the distribution, a few days of the first ballot, of gift baskets, accompanied by a handwritten note of Mr. GORGES, to the pensioners of the town of Chartres who could not travel for the traditional "alumni dinner" of March 2012 constitutes a ploy likely to affect the fairness of the poll.

The investigation revealed that gift baskets are distributed to pensioners not having been able to participate in the "alumni dinner" since 2006 at least. Such distribution, which is of a traditional nature, is not carried out for election purposes.
*(2012-4601 AN, November 29, 2012, recitals 9 and 10, p. 627)*

Mr. ÉPINEAU objects to Mr. GORGES having used for his profession of faith the photographs belonging to territorial collectivities. Such use is not established.
*(2012-4601 AN, 29 November 2012, recital 16, p. 627)*

The applicant contends that Mr. FERRAND has benefitted from irregular operations of electioneering propaganda, relying on municipal resources, especially during a ceremony in the memory of the death of his great-grandfather, the presentation of a cup to the children of a football club and the presence of several political figures. The use of municipal resources during these events is not established.
*(2012-4578 AN, December 07, 2012, recitals 5 and 6, p. 645)*

Personnel

While Mrs. ROQUÉ contends that Mr. ABOUD benefitted from the assistance of municipal employees for the organization, the day before the second ballot, of a "republican festival", she does not offer any prima facie evidence in support of her allegations. In addition, the circumstance that this event took place in a park, is not, considering the statement, constitutive of a benefit which would contravene Article L. 52-8 of the Electoral Code.
*(2012-4590 AN, October 24, 2012, recital 8, p. 566)*

The applicant contends that the elected candidate, for the campaign needs, resorted to the services of several employees of the territorial collectivities and the public corporation of inter-municipality co-operation in which he holds a mandate. However, the investigation revealed that both employees of the departmental council who participated in Mr. GINÉSY's campaign were on leave during the entire period of the campaign, so that the assistance which they offered to the elected candidate cannot be looked at as a gift of this community prohibited by the provisions of Article L. 52-8 of the Electoral Code. As regards the employee of the community of Cians-Var municipality, it is not established that she would have carried out the duties of press agent of the elected candidate during her campaign. While she accompanied this candidate during various events, she did it, as attested by her supervisor, during her days off or outside her working hours, while continuing to normally take up her duties within the community of municipalities. Finally as regards both employees of the municipality of Péone-Valberg, the applicant does not establish that they would have actually participated in the campaign of the elected candidate.
*(2012-4639 AN, November 20, 2012, recital 3, p. 581)*

The applicants object to Mr. SCELLIER having benefitted from the assistance of an agent of the town hall of Enghien-les-Bains in connection with his operations of electioneering propaganda. The investigation revealed that this agent distributed leaflets in favour of Mr. SCELLIER during a day off. Consequently, the disregard of Article L. 52-8 of the Electoral Code prohibiting legal entities other than political parties from contributing to the financing of electoral campaigns is not established.
*(2012-4619 AN, December 07, 2012, recital 3, p. 662)*

*Use of administration means - Absence of ploy*

The applicants denounce the support given to the elected candidate, in disregard of Article L. 52-8 of the Electoral Code, by the towns of Lyon and Villeurbanne. In Particular, Mr. BRAILLARD is deemed to have participated in events staged by these communities without connection to his functions of elected local official.

The events in which the candidate took part enter within the framework of offices which he holds as a town councillor and a departmental councillor. The other allegations are not matched with justifications making it possible to assess its extent and scope.
*(2012-4636 AN, November 20, 2012, recital 7 and 8, p. 578)*

*Pressures by intimidation or corruption*

Violence

Mrs. LATRÈCHE contends that the activists who supported her during the electoral campaign underwent repeated violence, particularly between the two ballots, and that on June 17, 2012, during the proclamation of the results of the second ballot, she was herself the target.

The allegations, of which neither the frequency nor the extent are established, could not be likely to affect the result of the poll.
*(2012-4630 AN, December 07, 2012, recitals 1 and 2, p. 664)*

Charges likely to adversely reflect on a candidate

In support of his protest, the applicant denounces the publication in a national daily and a local daily having a broad audience, in the days which preceded the first ballot, of articles

mentioning a complaint for discrimination directed against him. He contends that this publication would constitute a ploy by the elected candidate, intended to discredit his candidacy at a moment when he could no longer relevantly answer the allegations contained in these articles, in disregard of the provisions of Articles L. 48-1 and L. 48-2 of the Electoral Code.

The investigation revealed that the allegations contained in these articles had already been brought to the knowledge of the inhabitants of the municipality of Villemomble by a leaflet distributed between May 19 and 24, 2012 and by mentions on websites of local representatives of political parties. These articles did not add any new elements to the local election controversy to which the applicant would not have been able to answer before the first poll.
*(2012-4616 AN, November 29, 2012, recitals 1 and 2, p. 634)*

Reservation of claim for libel

The assertions appearing in Mr. GIRARD's request do not present the character of abusive, offensive or defamatory speech justifying the application of provisions of the fourth subparagraph of Article 41 of the law of July 29, 1881 on freedom of the press.
*(2012-4645 AN, November 20, 2012, recital 13, p. 584)*

If, in his writings, Mr. ÉPINEAU alleges Mr. GORGES committed criminally punishable practices, these allegations do not justify, in the circumstances of this specific case, a cancellation pursuant to the provisions of the fourth subparagraph of Article 41 of the law of July 29, 1881 on freedom of the press.
*(2012-4601 AN, November 29, 2012, recital 21, p. 627)*

Distribution or promises of money, gifts, various benefits

While the applicant asserts a voter claimed that a person promised him, as well as members of his household, before the first ballot, benefit of "agreements for insertion by way of activity", in return for their votes for the elected candidate, it is not established that such a promise would have been made to other voters, a promise whose author is not identified and of which it is not alleged that it would have modified the direction of the vote of the concerned parties.

While a certificate delivered by the deputy mayor of the associated municipality of Puohine reveals that road works were completed between the two polls, these works were carried out within the scope of a programme started in 2004 and whose last phase started in 2008. The investigation didn't reveal that their execution constituted, in this specific case, a ploy likely to affect the fairness of the poll.
*(2012-4642 AN, October 18, 2012, recitals 1 and 2, p. 555)*

If the applicant denounces the promises of gifts by way of cash, employment or residences which were allegedly made to some voters, the insufficiency of evidence produced does not make it possible to establish, despite the weak difference of votes in the first ballot between the candidates who made it to the second and third position, that the magnitude of these facts is such that the result of the poll could be modified.
*(2012-4628 AN, December 14, 2012, recital 5, p. 701)*

*Various pressures*

We could not consider as constitutive of an irregularity, the request made by the mayor of Taputapueta to the municipal police officers to inform the voters having received proxy that they could come and vote.
*(2012-4642 AN, October 18, 2012, recital 3, p. 555)*

The investigation, and in particular the audio-visual recording produced, didn't reveal that the presence of a group of people accompanied by the mayor of Méricourt prevented Mrs. LE PEN from going to the voters' meeting during the market which was held on Saturday, June 16 in the morning in the municipality of Méricourt. While Mr. BRIOIS contends that leaflets were then distributed by supporters of Mr. KEMEL, whereas the electoral campaign was closed, he does not offer any element in support of this allegation.
*(2012-4588 AN, December 07, 2012, recital 10, p. 650)*

Neither the circumstance that the replacement of Mr. MENNUCCI directs "the Union of Moslem families of Bouches-du-Rhône", nor the fact that this association pursued its activities

during the electoral campaign, moreover without taking a stand in this campaign, have by themselves an impact on the regularity of the poll.
*(2012-4628 AN, December 14, 2012, recital 4, p. 701)*

*Untrue or malicious information*

While the applicant denounces a defamation campaign wherein he was the victim, these facts, even if established, are unlikely to have exerted an influence on the outcome of the poll, in view of the difference of votes.
*(2012-4560 AN, July 13, 2012, cons 4, p. 358)*

The investigation revealed that a long anonymous e-mail particularly including a critical presentation of the political career of Mr. LOVISOLO and innuendo relating to his honesty and that of his family, as well as an invitation to massively forward it to other correspondents, was released on or before the day after the first ballot. If this message was likely to discredit the applicant in the mind of the voters, it is however not alleged that it would have been disseminated in the form of printed leaflets nor established that its dissemination by electronic means would have been significant. Consequently, in view of the difference of votes between the applicant and the elected candidate, its dissemination, contrary to what is contended, was not likely to affect the fairness of the poll.
*(2012-4599 AN, October 04, 2012, recital 1, p. 504)*

If the protester criticises the elected candidate for having publicly challenged his eligibility, it results from the statement that this question was mentioned during a radio debate opposing them five days before the second ballot. It follows that Mr. LOVISOLO could usefully take part in this debate.
*(2012-4599 AN, October 04, 2012, recital 3, p. 504)*

In the absence of any ploy, the applicant is not entitled to invoke the mistake made by his printer as a result of which, on the back page of his circular of electioneering propaganda, sent to the constituents before the second round, appeared the circular of another candidate of his party in another constituency.

The distribution of a satirical broadcast "Action discrète", on the Canal Plus channel, on Sunday, June 03, 2012, could not, because of its character itself, be at the origin of a defamatory rumour which the adversary of the applicant could have exploited.
*(2012-4593 AN, October 11, 2012, recitals 6 and 7, p. 522)*

Mrs. MORANO denounces the actions of a mimic comedian, host of a radio show, who pretending to be the vice-president of the National Front, held a phone conversation with her of political nature released during radio broadcasts on June 14, 2012. This broadcast allegedly constitutes a ploy prohibited by Article L. 97 of the Electoral Code. On the one hand, it is not the judge of the election who assesses if the said allegations enter the scope of application of this article. On the other hand, Mrs. MORANO could reply to the election controversy resulting from the broadcast of remarks recorded without her knowledge.
*(2012-4589 AN, December 07, 2012, recitals 3 and 4, p. 654)*

**Ploys or interventions relating to the political situation of the candidates**

*Political membership or "label"*

The applicants challenge the breach of the fairness of the poll by the references to the UMP in the electioneering propaganda of the elected candidate and by the use of this abbreviation in large print on its ballot papers whereas the Union for a popular movement (UMP) had even before the first round withdrawn its support for this candidate in favour of Mr. Claude GUËANT.

However, if the ballot papers in the name of Mr. SOLÈRE are marked "Departmental councillor of Boulogne-Billancourt group UMP", a wide-ranging public debate on the political supports of the candidates mentioned took place during the entire electoral campaign and was abundantly relayed by the press. The national renown of the candidate supported by the Union for a popular movement is established and finally, on numerous occasions, the latter informed the voters, during the electoral campaign having preceded each of the two ballots,

that he was the only candidate invested by the Union for a popular movement and thus could prevent or dissipate a possible confusion in the mind of the voters, which, moreover, was not established by the statement. Consequently, the allegations by the applicants cannot be deemed likely to affect the fairness of the poll.
*(2012-4604 AN, October 24, 2012, recitals 1 and 2, p. 569)*

The applicants contend that Mr. BRAILLARD has usurped, on his campaign documents, the abbreviation and the logo of the socialist party as well as the graphic charter and the slogans of the electoral campaign of Mr. François Hollande.

While the judge of the election has to check if ploys were likely to mislead the voters on the reality of the nomination of candidates by political parties, he does not have to check the regularity of this nomination taking into consideration the statutes and operating rules of the political parties.

While it is not disputed that only Mr. MEIRIEU benefited from the nomination of the socialist party in the constituency in question, he had had the chance, during the campaign, to inform the voters on the range of the nominations. A wide-ranging public debate on the political supports of candidates took place during the entire campaign and was relayed by the press. In the circumstances of this specific case and taking into account the local renown of Mr. MEIRIEU and the elected candidate, the allegations are not however likely to have created in the mind of the voters a confusion such that the results of the poll of the first round are affected.
*(2012-4636 AN, November 20, 2012, recitals 1 to 3, p. 578)*

*Nominations (see below also: Ploys or interventions relating to the second round)*

The applicant asserts that during the first ballot, Mrs. ANDRIEUX took unduly advantage, on her ballot papers and professions of faith, of the nomination of the socialist party, whereas it had been withdrawn.

While it is established that the socialist party had withdrawn Mrs. ANDRIEUX's nomination ten days before the poll, the investigation doesn't reveal that the continued presence, on the ballot papers and the professions of faith printed for the first round, with the mention of the initials and the logo of this party would have constituted a ploy likely to influence the results of the poll, for the concerned party which did not besides maintain these mentions on the documents printed for the second round.
*(2012-4598 AN, December 07, 2012, recitals 2 and 3, p. 657)*

*Supports*

Mr. KOKOUENDO contends that the elected candidate has improperly relied on, in a leaflet distributed on June 7, 2012, support of several elected officials. The investigation however revealed that, in both cases denounced, the voters made an informed decision since these people could deny this allegation in good time.

While the mayor of the municipality of Saint-Thibault-des-Vignes made public a mail to his voters which mentions his support for Mr. ALBARELLO, as well as "that of the majority of the town council" while this town council did not give its opinion on such support, this circumstance, which Mr. ALBARELLO did not avail in the campaign, is without impact on the outcome of the poll.
*(2012-4605 AN, December 07, 2012, recitals 2 and 3, p. 659)*

*Absence of ploy*

The announcement in a local daily on June 09 of support given to the elected candidate could not constitute a ploy likely to affect the fairness of the poll.
*(2012-4616 AN, November 29, 2012, recital 3, p. 634)*

**Ploys or interventions relating to the second round**

*Supports*

The presence of the emblem of the Socialist party on circulars, ballot papers and posters of one of candidates present in the second round, while this party had called to vote for another

candidate present in the second round and had withdrawn his support for this candidate who was maintained in the second round, cannot be deemed able to affect the fairness of the poll, because of the wide-ranging public debate which took place for the second ballot on political supports of the candidate as well as differences of votes.
*(2012-4569/4570/4571 AN, July 20, 2012, recitals 3 and 4, p. 405)*

While shortly after the first round, Mr. AUBERT claimed support of the Rassemblement du peuple français ("Rally of the French People"), the investigation revealed that the representatives of this political formation in the department had called to "obstruct the left" in the 5th constituency. It follows from this that the objection alleging that Mr. AUBERT wrongly claimed the support of this movement lacks in fact.
*(2012-4599 AN, October 04, 2012, recital 5, p. 504)*

*Withdrawals*

The withdrawal of the candidate of the National Front in favour of Mr. AUBERT after the first ballot did not, in view of conditions under which it happened, constitute a ploy likely to affect the fairness of the poll.
*(2012-4599 AN, October 04, 2012, recital 4, p. 504)*

## Financing

### Receipts produced in the campaign account

*Receipts for inclusion in the account*

Mrs. VASSEUR claims Mr. KRABAL benefited, for his electoral campaign, from various materials prepared in connection with the presidential campaign without mentioning these benefits in his campaign account. It results from the statement that the expenditure and the receipts in question were correctly entered in the campaign account of Mr. KRABAL.
*(2012-4637 AN, December 14, 2012, recital 8, p. 704)*

*Gifts or benefits authorized by political parties or groups*

The use of symbols and slogans of a political party by a candidate for his campaign needs does not constitute a benefit provided by this party as per Article L. 52-8 of the Electoral Code. Consequently, the objection alleging that the financial contribution of the use of the titles and brands owned by the socialist party and Mr. François Hollande's campaign financing association should have been entered in the campaign account of Mr. BRAILLARD must be rejected in any event.
*(2012-4636 AN, November 20, 2012, recital 9, p. 578)*

*Gifts granted to a candidate by a natural person (Article L. 52-8, subparagraph 1st, of the Electoral Code)*

Principle

It is not established that the vehicle of an activist, used for attaching posters and certain trips, was provided to Mr. ALAUZET. Consequently, it was not a benefit in kind to be entered in the campaign account.
*(2012-4596 AN, November 29, 2012, recital 17, p. 623)*

*Gifts granted to a candidate by a legal entity excepting political parties or groups (Article L. 52-8, subparagraph 2, of the Electoral Code)*

Absence of gift or benefit

Mrs. ROQUÉ contends that Mr. ABOUD benefited from gifts provided by the town of Béziers which were prohibited by the provisions of Article L. 52-8 of the Electoral Code, and that these benefits in kind should be entered in his campaign account.

Firstly, the various articles published in the municipal newspaper of the city of Béziers which Mrs. ROQUÉ invokes are not likely to be considered, in view of their contents or their date of publication, as elements of electioneering propaganda in favour of Mr. ABOUD which could be comparable to gifts coming from the municipality, legal entity, as per provisions of Article L. 52-8 of the Electoral Code.

Secondly, if Mrs. ROQUÉ contends that Mr. ABOUD benefited from the assistance of municipal employees for the organization, the day before the second ballot, of a "republican festival", she does not offer any prima facie evidence in support of her allegations. In addition, the circumstance that this event took place in a park, is not, considering the statement, constitutive of a benefit which would contravene Article L. 52-8 of the Electoral Code.
*(2012-4590 AN, October 24, 2012, recitals 6 to 8, p. 566)*

A public meeting was arranged on March 28, 2012 with the participation of municipal employees of the municipality of Avallon. This event was staged in connection with the presidential campaign. Some of the costs corresponding to its organization appear in the campaign account under legislative campaign. The applicants do not offer pieces of evidence in support of their allegations according to which this service was provided to the elected candidate for a price lower than those usually in force. This organisation cannot be deemed to be a gift prohibited as per the provisions of Article L. 52-8 of the Electoral Code.
*(2012-4646 AN, November 20, 2012, recitals 2 and 3, p. 587)*

Mr. ÉPINEAU contends that the distribution of gift baskets, the employment forum held in June 2012, the use of photographs belonging to territorial collectivities and the participation of caretakers in the campaign of Mr. GORGES constitute violations of Article L. 52-8 of the Electoral Code.

The cost of the gift baskets distributed to pensioners should not be looked at as an electoral expenditure, in view of the traditional character of this distribution. The same applies to expenses related to the employment forum just as the "Boostemploi" operation, these events not being of electoral nature by their purpose and conditions under which they are held. The use of photographs belonging to territorial collectivities, or the participation of caretakers in the electoral campaign of Mr. GORGES are not established.
*(2012-4601 AN, November 29, 2012, recitals 17 to 19, p. 627)*

The various events in question fall within the scope of usual activities of the territorial collectivities. It does not result from the statement that their frequency and the choices of dates testify to a particular will to influence the voters. They didn't result in any political expression in direct relation with the electoral campaign. Consequently, none of the meetings or events challenged could be deemed to be as an advertising promotion campaign as per the provisions of Article L. 52-1 of the Electoral Code or as a participation of these territorial collectivities in the campaign of Mr. KRABAL prohibited by Article L. 52-8 of the same code.
*(2012-4637 AN, December 14, 2012, recital 7, p. 704)*

Mr. ROUILLON claims that Mr. LE MENER, elected candidate, benefited from the financial support of local government agencies because of his participation, on May 19, 2012, in the Artec festival which was held in the municipality of La Ferté-Bernard, as well as in the presentation of a racing car, organised on June 7, 2012, in connection with 24 hours racing tests of Le Mans, in the municipality of Vibraye. However, the investigation revealed that these traditional events were not electoral, that Mr. LE MENER was invited in his capacity as vice-president of the departmental council and did not have remarks relating to the campaign of the legislative elections. His participation in these events would not, consequently, be deemed as a gift prohibited as per the provisions of subparagraph 2 of Article L. 52-8 of the Electoral Code.
*(2012-4647 AN, December 14, 2012, recital 11, p. 707)*

The presence of photographs, on which the elected candidate appears, on the home banner of the website of the Departmental council of the Sarthe and on that of the municipality of La Ferté-Bernard, as well as in the magazine of the Departmental council of the Sarthe is not akin, in the circumstances of this case, to the provision, by a legal entity, of goods and services to a candidate.
*(2012-4647 AN, December 14, 2012, recital 12, p. 707)*

Mr. LE MENER, elected candidate, in his double capacity of vice-president of the departmental council and of deputy, held a "blog" intended to inform his voters of his activities. It is not established that this "blog" was financed by commercial advertising or by gifts of legal entities. In the absence of any element which promotes the candidate, the existence on the site of the

departmental council of which Mr. LE MENER is vice-president, of a link towards this "blog" does not constitute an assistance prohibited by Article L. 52-8 of the Electoral Code.
*(2012-4647 AN, December 14, 2012, recital 13, p. 707)*

While restricting himself to contend that the two parliamentary assistants of Mr. LE MENER appeared on his "blog" without any other member of his campaign team, Mr. ROUILLON does not establish that they took part in the electoral campaign during their working hours. The objection alleging that Mr. LE MENER benefited, because of the intervention of his parliamentary assistants in relation with the campaign, from a gift prohibited by Article L. 52-8 of the Electoral Code must consequently be rejected.
*(2012-4647 AN, December 14, 2012, recital 15, p. 707)*

Even if established, the existence in the bibliographic record of Mr. LE MENER appearing on the site of the National Assembly of a link towards his "blog" does not constitute an assistance prohibited by Article L. 52-8 of the Electoral Code.
*(2012-4647 AN, December 14, 2012, recital 14, p. 707)*

**Expenses produced in the campaign account**

*Expenses for inclusion in the account*

Posters, leaflets, circular letter

Mr. ISNARD contests that the campaign account of Mr. FERRAND does not take into account expenditure relating to printing of leaflets relating to the Salon-de-Provence hospital and the refinery of Berre-l'Étang. All these expenditure are retraced in the campaign account of Mr. FERRAND.
*(2012-4578 AN, December 07, 2012, recitals 16 and 17, p. 645)*

Mrs. LATRÈCHE calls into question the disregard of Article L. 52-8 of the Electoral Code which would result from the absence of entering in the campaign account of printing and distribution expenses of various electoral leaflets and electoral material.

The cost of printing of various leaflets and electoral material appears in particular in the campaign account of the elected candidate.
*(2012-4630 AN, December 07, 2012, recitals 8 and 9, p. 664)*

Surveys

Mr. ISNARD disputes the absence of entry in the campaign account of Mr. FERRAND of expenditure relating to the carrying out of two surveys. On the one hand, as regards the carrying out of the survey used in relation to the electoral campaign, the expenditure are retraced in the campaign account of Mr. FERRAND. On the other hand, it is not established that the second survey was ordered by Mr. FERRAND or a member of his campaign team or that it was used in connection with the electoral campaign.
*(2012-4578 AN, December 07, 2012, recitals 16 to 18, p. 645)*

Work, booklet, publication

The applicant contends that the costs of promotion, edition and marketing of a biography of Mr. DORD, "Aux actes citoyens", distributed to voters in May 2012, must be retraced in the campaign account of the elected candidate. He results from the statement that the costs of drafting by the parliamentary assistant of the elected candidate appear in the account under the assistance in kind provided by a third party. The costs of edition of this work are also retraced in the campaign account.
*(2012-4645 AN, November 20, 2012, recital 7, p. 584)*

Miscellaneous

Mrs. LATRÈCHE calls into question the disregard of Article L. 52-8 of the Electoral Code which would result from the use of photographs of the municipality of Drancy on the documents of propaganda of Mr. LAGARDE.

It results from the statement that the purchase of eight photographs in the municipality of Drancy appear in particular in the campaign account of the elected candidate.
*(2012-4630 AN, December 07, 2012, recitals 8 and 9, p. 664)*

Mrs. LATRÈCHE calls into question the disregard of Article L. 52-8 of the Electoral Code which would result from the participation in the campaign of Mr. LAGARDE of the director of the computer departments of the municipality of Drancy.

The participation of the director of the computer departments of the municipality in the campaign of Mr. LAGARDE is not established and IT expenses appear in particular in the campaign account of the elected candidate.
*(2012-4630 AN, December 07, 2012, recitals 8 and 9, p. 664)*

Mrs. LATRÈCHE calls into question the disregard of Article L. 52-8 of the Electoral Code which would result from the recourse by Mr. LAGARDE to an official vehicle to go to the electoral meetings.

The cost of use of the vehicle which was used by Mr. LAGARDE for his electoral travels appears in particular in the campaign account of the elected candidate.
*(2012-4630 AN, December 07, 2012, recitals 8 and 9, p. 664)*

*Expenditures not to be included in the account*

The inauguration of a multipurpose hall, in which Mr. ALAUZET took part without speaking, was not electoral in nature. The corresponding expenditure did not have to appear in the campaign account of the elected candidate.
*(2012-4596 AN, November 29, 2012, recital 14, p. 623)*

The participants in the two "dinner-debates" organised by Mr. ALBARELLO during his campaign directly paid the caterer their only meal expenses. It is not alleged that the amount paid exceeds the price of the meal. These sums do not have the character of electoral receipts. The applicant is thus not entitled to contend that these expenditures should pass through the financial agent and be retraced to the campaign account of the candidate. It follows from this that the objection alleging the disregard of Articles L. 52-4 and L. 52-12 of the Electoral Code must be rejected. The conclusions of Mr. KOKOUENDO holding that the campaign account of the elected candidate be rejected and its ineligibility pronounced must be rejected.
*(2012-4605 AN, December 07, 2012, recital 7, p. 659)*

Absence of advertising promotion campaign

The various local events whose organisation is criticized are of a traditional nature. The elected candidate took part in it as mayor or vice-president of the departmental council, without the documents distributed on this occasion being of a promotional nature. The expenditure incurred in connection with these various meetings could not be deemed as belonging to the campaign of Mr. GINÉSY.
*(2012-4639 AN, November 20, 2012, recital 5, p. 581)*

The applicant alleges that the publication "Un territoire, un homme", published in June 2010, was financed by means of advertising of marketing companies, which constitutes a political financing in disregard of Article L. 52-8 of the Electoral Code. However this document was published before the beginning of the electoral campaign. It does not contain any reference to the legislative elections. The investigation revealed that this document was not used on this occasion by the candidate.
*(2012-4645 AN, November 20, 2012, recitals 2 and 3, p. 584)*

The organisation by the elected candidate of a new year reception, similar to that of the previous years, cannot, in the circumstances of this specific case, be deemed as an event of electoral nature.
*(2012-4645 AN, November 20, 2012, recital 6, p. 584)*

The applicant contends that in the month of May 2012 the municipal bulletin, whose rate of publication would have been modified, published a statement of the action of Mr. DORD.

The municipal bulletin of which it is alleged that the rate of publication would have been modified and which would have published a statement of the action of Mr. DORD cannot be deemed, by its contents, as belonging to the electoral campaign. The investigation revealed

that the modification of the publication rate of this bulletin is not akin to a ploy. Consequently, the expenditure incurred for its production and its distribution did not have to appear in the campaign account of the elected candidate.
*(2012-4645 AN, November 20, 2012, recitals 8 and 9, p. 584)*

The applicants contend that the organisation of a district festival at Avallon, a traditional event staged for ten years, has been modified and benefited from unusual media coverage. These modifications had an effect on the poll. The expenditure caused by this event is not retraced in the campaign account.

The investigation revealed that the district festival denounced by the applicants is of a traditional nature and was not in particular modified for the disputed elections. The elected candidate did not make any allusion to the legislative campaign. The electoral character of this event is not established.
*(2012-4646 AN, November 20, 2012, recitals 4 and 5, p. 587)*

A distribution of roses took place three days before the first poll, financed by the municipality of Migennes under its policy of organising the weekly market, during Mother's Day. This operation had been organised already the previous year by the municipality of Migennes. No element makes it possible to establish that the distribution of roses had an electoral object. Consequently, this distribution cannot be regarded as an expenditure especially carried out for the legislative election and, for this reason, having to be integrated in the campaign account relating to this election.
*(2012-4646 AN, November 20, 2012, recitals 8 and 9, p. 587)*

The various events denounced by the applicant as being electoral fall within the scope of usual community activity. It does not result from the statement that their frequency and the choices of dates testify to a particular will to influence the voters. They didn't result in any political expression in direct relation with the electoral campaign. While, at the time of the inauguration of the technical premises in the municipality of Fongrave, the mayor of this municipality and the elected candidate made remarks in connection with the electoral campaign, this isolated event and without significant media repercussion, in which Mr. CAHUZAC participated in his capacity as vice-president of the urban community of grand Villeneuvois, lies within the scope of the normal functioning of public services. Consequently, none of the events challenged could be looked at as an advertising promotion campaign as per the provisions of Article L. 52-1 of the Electoral Code or as a participation of these territorial collectivities in the campaign of Mr. CAHUZAC prohibited by Article L. 52-8 of the Electoral Code.
*(2012-4650 AN, November 20, 2012, recital 3, p. 590)*

Except for an invitation card, the press releases and other documents relating to the inauguration of the green lane of Sainte-Livrade-sur-Lot do not mention the presence of the elected candidate nor that of his replacement. The cost of the photographs taken for the departmental council and which the elected candidate has used on his website was retraced in the campaign account.
*(2012-4650 AN, November 20, 2012, recitals 4 and 5, p. 590)*

Mrs. LATRÈCHE calls into question the disregard of Article L. 52-8 of the Electoral Code which would result from the distribution of municipal bulletins of the municipality of Drancy.

It is not established that the municipal bulletins were of an electoral nature and should, consequently, appear in the campaign account.
*(2012-4630 AN, December 07, 2012, recitals 8 and 9, p. 664)*

The applicant requests that the subsidies amount granted on May 25, 2012, by the departmental council to intervening associations in the cultural field be included in the campaign account of Mr. MENNUCCI. The subsidies, which originate from simple annual renewals, have no connection with this electoral campaign.
*(2012-4628 AN, December 14, 2012, recital 9, p. 701)*

**Intervention of the Constitutional Council pursuant to Articles L.O. 136-1 and 186-1 of the Electoral Code**

Case law posterior to the Organic Law no. 2011-410 of April 14, 2011.

Article L.O. 136-1 of the Electoral Code allows the Constitutional Council, as soon as election operations of the constituency were regularly contested before it, to pronounce the ineligibility

of a candidate whose campaign account shows an excess of election spending limits, who has not filed this account under the conditions and the time envisaged by the law or whose account was rejected justifiably in the event of willingness to fraud or failure of a particular seriousness to the rules relating to the financing of the election campaigns. It follows from this that Mr. ABOUD is not entitled to contend that Mrs. ROQUÉ's conclusions to the effect that his campaign account is rejected and his ineligibility declared are inadmissible.
*(2012-4590 AN, October 24, 2012, recital 4, p. 566)*

Case law posterior to the Organic Law no. 2011-410 of April 14, 2011.

It results from the statement that the Departmental council of Loir-et-Cher published on April 14, May 12 and June 02, 2012 in the regional newspaper "La Nouvelle République" three advertising inserts showing a picture and a quotation from Mr. LEROY pointing out his commitment to the support of several categories of economic contributors of the department. These inserts promoted selected achievements in the municipalities of the 3rd constituency of Loir-et-Cher. This presentation tended to emphasize the person of the president of the Departmental council of Loir-et-Cher. In view of their contents and the proximity of the poll, these publications must be deemed as having an electoral purpose and, consequently, disregard the provisions of Article L. 52-8 of the Electoral Code. This disregard justifies the rejection of the account of Mr. LEROY's campaign.

In view of the significance of the difference of votes separating Mr. LEROY from the candidate eliminated in the second ballot, this disregard of provisions of the Electoral Code, however regrettable it may be, did not have a determining influence on the result of the poll.

Under the terms of the third subparagraph of Article L.O. 136-1 of the Electoral Code, in its drafting resulting from the Organic Law no. 2011-410 of April 14, 2011 relating to the election of deputies and senators, the Constitutional Council "also declares the ineligibility of the candidate whose campaign account was rejected justifiably in the event of willingness to fraud or failure of a specific seriousness to the rules relating to the financing of electoral campaigns". The investigation didn't reveal that the disregard of Article L. 52-8 reveals in this specific case intent to fraud. Moreover, in view of the number of publications, these actions cannot be looked at as a failure of a specific seriousness to the rules relating to the financing of the electoral campaigns. Consequently it is not necessary to declare the ineligibility of the candidate.
*(2012-4603 AN, November 29, 2012, recitals 3 to 5, p. 631)*

**Ineligibility of the elected candidate**

*Disregard of Article L. 52-8 of the Electoral Code*

Case law posterior to the Organic Law no. 2011-410 of April 14, 2011.

It results from the statement that the Departmental council of Loir-et-Cher published on April 14, May 12 and June 02, 2012 in the regional newspaper "La Nouvelle République" three advertising inserts showing a picture and a quotation from Mr. LEROY pointing out his commitment to the support of several categories of economic contributors of the department. These inserts promoted selected achievements in the municipalities of the 3rd constituency of Loir-et-Cher. This presentation tended to emphasize the person of the president of the Departmental council of Loir-et-Cher. In view of their contents and the proximity of the poll, these publications must be deemed as having an electoral purpose and, consequently, disregard the provisions of Article L. 52-8 of the Electoral Code. This disregard justifies the rejection of the account of Mr. LEROY's campaign.

In view of the significance of the difference of votes separating Mr. LEROY from the candidate eliminated in the second ballot, this disregard of provisions of the Electoral Code, however regrettable it may be, did not have a determining influence on the result of the poll.

Under the terms of the third subparagraph of Article L.O. 136-1 of the Electoral Code, in its drafting resulting from the law of April 14, 2011 relating to the election of deputies and senators, the Constitutional Council "also declares the ineligibility of the candidate whose campaign account was rejected justifiably in the event of willingness to fraud or failure of a specific seriousness to the rules relating to the financing of electoral campaigns". The investigation didn't reveal that the disregard of Article L. 52-8 reveals in this specific case intent

to fraud. Moreover, in view of the number of publications, these actions cannot be looked at as a failure of a specific seriousness to the rules relating to the financing of the electoral campaigns. Consequently it is not necessary to declare the ineligibility of the candidate.
*(2012-4603 AN, November 29, 2012, recitals 3 to 5, p. 631)*

## Electoral operations

### Polling stations

*President of the polling stations*

While Article R. 43 of the Electoral Code provides that the polling stations are chaired by mayors, deputies and town councillors in the order of the table and, failing this, by voters of the municipality indicated by the mayor, it arises from the order of the mayor of Clamart dated June 12, 2012 that two voters only were designated to chair a polling station among the thirty-five which constitute the municipality. The fact that these two voters who respectively exert responsibilities to the town hall and the office managing the social housing of the municipality did not prevent them from chairing a polling station. The investigation didn't reveal that the methods of attribution of these presidencies were constitutive of a ploy, or that they caused difficulties or anomalies during the course of voting operations in these two polling stations.
*(2012-4617 AN, December 14, 2012, 5, p. 698)*

*Composition of the polling stations*

Under the last subparagraph of Article R. 61 of the Electoral Code: "The operations aimed for in this article are distributed between the assessors designated by the candidates… In the event of any disagreement on this distribution, assessors responsible for the aforesaid operations are appointed by drawing of lots". Mr. BRIOIS contends that the presidents of three polling stations refused to conduct the drawing of lots of the distribution of the functions between the assessors. However, only an official report of voting operations comprises such a mention which, moreover, does not emanate from one of the assessors of the office but from Mr. BRIOIS. In any event, the investigation didn't reveal that the alleged irregularity was likely to support a fraud.
*(2012-4588 AN, December 07, 2012, recital 6, p. 650)*

The applicants challenge the composition of six polling stations of the municipality of Enghien-les-Bains in that municipal agents have exercised, against remuneration, the functions of assessor. This circumstance would have been likely to harm the neutrality of assessors and the fairness of the poll. However, the behaviour of these agents was not subject to any observation in the official report of the polling stations aiming at calling into question their neutrality. In any event their presence as assessor has not, in the circumstances of this specific case, affected the fairness of the poll.
*(2012-4619 AN, December 07, 2012, recital 4, p. 662)*

### Course of the poll

*Poll hours and exemptions*

Mr. ISNARD disputes the conditions of opening of the polling stations of the municipality of Salon-de-Provence. He contends that the closing of these polling stations at 6 p.m., while nonofficial information relating to the opening of the polling stations of this municipality indicated a closing at 8 p.m., has deprived many voters of the possibility of voting. During both ballots, the polling stations closed at 6 p.m. pursuant to the first subparagraph of Article R. 41 of the Electoral Code. It is not established that the circumstance that some voters could believe that the polling stations would close later results from a ploy.
*(2012-4578 AN, December 07, 2012, recitals 12 and 13, p. 645)*

*Providing voters with ballot papers and envelopes*

Ballot papers

Mr. ZERIBI, who says having noted at 7 p.m. on the evening of the first round that the ballot papers with his name were covered by those of another candidate in polling station no. 1404 at Marseilles, contends that these ballot papers were not available during the entire day.

Contrary to what is alleged by the applicant, the official report of polling station no. 1404 of Marseilles does not mention this irregularity. No prima facie proof is produced by the applicant. The objection alleging the absence of provision of ballot papers bearing the name of Mr. ZERIBI in polling station no. 1404 of Marseilles must thus be rejected.
*(2012-4618 AN, October 18, 2012, recital 1, p. 550)*

*Voting machines*

Mr. ROUILLON mentions pressures exerted on an old voter having difficulties in using the voting machine. It results from the statement that the president of the polling station no. 23 of Mans indicated to this voter the direction of the vote which she should formulate. This circumstance implies that this vote cannot be looked at as regularly cast.
*(2012-4647 AN, December 14, 2012, recital 5, p. 707)*

*Lists of voters*

On the one hand, if, in a polling station, a voter found the voter list signed in the location of his name, this error did not prohibit him from voting. On the other hand, if differenced could be noted, in polling stations Nos. 101, 188, 238, 253 and 354 of the city of Marseilles, between the number of ballot papers and the number of signatures and if voters registered abroad have nevertheless voted, these irregularities concern fourteen votes. They could not thus modify the order of preference expressed by the voters in the first round or exert of influence on the results of the election.
*(2012-4628 AN, December 14, 2012, recital 8, p. 701)*

Minor irregularities or without influence on the poll

Difficulties of obtaining communication of the voter list of the first round, in violation of Article L. 68 of the Electoral Code. In view of the number of votes obtained by each candidate, the allegations, even if established, could not have an impact on the outcome of the poll.
*(2012-4557 AN, July 13, 2012, recital 2, p. 354)*

Differences of signature of the voters list between the two ballots. In this specific case, without impact on the fairness of the poll.
*(2012-4622 AN, 20 July 2012, recital 3, p. 423)*

The applicant contends that the number of signatures, as settled on the official reports of several polling stations of the municipality of Montpellier, is lower, for a total of ninety-seven, than the number of signatures appearing on the voters list for the second ballot.

If this discrepancy is established and is not moreover disputed, it is on the other hand neither established, nor even contended, that the number of signatures settled in the official reports of these polling stations would not correspond to the number of signatures actually made during voting operations or would differ from the number of ballot papers found in the ballot box. The official reports do not comprise any observation relating to this discrepancy and moreover, many signatures, of coarse aspect and distributed between the polling stations in question for the second round, present strong resemblances. Consequently, the discrepancy noted must be deemed as resulting in this specific case from the addition of signatures subsequently to the counting and the establishment of the official reports. Under these conditions and without it being necessary to know the circumstances in which these additions occurred, the discrepancy noted is without impact on the result of the poll.
*(2012-4623 AN, October 24, 2012, recitals 2 and 3, p. 571)*

It is alleged that obligatory mentions as regards proxy vote do not appear on the voter list of several polling stations. In particular, the name of the agent does not appear beside the name of the constituent, as opposed to the requirement of Article R. 76-1 of the Electoral Code.

The absence on the voter list of obligatory mentions as regards proxy vote should not lead to the invalidation of an equivalent number of votes, since it does not result from the statement that these insufficiencies or omissions would lead to irregular votes.
*(2012-4596 AN, November 29, 2012, recitals 6 and 7, p. 623)*

The applicant contends that 334 votes were cast in disregard of provisions of Article L. 62-1 of the Electoral Code, many voters having signed in a very different manner in the first and the second ballot and the voters lists comprising crossing out or distinctive signs. The investigation revealed that in most of the cases, the signature differences noted reveal that proxies had been established or that in the circumstance that the voters used alternately an initial or their signature or, for married women, their surname or their usual name, or still do not present an abnormal character making one doubt the authenticity of the votes in question. The presence of crosses in the list's margin, the crossing out or the material errors made by voters must be deemed as minor irregularities without impact on the results of the poll. On the other hand, thirty-nine initials show significant differences between both ballots. It is necessary, consequently, to deduct thirty-nine irregularly cast votes from the total of votes cast as well as from the number of votes collected by the elected proclaimed candidate. The difference of votes between the two candidates present in the second ballot is thus established at thirty-one.
*(2012-4605 AN, December 07, 2012, recital 1, p. 659)*

Cancellations

The voter lists of polling station no. 1613 in Marseilles disappeared in the evening of the electoral operations of the first round. These lists could never be produced in support of the results of this polling station.

The investigation revealed that this disappearance was noted at the end of the day, during the ballot paper counting operations, by the president of the polling station, who mentioned it in the official report of this polling station, and which was also mentioned in the official report, dated June 11, 2012, of the commission in charge of the counting of votes in the 7th constituency of the Bouches-du-Rhône. The absence of these lists constitutes an irregularity which hinders the Constitutional Council from ensuring fairness of electoral operations in the polling station no. 1613 of Marseilles.

It is necessary to consider as null the votes issued in this polling station and to deduct them from the number of votes obtained by the candidates. Deduction made of 114 votes allotted to Mr. JIBRAYEL, from 92 votes allotted to Mr. ZERIBI and from 52 votes allotted to Mr. MIRANDAT in the polling station no. 1613 of Marseilles, Mssrs JIBRAYEL and MIRANDAT remain the two leading candidates at the conclusion of the first ballot without any other candidate obtaining a number of votes at least equal to 12.5% of the registered voters. Consequently, only Mssrs. JIBRAYEL and MIRANDAT fulfilled the conditions to be candidates in the second round and the objection alleging that the disappearance of the voter lists would result in modifying the candidate nomination for the second round must be rejected.
*(2012-4618 AN, October 18, 2012, recitals 2 and 3, p. 550)*

The applicant contends that 334 votes were cast in disregard of provisions of Article L. 62-1 of the Electoral Code, many voters having signed in a very different manner in the first and the second ballot and the voters lists comprising crossing out or distinctive signs. The investigation revealed that in most of the cases, the signature differences noted reveal that proxies had been established or that in the circumstance that the voters used alternately an initial or their signature or, for married women, their surname or their usual name, or still do not present an abnormal character making one doubt the authenticity of the votes in question. The presence of crosses in the list's margin, the crossing out or the material errors made by voters must be deemed as minor irregularities without impact on the results of the poll. On the other hand, thirty-nine initials show significant differences between both ballots. It is necessary, consequently, to deduct thirty-nine irregularly cast votes from the total of votes cast as well as from the number of votes collected by the elected proclaimed candidate. The difference of votes between the two candidates present in the second ballot is thus established at thirty-one.
*(2012-4605 AN, December 07, 2012, recital 1, p. 659)*

Mr. ROUILLON invokes the difference existing between the number of ballot papers and the number of signatures in eighteen polling stations. The investigation, and in particular the examination of the official reports of electoral operations of these polling stations,

revealed that only the polling stations of the municipalities of Cherreau, Cherré, Roullée and Saint-Cosme-en-Varais, as well as in the polling station no. 1 of Coulaines and polling stations nos. 14, 20, 21, 24, 25 and 33 of Mans, present a number of ballot papers and envelopes does not correspond to that of the signatures. In such a case, the lowest of these two numbers should be retained. It is thus unnecessary to deduct twelve votes from the number of votes cast as well as from the number of votes obtained by Mr. LE MENER.
*(2012-4647 AN, December 14, 2012, recital 4, p. 707)*

Signatures

Irregularity of two votes noted by simple crosses on the voter lists. Regularity of a vote noted by the affixing of two circles when it arises from the identification of the papers of the voter that it is the same signature and two votes noted by an identical signature appearing in the margin of the names of two different voters on the voters list when it is established that each signature appearing on this list is the personal signature of each of the two voters despite their similarity.

The applicant contends that the signatures appearing for the two ballots in the margin of the name of a same voter present, in forty-four cases, differences which establish that the vote was not made by the voter. The investigation revealed, in particular from the examination of the voters lists of the polling stations concerned, that, for the major part of the cases, the differences alleged are not convincing. Furthermore, twenty-four of the voters concerned formally admitted having voted in person during the two ballots while one voter attested to have voted only in the second round, which explained the presence of a crossed signature in the first round on the voters list. On the other hand, seven votes, corresponding to significant differences of signature, must be looked at as irregularly cast.

On a voters list, the name of the agent does not appear beside the name of the constituent for six voters having proxy vote, as opposed to the requirement of R. 76-1 of the Electoral Code. This omission, however regrettable it may be, should not however lead to the invalidation of an equivalent number of votes, since it does not result from the statement, and it is not alleged besides, that these insufficiencies or omissions would have been the cause of irregular votes.
*(2012-4593 AN, October 11, 2012, recitals 2 to 4, p. 522)*

Mr. GROSPERRIN contends that, in seventy two cases, the signatures appearing for the two ballots in the margin of the name of a same voter present differences which establish that the vote was not made by the voter.

The investigation, and in particular the examination of the voter lists of the polling stations concerned, revealed that, in fifty-seven cases, the differences alleged are not very convincing, or are due to fact that the constituent voted in one of the two rounds, or to the fact that the voter used alternately his initials, an initial or his signature or still, for married women, alternatively their surname or their usual name.

On the other hand, fifteen votes, showing significant signature differences, must be deemed as irregularly cast.
*(2012-4596 AN, 29 November 2012, recitals 4 and 5, p. 623)*

The investigation revealed that two votes noted with simple crosses on the voter lists of polling stations no. 1 of Carvin and no. 4 of Libercourt cannot be considered as regularly cast.

The examination of the voter lists of the polling stations concerned revealed that, in the main part of the cases, the differences in signatures alleged by the applicant are not convincing or correspond either to the affixing of an initial instead of the signature of the voter or to the circumstance that the voter used her surname or her usual name. Furthermore, thirty-seven of the voters concerned formally declared having voted in person during both ballots. On the other hand, ten votes, corresponding to significant differences of signature, must be deemed as irregularly cast.

Mr. BRIOIS contends that five groups of voters affixed identical signatures on the voters lists of five polling stations. However, it results in particular from the examination of the voters lists of the polling stations concerned, that while these signatures are close, they originate from voters belonging to the same family and having the same last name. The resemblance of these signatures is not consequently sufficient to establish that it is not the personal signature of these voters.

It is necessary to deduct twelve votes from the number of votes obtained by Mr. KEMEL, proclaimed elected candidate of the 11th district of Pas-de-Calais, as well as from the total number of votes cast. The difference of votes between the two candidates present in the second ballot is thus established at 106.
*(2012-4588 AN, December 07, 2012, recitals 2 to 5, p. 650)*

It arises from the provisions of the last subparagraph of Article L. 62-1 and the second subparagraph of Article L. 64 of the Electoral Code, intended to ensure the fairness of electoral operations, that only the personal signature, in ink, of a voter is likely to offer proof of his participation in the poll, except where impossibility is duly mentioned on the voter list.

The investigation revealed that a vote noted by a simple cross on the voters list of the polling station of Cormes cannot be considered as regularly cast.

Mr. ROUILLON contends that the signatures appearing for the two ballots in the margin of the name of a same voter present, in thirty cases, differences which establish that the vote was not made by the voter. However, the three voters in question formally admitted having voted in person during the two ballots or to have given a proxy for one of the two rounds. None of these votes can thus be deemed as irregularly cast.
*(2012-4647 AN, December 14, 2012, recitals 1 to 3, p. 707)*

*Violence or pressures during the poll*

Violence

Brawls occurred at the common entrance to three polling stations of the town of Marseilles and led to the intervention of the police. It is not established that these acts of violence and the later presence of the police stopped the course of voting operations and affected the fairness of the poll.
*(2012-4628 AN, December 14, 2012, recital 7, p. 701)*

Pressures on voters

Mr. BRIOIS stipulates that in polling station no. 8 of the municipality of Carvin, a person supporting Mr. KEMEL consulted, at 5.30 p.m., the voter list before going out to encourage stay-away voters to vote. However, in the absence of proof of pressures and constraints exerted on these voters, such facts cannot be deemed as having constituted an infringement on the freedom to vote.
*(2012-4588 AN, December 07, 2012, recital 7, p. 650)*

The applicant mentions "pressures" exerted by Mr. MENNUCCI and members of his campaign team, on the day of the first ballot, to incite the voters to vote for him. However, if the presence of one of the candidates outside the polling station, in the early afternoon, is indicated in the official reports of the operations of polling stations nos. 251 and 252 of the town of Marseilles, neither this mention nor the attestations and complaint produces, are sufficient to establish that the allegations were likely to affect the results of the first ballot by a modification of the order of classification of Mrs. AUCOUTURIER, BIAGGI and NARDUCCI.
*(2012-4628 AN, December 14, 2012, recital 6, p. 701)*

*Various incidents*

Discussions which would have taken place in a polling station in disregard of Article R. 48 of the Electoral Code. In view of the number of votes obtained by each candidate, the allegations, even if established, could not have an impact on the outcome of the poll.
*(2012-4557 AN, July 13, 2012, recital 2, p. 354)*

According to the applicant, in the municipality of Punaauia, some voters, the representative of the elected candidate and a member of the polling station no. 5, were, on the day of the second ballot, wearing orange colour clothing, colour of the political party of the elected candidate. These facts could not be akin, in the circumstances of this specific case, to a pressure likely to have influenced the electorate. The same applies to the circumstance that people sympathising the elected candidate would have been seated in front of the entrances of the

town hall of the associated municipality of Tehurui, thus obstructing voters. None of those have mentioned threats, acts of violence or difficulties of access to the polling station.

Voting papers in the name of the elected candidate were distributed the day before the first round and voting papers were distributed in front of the town hall on the morning of the second round, in disregard of the provisions of Article L. 49 of the Electoral Code, which prohibits, as from the day before the poll at zero hour, "distributing or making arrangements to distribute voting papers, circulars and other documents". These facts, however regrettable they may be, may not, in the absence of any details on the extent and the duration of this distribution, be deemed as having affected the fairness of the poll.
*(2012-4642 AN, October 18, 2012, recitals 5 and 6, p. 555)*

Mr. ISNARD produces a lodging of a complaint of an assessor of a polling station of Salon-de-Provence who denounces the practice of other assessors having listed, for Mr. FERRAND, voters not having yet voted so as to remind them of their obligations. Such a practice cannot, since it is not established that it contributed to putting pressure on voters, be looked at as having undermined the freedom to vote.
*(2012-4578 AN, December 07, 2012, recitals 14 and 15, p. 645)*

Mrs. MORANO contends that the arrival of an audio-visual film crew at Toul on June 16 and 17 caused disorder amongst voters, by its actions in the polling stations on the day of the poll. It indeed results from the hearing that members of an audio-visual film crew undermined the rules of Electoral Code relating to the course of voting operations in a polling station of the constituency on the day of the second ballot. Regardless of their criminal enforcement, these facts however could not, taking into account the differences of votes, have an impact on the results of the poll.
*(2012-4589 AN, 07 December 2012, recitals 8 and 9, p. 654)*

**Proxy vote**

*Establishment of proxies*

Requests for the intervention of the criminal investigating department officer - certificates

It appears from the combined provisions of Articles R. 72 and R. 73 of the Electoral Code that officers and competent agents of the criminal investigating department to establish the proxies or their delegates travel to residence only on written request, accompanied by any official document justifying that the voter is clearly unable to appear. The applicant does not establish that voters of the municipality presented such requests.
*(2012-4620 AN, October 18, 2012, recital 4, p. 552)*

Forms

The applicant does not offer any prima facie proof in support of the objection based on the lack of supply of printed forms because of which voters were unable to establish a proxy.
*(2012-4620 AN, October 18, 2012, recital 4, p. 552)*

Mr. ISNARD claims that voters were not able to establish a proxy, because of the absence of printed forms at the police station of Salon-de-Provence some days before the election. The applicant does not offer any prima facie proof that voters were unable to establish a proxy.
*(2012-4578 AN, 07 December 2012, recital 10, p. 645)*

Personal choice of the representative

Mr. ISNARD criticises Mr. FERRAND for having allowed people wishing to establish a proxy to choose a representative. Such a practice does not constitute however an irregularity since it is not established that voters would not have had the free choice of their representative.
*(2012-4578 AN, 07 December 2012, recital 11, p. 645)*

*Document forwarding*

While the applicant contends that, for the second ballot, proxies established with the national police at Lattes by voters registered on the electoral rolls of the municipality of Pérols

would not have arrived in time at the town hall of Pérols, thus unduly depriving these voters of their right to cast their vote, this allegation is matched only with the testimony of two voters. This circumstance is not, by itself, likely to mar the poll with irregularity since it does not result from the hearing that other voters having given proxy validly could not have voted. Consequently, this objection must be rejected.
*(2012-4623 AN, October 24, 2012, recital 1, p. 571)*

*Checking of proxy vote documents*

Absence on the voters list of a polling station of the name of the representative beside the name of the constituent for six voters having proxy vote, as opposed to the requirement of Article R. 76-1 of the Electoral Code. This omission, however regrettable it may be, should not however lead to the invalidation of an equivalent number of votes, since it does not result from the hearing and it is not alleged besides, that these insufficiencies or omissions would have been the cause of irregular votes.
*(2012-4593 AN, October 11, 2012, recital 4, p. 522)*

Under the terms of Article R. 72 of the Electoral Code, proxies must be established by deed drawn up either before the judge or the chief clerk of the magistrates' court, or before an officer of the criminal investigating department. Any agent of the criminal investigating department or any reservist under the civil reserve of the national police or under the operational reserve of the national gendarmerie, having the capacity of agent of criminal investigating department, appointed by the judge of the magistrates' court, is also qualified to draw up proxies. Article R. 75 of the same code provides, in its first subparagraph, that the proxy is signed by the constituent and, in its second subparagraph, that the authority before whom it is drawn up specifies on the printed form its names and capacity and affixes its signature and its seal on it.

The applicant mentions many proxies comprising various formal irregularities. The investigation revealed that among those which were actually used by the representative during the second ballot, twenty-three must be regarded as vitiated by substantial irregularities. This thus applies for irregularities relating to the absence of signature of the constituent, the impossibility of signing not being attested by the authority before whom the proxy was drawn up, or the impossibility of identifying this authority, or the absence of signature of this authority, without it being possible to affirm that these omissions would be pure material errors not lending to the consequence. Consequently, twenty-three votes were cast under conditions which were not in conformity with Articles R. 72 and R. 75 of the Electoral Code.
*(2012-4590 AN, October 24, 2012, recitals 1 and 2, p. 566)*

**Counting**

*Organisation of counting*

Irregularities during counting operations of the first ballot in two polling stations. In view of significant differences of votes noted in the first ballot, these facts, even if established, are not likely to affect the fairness of the poll.
*(2012-4581 AN, 13 July 2012, recital 3, p. 368)*

Under the second subparagraph of Article L. 65 of the Electoral Code: "The envelopes containing the voting papers are grouped by packs of 100. These packs are placed in envelopes especially reserved for this purpose. As of the introduction of a packet of 100 voting papers, the envelope is sealed and signatures are affixed on it of the president of the polling station and at least two assessors representing, outside the list or a unique applicant, lists or different candidates". Under the second and third subparagraphs of Article R. 65-1 of the same code: "The president distributes between the various counting tables the envelopes of one hundred papers. - After having checked that the envelopes of one hundred papers are in conformity with the provisions of the second subparagraph of Article L. 65, the scrutineers open them, extract from them the electoral envelopes and proceed as mentioned in the third subparagraph of the aforesaid article".

It is not established that the alleged division of envelopes of hundred in packets of twenty-five during the counting of the second ballot in the polling stations of Montpellier intended to

or lead to support a fraud or cause errors in the calculation of votes. Under these conditions, even if established, this circumstance did not constitute an irregularity likely to vitiate the results of the poll.
*(2012-4623 AN, October 24, 2012, recitals 8 and 9, p. 571)*

*Validity of the voting papers*

Mentions

Although the voting papers of the first round did not comprise the logotype of two political formations which had rallied to the candidacy of the elected candidate for the second round, the support that this candidate had received from these various political formations were very broadly publicised in the municipality and appeared explicitly in his profession of faith. In this specific case, the intent to mislead part of the electorate by the absence of mention of support of some political formations is not established.
*(2012-4620 AN, October 18, 2012, recital 8, p. 552)*

Use, in the second round, of voting papers printed for the first round

No legislative or statutory measure prohibits using, for the second ballot, voting papers printed in the name of the candidate for the first round.

No legislative or statutory measure imposes that the voting papers be identical in all polling stations. The investigation didn't reveal that the regulations of the Electoral Code relating to the mentions and the format of the voting papers were disregarded.
*(2012-4620 AN, October 18, 2012, recitals 6 and 7, p. 552)*

*Number of voter signatures which differ from that of the voting papers and envelopes found in the ballot box*

The mention of a supernumerary envelope in the official report of polling station no. 54 of Montpellier must result in deducting one vote from the number of votes cast as well as from the number of votes obtained by the elected candidate.
*(2012-4623 AN, October 24, 2012, recital 3, p. 571)*

Case law following the legislative elections of 1988

Mr. GROSPERRIN contends that, in two polling stations of the municipality of Besançon as well as in the polling station of the municipality of Mérey-Vieilley, the number of effective signatures does not correspond to the number of voting papers found in the ballot box. For the municipality of Mérey-Vieilley, it results from the hearing, and in particular from the examination of the voters lists and the official reports, that the objection lacks in fact. For the municipality of Besançon, it results from the hearing that, in two polling stations, the number of signatures is lower by one than the number of votes. Consequently, two votes must be deemed as cast irregularly.
*(2012-4596 AN, November 29, 2012, recitals 9 to 11, p. 623)*

*Differences of signatures between the first and the second round*

The applicant contends, in the last report of his writings, that in a hundred and fifty-three cases, the two signatures appearing for the two ballots in the margin of the name of a same voter present differences which establish that the vote was not made by the voter.

On the one hand, amongst the denounced signatures, ninety-seven signatures result from additions after the counting and the drawing up of official reports and, in any event, could not be taken into account during the counting. Consequently, the lack of authenticity of these signatures could not affect the result of the poll.

On the other hand, the investigation revealed, and in particular following the examination of the voter lists of the polling stations concerned, that, in at least fifty-one of the other cases raised by the applicant, the alleged differences are not very convincing, or are ascribable to

the fact that the constituent voted in one of the two rounds, or in the circumstance that the voter successively used his initials, an initial or his signature or, for the married women, their maiden name or their married name, or result from material errors made by voters having signed in the wrong box, or finally come from voters having formally admitted having voted during both ballots. On the other hand, five votes, corresponding to significant differences of signature, must be looked at as irregularly cast.
*(2012-4623 AN, October 24, 2012, recitals 4 to 6, p. 571)*

**Drawing up of official reports and their appendices**

*Tally sheets and counting sheets*

Under the terms of the third subparagraph of Article L. 65 of the Electoral Code, during the count, "the names on the voting papers are identified by at least two scrutineers on lists prepared for this purpose". Under Article R. 68: "the counting sheets are attached to the official report".

It is not established that counting sheets would not have been used during the counting of the second ballot in the polling stations of the municipality of Montpellier. In any event, this irregularity would not be, in itself, likely to vitiate the results of the poll since the calculation of the votes cast in these offices is not disputed.
*(2012-4623 AN, October 24, 2012, recitals 10 and 11, p. 571)*

*Official reports*

The applicant avails of four certificates of assessors of four different polling stations affirming, for two of them, that their signature is not appearing on the official report of the polling station while they had signed such an official report, for a third one who was asked to sign a blank official report and, for the last, who was asked to sign an official report before the completion of the poll and the counting.

However, on the one hand, with regard to the official reports of which it is alleged that they would have been irregularly signed, no reservation was expressed on this subject in the official reports and the Commission Report of control does not contain any observation on this point; on the other hand, with regard to the official reports of which it is alleged that the signature of one of the assessors did not appear in it while the assessor has signed such an official report, it does not arise from the examination of the official reports that the signature of an assessor would be missing. Consequently, the irregularities invoked are not established.
*(2012-4623 AN, October 24, 2012, recitals 14 and 15, p. 571)*

*Accompanying documents: spoilt ballot papers and empty envelopes*

The applicant contends that, in some polling stations of Montpellier, blank and spoilt ballot papers weren't appended under conditions in conformity with the provisions of Article L. 66 during the second ballot and that, in particular, some of the ballot papers declared blank or spoilt weren't appended to the official reports, only envelopes having contained these ballot papers having been appended while these envelopes weren't all empty. However, the applicant does not allege that the ballot papers contained in these envelopes were valid and should have been taken into account in the result of the counting, nor that this omission intended or resulted in undermining the fairness of the poll. Consequently, such an omission is without impact on its regularity.
*(2012-4623 AN, October 24, 2012, recitals 12 and 13, p. 571)*

## Disputes - Jurisdiction

### Scope of the Constitutional Council's jurisdiction

*Priority preliminary issue of constitutionality*

The applicant contends that the delimitation of two legislative constituencies of New Caledonia, which has not been amended by Law no. 2010-165 of February 23, 2010, is an "unfair political boundary aiming to prohibit the election of an kanak separatist deputy", in violation of a rebalancing principle appearing in the agreement signed in Nouméa on May 5, 1998.

However, the legislator proceeded, before the general renewal of the National Assembly of June 2012, with the amendment of the table of the legislative constituencies to which Article L. 125 of the Electoral Code refers to, in order to take into consideration the demographic trends which have occurred since the previous delimitation of these constituencies. The law of February 23, 2010 was declared constitutional by the Constitutional Council. Consequently, in any event, the objection alleging the disregard of the orientations entered in the agreement of Nouméa must be rejected.
*(2012-4613 AN, July 20, 2012, recitals 3 and 4, p. 415)*

According to the author of the priority question of constitutionality, the provisions of Article L.O. 134 of the Electoral Code under the terms of which "A deputy, a senator or the replacement of a member of a parliamentary assembly cannot be a replacement of a candidate to the National Assembly" disregard the provisions of Article 6 of the Declaration of human rights and that of the citizen of 1789 and Article 3 of the Constitution.

The Constitutional Council proceeds as it did for the senatorial elections (see 2011-4538 SEN of January 12, 2012) and admits that a priority question of constitutionality can be posed directly before it during a dispute relating to the election of a deputy.

However, the disputed provisions having been declared constitutional in the reasons and the mechanism of a decision of the Constitutional Council, it judges that in the absence of change of the circumstances, it is not necessary for it to examine the priority question of constitutionality.
*(2012-4563/4600 AN, October 18, 2012, recitals 3 to 6, p. 543)*

According to the author of the priority question of constitutionality, the provisions of Article L.O. 134 of the Electoral Code under the terms of which "A deputy, a senator or the replacement of a member of a parliamentary assembly cannot be a replacement of a candidate to the National Assembly" disregard the provisions of Article 6 of the Declaration of human rights and that of the citizen of 1789 and in that they disproportionately infringe the right of eligibility and the principle of equality before the law.

The Constitutional Council proceeds as it did for the senatorial elections (see 2011-4538 SEN of January 12, 2012) and admits that a priority question of constitutionality can be posed directly before it during a dispute relating to the election of a deputy.

However, the disputed provisions having been declared constitutional in the reasons and the mechanism of a decision of the Constitutional Council, it judges that in the absence of change of circumstances, it is not necessary for it to examine the priority question of constitutionality.
*(2012-4565/45674568/4574/4575/4576/4577 AN, October 18, 2012, recitals 3 to 6, p. 546)*

### Issues not falling within the Constitutional Council's jurisdiction

*Checking the regularity of electoral rolls*

The Constitutional Council, judge of the election, is not responsible to come to a conclusion about the regularity of the registrations on the electoral register, except if there was a ploy likely to undermine the fairness of the poll.

The circumstance that residence information appearing on the electoral register would be erroneous is not, in itself, likely to establish that the registration of the voters concerned would result from a fraudulent ploy.
*(2012-4635 AN, July 20, 2012, recitals 2 and 3, p. 433)*

*Constitutionality of a legislative text*

The Constitutional Council proceeds as it did for the senatorial elections (see 2011-4538 SEN of January 12, 2012) and admits that a priority question of constitutionality can be posed directly before it during a dispute relating to the election of a deputy.
*(2012-4563/4600 AN, October 18, 2012, recitals 3 to 6, p. 543)*

The Constitutional Council proceeds as it did for the senatorial elections (see 2011-4538 SEN of January 12, 2012) and admits that a priority question of constitutionality can be posed directly before it during a dispute relating to the election of a deputy.
*(2012-4565/4567/4568/4574/4575/4576/4577 AN, October 18, 2012, recitals 3 to 6, p. 546)*

## Dispute - Admissibility

### Lodging of the application

*Capacity of the applicant*

The applicant was not registered on the electoral rolls of the 5th constituency of Alpes-Maritimes and he did not submit his candidacy there. Consequently, he has no standing to challenge the electoral operations in this constituency.
*(2012-4625 AN, July 20, 2012, recital 3, p. 425)*

*Authorities to which the application must be addressed*

Under the first subparagraph of Article L. 34 of the ordinance of 07 November 1958: "The Constitutional Council can be referred only by a written request addressed to the general secretary of the Council or to the representative of the State" Consequently, a petition addressed to the administrative court of Lille and submitted by this court to the Constitutional Council which received it within the dispute period is not admissible.
*(2012-4582 AN, July 13, 2012, recital 1, p. 370)*

By decision no. 2012-4582 AN of July 13, 2012, the Constitutional Council declared inadmissible an application lodged by the same applicant to the administrative court of Lille. Another application drafted under the same terms however was also lodged on June 28t, 2012 to the prefecture of the North. It is thus admissible.
*(2012-4652 AN, August 9, 2012, recital 1, p. 480)*

*Deadlines*

Imperative character of the ten day deadline

While the applicant asks for additional time to lodge the documents in support of his protest, he does not justify circumstances having hindered him from producing the justifications in support of his petition within the time envisaged by Article 33 of the ordinance of 07 November 1958 referred to above. Refusal to grant additional time.
*(2012-4629 AN, July 20, 2012, recital 2, p. 427)*

Premature request

Request directed against the sole operations of the first ballot. Any candidate not having been proclaimed elected following this first round and the applicant not asking for the proclamation of any candidate, his request is premature and, consequently, inadmissible.
*(2012-4547 AN, July 13, 2012, recital 2, p. 340; 2012-4548/4583 AN, July 13, 2012, recital 3, p. 342; 2012-4550/4634 AN, July 20, 2012, recital 3, p. 397)*

Late request

The proclamation of the results of the poll of June 16, 2012 for the election of a deputy in the single constituency of Saint-Barthélemy and Saint-Martin was done on June 17, 2012. The

request lodged with the prefecture of Saint-Barthélemy and Saint-Martin on June 28, 2012 is late and, consequently, inadmissible.
*(2012-4641 AN, July 13, 2012, recital 2, p. 378)*

Under the first subparagraph of Article 33 of the ordinance of November 07, 1958 as amended by the Organic Law no. 2011-410 of 14 April 2011: "The election of a deputy or a senator can be contested before the Constitutional Council until the tenth day which follows the proclamation of the results of the election, at the latest at 6 p.m.".

The proclamation of the results of the ballot of June 17, 2012 for the election of a deputy in the 6th constituency of the Hauts-de-Seine was done on June 18, 2012. The request was addressed by e-mail to the general secretary of the Constitutional Council on June 28, 2012 at 10.15 p.m. Consequently, it is late and hence inadmissible.
*(2012-4643 AN, 13 July 2012, recitals 1 and 2, p. 380)*

According to the first subparagraph of Article 33 of the ordinance no. 58-1067 of November 07, 1958 relating to the organic law of the Constitutional Council, as amended by the Organic Law no. 2011-410 of 14 April 2011 relating to the election of deputies and senators, the contesting of the election of a deputy or a senator must reach in prefecture or the general secretary of the Constitutional Council on the tenth day which follows the proclamation of the results of the election, "at the latest at six p.m.".

The proclamation of the results of the ballot of June 17, 2012 for the election of a deputy in the 2nd constituency of the Alpes-Maritimes was done on June 18, 2012. The petition was addressed by e-mail to the general secretary of the Constitutional Council on June 28, 2012 at 10.03 p.m. Consequently, it is late and hence inadmissible.
*(2012-4644 AN, 13 July 2012, recitals 1 and 2, p. 382)*

Under the first subparagraph of Article 33 of the ordinance of November 07, 1958 as amended by the Organic Law no. 2011-410 of 14 April 2011: "The election of a deputy or a senator can be contested before the Constitutional Council until the tenth day which follows the proclamation of the results of the election, at the latest at 6 p.m.".

The proclamation of the results of the poll for the election of deputies in the department of the Seine-Saint-Denis was done, according to the constituencies, on June 11 or 18, 2012. The request was received by the general secretary of the Constitutional Council on June 29, 2012. Consequently, in any event, it is late and hence inadmissible.
*(2012-4649 AN, July 13, 2012, recitals 1 and 2, p. 384)*

The results of the poll of June 16, 2012 for the election of a deputy in the 3rd constituency of French Polynesia were proclaimed on June 18, 2012. The request lodged with the services of the high commissioner of the Republic in French Polynesia on July 4, 2012 is late and consequently inadmissible.
*(2012-4651 AN, July 20, 2012, recital 2, p. 439)*

*Inadmissibility of the conclusions*

Simple criticisms of the conditions under which the electoral campaign or the poll was held

The applicants limit to alleging various irregularities touching the electoral campaign without asking for the cancellation of electoral operations. Consequently, the petition is inadmissible.
*(2012-4572 AN, July 13, 2012, recital 2, p. 362)*

Dismissal without hearing of a petition which is restricted to contesting the methods of the electoral poster display of the elected candidate without asking for the cancellation of the election.
*(2012-4573 AN, July 13, 2012, recital 2, p. 364)*

Simple requests for correction of results without impact on the direction of the election

The petition is directed against the sole operations of the first ballot. No candidate having been proclaimed elected following this first round and the applicant not asking for the proclamation of any candidate, his petition is premature and, consequently, inadmissible.
*(2012-4546 AN, July 13, 2012, recital 2, p. 338)*

Dispute not concerning the election itself

The petition exclusively relates to contesting the list of candidates in the first ballot. It does not relate to contesting the election of the elected proclaimed candidate at the conclusion of the second round, it is consequently inadmissible.
*(2012-4544 AN, July 13, 2012, recital 2, p. 334)*

Inadmissibility of a petition which denounces the irregularity of the voting papers and the posters of some candidates and challenges the practices of display but does not ask for the cancellation of the election of the proclaimed candidate elected at the conclusion of the second ballot.
*(2012-4555 AN, July 13, 2012, recital 2, p. 350)*

Dismissal without hearing of a petition which exclusively relates to contesting the presence of a candidate in the first ballot and not to dispute the election of the proclaimed candidate elected at the conclusion of the second round.
*(2012-4562 AN, July 20, 2012, recital 2, p. 401)*

Request for cancellation of several elections

Dismissal without hearing of a petition which disputes the results of electoral operations which was conducted in June 2012 in the whole of the constituencies and not in a given constituency.
*(2012-4586 AN, July 13, 2012, recital 2, p. 374)*

## Disputes - Objections

**New objections**

The applicant contends that, on the one hand, some expenditure do not appear in the campaign account of Mr. MENNUCCI or was under assessed, that, on the other hand, benefits were granted to him by several legal entities in violation of the provisions of Article L. 52-8 of the Electoral Code and that finally, he received sums in cash from an activist beyond the amount authorised by the third subparagraph of Article L. 52-8 of the Electoral Code in order to finance the electoral campaign in disregard of Article L. 52-4 of the same code. These new objections invoked for the first time in statements of case recorded on 09 October and 05 November 2012 were presented after the expiry of ten days deadline fixed by Article 33 of the ordinance of 07 November 1958. They are, consequently, inadmissible.
*(2012-4628 AN, 14 December 2012, recital 10, p. 701)*

*Existence*

Mr. ÉPINEAU contends that one of the stances aiming to influence the voters would have been obtained by Mr. GORGES in violation of Article L. 106 of the Electoral Code. This objection was raised by Mr. ÉPINEAU subsequently to the expiry of the ten days period which was assigned to him by the provisions of Article 33 of the ordinance of 07 November 1958 referred to above to refer to the Constitutional Council. It is consequently inadmissible.
*(2012-4601 AN, 29 November 2012, recital 3, p. 627)*

Objections alleging the absence of inclusion in the campaign account of Mr. GERMAIN the cost of the posters of the mayor of Fontenay-aux-Roses calling to vote for him as well as all expenditure borne by his replacement, are inadmissible as they were brought up for the first time after the expiry of the protest deadline.
*(2012-4617 AN, December 14, 2012, recital 8, p. 698)*

The objection alleging that irregularities have sullied the counting operations in a polling station was invoked for the first time in a statement of case filed after the expiry of the ten days period fixed by Article 33 of ordinance no. 58-1067 of the 07 November 1958 amended relating to the organic law of the Constitutional Council. It is consequently not admissible.
*(2012-4647 AN, December 14, 2012, recital 6, p. 707)*

**Objections lacking in fact**

According to the applicant, candidate in the 4th constituency of the Vosges, a letter sent by the president of the departmental council, on 05 June 05 to the mayors of this constituency had a "major impact on the result of the election". This letter, which could usefully be contradicted, did not exceed obviously the limits of controversial election. Consequently, this objection must be rejected.
*(2012-4622 AN, July 20, 2012, recital 2, p. 423)*

Mr. GROSPERRIN contends that, in two polling stations of the municipality of Besançon as well as in the polling station of the municipality of Mérey-Vieilley, the number of effective signatures does not correspond to the number of voting papers found in the ballot box. For the municipality of Mérey-Vieilley, it results from the hearing, and in particular from the examination of the voters lists and the official reports, that the objection lacks in fact.
*(2012-4596 AN, November 29, 2012, recitals 9 and 10, p. 623)*

It results from the hearing that the objection relating to the absence of inclusion in the campaign account the cost of the campaign premises lacks in fact.
*(2012-4596 AN, November 29, 2012, recital 13, p. 623)*

Objections alleging that Mr. GERMAIN would not have appointed a financial agent, in disregard of the first subparagraph of Article L. 52-4 of the Electoral Code and that according to which his campaign account would not retrace all his phone expenses borne by the socialist party, lacks in fact.
*(2012-4617 AN, December 14, 2012, recitals 7 and 8, p. 698)*

**Objections that are not sufficiently precise**

The applicant is restricted to denouncing the "general, political, administrative and electoral collusion" between the elected candidates. These allegations are not matched with details and justifications enabling the election judge to assess its scope.
*(2012-4625 AN, July 20, 2012, recital 4, p. 425)*

Candidate denouncing the obstacles made to his candidacy and his electoral campaign as well as attacks on the equality between the candidates, without matching these allegations with precise details and justifications allowing the election judge to assess its scope. Dismissal of the petition.
*(2012-4631 AN, July 20, 2012, recital 2, p. 429)*

The applicant restricts himself to denounce frauds during electoral operations. These allegations are not matched with details and justifications enabling the election judge to assess its scope.
*(2012-4648 AN, July 20, 2012, recital 2, p. 437)*

A high number of spoilt ballot papers and proxies would not by itself establish the existence of irregularities.
*(2012-4617 AN, December 14, 2012, recital 6, p. 698)*

**Objections which do not have any *prima facie* evidence**

Dismissal of the petition which only invokes "peddling of votes" as well as an attack on the secrecy of the ballot in the municipality without matching these allegations with precise details and justifications enabling the election judge to assess its scope.
*(2012-4556 AN, July 13, 2012, recital 2, p. 352)*

In the absence of ploys, the Constitutional Council is not responsible to check, taking into consideration their statuses, the regularity of the nomination of candidates by the political parties, or to involve itself in their inner working. The allegations of the applicants relating to the nomination of the elected candidate, which are not matched with any precise detail, are not likely to establish the existence of such ploys.

Allegations according to which posters of electioneering propaganda of a candidate were defaces and according to which irregular conditions of the identity of the voters in a polling station during the first ballot would be checked, are not matched with precise details and justifications enabling the election judge to assess its scope.
*(2012-4559 AN, July 13th, 2012, recitals 2 and 3, p. 356)*

If the applicant denounces "a succession of inaugurations concentrated over the campaign period, in an abnormal and promotional manner", these allegations are not matched with any justification.
*(2012-4560 AN, July 13, 2012, recital 3, p. 358)*

The applicant, candidate in the 1st constituency of Meurthe-et-Moselle, restricts to denouncing a "total censure" of his campaign in the media and a "refusal of the Nancy remand centre to arrange an electoral meeting for the prisoners". These allegations are not matched with details and justifications enabling the election judge to assess its scope.
*(2012-4579 AN, July 13, 2012, recital 2, p. 366)*

The Constitutional Council, in the absence of ploys, does not have to come to a conclusion about the regularity of an electoral register. The allegations of the applicant are not such as to establish the existence of such ploys.
*(2012-4581 AN, July 13, 2012, recital 2, p. 368*

In support of his protest relating to the cancellation of electoral operations, the applicant disputes the judgment of the administrative court of Rennes which rejected his candidacy. However, the allegations of the applicant are not matched with details and justifications enabling the election judge to assess its scope, his petition must be dismissed.
*(2012-4584 AN, July 13, 2012, recital 2, p. 372)*

The applicant denounces the obstacles created for his candidacy and his electoral campaign. These allegations not being matched with details and justifications enabling the election judge to assess its scope, his petition must be dismissed.
*(2012-4607 AN, July 13, 2012, recital 2, p. 376)*

Allegations according to which the envelopes intended for the poll were delivered personally to voters who could not take them themselves, in disregard of the first sentence of Article L. 62 of the Electoral Code.

While the applicant claims that this irregularity leads to thinking that the envelopes "generally, were pre-filled with a favourable ballot paper" in the name of the candidate declared elected in the second round, he does not establish or even allege that a voter would have announced the presence of a pre-filled envelope or that the number of spoilt ballot papers was abnormally high. Dismissal of the petition.
*(2012-4615 AN, July 20, 2012, recitals 2 and 3, p. 419)*

The applicant does not produce any element so as to assess the extent and the scope of the facts and incidents which he denounces.
*(2012-4587 AN, November 20, 2012, recitals 3 and 4, p. 575)*

The applicant objects that the elected candidate arranged for massive irregular postings in disregard of Articles L. 51 and L. 165 of the Electoral Code and that a leaflet which was hostile to his candidacy would have been widely distributed on the day before the second ballot in disregard of Article L. 48-2 of the same code. He however does not offer any prima facie proof in support of both objections.
*(2012-4591 AN, November 29, 2012, recitals 3 and 5, p. 621)*

Mr. ISNARD claims that voters were not able to draw up a proxy, because of the absence of printed forms at the police station of Salon-de-Provence some of the days before the election. The applicant does not offer any prima facie proof that voters were unable to establish a proxy.
*(2012-4578 AN, 07 December 2012, recital 10, p. 645)*

The applicant claims that Mrs. ANDRIEUX, candidate elected at the conclusion of the second ballot, allegedly unduly benefited, in support of her electoral campaign, from the award of subsidies from the Departmental council of Provence-Alpes-Côte-d'Azur for associations intended to shower voters with "generosities". He however restricts himself to mention a criminal procedure in progress without offering any suitable element to enable the election judge to assess if the allegations reveal a violation of the rules of the electoral law and to assess their impact on the outcome of the ballot.
*(2012-4598 AN, December 07, 2012, recital 1, p. 657)*

The objection alleging the absence of professions of faith and the ballot papers of Mrs. CERQUEIRA in some postal dispatches bound for voters is not matched with any prima facie proof.

If Mr. KOKOUENDO estimates that the importance of the means deployed by the elected candidate during his campaign results in thinking that he has exceeded the limit of electoral

expenditure, as opposed to the decision of the National Commission of campaign accounts and political financings on October 11, 2012, this objection is not matched with any precise detail or justification enabling the Constitutional Council to assess its scope.
*(2012-4605 AN, December 07, 2012, recitals 5 and 6, p. 659)*

Mrs. LATRÈCHE calls into question the disregard of Article L. 52-8 of the Electoral Code which would result from the incomplete character of the campaign account of Mr. LAGARDE. Moreover, an excess over the limit of electoral expenditure would result from it in disregard of Article L. 52-11 of the same code. The applicant does not offer pieces of evidence showing that the campaign account of Mr. LAGARDE would have been incomplete or that the limit of the expenditure would have been exceeded.
*(2012-4630 AN, December 07, 2012, recitals 8 and 9, p. 664)*

The objections alleging the absence of mention of the name of the replacement of Mr. GERMAIN on some ballot papers and signature missing of envelopes intended to collect the ballot papers during the counting in the polling stations of the municipalities of Clamart and Fontenay-aux-Roses are not matched with any prima facie proof. The objection is not established according to which transport expenses would have been borne by a territorial authority.
*(2012-4617 AN, December 14, 2012, recitals 6 and 8, p. 698)*

Mrs. VASSEUR objects to Mr. KRABAL of having used, in connection with the electoral campaign, files held by several legal entities in disregard of the applicable regulation. However, neither the use by Mr. KRABAL of such files nor the extent of the dissemination of these messages are established.
*(2012-4637 AN, December 14, 2012, recital 3, p. 704)*

**Inoperative objections**

The objection alleging that municipal news bulletins as well as the speech made during the ceremony of vows by the mayor, elected proclaimed candidate, violated the rules of propaganda, is inoperative. These bulletins and speeches, which did not contain any allusion to the coming electoral campaign, could not be deemed as having been done in violation of the regulations of the Electoral Code. Because of their contents and in view of differences of votes separating the candidates, they could not affect the fairness of the poll.
*(2012-4635 AN, July 20, 2012, recitals 2 and 3, p. 433)*

The objection alleging that 9,788 of the 55,056 letters sent by the applicant to the voters of the constituency were returned to him with the mention "does not live at the address indicated" is not of nature to establish that the registration of the voters concerned would result from a fraudulent ploy and, consequently, it is inoperative.
*(2012-4635 AN, July 20, 2012, recitals 2 and 3, p. 433)*

**Scope of the objections**

The allegation is made that several people who planned to be candidates in the 10th constituency of the French from abroad contacted voters by e-mail, sometimes on several occasions, in the year which preceded the organisation of the ballot. The circumstance that these people would have, before the opening of the electoral campaign, sent to the voters e-mail messages is not an infringement to the rules governing the electoral campaign. Dismissal of the petition.
*(2012-4545 AN, July 13, 2012, recital 2, p. 336)*

In support of their protest, the applicant, candidate in the 2nd constituency of Paris, and her replacement claim that the absence of distribution to voters of circulars relating to their candidacy harmed them and has, in the same time, undermined the fairness of the poll. In view of differences of votes separating the candidates in the first round, this omission could not have impact on the nomination of candidates allowed to participate in the second round and, consequently, on the outcome of the poll. Dismissal of the petition.
*(2012-4550/4634 AN, recital 4, p. 397)*

Objection alleging the ineligibility of the replacement of a non-elected candidate, pursuant to Article L.O. 134 of the Electoral Code insofar as he was also replacement of a senator. In

view of differences of votes separating, in the first round, the three leading candidates from the other candidates and, in the second round, the elected proclaimed candidate from the two other candidates, the ineligibility denounced by the applicant could not, in any event, impact the fairness of the poll.
*(2012-4595 AN, July 20, 2012, recitals 2 and 3, p. 409)*

## Disputes - Investigation

### General Powers of investigation

*Dismissal without prior joint hearing*

Late petition. Dismissal without hearing.
*(2012-4641 AN, July 13, 2012, recital 2, p. 378; 2012-4643 AN, July 13, 2012, recital 2, p. 380; 2012-4644 AN, July 13, 2012, recital 2, p. 382; 2012-4649 AN, July 13, 2012, recital 2, p. 384; 2012-4651 AN, July 20, 2012, recital 2, p. 439)*

Petition not disputing the election of the elected proclaimed candidate. Dismissal without hearing.
*(2012-4544 AN, July 13, 2012, recital 2, p. 334)*

Petition calling upon of facts which are not constitutive of an infringement to the rules governing electoral campaign. Dismissal without hearing.
*(2012-4545 AN, July 13, 2012, recital 2, p. 336)*

Dismissal without hearing of a petition directed against the sole operations of the first ballot which proceeded on June 3, 2012 while no candidate was proclaimed elected following this first round and that the applicant does not ask for the proclamation of any candidate.
*(2012-4546 AN, July 13, 2012, recital 2, p. 338)*

Premature petition. Dismissal without hearing.
*(2012-4547 AN, July 13, 2012, recital 2, p. 340)*

Dismissal without hearing of the two petitions presented by the same applicant. The first was premature and the second denounced by irregularities unlikely to have affected the fairness of the poll.
*(2012-4548/4583 AN, July 13, 2012, recitals 2 to 4, p. 342)*

Dismissal without hearing of a petition denouncing facts which, for some of them, taking into account their minor character, are not of nature to call into question the election of the elected candidate and, for the others, are not matched with precise details and justifications enabling the election judge to assess its scope.
*(2012-4549 AN, July 13, 2012, recital, 2, p. 344)*

Dismissal without hearing of a petition denouncing facts whose irregular character is not established.
*(2012-4552 AN, July 13, 2012, recitals 2 and 3, p. 346)*

Dismissal for absence of justification of a petition denouncing irregularities as well as the fact that a candidate would have unduly availed of the support of a political party on the ballot papers.
*(2012-4553 AN, July 13, 2012, recital 2, p. 348)*

Petition not disputing the election of the elected proclaimed candidate. Dismissal without hearing.
*(2012-4555 AN, July 13, 2012, recital 2, p. 350)*

Petition which is not matched with precise details and justifications enabling the election judge to assess its scope. Dismissal without hearing based on Article 38 of the ordinance of November 07, 1958.
*(2012-4556 AN, July 13, 2012, recital 2, p. 352; 2012-4579 AN, July 13, 2012, recital 2, p. 366; 2012-4584 AN, July 13, 2012, recital 2, p. 372; 2012-4607 AN, July 13, 2012, recital 2, p. 376; 2012-4631 AN, July 20, 2012, recital 2, p. 429; 2012-4648 AN, July 20, 2012, recital 2, p. 437)*

Dismissal of a petition invoking facts which, even if established, could not be looked at, in view of the differences of votes, as likely to impact the outcome of the poll.

*(2012-4557 AN, July 13, 2012, recital 2, p. 354; 2012-4560 AN, July 13, 2012, recitals 2 to 5, p. 358; 2012-4581 AN, July 13, 2012, recitals 2 and 3, p. 368)*

Petition comprising allegations which are not matched with precise details and justifications enabling the election judge to assess its scope and denouncing various facts which, even if established, are not of nature to affect the fairness of the poll, in view of significant differences of votes noted in the first as well as the second ballot. Dismissal without hearing.
*(2012-4559 AN, July 13, 2012, recitals 2 to 4, p. 356)*

Dismissal without hearing of a petition denouncing irregularities relating to the electoral billposting which could not, taking into account the differences of votes, have an impact on the result of the poll.
*(2012-4566 AN, July 13, 2012, recital 2, p. 360)*

Dismissal without hearing of a petition which is restricted to alleging various irregularities touching the electoral campaign without requesting the cancellation of electoral operations in the constituency.
*(2012-4572 AN, July 13, 2012, recital 2, p. 362)*

Dismissal without hearing of a petition which is restricted to contesting the methods of the electoral poster display of the elected candidate without asking for the cancellation of the election.
*(2012-4573 AN, July 13, 2012, recital 2, p. 364)*

Dismissal without hearing of a petition addressed to the administrative court of Lille, in disregard of the provisions of Article 34 of the ordinance of November 07, 1958.
*(2012-4582 AN, July 13, 2012, recital 1, p. 370)*

Dismissal without hearing of a petition which disputes the results of electoral operations which was conducted in June 2012 in the whole of the constituencies and not in a given constituency.
*(2012-4586 AN, July 13, 2012, recital 2, p. 374)*

Dismissal without hearing of a premature petition and a petition comprising an objection without impact on the results of the election.
*(2012-4550/4634 AN, July 20, 2012, recital 4, p. 397)*

Dismissal without hearing of a petition comprising objections denouncing the irregularities which, even if established, are not of nature to affect the fairness of the poll in view of differences of votes.
*(2012-4561 AN, July 20, 2012, recital 2, p. 399)*

Dismissal without hearing of a petition which exclusively relates to contesting the presence of a candidate in the first ballot and not to dispute the election of the proclaimed candidate elected at the conclusion of the second round.
*(2012-4562 AN, July 20, 2012, recital 2, p. 401)*

Dismissal without hearing of a petition denouncing irregularities which would have sullied the electoral billposting of the elected candidate, in particular the massive use of panels provided to candidates in the presidential election. In view of significant differences of votes, such irregularities, even if established, are not of nature to affect the fairness of the poll.
*(2012-4564 AN, July 20, 2012, recital 2, p. 403)*

Dismissal without hearing of a petition denouncing defamatory remarks made against one of the candidates present in the second round by another candidate present in the second round, both not elected, and the fact that leaflets in favour of the elected candidate were thrown in front of the polling stations of many municipalities in the night preceding the second ballot, in violation of Article L. 49 of the Electoral Code, and the presence of the emblem of the Socialist party on the circulars, the ballot papers and the posters of one of the candidates present in the second round, while this party had called to vote for another candidate and had withdrawn its support for this candidate who remained steady in the second round, because of the wide-ranging public debate which took place for the second ballot on the political supports of the candidate as well as differences in votes.
*(2012-4569/4570/4571 AN, July 20, 2012, recitals 3 and 4, p. 405)*

Dismissal without hearing of a petition which is restricted to denouncing "attempts at intimidations" of the applicant, defacing of his electoral posters, irregular use of data processing of personal nature and irregularities relating to the course of the poll without matching these allegations with precise details and justifications enabling the election judge to assess its scope.
*(2012-4585 AN, July 20, 2012, recital 2, p. 407)*

Dismissal of a petition containing a single objection alleging the ineligibility of the replacement of a non-elected candidate. In view of differences of votes separating, in the first round, the three leading candidates from the other candidates and, in the second round, the elected proclaimed candidate from the two other candidates, the ineligibility denounced by the applicant could not, in any event, impact the fairness of the poll.
*(2012-4595 AN, July 20, 2012, recital 3, p. 409)*

Dismissal without hearing of a petition denouncing facts which, even if established, could not have an influence on the nomination of candidates allowed to participate in the second round and, consequently, affect the fairness of the poll taking into account the differences of votes.
*(2012-4606 AN, July 20, 2012, recital 2, p. 411)*

Dismissal without hearing. In view of the differences of votes, irregularities which, even if established, could not affect the fairness of the poll. Other allegations not matched with details and justifications enabling the election judge to assess its scope.
*(2012-4608/4609 AN, July 20, 2012, recital 3, p. 413)*

Dismissal without hearing of a petition which is restricted to invoking "the numerous irregularities of propaganda" as well as the use of his capacity as member of the government of New Caledonia, by the elected candidate, during the electoral campaign without matching these allegations with precise details and justifications enabling the election judge to assess its scope.
*(2012-4613 AN, July 20, 2012, recital 2, p. 415)*

Dismissal without hearing of a petition denouncing the actions which could not affect the fairness of the poll in view of differences of votes.
*(2012-4614 AN, July 20, 2012, recitals 2 and 3, p. 417)*

Petition containing only objections without influence on the results of the election or not matched with precise details and justifications enabling the election judge to assess its scope. Dismissal without hearing.
*(2012-4615 AN, July 20, 2012, recitals 2 and 3, p. 419)*

Dismissal without hearing of a petition denouncing the fact that the proclaimed candidate elected in June 2012 had benefitted in January 2012 from the support of the mayor of a municipality, in the municipal newspaper of this municipality, in view of differences of votes.
*(2012-4621 AN, July 20,2012, recital 2, p. 421)*

Dismissal without hearing of a petition based on objections alleging irregularities unlikely to have affected the fairness of the poll or existence of an alleged ploy which did not clearly exceed the limits of election controversy.
*(2012-4622 AN, July 20, 2012, recitals 2 and 3, p. 423)*

Dismissal without hearing of a petition aiming for two constituencies: the first petition is inadmissible as the applicant was not registered on the electoral rolls of this constituency and he did not submit his candidacy there. The second comprises objections which are not matched with details and justifications enabling the election judge to assess its scope.
*(2012-4625 AN, July 20, 2012, recitals 2 to 4, p. 425)*

Dismissal without hearing of a petition denouncing the granting of subsidies by the town hall of Sarcelles at the approach of the ballot, as well as the organisation of public events days before and on the poll days, in which the mayor of Sarcelles would have participated, elected proclaimed candidate. These allegations are not matched with precision or justification enabling the Constitutional Council to assess its scope. While the applicant asks for additional time to lodge the documents in support of his protest, he does not justify circumstances having hindered him from producing the justifications in support of his petition within the time envisaged by Article 33 of the ordinance of November 07, 1958.
*(2012-4629 AN, July 20, 2012, recital 2, p. 427)*

Dismissal without hearing of a petition denouncing the benefit which a candidate would have got. In view of differences of votes, this circumstance, even if established, is not of nature to affect the fairness of the poll.
*(2012-4632 AN, July 20, 2012, recital 2, p. 431)*

Dismissal without hearing of a petition which challenges the municipal news bulletins as well as the speech made during the ceremony of vows by the mayor, elected proclaimed candidate, while these bulletins and speeches did not violate the regulations of the Electoral Code,

and which disputes the regularity of the inscriptions on the electoral register without ploys being established.
*(2012-4635 AN, July 20, 2012, recitals 2 and 3, p. 433)*

Dismissal without prior hearing of a petition in which the applicant disputes the rejection of his candidacy. The refusal of registration of this candidacy could not, in the circumstances of this specific case, have influence on the nomination of candidates allowed to participate in the second round and, consequently, have affected the fairness of the poll.
*(2012-4640 AN, July 20, 2012, recitals 2 and 3, p. 435)*

Dismissal without hearing of a petition of a candidate denouncing, on the one hand, to have been illegally subject to hospitalisation without his consent from May 27 to June 20, 2012 which would have prevented him from campaigning and, on the other hand, that the elected proclaimed candidate would have arranged to affix posters of his campaign on panels reserved for this purpose before the beginning of the official campaign. In view of differences of votes, in the first and the second ballot, the allegations, even if established, could not affect the fairness of the poll.
*(2012-4652 AN, August 09, 2012, recital 3, p. 480)*

*Joinder*

Joinder of two petitions directed against the same election.
*(2012-4550/4634 AN, July 20, 2012, recital 1, p. 397)*

It is necessary to join three petitions directed against the same election and drafted in the same terms, to rule by only one decision.
*(2012-4569/4570/4571 AN, July 20, 2012, recitals 3 and 4, p. 405; 2012-4608/4609 AN, July 20, 2012, recital 1, p. 413)*

**Procedural issues, special petitions, no need to adjudicate**

*Special requests*

While the applicant asks for additional time to lodge the documents in support of his protest, he does not justify circumstances having hindered him from producing the justifications in support of his petition within the time envisaged by Article 33 of the ordinance of November 07, 1958 referred to above. Refusal to grand additional time.
*(2012-4629 AN, July 20, 2012, recital 2, p. 427)*

## Litigation - Assessment of the facts by the Constitutional Council

**Irregularities which do not change the result**

*Irregularities wherein it is not established that they permitted frauds*

Electoral operations

The applicants denounce an early signature of the official report of voting operations and a closing of this official report as of 8 p.m. on June 10, 2012 in a polling station, the absence of compliance with the rules relating to the counting of signatures during the vote counting in several polling stations, as well as differences between the number of votes cast and the number of signatures noted in eight polling stations on June 10, 2012, for a total of 19 votes. In view of significant differences of votes noted in the first and the second ballot, these facts, even if established, are not of nature to affect the fairness of the poll.
*(2012-4559 AN, 13 July 2012, recital 4, p. 356)*

*Irregularities which, because of the differences of votes, do not modify the result*

Objection alleging the ineligibility of the replacement of a non-elected candidate, pursuant to Article L.O. 134 of the Electoral Code insofar as he was also replacement of a senator. In

view of differences of votes separating, in the first round, the three leading candidates from the other candidates and, in the second round, the elected proclaimed candidate from the two other candidates, the ineligibility denounced by the applicant could not, in any event, impact the fairness of the poll.
*(2012-4595 AN, July 20, 2012, recitals 2 and 3, p. 409)*

The applicant claims that the elected candidate would have benefited from facilities, as president of the urban community of Dracénoise, to address his views to all the elected officials of the 8th constituency of Var at the start of the year 2012. Dismissal without prior hearing.
*(2012-4632 AN, July 20, 2012, recital 2, p. 431)*

Candidacies

A candidate campaigned under the label "Union for the parliamentary majority" and banners presenting the emblem and the initials of the Union for a popular majority were affixed on his posters. It is contended that while availing unduly of the political label "U.M.P. ", this candidate could, by means of this ploy, obtain sufficient number of votes so that he was maintained in the second ballot.

At the conclusion of the first ballot, this candidate, who had obtained a number of votes accounting for 12.79% of registered voters, could be maintained in the second ballot with two other candidates of which one was elected. However, In view of differences of votes separating, in the first round, the three leading candidates from the other candidates and, in the second round, the elected proclaimed candidate from the two other candidates, the ploy denounced by the applicant could not, in any event, impact the result of the ballot.
*(2012-4548/4583 AN, July 13, 2012, recitals 4 and 5, p. 342)*

Propaganda

If the applicant denounces a defamation campaign wherein he was the victim, as well as defacing of election billboards, these facts, even if established, are unlikely to have exerted an influence on the outcome of the ballot, in view of the difference of votes.
*(2012-4560 AN, 13 July 2012, cons 4, p. 358)*

If posters in favour of four candidates in the first ballot were affixed on the locations allotted to other candidates, in disregard of Article L. 51 of the Electoral Code, these facts could not have an influence on the result of the poll, considering the differences of votes, in the first round, separating both candidates leading from other candidates.
*(2012-4566 AN, 13 July 2012, recital 2, p. 360)*

Irregular Posting before the first ballot in disregard of the provisions of Article L. 51 of the Electoral Code. In view of significant differences of votes noted in the first ballot, these facts, even if established, are not likely to affect the fairness of the poll.
*(2012-4581 AN, 13 July 2012, recital 3, p. 368)*

The applicant denounces the fact that the elected proclaimed candidate would have benefitted from an excessive air time of the broadcasting company Réunion Première. He also denounces the fact of being prevented from campaigning on the day before the ballot. In view of the differences of votes, the irregularities alleged, even if established, are not of nature to affect the fairness of the poll. Dismissal without prior joint hearing.
*(2012-4561 AN, July 20, 2012, recital 2, p. 399)*

The applicant denounces irregularities which would have sullied the electoral billposting of the elected candidate, in particular the massive use of panels provided to candidates in the presidential election. In view of significant differences of votes, such irregularities, even if established, are not of nature to affect the fairness of the poll.
*(2012-4564 AN, July 20, 2012, recital 2, p. 403)*

The applicant contends that the candidate elected at the conclusion of the second ballot, used municipal services of municipalities of the constituency while sending e-mails of invitation to his meetings and reproducing such messages on the website of a municipality. It arises from the documents produced by the applicant that the messages in question are restricted to inform their recipients of the date when the candidate in question will come to the municipality. In view of the differences of votes, these actions could not affect the fairness of the poll.
*(2012-4614 AN, 20 July 2012, recitals 2 and 3, p. 417)*

The applicant denounces the fact that the proclaimed elected candidate had benefited in January 2012 from the support of the mayor of a municipality, in the municipal newspaper of this municipality. In view of differences of votes, the allegations are not likely to have affected the fairness of the poll.
*(2012-4621 AN, July 20, 2012, recital 2, p. 421)*

Dismissal without hearing of a petition of a candidate denouncing, on the one hand, to have been illegally subject to hospitalisation without his consent from May 27 to June 20, 2012 which would have prevented him from campaigning and, on the other hand, that the elected proclaimed candidate would have arranged to affix posters of his campaign on panels reserved for this purpose before the beginning of the official campaign. In view of differences of votes, in the first and the second ballot, the allegations, even if established, could not affect the fairness of the poll.
*(2012-4652 AN, August 09, 2012, recital 3, p. 480)*

A large number of computer messages in the nature of election propaganda materials were disseminated June 16 and 17, the day before and the day of the second ballot, in violation of Article L. 49 of the Electoral Code which prohibits, starting from the day before the poll at zero hour, to distribute or arrange for distributions of bulletins, circulars and other documents as well as, by electronic means, any message in the nature of election propaganda. However, this irregularity, however regrettable it may be, could not, taking into account the differences of votes, have an impact on the results of the poll.
*(2012-4589 AN, December 07, 2012, recitals 5 and 7, p. 654)*

While the investigation revealed that during the election campaign, posters of the candidate were defaced, the applicant does not offer any element as for the extent or the systematic character of these defacements and does not demonstrate that she would have been unable to replace the damaged posters. Consequently, considering the differences of votes, this circumstance could not be considered as having impact on the election results.
*(2012-4630 AN, December 07, 2012, recitals 6 and 7, p. 664)*

If the existence, from May 06, 2012, of a website usurping the identity of Mrs. LATRÈCHE and disseminating information intended to discredit her candidacy, must be looked at as a ploy exceeding the limits of the controversial election, this circumstance, in the absence of any element on the audience of this site, could not, in view of the differences of votes, affect the results of the poll.
*(2012-4630 AN, December 07, 2012, recitals 3 and 4, p. 664)*

Electoral operations

The applicant mentions his difficulties in obtaining the voter list for the first ballot, in violation of Article L. 68 of the Electoral Code, as well as discussions which would have taken place in a polling station in disregard of Article R. 48 of the same code. In view of the number of votes obtained by each candidate, the allegations, even if established, could not have an impact on the outcome of the poll.
*(2012-4557 AN, July 13, 2012, recital 2, p. 354)*

Irregularities during counting operations of the first ballot in two polling stations. In view of significant differences of votes noted in the first ballot, these facts, even if established, are not likely to affect the fairness of the poll.
*(2012-4581 AN, 13 July 2012, recital 3, p. 368)*

Mrs. MORANO contends that the arrival of an audio-visual film crew at Toul on June 16 and 17 caused disorder amongst voters, by its actions in the polling stations on the day of the poll. It indeed results from the hearing that members of an audio-visual film crew undermined the rules of Electoral Code relating to the course of voting operations in a polling station of the constituency on the day of the second ballot. Regardless of their criminal enforcement, these facts however could not, taking into account the differences of votes, have an impact on the results of the poll.
*(2012-4589 AN, December 07, 2012, recitals 8 and 9, p. 654)*

*Irregularities in the first ballot without incidence on the situation of the candidates for the second*

Propaganda

The applicant objects to the replacement of the elected candidate of having sent e-mails containing elements of electioneering propaganda to employees of the municipality of Goussainville before the first ballot. He claims that a departmental councillor resorted to the same

process with regard to employees of the Regional council of Val-d'Oise before the first ballot. He also denounces irregularities made before the first ballot relating to the electoral billposting of the elected candidate. Finally, he denounces the presence of a poster of the electoral campaign for the election of the President of the Republic in the voting hall of the municipality of Fontenay-en-Parisis during the first ballot in disregard of Article L. 51 of the Electoral Code.

In view of differences of votes, these facts, even if established, could not have an influence on the nomination of the candidates allowed to participate in the second ballot and, consequently, to have affected the fairness of the poll. Dismissal without hearing.
*(2012-4606 AN, July 20, 2012, recital 2, p. 411)*

*Irregularities which do not modify the result because of the special circumstances of the election*

Candidacies

The applicant disputes the electoral operations conducted on June 09 and 16, 2012, in the 2nd constituency of Guadeloupe, for the reason that his candidacy was rejected by the judgment no. 1200513 of the administrative court of Basse-Terre of May 22, 2012 despite its regular nature.

The refusal of registration of this candidacy could not, in the circumstances of this specific case, have influence on the nomination of candidates allowed to participate in the second round and, consequently, have affected the fairness of the poll. Consequently, the petition can only be dismissed.
*(2012-4640 AN, July 20, 2012, recitals 2 and 3, p. 435)*

Propaganda

Defamatory remarks made against one of the candidates present in the second round by another candidate present in the second round, both not elected, as well as the fact that leaflets in favour of the elected candidate were thrown in front of the polling stations of many municipalities in the night preceding the second ballot, in violation of Article L. 49 of the Electoral Code, and the presence of the emblem of the Socialist party on the circulars, the ballot papers and the posters of one of the candidates present in the second round, while this party had called to vote for another candidate and had withdrawn its support for this candidate who remained steady in the second round, in any event, cannot be looked at as having affected the fairness of the poll.
*(2012-4569/4570/4571 AN, July 20, 2012, recitals 3 and 4, p. 405)*

Mr. ISNARD makes the point that Mr. FERRAND would have proceeded with the affixing of electoral posters the day before the second ballot on the place of the town hall of Salon-de-Provence in disregard of the provisions of Articles L. 51 and L. 90 of the Electoral Code. If posters were affixed on mobile supports, they were set up only in limited number and for a short length of time. Consequently, this irregular posting could not, in the circumstances of this case, affect the results of the poll.
*(2012-4578 AN, December 07, 2012, recitals 7 and 8, p. 645)*

Mr. ISNARD calls into question a leaflet of defamatory nature concerning him which was allegedly distributed the day before and on the day of the poll. Where this leaflet exceeded the limits of election controversy, neither its source nor the duration or scope of its distribution have been established. Consequently, the distribution of such a document, however regrettable it may be, cannot, in the circumstances of this specific case, be looked at as having affected the fairness of the poll.
*(2012-4578 AN, December 07, 2012, recital 9, p. 645)*

**Irregularities giving rise to corrections**

*Cancellation of some votes*

Electoral operations

The investigation revealed that, in the polling stations of the municipalities of Besançon and Devecey, two voters voted via proxy without it being established that a proxy had been validly given. Consequently, two votes must be deemed as cast irregularly.
*(2012-4596 AN, November 29, 2012, recitals 6 and 7, p. 623)*

Mr. GROSPERRIN contends that, in seventy two cases, the signatures appearing for the two ballots in the margin of the name of a same voter present differences which establish that the vote was not made by the voter.

The investigation revealed, particularly following the examination of the voters lists of the polling stations concerned, that fifteen votes, corresponding to significant differences in signature, must be deemed as irregularly cast.
*(2012-4596 AN, November 29, 2012, recitals 4 and 5, p. 623)*

Number of voters' signatures differing from that of the voting papers and envelopes found in the ballot box: case law following the legislative elections of 1988

For the municipality of Besançon, the investigation revealed that, in two polling stations, the number of signatures is lower by one than the number of votes. Consequently, two votes must be deemed as cast irregularly.
*(2012-4596 AN, November 29, 2012, recitals 9 to 11, p. 623)*

*Cancellation of the election*

Impossibility of making a correction of the results of the ballot

Twenty-three votes were cast under conditions which were not in conformity with Articles R. 72 and R. 75 of the Electoral Code. The election of Mrs. ROQUÉ was acquired with an advance of ten votes, lower than the number of the irregularly cast votes. Without having to examine the other objections of the petition, it is consequently necessary to cancel the disputed electoral operations.
*(2012-4590 AN, October 24, 2012, recitals 2 and 3, p. 566)*

## SENATE ELECTIONS

### Operations prior to voting

#### Senate elector rolls

*Appointment of the delegates*

The applicant does not contest that the appointment of the delegates of the municipal council for the municipality of Beaugency was done in accordance with the rules set by the Electoral Code. Since the Constitutional Council, ruling on the priority preliminary issue of constitutionality filed by the applicant in connection with his application regarding the election to the Senate, ruled Article L. 289 of the Electoral Code to be constitutional, the application for the cancellation of the election must be rejected.
*(2011-4538 SEN, 12 January 2012, recital 6, p. 67)*

### Election campaign - Means of propaganda

#### Ballot papers

*Content and format of the ballot papers*

The ballot papers for the roll managed by Mr KAROUTCHI met the requirements of Article R. 155 of the Electoral Code, which provides that the voting papers include the roll title and the name of each candidate making up the roll in the order of presentation.
*(2011-4541 SEN, 12 January 2012, recital 7, p. 72)*

**Prohibition of gifts from legal entities (Article L. 52-8, paragraph 2, of the Electoral Code)**

Firstly, the arrangement of a departmental hotel reception by the Chairman of the Departmental Council of Hauts-de-Seine to which all of the Senate electors were invited after the voting, whilst awaiting the results, cannot be regarded as the participation of that territorial collectivity in the funding of the election campaign of the roll managed by Mr KAROUTCHI, within the meaning of Article L. 52-8 of the Electoral Code, applicable to the election of Senators in accordance with Article L. 308-1 of that Code.

Secondly, the arrangement, on the initiative of various associations and unions, of a meeting on 19 September 2011, the theme of which was the defence of the Antoine Béclère hospital, located in Clamart, during which the applicant asserts, without proving it, that Mr. KALTENBACH allegedly criticised the Government's policy and its majority, cannot, in the absence of a direct link between that event and the Senate voting, constitute the participation of private legal entities in the funding of the election campaign of the Senators elected.
*(2011-4541 SEN, 12 January 2012, recitals 4 and 5, p. 72)*

## Election campaign - Intervention, pressures, manoeuvring

**Manoeuvring**

*Manoeuvring or intervention relating to a candidate's political situation*

Nominations

Mrs LE SASSIER BOISAUNE asserts that Mr KALTENBACH and Mrs LE NEOUANNIC have each filed a roll, as far as one of them is concerned, without having been voted for by the members of the socialist party, and, as far as the other is concerned, without having received the backing of the bodies whose support she claimed to have. Although it is down to the electoral judge to check whether any manoeuvring has been likely to have deceived voters regarding the reality of the appointment of the candidates by the political parties, it is not down to him to check the legality of the appointment of the candidates from the viewpoint of the political parties' by-laws and operating rules; therefore, the complaint raised by the applicant can only be dismissed.
*(2011-4541 SEN, 12 January 2012, recitals 2 and 3, p. 72)*

Supports

Contrary to what Mrs LE SASSIER BOISAUNE maintains, the title of the roll managed by Mrs LE NEOUANNIC - "List of the ecologist, socialist and Republican left union" - did not constitute a manoeuvring which could mislead voters, since the voting papers named, without any ambiguity, the only political bodies which supported that list.
*(2011-4541 SEN, 12 January 2012, recital 6, p. 72)*

## Disputes - Jurisdiction

**Scope of the Constitutional Council's jurisdiction**

*Priority preliminary issue of constitutionality*

The Constitutional Council relinquishes its previous case law under which "it is not down to the Constitutional Council, asked to rule on an appeal against the election of Senators, to assess the constitutionality of legislative provisions" (see 80-889 SEN of 2 December 1980, *Sénat, Eure*). It accepts that a priority preliminary issue of constitutionality (QPC) can be put directly before it in connection with an objection relating to the election of a Senator.

This QPC relates to Article L. 289 of the Electoral Code which provides, inter alia, that in municipalities of more than 3,500 inhabitants, the election of delegates and substitutes takes place on the same roll according to the proportional representation system with the application of the highest average rule. It is the choice of this rule which is contested on the basis of the principle of pluralism guaranteed by Article 4 of the Constitution.

It does not however follow, either from the provisions of that Article or from any constitutional principle, that all political groups represented within a municipal council should have delegates once the Senate electors have been appointed. The specific effect of the choice of a method for appointing these delegates, in municipalities of more than 3,500 inhabitants, in accordance with the proportional representation system, is to ensure a greater representation of minority groups from municipal councils. By opting for the application of the highest average rule, the legislator has not in any way infringed the principle of pluralism of thinking and opinion trends. Article L. 289 of the Electoral Code is not contrary to any other right or freedom guaranteed by the Constitution. It must therefore be ruled to be constitutional.
*(2011-4538 SEN, 12 January 2012, recitals 2 to 5, p. 67)*

*Issues not falling within the Constitutional Council's jurisdiction*

Constitutionality of a legislative text

The Constitutional Council relinquishes its previous case law under which "it is not down to the Constitutional Council, asked to rule on an appeal against the election of Senators, to assess the constitutionality of legislative provisions" (see 80-889 SEN of 2 December 1980, *Sénat, Eure*). It accepts that a priority preliminary issue of constitutionality (QPC) can be put directly before it in connection with an objection relating to the election of a Senator.
*(2011-4538 SEN, 12 January 2012, recitals 1 to 6, p. 67)*

## Disputes - Admissibility of the complaint

### Capacity to act

Under the terms of the second paragraph of Article 33 of the order of 7 November 1958 concerning the organic law on the Constitutional Council: "All persons registered on the electoral rolls or the consular electoral rolls of the constituency in which the election has taken place and persons who have applied as a candidate have the right to challenge an election". With regard to the Senate elections, the persons registered on the electoral rolls of the constituency are all of the citizens registered on the electoral rolls of the department and not just the members of the Senate electoral college defined in Article L. 280 of that Code.
*(2011-4538 SEN, 12 January 2012, recital 1, p. 67)*

## Disputes - Objections

### Objections that are not sufficiently precise

Although the applicant asserts that some Senate elector substitutes are alleged to have taken part in the voting, she has not provided specific information which would allow the validity of the assertion to be assessed.
*(2011-4541 SEN, 12 January 2012, recital 8, p. 72)*

### Objections which do not have any prima facie evidence

Although Mrs LE SASSIER BOISAUNE holds that various municipalities from the department of Hauts-de-Seine, disregarding the provisions of Article L. 285 of the Electoral Code,

were in breach of the obligation to appoint additional delegates, she does not provide any prima facie evidence in support of her allegations.
*(2011-4541 SEN, 12 January 2012, recital 1, p. 72)*

## Disputes - Investigation

**Procedural issues, special petitions, no need to adjudicate**

*Abandonment of proceedings*

During the investigation, the applicant abandoned his application. This is a pure and simple abandonment. Nothing prevents this from being formally communicated to him.
*(2011-4539 SEN, 12 January 2012, recital 1, p. 70)*

# PRESIDENT OF THE REPUBLIC AND GOVERNMENT

## PRESIDENT OF THE REPUBLIC

### Powers and jurisdiction

#### Power of nomination to civil and military jobs

*Control of the power of nomination*

Parliamentary committee opinions (see Title 10 Parliament)

The only article of Organic Law no. 2012-1557 of 31 December 2012 relating to the nomination of the general manager of the public limited company BPI-Groupe modifies the table appended to Organic Law no. 2010-837 of 23 July 2010 which fixes the list of posts and offices for which the power of nomination of the President of the Republic is exercised in accordance with the conditions stipulated in Article 13 of the Constitution.

On the one hand, the organic law of 23 July 2010 had recorded in that table the Chairman of the Board of Directors of the public institution OSEO. The law relating to the aforementioned public investment bank provides that the public institution OSEO takes the public institution name BPI-Groupe. The only article of the organic law referred to the Constitutional Council for examination deletes from the aforementioned table the reference to the Chairman of the Board of Directors of that public institution. Article 13 of the Constitution cannot prevent the organic legislator from deleting a post or an office from that table. This deletion is not contrary to any constitutional requirement.

On the other hand, the aforementioned law provides for the creation of the public limited company BPI-Groupe to which the public institution BPI-Groupe and the Caisse des dépôts et consignations transfer their holdings in the company called OSEO or its subsidiaries. The only article of the organic law refers the nomination, by the President of the Republic, of the general manager of the public limited company BPI-Groupe for the opinion of the competent commission of each assembly. In view of its importance for the Nation's economic and social life, this post falls within the scope of the last paragraph of Article 13 of the Constitution.
*(2012-663 DC, 27 December 2012, recitals 2 to 5, p. 711)*

#### National independence, territorial integrity and compliance with treaties

Under the terms of Article 16 of the 1789 Declaration: "A society in which the observance of the law is not assured, nor the separation of powers defined, has no Constitution at all". According to Article 5 of the Constitution, the President of the Republic is the guarantor of national independence and territorial integrity. The principle of the separation of powers applies in relation to the President of the Republic.

By modifying the remuneration of the President of the Republic, Article 40 of the amending law on finances for 2012 is contrary to the principle of the separation of powers. It must therefore be ruled to be unconstitutional.
*(2012-654 DC, 09 August 2012, recitals 81 and 82, p. 461)*

## Government's specific powers

### Determining and conducting the Nation's policy (Article 20)

Under the terms of Article 16 of the 1789 Declaration: "A society in which the observance of the law is not assured, nor the separation of powers defined, has no Constitution at all". Under the terms of the first paragraph of Article 20: "The Government shall determine and conduct the Nation's policy". The principle of the separation of powers applies in relation to the Government.

By modifying the remuneration of the Prime Minister, Article 40 of the referred law infringes the principle of the separation of powers. It must therefore be ruled to be unconstitutional.
*(2012-654 DC, 09 August 2012, recitals 81 and 82, p. 461)*

# PARLIAMENT

## PARLIAMENTARY MANDATE

### Exercising the parliamentary mandate

#### Replacement

The status as a replacement for a member of Parliament does not confer any office on this replacement member from which he/she could resign. No text allows him/her to waive, in advance, his/her right to exercise his/her mandate should the seat become vacant. Consequently, although M. SIFFREDI sent a letter to the President of the Senate, the President of the Constitutional Council and the Prefect of Hauts-de-Seine on 7 May 2012, in which he advised those authorities of his decision to "resign" from his position as a replacement member, this circumstance is immaterial for the application of Article L.O. 134 of the Electoral Code.
*(2012-4563/4600 AN, 18 October 2012, recital 8, p. 543)*

## ORGANISATION OF THE PARLIAMENTARY ASSEMBLIES AND THEIR WORK

### Organisation of the work

#### Sittings

*Extraordinary sessions*

The Parliament was called for an extraordinary sitting from Tuesday 3 July 2012. No public sitting was reserved as a priority matter for questions from Members of Parliament and the Government's responses in the agenda for either of the houses during the first week of the extraordinary session, which is contrary to the last paragraph of Article 48 of the Constitution. However, the amending finance bill for 2012, tabled with the National Assembly on 4 July 2012, was not adopted by the National Assembly during the first week of the extraordinary session. The procedure for considering the bill is not therefore unconstitutional.
*(2012-654 DC, 9 August 2012, recitals 2 to 4, p. 461)*

#### Agenda

*Reserved agenda*

A bill or a draft law which would be adopted during a week for which the agenda had been drawn up contrary to the last paragraph of Article 48 of the Constitution would be adopted by an unconstitutional procedure.

In this particular case, although no public sitting was reserved as a priority matter for questions from Members of Parliament and the Government's responses in the agenda for either of the houses during the first week of the extraordinary session, the amending finance bill for 2012 was not adopted by the National Assembly during that week. The procedure for considering the bill is not therefore unconstitutional.
*(2012-654 DC, 9 August 2012, recitals 2 to 4, p. 461)*

## Initiative

### Bills

*Filing conditions*

Prior consultation of the Conseil d'État

According to the first sentence of the second paragraph of Article 39 of the Constitution, if the Council of Ministers deliberates on bills and if it is possible for it to amend their content, this is, as the constituent authority wanted, subject to the informed opinion of the Conseil d'État being obtained. Therefore, all of the questions raised by the text adopted by the Council of Ministers must have been submitted to the Conseil d'État at the time of its consultation.

The sincerity of the law on the programming of public finances must in particular be assessed taking account of the opinion of the High Council for public finances. The same will apply to the assessment of the sincerity of the laws on finances and the laws on the financing of Social Security. Therefore, Article 39 of the Constitution requires that said opinion on the bill on the programming of public finances, the bill on finances for the year or the bill on the financing of Social Security for the year must be given before the Conseil d'État gives its opinion. By providing that the opinion will be attached to the bill when it is referred to the Conseil d'État, the provisions of Articles 13 and 14 of the organic law concerning the programming and the governance of public finances did not infringe those requirements.

By allowing the opinion of the High Council only to be given before the National Assembly adopts the amending bill on finances or the amending bill on the financing of Social Security on the first reading, the organic legislator infringed those requirements. Therefore, the last sentence of Article 15 must be ruled to be unconstitutional.

If, due to the circumstances, the opinion of the High Council for public finances were to be given after the opinion of the Conseil d'État, the Constitutional Council would, where applicable, assess compliance with the provisions of Articles 13, 14 and 15 from the viewpoint of the requirements for the continuity of the Nation.
*(2012-658 DC, 13 December 2012, recitals 51 to 54, p. 667)*

## Holding the debates

Under the terms of the first paragraph of Article 42 of the Constitution: "Discussing bills and draft laws concerns, in session, the text adopted by the committee asked to rule in accordance with Article 43 or, failing that, the text on which the Assembly has been asked to rule". It is shown by the terms of that Article that the constituent authority understood that, after being included on the agenda in accordance with the conditions specified in Article 48 of the Constitution, discussing a bill or a draft law concerns, in session, the text adopted by the committee asked to rule in accordance with Article 43. The position is different if the committee asked to rule in accordance with Article 43 has rejected the text which was submitted to it and if the committee has not ruled on all of the Articles of the text before its consideration in session begins.

The Senate's permanent committee, asked to rule in accordance with Article 43 of the Constitution, appointed a rapporteur and met to rule on the bill during the morning of Monday 11 September. According to the minutes of that meeting, after having adopted various amendments and considered all of the text's Articles, that committee finished its work that morning by adopting "the bill thus modified". Notwithstanding the adoption of this bill by the relevant permanent committee, the consideration of the text in open session which started on 11 September in the evening concerned the text of the bill on which the Senate had been asked to rule. The bill was not discussed in accordance with the first paragraph of Article 42 of the Constitution. It was therefore adopted in accordance with an unconstitutional procedure. Censure.
*(2012-655 DC, 24 October 2012, recitals 2 to 4, p. 557)*

## Motions

### Preliminary issue

According to the applicant Senators, the presentation and the adoption of a preliminary issue when considering, at a new reading, the finance bill for 2013 at the Senate constituted an abuse of procedure. They argue that, in the absence of any wish to obstruct on the part of the opposition when considering the bill, the adoption of that preliminary issue hindered the proper carrying out of the democratic debate, the proper operation of the constitutional public authorities and the right of amendment guaranteed by Article 44 of the Constitution.

The finance bill for 2013 was tabled with the National Assembly on 28 September 2012 and adopted on the first reading by the National Assembly on 20 November 2012. The Senate rejected the first part of the finance bill for 2013 on 28 November 2012, thereby obstructing the discussion of the second part of the bill. After the joint committee tasked with proposing a text on the provisions still under discussion was unsuccessful, on 6 December 2012, the National Assembly was asked to rule in a new reading of the bill and adopted it on 14 December 2012. Before the Senate asked to rule on the bill adopted by the National Assembly at the new reading, the chairman of the main group in the Senate majority filed a motion objecting to the preliminary issue to the deliberation of the bill in conditions which clearly showed that voting for that motion was wanted not to object to the text on the merits but, with a view to accelerating the procedure for the adoption of that text by the Parliament, to draw conclusions both from the rejection of the bill at its first reading at the Senate and from the lack of majority for adopting the bill on 18 December 2012 when it was considered at the finance committee. After the adoption of that preliminary issue on 18 December 2012, the Government, in accordance with the provisions of the fourth paragraph of Article 45 of the Constitution, asked the National Assembly to give a final ruling, which it did on 20 December 2012.

The proper carrying out of the democratic debate, and, consequently, the proper operation of the constitutional public authorities, assume that the right of amendment given to members of Parliament by Article 44 of the Constitution is respected and that both members of Parliament and the Government can use the procedures made available to these ends without hindrance. This dual requirement implies that no clearly excessive use is made of these rights.

In the conditions in which it occurred, the adoption of the preliminary issue when considering the bill at the new reading at the Senate does not render the referred law unconstitutional.
*(2012-662 DC, 29 December 2012, recitals 2 to 6, p. 724)*

## Right of amendment

### Exercising the right of amendment

*The Government's right of amendment*

By bringing in, through an amendment, an article establishing the "employment competitiveness tax credit" when considering the text at the first reading at the National Assembly, the Government used the right that it has from the provisions of the first paragraph of Article 44 of the Constitution. There is no other constitutional or organic rule which prevented the use of that right.
*(2012-661 DC, 29 December 2012, recital 34, p. 715)*

### Admissibility

*Admissibility on first reading*

Absence of an indirect link

Article 64 of the law on the simplification of the law and the streamlining of the administrative procedures creates a new article in chapter I of title I of book I of the Post and Electronic

Communications Code to define the characteristics of the registered mail service. Article 129 establishes the legal recognition of regional unions of family associations, stipulates their mission, their composition and their modus operandi and gives them the benefit of the resources of unions of family associations. Article 130 authorises the transfer of the last debiting of fourth category drinks from one municipality to another located on the territory of the same public inter-community cooperation institution with its own tax status. Article 134 establishes criminal immunity regulations for members of the Inter-ministerial Mission for Vigilance and Combating Sectarian Aberrations. These provisions, introduced at the National Assembly at the first reading, have no link, even an indirect one, with those that appear in the draft law. They were adopted according to a procedure contrary to Article 45 of the Constitution. Censure.
*(2012-649 DC, 15 March 2012, recitals 16 to 21, p. 142)*

*Admissibility after the first reading*

Absence of any link

Point III of Article 31 of the law on the simplification of the law and the streamlining of the administrative procedures authorises the Government, by means of an order, to take the steps needed to modify and add to the provisions governing the organisation of the craftwork sector, those which relate to the status of businesses falling under that sector, to the craftwork property regulations, to professional training and qualifications, and also to the quality of products and services, in order to simplify them, to adapt their procedures to the changes in the craftwork trades and, with the provisions which are specific to that sector in respect of taxation, credit, aid to businesses, employments law and social protection, to bring them together and organise them into a craftsman's code. Point II of Article 59 authorises the Government, by means of an order, to take the steps needed to transpose directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 concerning access to the activity of electronic money institutions and carrying it out and the prudential supervision of these institutions and also the measures for adapting the legislation associated with such transposition. Point III of Article 59 modifies the Monetary and Financial Code to adapt the duties of the Financial Markets Authority and the Prudential Supervisory Authority to the new obligations of cooperation and exchanges of information with the European Financial Markets Authority, the European Banking Authority, The European Insurance and Professional Pensions Authority and the European Systematic Risk Board. Item 1° of point I of Article 76 allows land and agricultural experts to assist the surveyor expert in land, agricultural and forestry town planning activities. Point II of Article 76 allows land and agricultural experts and forestry experts to value the elements of the net assets allocated to the professional activity by the individual entrepreneur with limited liability. Point I of Article 89 established a nullity of the disposal, for valuable consideration, of rural property effected without the rural development and rural establishment companies having been advised of the owner's intention to dispose of the property. Point III and *b* of 1° of IV of Article 95 amend the date from which certain classifications prior to the promulgation of the aforementioned law of 22 July 2009 cease to be effective, respectively for five star hotel establishments and for camping establishments.

The amendments which resulted from the aforementioned provisions were introduced at a new reading by the National Assembly. These additions did not, at this stage of the procedure, have direct relationship with a disposition still under discussion. Nor were they intended to ensure compliance with the Constitution, to go hand in hand with the texts being examined or to correct a material error. It follows that these provisions were adopted according to an unconstitutional procedure. Censure.
*(2012-649 DC, 15 March 2012, recitals 22 to 30, p. 142)*

## Successive readings and promulgation

The draft law on the recognition of 19 March as a national day of remembrance to commemorate the civil and military victims of the Algerian war and the fighting in Tunisia and Morocco, considered by the National Assembly in the text adopted by the committee asked to rule in accordance with Article 43 of the Constitution, was adopted without amendment

on 22 January 2002. The Senate adopted this draft law without amendment on 8 November 2012. Consequently, the bill which was referred to the Constitutional Council was considered successively in the two Houses of Parliament and adopted at the same terms in accordance with Article 45 of the Constitution. Its adoption procedure was also not contrary to any other provision of the Constitution. (Implicit solution: the procedure for adopting a draft law passed on by one House to the other one and considered by the latter after various renewals is not contrary to any provision of the Constitution)
*(2012-657 DC, 29 November 2012, recital 2, p. 616)*

**Urgency and accelerated procedure**

Under the terms of the second paragraph of Article 45 of the Constitution: "When, as a result of a disagreement between the two Houses, it has not been possible to adopt a bill or a draft law after two readings by each House or, if the Government has decided to initiate the accelerated procedure without the Conferences of Presidents jointly objecting to it, after just one reading by each of them, the Prime Minister or, for a draft law, the Presidents of both Houses acting together, has/have the power to call a meeting of a Joint Committee tasked with proposing a text on the provisions still under discussion". This provision allows the Government, after the tabling of a bill or a draft law, to notify its decision to initiate the accelerated procedure, provided that he Conferences of Presidents of both Houses are able, before starting to consider the text on the first reading, to exercise the prerogative which they have to jointly object to it.

No constitutional provisions requires the Government to justify initiating the accelerated procedure. In this case, this procedure was properly initiated on the draft law on the simplification of the law and the streamlining of the administrative procedures.
*(2012-649 DC, 15 March 2012, recitals 3 and 4, p. 142)*

**Joint committee**

*Amendments adopted after the failure of the committee*

Subsection IV of Article 11 of the law on the financing of Social Security for 2013 entitles chiropodists/podiatrists, for a limited period, to be members of the mandatory Social Security regime for freelance professions. The purpose of subsection VI of Article 67 is to supplement the experimental arrangement on the pricing rules for institutions for dependent elderly people. The purpose of the provisions of points *b* to *g* of 3° of A and 5° of B of subsection VIII of Article 73 is to amend the rules relating to the operation of the Intervention Fund for the quality and coordination of care. The amendments which resulted from the aforementioned provisions were introduced at a new reading at the National Assembly. These additions did not, at this stage of the procedure, have direct relationship with a disposition still under discussion. Nor were they intended to ensure compliance with the Constitution, to go hand in hand with the texts being examined or to correct a material error. It follows that subsection IV of Article 11, subsection VI of Article 67, items *b* to *g* of 3° of A and point 5° of B of subsection VIII of Article 73 were adopted according to an unconstitutional procedure. They must be ruled to be unconstitutional.
*(2012-659 DC, 13 December 2012, recitals 90 to 93, p. 680)*

## Status of the law

**Principle of clarity and sincerity of Parliamentary debates**

The initiation of the accelerated procedure by the Government on the draft law on the simplification of the law and the streamlining of the administrative procedures did not have the effect of altering the clarity and sincerity of the Parliamentary debate.
*(2012-649 DC, 15 March 2012, recital 4, p. 142)*

**Objective of accessibility and intelligibility**

The objective of constitutional standing of intelligibility and accessibility of the law, which arises from Articles 4, 5, 6 and 16 of the Declaration of the Rights of Man and the Citizen of 1789, requires the legislator to adopt sufficiently precise provisions and unequivocal formulae.

There is no constitutional requirement for the provisions of a bill or a draft law to have a similar purpose. The complexity of the law on the simplification of the law and the streamlining of the administrative procedures and the heterogeneity of its provisions cannot, by themselves, infringe the objective of constitutional standing of accessibility and intelligibility of the law. None of the provisions of the law on the simplification of the law and the streamlining of the administrative procedures is, by itself, contrary to this objective.
*(2012-649 DC, 15 March 2012, recitals 7 and 8, p. 142)*

Article 1 of the law on the recognition of 19 March as a national day of remembrance to commemorate the civil and military victims of the Algerian war and the fighting in Tunisia and Morocco establishes a "national day of remembrance to commemorate the civil and military victims of the Algerian war and the fighting in Tunisia and Morocco". According to its second Article, this day "neither a public nor a Bank holiday, is set as 19 March, the anniversary of the ceasefire in Algeria". These provisions are not unintelligible.
*(2012-657 DC, 29 November 2012, recital 3, p. 616)*

The contested provisions of the Professional Code applicable in the departments of Haut-Rhin, Bas-Rhin and Moselle, written in German, have not resulted in the publication of the official translation stipulated by the laws of 1st June 1924 putting into force the civil and commercial legislation in those departments. Under the terms of the first paragraph of Article 2 of the Constitution: "The language of the Republic is French". While the infringement of the objective of constitutional standing of accessibility and intelligibility of the law, which arises from Articles 4, 5, 6 and 16 of the Declaration of 1789, cannot, by itself, be invoked in support of a priority preliminary issue of constitutionality on the basis of Article 61-1 of the Constitution, the infringement of the objective of constitutional standing of accessibility of the law which arises from the absence of an official French version of a legislative provision can be invoked in support of a priority preliminary issue of constitutionality. However, bearing in mind the declaration of unconstitutionality pronounced in recital 11 of the decision based on the infringement of the freedom of enterprise, there is no reason for the Constitutional Council to consider the challenge alleging the breach of these constitutional requirements.
*(2012-285 QPC, 30 November 2012, recital 12, p. 636)*

Article 57 of the law on the financing of Social Security for 2012 modifies Article L. 5112-12-1 of the Public Health Code to extend the possibility of adopting a temporary recommendation of use for a proprietary medicinal product in cases where there is a therapeutic alternative to the suggested one. It provides that such an extension may be granted with the objective either or resolving a proven risk for public health or to avoid costs with a significant impact on the finances of sickness insurance bodies.

It is up to the legislator to fully exercise the power given to him/her by the Constitution and, in particular, its Article 34. The full exercising of this power, and the objective of constitutional standing of accessibility and intelligibility of the law, which arises from Articles 4, 5, 6 and 16 of the Declaration of 1789, require the legislator to adopt sufficiently precise provisions and unequivocal formulae. If it is up to the French National Agency for the Safety of Medicines and Health Products to assess, under the control of the competent court, the de facto situations corresponding to the notion "of significant impact on health insurance finances", this notion is not equivocal or ambiguous.
*(2012-659 DC, 13 December 2012, recital 60, p. 680)*

As a result of parliamentary work, the contribution established by Article 28 of the law on the financing of Social Security for 2013, amending Articles L. 245-2 and L. 245-5-2 of the Social Security Code, which will be due in 2013 will be set according to the amount liable to tax determined for the financial year 2012. The contested provisions are not unintelligible.
*(2012-659 DC, 13 December 2012, recital 32, p. 680)*

The complexity of the law cannot, by itself, infringe the objective of constitutional standing of accessibility and intelligibility of the law. The provisions of Article 73 of the law on

finances for 2013, relating to the tax on vacant dwellings, are not contrary by themselves to this objective.
*(2012-662 DC, 29 December 2012, recital 119, p. 724)*

According to item *b* of 1° of A of subsection I of Article 11 of the law on finances for 2013, a paragraph is added to subsection I of Article 80 *bis* of the General Tax Code under the terms of which: "The purchase price of shares purchased before 1st January 1990 is deemed to be equal to the value of the share on the date of exercising the option".

It is up to the legislator to fully exercise the power given to him/her by the Constitution and, in particular, its Article 34. The objective of constitutional standing of accessibility and intelligibility of the law, which arises from Articles 4, 5, 6 and 16 of the Declaration of 1789, requires the legislator to adopt sufficiently precise provisions and unequivocal formulae.

In this case, by adopting the aforementioned provisions, the legislator intended to specify the rules for determining the gain resulting from exercising an option to subscribe to or purchase shares subject to the taxation per Article 80 *bis* of the General Tax Code. These provisions must be combined with subsection IV of Article 11, which provides that subsections I to III are applicable to stock options and to free shares allocated from 28 September 2012. By their contradiction, they infringement the objective of constitutional standing of accessibility and intelligibility of the law. Censure.
*(2012-662 DC, 29 December 2012, recitals 82 to 84, p. 724)*

**Requirement for normativity of the law**

Under the terms of Article 6 of the 1789 Declaration: "Law is the expression of the general will... ". According to this Article and to all other provisions of constitutional standing relating to the subject matter of the law that, without prejudice to the special provisions provided for under the Constitution, the Law has the vocation of laying down rules and must accordingly have a normative scope.

A legislative provision the purpose of which is to "recognise" genocide crime cannot, by itself, have the normative scope which is characteristic of the law. However, Article 1 of the law aimed at punishing the denial of the existence of genocide recognised by law punishes the denial or minimisation of the existence of one or more crimes of genocide "recognised as such by French law" and is not therefore devoid of normative scope.
*(2012-647 DC, 28 February 2012, recitals 4 and 6, p. 139)*

## SUPERVISORY AND ASSESSING FUNCTION

### Overseeing appointments

The principle of the separation of powers precludes, in the absence of constitutional disposition allowing it, the power to nominate by an administrative or legal authority, to be contingent upon the audition by the parliamentary assemblies of the persons which appointment is envisaged. By requiring the hearing, by the finance committees and the social affairs committees of both the National Assembly and the Senate, of the magistrates of the Cour des Comptes appointed by the first president of that court and of the member appointed par le president of the Economic, Social and Environmental Council, the provisions of points 1° and 3° of Article 11 of the organic law concerning the programming and the governance of public finances were contrary to the requirements resulting from the separation of powers. Consequently, in Article 11, the words "these members are appointed after their public hearing by the finance committees and the social affairs committees of both the National Assembly and the Senate", which appear in point 1°, and the words: "this member is after his/her public hearing by the finance committees and the social affairs committees of both the National Assembly and the Senate", which appear in point 3°, must be declared unconstitutional.
*(2012-658 DC, 13 December 2012, recital 39, p. 667)*

# CONSTITUTIONAL COUNCIL AND DISPUTES REGARDING LEGAL RULES

## STATUS OF MEMBERS OF THE CONSTITUTIONAL COUNCIL

### Impartiality

During a priority preliminary issue of constitutionality, the Constitutional Council was asked to rule on an application challenging one of its members, filed in accordance with Article 4 of the internal regulations on the procedure applicable before the Constitutional Council for priority preliminary issues of constitutionality.
*(2011-208 QPC, 13 January 2012, validation p. 75)*

## SCOPE OF CHECKING CONSTITUTIONALITY

### Lack of jurisdiction of the Constitutional Council

#### Regulatory acts

Article L. 520-11 of the Town Planning Code limits the tax surcharge for creating premises to be used as offices in the Île-de-France region applicable in the event of the breach of legislative or regulatory provisions to 100% of the amount of the tax evaded. By referring the responsibility for setting the rate of the surcharges applicable to the regulatory authority, this Article does not in any way excuse the regulatory authority from complying with the requirements arising from Article 8 of the Declaration of 1789. It is not up to the Constitutional Council to assess the compliance of Article R. 520-10 of the Town Planning Code with these requirements.
*(2012-225 QPC, 30 March 2012, recital 7, p. 172)*

## OBJECTIONS
(*ex ante* check of the laws - Article 61 of the Constitution)

### Ineffective or groundless objections

#### Groundless objections (examples)

French nationals, and also foreign nationals lawfully resident in France whose financial means are lower than the threshold set by decree pursuant to Article L. 861-1 of the Social Security Code receive, according to that Article, complementary cover without any corresponding duty to contribute. It results from Article L. 322-4 of the Code, that the contribution referred to in paragraph II of Article L. 322-2 of the Code and the healthcare excesses provided for under paragraph III are not required from the recipients of this complementary protection. Consequently, the argument put forward against the provisions of Article 41 of the amending law on finances for 2012 which re-establish free access to State medical assistance and based on the difference in treatment between individuals in receipt of State medical assistance and individuals in receipt of universal complementary illness has no factual basis.
*(2012-654 DC, 9 August 2012, recital 70, p. 461)*

**Exception: conditional acceptance of the check**

The constitutionality of a promulgated law can be assessed when considering legislative provisions which amend it, add to it or affect its scope. In this case, Article 40 of the amending law on finances amends the provisions of subsection I of Article 14 of the Law no. 2002-1050 of 6 August 2002. These provisions on the remuneration of the President of the Republic and the members of the Government must be ruled unconstitutional on the same grounds which led to the provisions of Article 40 of the amending law on finances for 2012 being ruled unconstitutional.
*(2012-654 DC, 9 August 2012, recital 83, p. 461)*

The constitutionality of a promulgated law can be assessed when considering legislative provisions which amend it, add to it or affect its scope. The provisions of Articles 1 and 11 of the law on future oriented jobs affect the scope of the provisions of the Labour Code relating to the employment support contract.

Article L. 5134-20 of the Labour Code provides that "the purpose of the employment support contract is to facilitate unemployed people who are having special social and professional difficulties in getting a job to find employment". In their wording amended by Article 7 of the referred law, Articles L. 5134-21 and L. 5134-24 provides, inter alia, on the one hand, that local authorities and other public legal entities except for the State can use employment support contracts and, on the other hand, that an employment contract linked to employment assistance allocated under an employment support contract can be taken out either on a fixed term or an open-ended basis. In their wording amended by Article 13 of the referred law, Articles L. 322-6, L. 322-7 and L. 322-13 of the Labour Code applicable to Mayotte stipulate identical rules applicable in that department.

For the same reasons as those given when considering the provisions of Articles 4 and 12 of the law, relating to future contracts, the Constitutional Council deems that local authorities and other public entities can only use employment support contracts for fixed term employment contracts.
*(2012-656 DC, 24 October 2012, recitals 17 to 19, p. 560)*

The applicant Members of Parliament assert that by removing the ceiling from the health insurance contributions payable by the non-agricultural self-employed, the legislator is in breach of the principle of equality in the payment of public dues. Removing this ceiling would also make the second sentence of the second paragraph of Article L. 131-9 of the Social Security Code unconstitutional.

The contested provisions amend the health insurance contribution rules for the non-agricultural self-employed. The purpose of the second paragraph of Article L. 131-9 of the Social Security Code is to make those insured under a French health insurance scheme who do not meet the conditions for residence in France and those who are totally or partly exempt from direct taxation in respect of their business or alternative income in accordance with an international convention or agreement subject to special rates of Social Security contributions.

The constitutionality of a promulgated law can be assessed when considering legislative provisions which amend it, add to it or affect its scope. In this case, the purpose of the contested provisions of Article 11 is to affect the scope of the provisions of the second sentence of the second paragraph of Article L. 131-9 of the Social Security Code.

By making some of those under a French health insurance scheme subject to special arrangements for the rate of contributions, the second sentence of the second paragraph of Article L. 131-9 of the Social Security Code infringes the principle of equality between those insured in the same scheme which is not based on a difference in situation in line with the purpose of the Social Security contribution. Therefore, the provisions of the second sentence of the second paragraph of Article L. 131-9 of the Social Security Code must be ruled unconstitutional.
*(2012-659 DC, 13 December 2012, recitals 9, 14 and 15, p. 680)*

The constitutionality of a promulgated law can be assessed when considering legislative provisions which amend it, add to it or affect its scope. In this case, the purpose of the increase in the maximum marginal rate of taxation on the income tax scale provided by Article 3 of the

law on finances for 2013, by combining it, in particular, with the application of the maximum marginal rate of the contribution provided by Article L. 137-11-1 of the Social Security Code in its wording resulting from law no, 2011-1978 of 28 December 2011, is to modify the scope of the marginal rate of that taxation in the light of the ability of taxpayers to pay tax. Consequently, Article 3 of the referred law must be seen as affecting the scope of the provisions of Article L. 137-11-1 of the Social Security Code.

Under these circumstances, to rectify the unconstitutional nature of the excessive charge in the light of the ability of certain taxpayers receiving annuities paid under defined benefit pension schemes (so-called "top hat schemes") to pay tax, the provisions of the fifth an ninth paragraphs of Article L. 137-11-1 of the Social Security Code and the words: "and less than or equal to 24,000 euros per month" appearing in the fourth and eighth paragraphs of that Article must be ruled unconstitutional.
*(2012-662 DC, 29 December 2012, recitals 20 and 21, p. 724)*

## PRIORITY PRELIMINARY ISSUE OF CONSTITUTIONALITY

### Procedure applicable before the ordinary and administrative courts

#### Procedural rules for considering the passing on or the referral of the issue

By its judgement of 12 September 2011, the Criminal Court of Sarreguemines ordered a priority preliminary issue of constitutionality raised by the applicant, relating to the compliance of Article L. 3421-1 of the Public Health Code with the rights and freedoms guaranteed by the Constitution, to be passed on to the Cour de Cassation. The issue passed on was received at the Cour de Cassation on 23 September 2011.

During the appeal lodged by him against the ruling of the Metz appeal court (criminal chamber) dated 22 June 2011, this applicant also asked the Cour de Cassation, on 30 September 2011, to rule on a priority preliminary issue of constitutionality relating to the compliance of that article of the Public Health Code with the rights and freedoms guaranteed by the Constitution, and based on the same objections. By its ruling of 30 November 2011, the criminal chamber of the Cour de Cassation stated that there was no need to refer this priority preliminary issue of constitutionality to the Constitutional Council.

Under these circumstances, the Cour de Cassation ruled, within three months of the matter being brought before it, on the referral of the priority preliminary issue of constitutionality raised by the applicant and relating to Article L. 3421-1 of the Public Health Code. Consequently, the application submitted directly by the applicant to the Constitutional Council based on the last sentence of the first paragraph of Article 23-7 of the Ordinance of 7 November 1958, which provides as follows must in any event be rejected: "If the Conseil d'État or the Cour de Cassation has not ruled within the time limits stipulated in Articles 23-4 and 23-5, the issue is transferred to the Constitutional Council".
*(2012-237 QPC, 15 February 2012, recitals 1 to 4, p. 118)*

The Constitutional Council was asked to rule according to the terms and conditions set by the last sentence of Article 23-7 of the amended Ordinance no. 58-1067 of 7 November 1958 concerning the organic law on the Constitutional Council under the terms of which: "If the Conseil d'État or the Cour de Cassation has not ruled with the time limits stipulated in Articles 23-4 and 23-5, the issue is passed on to the Constitutional Council".
*(2012-283 QPC, 23 November 2012, referral, p. 605)*

## Criteria for passing on or referring the issue to the Constitutional Council

### Notion of legislative provision and interpretation

The provisions of Article 5 of Law no. 2009-888 of 22 July 2009 on the development and modernisation of tourist services have been codified in the Transport Code and repealed by Ordinance no. 2010-1307 of 28 October 2010 relating to the legislative part of the Transport Code. They now appear, inter alia, in Articles L. 3123-1 and L. 3123-2 of the Transport Code.

Firstly, to date, the order of 28 October 2010 has not been ratified. Consequently, Articles L. 3123-1 and L. 3123-2 of the Transport Code do not constitute legislative provisions as defined by Article 61-1 of the Constitution. There is therefore no need for the Constitutional Council to hear the issue.

Secondly, the subsequent amendment or repeal of the contested provision does not mean that the possible infringement of the rights and freedoms guaranteed by the Constitution disappears. It does not take away the usefulness of the priority preliminary issue of constitutionality and cannot, by itself, prevent the issue being passed on to the Constitutional Council.

However, according to the terms of Article 5 of the aforementioned law of 22 July 2009, determining the constraints imposed on companies providing a transportation service to people by means of motorcycles or motor tricycles was subject, in particular concerning the qualification of the drivers and the characteristics of the vehicles, to the application of regulatory measures. These regulatory provisions were only taken by decree no. 2010-1233 of 11 October 2010 relating to the public transportation of people with a driver, which only came into effect, according to its Article 13, on the first day of the sixth month after its publication, i.e. 1st April 2011. At that date, Article 5 of the law of 22 July 2009 had been repealed. Thus, this legislative provision, which never came into effect, is unable to have infringed a right or a freedom guaranteed by the Constitution. This provision cannot, therefore, be subject to a priority preliminary issue of constitutionality. There is therefore also no need for the Constitutional Council to hear it.
*(2011-219 QPC, 10 February 2012, recitals 2 to 5, p. 113)*

Asked to rule on a priority preliminary issue of constitutionality relating to Article 146 of the Civil Code, which makes the validity of a marriage subject to the consent of the spouses, the Constitutional Council examined that article taking account of the established case law of the Cour de Cassation on that article, the result of which is that a marriage is null and void, without consent, when the spouses only have only taken part in the ceremony to achieve a result other than matrimonial union.
*(2012-261 QPC, 22 June 2012, recital 6, p. 312)*

The Constitutional Council was asked to rule on Article L. 461-3 of the Commercial Code as in force following Ordinance no. 2008-1161 of 13 November 2008. Article 139 of Law no. 2009-526 of 12 May 2009, which ratified that Ordinance, also amended the wording of the fourth paragraph of Article L. 461-3. The Constitutional Council can only be asked to rule on provisions which constitute legislative provisions as defined by Article 61-1 of the Constitution. Consequently, the Constitutional Council was asked to rule on Article L. 461-3 of the Commercial Code as in force following the law of 12 May 2009.
*(2012-280 QPC, 12 October 2012, recital 1, p. 529)*

### Applicable to the dispute or the procedure or the basis of the proceedings

The Constitutional Council was asked to rule on subsection II of Article L. 461-1 of the Commercial Code as in force following Ordinance no. 2008-1161 of 13 November 2008. That subsection, which was amended by Law no. 2008-776 of 4 August 2008, was then not subject to any further amendment before Law no. 2010-838 of 23 July 2010. The priority preliminary issue of constitutionality must be regarded as relating to the provisions applicable to the dispute in connection with which it has been raised. Thus, the Constitutional Council was asked to rule on subsection II of Article L. 461-1 of the Commercial Code as in force following the law of 23 July 2010.
*(2012-280 QPC, 12 October 2012, recital 1, p. 529)*

**Absence of a previous decision by the Constitutional Council (point 1° of Article 23-2 Ord. 7/11/1958)**

Subsection II of the only article of the organic law of 18 June 1976 amending Law no. 62-1292 of 6 November 1962 on the election of the President of the Republic by universal suffrage was ruled to be constitutional in the substantive part and the operative part of decision no. 76-65 DC of the Constitutional Council of 14 June 1976. However, in the change to the Constitution on 23 July 2008, the constituent authority added a paragraph worded as follows to Article 4 of the Constitution: "The law guarantees the pluralistic expression of opinions and the equitable participation of political parties and groups in the democratic life of the Nation". This new constitutional provision, applicable to the legislative provisions relating to the presidential election, constitutes a change in the legal circumstances justifying, in this case, the reconsideration of the contested provision.
*(2012-233 QPC, 21 February 2012, recitals 3 and 4, p. 130)*

According to the author of the priority preliminary issue of constitutionality, the provisions of Article L.O. 134 of the Electoral Code: "A deputy, a senator or a replacement member of a parliamentary assembly may not act as a replacement for a candidate to the National Assembly" are contrary to Article 6 of the Declaration of the Rights of Man and the Citizen of 1789 and Article 3 of the Constitution.

The provisions of Article L.O. 134 of the Electoral Code come from Article 6 of Ordinance no. 58-998 of 24 October 1958 concerning the organic law on eligibility conditions and parliamentary incompatibility, as worded by Article 1 of Ordinance no. 59-224 of 4 February 1959 which added to and amended it. These provisions have been codified by decree no. 64-1086 of 27 October 1964 amending the Electoral Code. Under the terms of Article 5 of Organic Law no. 85-689 of 10 July 1985 concerning the election of deputies from overseas territories, the territorial collectivity of Mayotte and the territorial collectivity of Saint-Pierre-et-Miquelon, the provisions of the Ordinance of 24 October 1958 "contained in the Electoral Code (legislative part) as amended and added to by the subsequent texts" have the "force of law". The Constitutional Council ruled the organic law of 10 July 1985 to be constitutional in recital 2 and Article 1 of its decision no. 85-194 DC of 10 July 1985.

The contested provisions were ruled constitutional in the substantive part and the operative part of a decision of the Constitutional Council. If there is no change in circumstances, there is no need for the Constitutional Council to consider the priority preliminary issue of constitutionality.
*(2012-4563/4600 AN, 18 October 2012, recitals 3 to 6, p. 543)*

According to the author of the priority preliminary issue of constitutionality, the provisions of Article L.O. 134 of the Electoral Code under the terms of which "A deputy, a senator or a replacement member of a parliamentary assembly may not act as a replacement for a candidate to the National Assembly" are contrary to Article 6 of the Declaration of the Rights of Man and the Citizen of 1789 in that they disproportionately infringe the right to stand as a candidate and the principle of equality before the law.

The provisions of Article L.O. 134 of the Electoral Code come from Article 6 of Ordinance no. 58-998 of 24 October 1958 concerning the organic law on eligibility conditions and parliamentary incompatibility, as worded by Article 1 of Ordinance no. 59-224 of 4 February 1959 which added to and amended it. These provisions have been codified by decree no. 64-1086 of 27 October 1964 amending the Electoral Code. Under the terms of Article 5 of Organic Law no. 85-689 of 10 July 1985 concerning the election of deputies from overseas territories, the territorial collectivity of Mayotte and the territorial collectivity of Saint-Pierre-et-Miquelon, the provisions of the Ordinance of 24 October 1958 "contained in the Electoral Code (legislative part) as amended and added to by the subsequent texts" have the "force of law". The Constitutional Council ruled the organic law of 10 July 1985 to be constitutional in recital 2 and Article 1 of its decision no. 85-194 DC of 10 July 1985.

The contested provisions were ruled constitutional in the substantive part and the operative part of a decision of the Constitutional Council. If there is no change in circumstances, there is no need for the Constitutional Council to consider the priority preliminary issue of constitutionality.
*(2012-4565/4567/4568/4574/4575/4576/4577 AN, 18 October 2012, recital 3 to 6, p. 546)*

## Procedure applicable before the Constitutional Council

### Objection raised *ex officio* by the Constitutional Council

The Constitutional Council raised the *ex officio* objection alleging that, by allowing the combined application of the deferral of the starting point for the time barring period for the Public Prosecutor's action to the date of discovery of the fraud or the fraud and the presumption of fraud when the cohabitation ceased in the year of the registration of the declaration with the aim of acquiring citizenship through marriage, the third paragraph of Article 26-4 of the Civil Code would be in breach of the rights of defence. It established a reservation of interpretation on that objection raised *ex officio*.
*(2012-227 QPC, 30 March 2012, recitals 10 to 14, p. 175)*

### Determining the provision submitted to the Constitutional Council

The Constitutional Council was asked to rule on a priority preliminary issue of constitutionality relating to Article 65 of the Customs Code in its wording prior to the amending law on finances for 2004 (no. 2004-1485 of 30 December 2004) and in its wording amended by Article 91 of that law. The Council cited the previous wording and examined its compliance with the rights and freedoms guaranteed by the Constitution. It then decided that the amendment made to that article by Article 91 of the law of 30 December 2004 had no effect on its compliance with the Constitution.
*(2011-214 QPC, 27 January 2012, recitals 1 and 7, p. 94)*

The Conseil d'État referred an issue relating to Article L. 311-7 of the Code of Military Justice and to Article L. 4139-14 of the Defence Code to the Constitutional Council. The Constitutional Council deemed that the priority preliminary issue of constitutionality related to Article L. 311-7 of the Code of Military Justice as worded prior to the Law no. 2011-1862 of 13 December 2011 on the allocation of disputes and the streamlining of certain judicial procedures and to the first and third paragraphs of Article L. 4139-14 of the Defence Code.
*(2011-218 QPC, 3 February 2012, recital 4, p. 107)*

When it has been asked to rule on a priority preliminary issue of constitutionality, it is not for the Constitutional Council to call into question the decision according to which the Conseil d'État or the Cour de Cassation ruled pursuant to Article 23–5 of the Ordinance of 7 November 1958 whether or not a provision was applicable to the dispute or to the procedure, or whether or not it constituted the basis of the proceedings; Consequently, the Constitutional Council can only rule on the provisions which are referred to it in their wording applicable to the dispute.

According to the file, Article 21-2 of the Civil Code was contested as it was worded following Law no. 98-170 of 16 March 1998 on citizenship. Article 26-4 of that Code was contested was contested as it was worded following Law no. 2006-911 of 24 July 2006 on immigration and integration. Consequently, the conclusions of the intervener association that the Constitutional Council should examine Article 21-2 of the Civil Code as currently worded had in any event to be dismissed.
*(2012-227 QPC, 30 March 2012, recitals 1 and 2, p. 175)*

The Cour de Cassation referred a priority preliminary issue of constitutionality relating to Articles 1559 and 1561 of the General Tax Code. Only the restriction in the scope of the tax on shows, games and entertainment and the exemptions allowed by joint ministerial decree or by deliberation of the municipal council were being contested.

The Constitutional Council deemed that the priority preliminary issue of constitutionality related to Article 1559 and point *b* of 3° of Article 1561 of the General Tax Code.
*(2012-238 QPC, 20 April 2012, recitals 1 to 4, p. 214)*

Asked to rule on a priority preliminary issue of constitutionality relating to Article L. 221-2 of the Rural and Marine Fishing Code, the Constitutional Council, taking account of the objections, considered that this issue related to the last two sentences of the first paragraph of that article.
*(2012-266 QPC, 20 July 2012, recital 3, p. 390)*

Asked to rule on a priority preliminary issue of constitutionality regarding Article 521-1 of the Criminal Code, the Constitutional Council, in the light of the objection, considered that it only related to the first sentence of the seventh paragraph of that article.
*(2012-271 QPC, 21 September 2012, recital 3, p. 483)*

Asked to rule on a priority preliminary issue of constitutionality relating to Article 73 of the law of 1st June 1924 putting into force the French civil legislation in the Departments of Bas-Rhin, Haut-Rhin and Moselle, the Constitutional Council, in the light of the objection, considered that it only related to the third paragraph of that article.
*(2012-274 QPC, 28 September 2012, recital 3, p. 493)*

The priority preliminary issue of constitutionality related to Articles L. 341-1, L. 341-2, L. 341-3, L. 341-6, L. 341-9, L. 341-10 and L. 341-13 of the Environmental Code based on their wording in force at 27 April 2009, the date of the decision of the Minister of Ecology, Energy, Sustainable Development and Land Planning contested by the applicant before the administrative court. In this case, the Constitutional Council had been asked to rule according to the terms and conditions set by the last sentence of Article 23-7 of amended Ordinance no. 58-1067 of 7 November 1958 concerning the organic law on the Constitutional Council under the terms of which: "If the Conseil d'État or the Cour de Cassation has not ruled with the time limits stipulated in Articles 23-4 and 23-5, the issue is passed on to the Constitutional Council".
*(2012-283 QPC, 23 November 2012, recital 1, p. 605)*

Asked to rule on a priority preliminary issue of constitutionality relating to Article L. 631-5 of the Commercial Code, the Constitutional Council, in the light of the objection, considered that it only related to the words "to take up the case *ex officio* or" in the first paragraph of that article.
*(2012-286 QPC, 7 December 2012, recitals 2 and 3, p. 642)*

## Meaning and scope of the decision

### Should not proceed to judgement

The Constitutional Council was asked to rule on a priority preliminary issue of constitutionality relating to Article 5 of Law no. 2009-888 of 22 July 2009 on the development and modernisation of tourist services and Articles L. 3123-1 and L. 3123-2 of the Transport Code. Article 5 of the law of 22 July 2009 was repealed before it came into effect, so it is not possible for it to have infringed a right or a freedom guaranteed by the Constitution, and the Transport Code arose from Ordinance no. 2010-1307 of 28 October 2010 relating to the legislative part of the Transport Code which, to date has not been ratified and hence its provisions do not constitute a legislative provisions as defined by Article 61-1 of the Constitution. Should not proceed to judgement.
*(2011-219 QPC, 10 February 2012, recitals 2 to 5, p. 113)*

By its decision no. 2012-234 QPC of 13 April 2012, the Constitutional Council ruled Article 54 of the amending law on finances for 2009 (Law no. 2009-1674 of 30 December 2009) to be constitutional. Consequently, there was no need to consider the priority preliminary issue of constitutionality relating to those provisions.
*(2012-252 QPC, 4 May 2012, recital 1, p. 244)*

## Nature of the review

### Power of assessment given to the Constitutional Council

Article 61-1 of the Constitution does not give the Constitutional Council a general power of assessment and decision-making of the same nature as that of the Parliament.
*(2012-233 QPC, 21 February 2012, recital 9, p. 130)*

Article 1 of the Environmental Charter provides that: "Every person has the right to live in a balanced environment that respects health". Article 3 provides that: "Subject to the conditions specified by law, every person shall prevent the harm that he is liable to cause to the environment or, alternatively, to limit its consequences". It is for Parliament and, insofar as specified by law, for the administrative authorities to determine, in accordance with the principles set forth in this Article, the procedure for implementing these provisions.

The Constitutional Council does not have a general power of assessment and decision-making of the same nature as that of the Parliament. It is not up to it to substitute its assessment for that of the legislator with regard to the means by which the legislator intends to implement the right of everyone to live in a balanced environment that respects health and also the principle of preventing damage to the environment.
*(2012-282 QPC, 23 November 2012, recitals 7 and 8, p. 596)*

## Conditions for taking account of elements extrinsic to the text of the law

### Reference to the preparatory work

*Reference to the preparatory work for the referred law*

The Senate's permanent committee, asked to rule in accordance with Article 43 of the Constitution, appointed a rapporteur and met to rule on the bill during the morning of Monday 11 September. It is shown by the minutes of that meeting that, after having adopted various amendments and considered all of the text's Articles, that committee finished its work that morning by adopting "the bill thus modified". Notwithstanding the adoption of this bill by the relevant permanent committee, the consideration of the text in open session which started on 11 September in the evening concerned the text of the bill on which the Senate had been asked to rule. The bill was not discussed in accordance with the first paragraph of Article 42 of the Constitution.
*(2012-655 DC, 24 October 2012, recital 3, p. 557)*

As a result of parliamentary work, the contribution established by Article 28 of the law on the financing of Social Security for 2013, amending Articles L. 245-2 and L. 245-5-2 of the Social Security Code, which will be due in 2013 will be set according to the amount liable to tax determined for the financial year 2012. The contested provisions are not unintelligible.
*(2012-659 DC, 13 December 2012, recital 32, p. 680)*

## Scope of the review

### Discretionary power of the legislator not reviewed by the Constitutional Judge

By allowing the mother to object to the disclosure of her identity, even after her death, Article L. 147-6 of the Code of Social Action and Families aims to ensure the effective compliance, for health protection purposes, with the wish expressed by her to keep her admission and

her identity secret during childbirth by tactfully handling, as far as possible and using appropriate measures, access by the child to information relating to his/her personal origins. It is not up to the Constitutional Council to substitute its assessment for that of the legislator with regard to the balance thus struck between the interests of the biological mother and those of the child.
*(2012-248 QPC, 16 May 2012, recital 8, p. 270)*

The legislator, by bringing in a fourth paragraph in Article L. 1241-1 of the Public Health Code, considered the principle of the anonymous and free donation of umbilical cord or placenta blood cells or of umbilical cord or placenta cells and intended to prevent the collection of umbilical cord or placenta blood cells or of umbilical cord or placenta cells with a view to their being kept by the individual for possible subsequent usage, in particular within the family. The legislator's choice to make the collection of these cells subject to the prior written consent of the woman being did not have the purpose of conferring rights on those cells.

It is not up to the Constitutional Council, which does not have a general power of assessment and decision-making of the same nature as that of the Parliament, to substitute its assessment for that of the legislator regarding the conditions in which such cells can be collected and the uses for which they are intended.
*(2012-249 QPC, 16 May 2012, recital 7, p. 274)*

**Acknowledged limits to the legislator's discretionary power**

*State of knowledge and state of the art*

The fourth paragraph of Article L. 1241-1 f the Public Health Code does not authorise collections of umbilical cord or placenta blood cells or of umbilical cord or placenta cells intended for transplants within the family in the absence of a proven therapeutic necessity which is duly substantiated at the time of collection. The legislator deemed that, in the absence of such a necessity, transplants of these cells within the family had no proven therapeutic benefit over other transplants.

It is not up to the Constitutional Council, which does not have a general power of assessment and decision-making of the same nature as that of the Parliament, to call into question, in the light of the state of knowledge and the state of the art, the measures thus taken by the legislator.
*(2012-249 QPC, 16 May 2012, recital 8, p. 274)*

**Intensity of the judge's review**

*Restricted review*

Under the terms of Article 6 of the 1789 Declaration, the law "must be the same for everyone, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents". The legislator has the power, under Article 34 of the Constitution, to set the rules concerning the electoral system for local assemblies and to determine the fundamental principles of the freedom of administration of local authorities. It can only deprive a citizen of the right to stand as a candidate which he/she has under Article 6 of the 1789 Declaration to the extent necessary to comply with the principle of equality in elections and to preserve the freedom of the voter.

The Constitutional Council does not have a general power of assessment and decision-making of the same nature as that of the Parliament. By providing that only engineers and rural engineering and water and forestry officials in the cantons where they carry out their functions or carried them out less than six months ago can be elected to the Departmental Council, the contested provisions have struck a balance which is clearly not unreasonable between the aforementioned constitutional requirements.
*(2012-230 QPC, 6 April 2012, recitals 4 and 5, p. 190)*

Restricted review arising from the constitutional norm

Article L. 224-6 of the Code of Social Action and Families provides that the child shall be declared a ward of the State on a provisional basis on the date on which the report is drawn up confirming that he/she has been taken into care by the children's social service. Article L. 224-4 provides that the child shall only be definitively granted the status as a ward of the State by a decision of the President of the Departmental Council on expiry of the time limits set by that Article L. 224-4. By adopting the provisions of Article L. 224-8, by Law no. 84-422 of 6 June 1984, the legislator established a right of appeal before the Regional Court against a decision conferring the status of a ward of the State on a definitive basis. To this end, the legislator gave standing to act to the parents, other than in cases in which a court had entirely revoked parental authority or declared that it had been abandoned, to the child's immediate family and, more broadly, to any person able to establish a connection with the child, in particular because the child has been within his/her custody, de facto or de jure, provided that such people apply to take over responsibility for the child. The starting point for the thirty-day time limit to refer an appeal to the court is the time when the child is conferred the status of a ward of the State on a definitive basis.

The legislator, on the one hand, deemed that it would be contrary to the child's interest to publish the decision conferring on him/her the status of a ward of the State, and on the other hand, provided that any person able to establish a connection with the child could file an appeal within a period of thirty days of that decision. The Constitutional Council does not have a power of assessment and decision-making of the same nature as that of the Parliament. It is not up to it to substitute its assessment for that of the legislator with regard to the balance which needs to be struck, in the interest of the child referred to the children's social services under the aforementioned conditions, between the rights of people intending to take advantage of a prior relationship with the child and the objective of facilitating his/her adoption.
*(2012-268 QPC, 27 July 2012, recitals 7 and 8, p. 441)*

## MEANING AND SCOPE OF THE DECISION

### Legal provisions without any normative effect

#### Requirement for normativity of the law

Under the terms of Article 6 of the 1789 Declaration: "Law is the expression of the general will... ". According to this article and to all other provisions of constitutional standing relating to the subject matter of the law that, without prejudice to the special provisions provided for under the Constitution, the Law has the vocation of laying down rules and must accordingly have a normative scope.
*(2012-647 DC, 28 February 2012, recital 4, p. 139)*

### Separable or inseparable nature of provisions ruled unconstitutional

The provisions of Article L. 120-1 of the Environmental Code relating to the general terms and conditions for the participation of the public limit such participation, in accordance with its first paragraph, to just the regulatory decisions of the State and its public establishments. Given the absence of special legislation, no other general legislative provision assures the implementation of this principle in relation to non-regulatory decisions which may have a direct and significant impact on the environment. Consequently, the legislator has deprived the constitutional requirement stipulated by Article 7 of the Environmental Charter of legal guarantees.

The result of this is that the first paragraph of Article L. 120-1 of the Environmental Code must be ruled unconstitutional. The other provisions of that article are inseparable from it. Consequently, without having to consider the other arguments raised against Article L. 120-1 of the Environmental Code, that article must be ruled unconstitutional.
*(2012-282 QPC, 23 November 2012, recitals 17 and 18, p. 596)*

**Censure as a consequence**

Articles 5 and 10 of the law relating to identity protection, which are contrary to the right to privacy, must be ruled unconstitutional. The same applies, therefore, to the third paragraph of Article 6, Article 7 and the second sentence of Article 8.
*(2012-652 DC, 22 March 2012, recital 11, p. 158)*

## Amendment of a legislative provision as a consequence

The Constitutional Council ruled the reference to officials in the fourth, sixth and seventh paragraphs of Article L. 134-2 of the Code of Social Action and Families to be unconstitutional. It ruled that the words "officials or", in the fourth paragraph of Article L. 134-2 of the Code of Social Action and Families, the words: "or from the officials from ministerial departments", in the sixth paragraph, and the words "and the officials from the ministry responsible for social assistance", in the seventh paragraph were unconstitutional. Consequently, in the operative part of the decision, to ensure that the text reads correctly, it replaced a comma with the word "and".
*(2012-250 QPC, 8 June 2012, Article 1, p. 281)*

Asked to rule on a priority preliminary issue of constitutionality relating to Articles 2 to 11 of the law of 3 January 1969 on the exercising of ambulatory activities and the arrangements applicable to persons travelling in France with no fixed abode or residence, the Council ruled the following words, in Article 4 of the Law as well as Article 5 of the Law, to be unconstitutional: "Where the individuals referred to under Article 3 are able to furnish proof of regular income guaranteeing them normal living conditions, in particular through the carrying out of salaried employment."

Consequently, in Article 3 of that Law, the words: "one of the circulation permits stipulated in Articles 4 and 5" had to be replaced by the words "the "circulation permit stipulated in Articles 4". In the second paragraph of Article 6 of the same Law, the words: ", the booklets and books stipulated in Articles 3, 4 and 5" had to be replaced by the words: "and the circulation book stipulated in Articles 3 and 4". In Article 11 of that Law, the words "in Articles 2, 3, 4 and 5," had to be replaced by the words: "in Articles 2, 3 and 4, ".
*(2012-279 QPC, 5 October 2012, recital 24, p. 514)*

## Scope of decisions over time

**As part of an *ex ante* review (Article 61)**

*Reservation*

As part of the *ex ante* review of the laws, the Constitutional Council looked at the provisions of both the Labour Code and the Labour Code applicable to Mayotte already in force and which the referred provisions affect. It lodged a reservation of interpretation regarding Articles L. 5134-21 and L. 5134-24 of the Labour Code and Articles L. 322-7 and L. 322-13 of the Labour Code and deemed that local authorities and other public entities can only use employment support contracts for fixed term employment contracts. So as not to call into question the open-ended contracts already entered into based on these provisions, it made clear that this reservation was applicable to contracts already entered into after the publication of its decision.
*(2012-656 DC, 24 October 2012, recital 19, p. 560)*

**As part of an *ex post* review (Article 61-1)**

*Repeal*

Repeal on the date of publication of the decision

The repeal of Article L. 624-6 of the Commercial Code takes effect from the publication of the decision of the Constitutional Council. It is applicable to all proceedings where no final judgement has been issued by that date.
*(2011-212 QPC, 20 January 2012, recitals 8 and 9, p. 84)*

The repeal of the third paragraph of Article 4 of Ordinance no. 45–1418 of 28 June 1945 laying down regulations applicable to notaries and certain ministerial officers takes effect from the publication of this decision. It allows interested parties to request, as of the date of publication of this decision, their immediate inclusion on the electoral roll under the conditions specified by law.
*(2011-211 QPC, 27 January 2012, recitals 8 and 9, p. 87)*

The repeal of Article 100 of the law on finances for 1998 (Law no. 97-1267 of 30 December 1997) takes effect from the publication of this decision. It is applicable to all proceedings where no final judgement has been issued by that date.
*(2011-213 QPC, 27 January 2012, recitals 9 and 10, p. 90)*

Whilst, in principle, the declaration of unconstitutionality must benefit the party submitting the priority question on constitutionality and the provision ruled unconstitutional cannot be applied to proceedings in progress at the time that the decision of the Constitutional Council is published, the provisions of Article 62 of the Constitution grant the Council the power both to set the date of repeal and to defer its effects as well as to provide for the review of the effects that the provision generates before this declaration takes effect.

The repeal of Article 706-88-2 of the Code of Criminal Procedure takes effect from the publication of this decision. It is applicable to all cases in which a suspect is remanded in police custody from that date.
*(2011-223 QPC, 17 February 2012, recitals 8 and 9, p. 126)*

The repeal of the seventh paragraphs of Articles 64-1 and 116-1 of the Code of Criminal Procedure takes effect from the publication of the decision of the Constitutional Council.. It is applicable to hearings of individuals remanded in police custody and the questioning of individuals under investigation which are carried out from that date.
*(2012-228/229 QPC, 6 April 2012, recital 11, p. 186)*

The repeal of Article 222-33 of the Criminal Code takes effect from the publication of the decision of the Constitutional Council. It is applicable to all cases where no final judgement has been issued by that date.
*(2012-240 QPC, 04 May 2012, recital 7, p. 233)*

The Constitutional Council declared some of the provisions of the Law of 3 January 1969 on the exercising of ambulatory activities and the arrangements applicable to persons travelling in France without a fixed place of abode or residence to be unconstitutional: It deemed that the declaration that they are unconstitutional should take effect from the publication of this decision and that it should be applicable to all cases where no final judgement has been issued by that date.
*(2012-279 QPC, 5 October 2012, recital 32, p. 514)*

The declaration that the words "lawyers of" in the first paragraph of Article 161-1 of the Code of Criminal Procedure are unconstitutional takes effect from the date of publication of the decision. It is applicable to all decisions ordering an expert opinion that are pronounced after the publication of this decision.
*(2012-284 QPC, 23 November 2012, recital 5, p. 613)*

The declaration that Article 100 *f* and the third paragraph of Article 100 *s* of the Professional Code applicable in the departments of Haut-Rhin, Bas-Rhin and Moselle (*Gewerbeordnung*) are unconstitutional takes effect from the publication of the decision of the Constitutional Council. It is applicable to all cases where no final judgement has been issued by that date.
*(2012-285 QPC, 30 November 2012, recitals 13 and 14, p. 636)*

The declaration that the power given to the commercial court to take up a case *ex officio* in accordance with the first paragraph of Article L. 631-5 of the Commercial Code is unconstitutional takes effect from the date of the publication of the decision of the Constitutional Council.
*(2012-286 QPC, 7 December 2012, recital 8, p. 642)*

Deferred repeal

Under the terms of the second paragraph of Article 62 of the Constitution: "A provision declared unconstitutional on the basis of Article 61–1 is repealed as from the publication of the decision of the Constitutional Council or at a later date stipulated in the decision. The Constitutional Council determines the conditions and the limits under which the effects

produced by the provision may be questioned". Whilst, in principle, the declaration of unconstitutionality must benefit the party submitting the priority question on constitutionality and the provision ruled unconstitutional cannot be applied to proceedings in progress at the time the decision of the Constitutional Council is published, the provisions of Article 62 of the Constitution grant the Council the power both to set the date of repeal and to defer its effects as well as to provide for the review of the effects that the provision generates before this declaration takes effect.

The immediate repeal of Articles 374 and 376 of the Customs Code would have clearly excessive consequences. Consequently, in order to allow the legislator to remedy the unconstitutionality of these articles, it is appropriate to defer the date of this repeal to 1st January 2013.
*(2011-208 QPC, 13 January 2012, recitals 10 and 11, p. 75)*

The immediate repeal of Articles L. 15-1 and L. 15-2 of the Code on Expropriation in the Public Interest, ruled unconstitutional, would have clearly excessive consequences. Consequently, in order to allow the legislator to put an end to this unconstitutionality, it is appropriate to defer the date of this repeal to 1st July 2013.
*(2012-226 QPC, 06 April 2012, recital 7, p. 183)*

The immediate repeal of subsection II of Article L. 3211-12 and of Article L. 3213-8 of the Public Health Code would have clearly excessive consequences. Consequently, in order to allow the legislator to remedy this unconstitutionality, it is appropriate to defer the date of this repeal to 1st October 2013. Decisions taken before this date in accordance with the provisions ruled to be unconstitutional cannot be contested based on this unconstitutionality.
*(2012-235 QPC, 20 April 2012, recitals 30 and 31, p. 202)*

Whilst, in principle, the declaration of unconstitutionality must benefit the party submitting the priority question on constitutionality and the provision ruled unconstitutional cannot be applied to proceedings in progress at the time that the decision of the Constitutional Council is published, the provisions of Article 62 of the Constitution grant the Council the power both to set the date of repeal and to defer its effects as well as to provide for the review of the effects that the provision generates before this declaration takes effect; The immediate repeal of the provisions of the last sentence of the first paragraph of Article L. 512-5 of the Environmental Code, ruled to be unconstitutional, would only have the effect of removing the provisions allowing the public to be informed without meeting the requirements of the principle of public participation. Consequently, it is appropriate to defer the date of this repeal to 1st January 2013.
*(2012-262 QPC, 13 July 2012, recital 9, p. 326)*

The immediate repeal of the provisions of the first paragraph of Article L. 224-8 of the Code of Social Action and Families would have the effect of removing the right to contest a decision conferring the status of ward of the State and would have clearly excessive consequences. Consequently, in order to allow the legislator to remedy the unconstitutional situation, it is appropriate to defer the date of this repeal to 1st January 2014. It is only applicable to the contesting of decisions conferring the status of ward of the State made after that date.
*(2012-268 QPC, 27 July 2012, recitals 10 and 11, p. 441)*

The provisions of Article L. 411-1 of the Environmental Code prohibit any attack on wild animals or plant species and any destruction, modification or damage to their environment if their conservation is justified by a specific scientific interest or the requirements of preserving biological heritage. The contested provisions of point 4° of Article L. 411-2 of the Environmental Code refer the task of setting the conditions under which exceptions from the prohibitions referred to above are issued to a decree of the Conseil d'État. These exceptions apply in particular in the interest of protecting the wild fauna and flora and the conservation of natural habitats, to prevent significant damage in particular to crops, livestock, forests, fisheries and waters and in the interest of public health and safety and for reasons including primordial beneficial consequences for the environment.

The immediate repeal of the provisions ruled unconstitutional would have the consequence of preventing any exception from the aforementioned prohibitions. Consequently, it is appropriate to defer the date of repeal of these provisions to 1st September 2013.
*(2012-269 QPC, 27 July 2012, recital 5, p. 445)*

The immediate declaration of unconstitutionality of point 5° of II of Article L. 211-3 of the Environmental Code, which allows the regulatory authority to determine the conditions un-

der which the administrative authority can delimit zones where it is necessary to ensure quantitative and qualitative protection for the feeder areas for drinking water intakes of particular importance for supply, and also erosion zones and to draw up an action plan in them to that end, could have clearly excessive consequences for other procedures without meeting the requirements of the principle of public participation. Consequently, it is appropriate to defer the declaration of unconstitutionality of these provisions to 1st January 2013.
*(2012-270 QPC, 27 July 2012, recital 9, p. 449)*

In order to allow the legislator to remedy the unconstitutional situation, it is appropriate to defer the date of the repeal of Article L. 120-1 of the Environmental Code to 1st September 2013. Decisions taken, before this date, in accordance with the provisions ruled to be unconstitutional cannot be contested based on this unconstitutionality.
*(2012-282 QPC, 23 November 2012, recital 34, p. 596)*

The immediate repeal of Articles L. 341-3 and L. 341-13 of the Environmental Code could have clearly excessive consequences without meeting the requirements of the principle of public participation. Consequently, it is appropriate to defer the declaration of unconstitutionality of these provisions to 1st September 2013. Decisions taken, before this date, in accordance with the provisions ruled to be unconstitutional cannot be contested based on this unconstitutionality.
*(2012-283 QPC, 23 November 2012, recital 31, p. 605)*

*Effects generated by the repealed provision*

Maintaining the effects

The repeal of Article 706-88-2 of the Code of Criminal Procedure takes effect from the publication of this decision. It is applicable to all cases in which a suspect is remanded in police custody from that date.
*(2011-223 QPC, 17 February 2012, recital 9, p. 126)*

The immediate repeal of the provisions ruled unconstitutional would have the consequence of preventing any exception from the prohibitions set by Article L. 411-1 of the Environmental Code. Consequently, it is appropriate to defer the date of repeal of these provisions to 1st September 2013. Exceptions issued, before this date, in accordance with the provisions ruled to be unconstitutional cannot be contested based on this unconstitutionality.
*(2012-269 QPC, 27 July 2012, recital 8, p. 445)*

The immediate declaration of unconstitutionality of point 5° of II of Article L. 211-3 of the Environmental Code, which allows the regulatory authority to determine the conditions under which the administrative authority can delimit zones where it is necessary to ensure quantitative and qualitative protection for the feeder areas for drinking water intakes of particular importance for supply, and also erosion zones and to draw up an action plan in them to that end, could have clearly excessive consequences for other procedures without meeting the requirements of the principle of public participation. Consequently, it is appropriate to defer the declaration of unconstitutionality of these provisions to 1st January 2013. Decisions taken, before this date, in accordance with the provisions ruled to be unconstitutional cannot be contested based on this unconstitutionality.
*(2012-270 QPC, 27 July 2012, recital 9, p. 449)*

The declaration that the power given to the commercial court to take up a case *ex officio* in accordance with the first paragraph of Article L. 631-5 of the Commercial Code is applicable to all opening judgements for reorganisation proceedings made after that date.
*(2012-286 QPC, 7 December 2012, recital 8, p. 642)*

Challenging the effects

According to the second sentence of the second paragraph of Article 62 of the Constitution, it is up to the Constitutional Council to determine the conditions and the limits under which the effects produced by the provision which it rules to be unconstitutional are likely to be challenged. Whilst, in principle, the declaration of unconstitutionality must benefit the party submitting the priority question on constitutionality and the provision ruled unconstitutional cannot be applied to proceedings in progress at the time that the decision of the

Constitutional Council is published, the provisions of Article 62 grant the Council the power to provide for the review of the effects that the provision generates before this declaration takes effect.

The declaration that Article L. 311–7 of the Code of Military Justice, as in force prior to the enactment of Law no. 2011–1862 of 13 December 2011 on the allocation of disputes and the streamlining of certain judicial procedures, is unconstitutional takes effect from the date of publication of this decision. It is applicable to all proceedings in progress and can also be invoked in any appeals for annulment which may be filed, after publication of this decision, against decisions ordering the loss of military status issued in accordance with Article L. 4139-14 of the Defence Code on the basis of the provisions of Article L. 311–7 of the Code of Military Justice which have been ruled unconstitutional.
*(2011-218 QPC, 3 February 2012, recitals 9 and 10, p. 107)*

— For proceedings in progress

The declaration of unconstitutionality of the reference to officials in the fourth, sixth and seventh paragraphs of Article L. 134-2 of the Code of Social Action and Families takes effect from the publication of this decision. From that date and without prejudice to subsequent amendments to this article, the central Social Security board shall be made up according to the rules of Article L. 134-2 of the Code of Social Action and Families resulting from this declaration of unconstitutionality. In addition, it is appropriate, in this case, to provide that the decisions rendered previously by the board can only be challenged based on this unconstitutionality if one party has invoked it against a decision which has not yet become final on the date of the publication of this decision.
*(2012-250 QPC, 8 June 2012, recital 8, p. 281)*

— For decisions that are final judgements

Whilst, in principle, the declaration of unconstitutionality must benefit the party submitting the priority question on constitutionality and the provision ruled unconstitutional cannot be applied to proceedings in progress at the time that the decision of the Constitutional Council is published, the provisions of Article 62 of the Constitution grant the Council the power both to set the date of repeal and to defer its effects as well as to provide for the review of the effects that the provision generates before this declaration takes effect.

The repeal of Article 227-27-2 of the Criminal Code takes effect from the publication of the decision of the Constitutional Council. From that date, no conviction may be qualified as an "incestuous» offence as provided for by that article. When the case has been finally ruled on at that date, mention of that qualification can no longer appear in the criminal record.
*(2011-222 QPC, 17 February 2012, recitals 5 and 6, p. 123)*

## Authority of the Constitutional Council's decisions

### Cases where the *res judicata* is not binding

*Bringing the law in line with the constitutional requirements*

In its decisions no. 2012-71 QPC of 26 November 2010 and no. 2011-135/140 QPC of 9 June 2011, the Constitutional Council deemed that continuing the sectioning of a person suffering from mental illness without his/her consent beyond fifteen days without confirmation by a court is contrary to the requirements of Article 66 of the Constitution. Following these decisions, Law no. 2011-803 of 5 July 2011, inter alia, introduced an Article L. 3211-12-1 into the Public Health Code. The first three paragraphs of subsection I of that article provide that the full sectioning of a patient resulting from a decision of an administrative authority cannot be continued without the custodial judge having ruled on that measure before the expiry of a period of fifteen days.
*(2012-235 QPC, 20 April 2012, recital 16, p. 202)*

*Change of circumstances*

Subsection II of the only article of the organic law of 18 June 1976 amending Law no. 62-1292 of 6 November 1962 on the election of the President of the Republic by universal suffrage was ruled to be constitutional in the substantive part and the operative part of decision no. 76-65 DC of the Constitutional Council of 14 June 1976. However, in the change to the Constitution on 23 July 2008, the constituent authority added a paragraph worded as follows to Article 4 of the Constitution: "The law guarantees the pluralistic expression of opinions and the equitable participation of political parties and groups in the democratic life of the Nation". This new constitutional provision, applicable to the legislative provisions relating to the presidential election, constitutes a change in the legal circumstances justifying, in this case, the reconsideration of the contested provision.
*(2012-233 QPC, 21 February 2012, recitals 3 and 4, p. 130)*

Article 26-4 of the Civil Code requires the civil service to record the registration of the declaration for the purpose of acquiring French citizenship if it does not refuse it within a certain time frame. It allows the public prosecutor to contest that declaration within a period of two years from the registration or, in the event of a lie or fraud, from the lie or fraud being discovered. That article establishes a presumption of fraud if cohabitation between the spouses ceases within twelve months of the declaration being registered.

In its decision no. 2012-227 QPC of 30 March 2012, the Constitutional Council ruled that article to be constitutional, subject to a reservation lodged on recital 14 of that decision. Although Law no. 2003-1119 of 26 November 2003 extended the period of cohabitation required for the spouse of a French national to acquire French citizenship by declaration from one year to two or three years, as applicable, the new wording thus given to Article 21-2 of the Civil Code has no effect on the civil service's obligation, if it does not refuse registration, within the legal time frames, to record the acquiring of citizenship, or on the time frames in which the public prosecutor can contest the legality of such registration, or indeed on the period of twelve months from the declaration during which the ceasing of cohabitation constitutes a presumption of fraud affecting the validity of the declaration. Consequently, these amendments to Article 21-2 of the Civil Code which come from the law of 26 November 2003 are not of a sort to alter the assessment of the compliance of Article 26-4 of that Code with the rights and freedoms guaranteed by the Constitution. Accordingly, subject to the same reservation, Article 26-4 of the Civil Code must be ruled to be constitutional.
*(2012-264 QPC, 13 July 2012, recitals 8 and 9, p. 330)*

**Scope of previous decisions**

*Reasons by reference to another decision*

As the Constitutional Council ruled in its decision no. 2011-163 QPC of 16 September 2011 regarding "incestuous" rapes and sexual assaults, whilst the legislator had the discretion to establish a particular criminal law qualification to classify sexual acts as incestuous, he could not refrain from precisely specifying the persons who must be considered as family members under that classification without infringing the principle of the legality of offences and punishments. Accordingly, the definition of incestuous sexual abuse given by Article 227-27-2 of the Criminal Code is unconstitutional
*(2011-222 QPC, 17 February 2012, recital 4, p. 123)*

Article 21-2 of the Civil Code concerns the conditions for acquiring citizenship by marriage. Asked to rule on a priority preliminary issue of constitutionality relating to this article, as worded following Law no. 2003-1119 of 26 November 2003, the Constitutional Council pointed out that, in its decision no. 2012-227 QPC of 30 March 2012, it had already considered that same Article 21-2 of the Civil Code as worded prior to that law.

The Constitutional Council pointed out that, at the time of the previous decision, it had already ruled that neither privacy nor any other constitutional requirement means that the spouse of a French national can acquire French citizenship for that reason. Consequently, the amendments made to Article 21-2 by the law of 26 November 2003, which aim to make the conditions allowing the foreign spouse of a French person to acquire French citizenship through marriage stricter but which do not prevent the foreigner from living in matrimony

with a French national and setting up a family with him/her do not, by themselves, infringe, the right to privacy or the right to lead a normal family life.
*(2012-264 QPC, 13 July 2012, recital 6, p. 330)*

In its decision no. 2012-227 QPC of 30 March 2012, the Constitutional Council examined Article 26-4 of the Civil Code, relating to the conditions for the Public Prosecutor to challenge the acquisition of French citizenship through marriage. It deemed it to be constitutional, subject to a reservation lodged on recital 14 of that decision.

Whilst Law no. 2003-1119 of 26 November 2003 amended Article 21-2 of the Civil Code to make the conditions allowing the foreign spouse of a French person to acquire French citizenship through marriage stricter, those amendments are not of a sort to alter the assessment of the compliance of Article 26-4 of that Code with the rights and freedoms guaranteed by the Constitution. Accordingly, subject to the same reservation, Article 26-4 of the Civil Code must be ruled to be constitutional.
*(2012-264 QPC, 13 July 2012, recital 9, p. 330)*

## Disputes - Means of appeal

### Application for amendment of material errors

*New case law*

By its decision no. 2012-284 QPC of 23 November 2012, the Constitutional Council ruled the words "lawyers of" in the first paragraph of Article 161-1 of the Code of Criminal Procedure to be unconstitutional. In recital 5 of that decision, it stated that the effective date of this declaration of unconstitutionality was the date of the publication of the decision and that it was applicable to all decisions ordering an expert opinion that are pronounced after the publication of that decision.

By asking the Constitutional Council to "add a clarification to its decision to ensure its effectiveness", Mme L. challenged the Constitutional Council on the conditions under which that declaration of unconstitutionality should take effect. She did not ask for the amendment of a material error. Her application therefore had to be rejected.
*(2012-284R QPC, 27 December 2012, recitals 1 and 2, p. 713)*

# COURTS AND JUDICIAL AUTHORITY

## COURTS AND SEPARATION OF POWERS

### Independence of the judiciary and the courts

#### Principle

*Ordinary court*

The principle of impartiality is inseparable from the exercising of judicial functions. It follows that, in principle, a court cannot have the power to institute, of its own motion, proceedings at the end of which it pronounces a decision which constitutes *res judicata*. Whilst the Constitution does not make this prohibition general and absolute, the taking up of a case *ex officio* by a court can only be justified, when the purpose of the proceedings is not to pronounce sanctions which constitute a punishment, on condition that it is based on a reason of general interest and that guarantees are prescribed by law to ensure compliance with the principle of impartiality.
*(2012-286 QPC, 7 December 2012, recital 4, p. 642)*

*Administrative court*

The central Social Security board is a specialised administrative court, with jurisdiction to consider appeals lodged against decisions made by the Departmental Social Security boards. The fourth paragraph of Article L. 134-2 of the Code of Social Action and Families provides that officials appointed by the Minister responsible for social assistance are members of the divisions or subdivisions of that court. The sixth paragraph of that article allows the Minister responsible for social assistance to appoint officials from ministerial departments as rapporteurs, responsible for preparing the case files submitted to the board and entitled to vote. The seventh paragraph provides that the same Minister can appoint officials from the Ministry responsible for social assistance as Government commissioners responsible for pronouncing their conclusions on the files.

Neither Article L. 134-2 of the Code of Social Action and Families nor any other legislative provision applicable to the central Social Security board prescribes the appropriate guarantees which allow the principle of independence of the officials who are members of the divisions or subdivisions, rapporteurs or Government commissioners of the central Social Security board to be met. Nor are there guarantees of impartiality prescribed that prevent officials from exercising their functions within the board when that court hears issues relating to services in which they have worked.

It follows from the foregoing that the reference to officials in the fourth, sixth and seventh paragraphs of Article L. 134-2 of the Code of Social Action and Families is unconstitutional.
*(2012-250 QPC, 8 June 2012, recitals 4 to 6, p. 281)*

#### Applications

Ex officio *submission of a case*

The principle of impartiality is inseparable from the exercising of judicial functions. It follows that, in principle, a court cannot have the power to institute, of its own motion, proceedings at the end of which it pronounces a decision which constitutes *res judicata*. Whilst the Constitution does not make this prohibition general and absolute, the taking up of a case *ex officio* by a court can only be justified, when the purpose of the proceedings is not to pronounce sanctions which constitute a punishment, on condition that it is based on a reasons of general interest and that guarantees are prescribed by law to ensure compliance with the principle of impartiality.

Reorganisation proceedings are open to any person/entity carrying out a commercial or craft activity, any farmer, any other individual carrying out a freelance professional activity including a liberal profession subject to a legislative or regulatory status or whose title is protected, and any private legal entity, who or which, being unable to meet the liabilities due with his/her/its available assets, is insolvent. The intention of these proceedings is to allow the debtor's activity to continue, employment to be maintained in the business and the settlement of the liabilities.

The contested provisions give the court the right to take up a case *ex officio* for the purpose of initiating reorganisation proceedings, except or the case where, in accordance with Articles L. 611-4 et seq. of the Commercial Code, a conciliation procedure is in progress between the debtor and his/her/its creditors. When the conditions for initiating reorganisation proceedings are met, these provisions allow such proceedings not to be delayed in order to avoid the irreparable worsening of the business's situation. Consequently, the legislator has pursued a general interest objective.

However, neither the contested provisions nor any other provision set the legal guarantees which have the purpose of ensuring that, by taking up a case *ex officio*, the court does not prejudge its position when, at the end of the proceedings involving both parties being heard or represented, it will be called upon to rule on the merits of the case in the light of all of the evidence submitted at the proceedings by the parties. Accordingly, giving the court the right to take up a case *ex officio* for the purpose of initiating reorganisation proceedings are contrary to the requirements arising from Article 16 of the 1789 Declaration. Consequently, the words "to take up a case *ex officio* or" in the first paragraph of Article L. 631-5 of the Commercial Code must be ruled to be unconstitutional.
*(2012-286 QPC, 7 December 2012, recitals 4 to 7, p. 642)*

## Right to judicial relief

### Consecration of the principle

Respecting the rights of the defence is guaranteed by Article 16 of the 1789 Declaration. This also means that the right of parties interested in securing effective relief before a court must not be substantially infringed.

On the one hand, by introducing an Article 1635 *bis* Q into the General Tax Code, Article 54 of the amending law on finances for 2011 (no. 2011-900 of 29 July 2011) introduced a contribution of 35 euros for legal assistance per proceedings. The legislator intended to establish financial solidarity between the parties to the trial to ensure the financing of the police custody reform arising from the aforementioned law of 14 April 2011 and, in particular, the resultant cost, in respect of legal assistance, for the involvement of the lawyer during the police custody. This contribution is due for any civil, commercial, labour, social or rural proceeding before a judicial jurisdiction or for any proceeding introduced before an administrative jurisdiction. The legislator defined exemptions in favour of individuals who benefit from the legal aid as well as certain kinds of disputes for which he believed that free access to justice must be ensured. The income of this contribution is paid to the National Council of Bars to be distributed between the bars according to criteria defined with regard to legal matters.

On the other hand, by introducing an Article 1635 *bis* P, into the General Tax Code, Article 54 of the amending law on finances for 2009 (no. 2009-1674 of 30 December 2009) introduced a fee for an amount of 150 euros payable by the parties to appeal proceedings when representation by a lawyer is compulsory before the appeal court. The legislator thus intended to ensure the financing of the payment of solicitors at appeal courts, as stipulated by Law no. 2011-94 of 25 January 2011 regarding the reform of representation before appeal courts, the purpose of which was to simplify and modernise the rules of representation before those courts. This fee applies to appeals lodged from 1st January 2012. Only parties to proceedings with compulsory representation before an appeal court have to pay it. This right is not due by individuals who benefit from the legal aid. The income from this right is allocated to the compensation fund of the attorneys at law profession.

Through the contested provisions, the legislator has pursued a general interest objective. With regard to their amount and the conditions under which they are payable, the contribu-

tion for legal assistance and the fee of 150 euros payable by parties in appeal proceedings have not disproportionately infringed the right to effective judicial relief before a court or the rights of the defence.
*(2012-231/234 QPC, 13 April 2012, recitals 5, 7 to 9, p. 193)*

**Applying for legal proceedings**

Under the terms of Article 16 of the 1789 Declaration: "A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all"; the right of persons who are affected to obtain judicial redress, the right to a fair trial and the principle of a fair hearing are guaranteed by this provision.

The provisions of Article 374 of the Customs Code permit the customs administration to order the confiscation of goods seized from the parties transporting or declaring such goods without any requirement to inform the owners, even if the latter have been specified; in thereby depriving the owner of the right to effective judicial relief against a measure infringing upon his rights, these provisions violate Article 16 of the 1789 Declaration.
*(2011-208 QPC, 13 January 2012, recitals 5 and 6, p. 75)*

Under the terms of Article 16 of the Declaration of the Rights of Man and the Citizen of 1789: "A society in which the observance of the law is not assured, nor the separation of powers defined, has no Constitution at all". This provision guarantees the right of interested persons to achieve effective judicial relief, the right to a fair trial and the right to make representations.

According to the contested provisions of Article L. 12-1 of the Code on Expropriation in the Public Interest, the transfer of ownership of property or property rights in rem, when there is no amicable agreement, occurs by order of the expropriation judge. This is issued based on the documents recording that the formalities prescribed by chapter I of title I of the legislative part of the Code, relating to the declaration of public interest and the approval of expropriation, have been fulfilled. The expropriation order transfers possession of the property to the expropriating body, provided that it has complied with the provisions on the setting and payment of compensation.

On the one hand, the expropriation judge only issues the order relating to the transfer of ownership after the public interest has been legally recorded. The declaration of public utility and the official approval of expropriation specifying the list of land parcels or real rights to be expropriated may be challenged before the administrative courts. The role of the judge in the expropriation proceedings is limited to a control that the file transmitted to him by the expropriating authority has been compiled in accordance with the requirements of the Code on Expropriation in the Public Interest. The order may be disputed by an appeal to the Cour de Cassation. Furthermore, the order issued by which the judge in the expropriation proceedings sets compensation is issued upon conclusion of a procedure in which the parties are entitled to make representations and may be subject to appeal.

On the other hand, according to the contested provisions, the expropriation order puts the expropriating authority in possession of the estate, subject to it complying with the provisions of chapter III of title I of the legislative part of the Code on Expropriation in the Public Interest regarding the setting and payment of the indemnities and of Article L. 15-2 of the Code relating to the conditions for taking possession. Moreover, pursuant to the second subparagraph of Article L. 12-5 of the Code: "In the event that a declaration of public interest or official approval of expropriation is annulled by a definitive decision of the administrative courts, any expropriated party may request a ruling from the judge in the expropriation proceedings that the order requiring the transfer of ownership lacks any basis in law". Not contrary to the requirements of Article 16 of the 1789 Declaration.
*(2012-247 QPC, 16 May 2012, recitals 3, 5 to 7, p. 267)*

## Constitutional principles relating to the rules

### Statutory independence

The principles of independence and impartiality are indissociable from the exercising of judicial functions.

Articles L. 722-6 to L. 722-16 of the Commercial Code relate to the mandate of commercial court judges. According to Article L. 722-6 of the Commercial Code, these judges are elected for a fixed period. According to Article L. 722-8, the functions of commercial court judges can only cease because of the expiry of their mandate, the closure of the court, resignation or forfeiture. Article L. 722-9 provides for the automatic resignation of the commercial court judge if safeguard, reorganization or liquidation proceedings are initiated against him/her. Articles L. 724-2 and L. 724-3 give to the national disciplinary board, chaired by a divisional president of the Cour de Cassation and made up of one member of the Conseil d'État, magistrates and judges of the commercial courts, the power to issue a reprimand or to dismiss a judge in the event of a disciplinary offence defined by Article L. 724-1.

Article L. 722-7 provides that before taking up office, judges in the commercial court shall swear an oath undertaking to fulfil their duties faithfully and to the best of their abilities, to strictly observe the secret nature of deliberations and to act with dignity and loyalty in all respects as a judge.

Pursuant to the second paragraph of Article L. 721-1, the commercial courts shall be subject to the provisions, which are common to all courts, of Book I of the Code of Judicial Organisation. Pursuant to Article L. 111-7 of that Code: "Any judge which supposes that there are grounds for his/her recusal or considers as a matter of conscience that he/she should not participate shall arrange to be replaced by another specially appointed judge". Similarly, the provisions of Articles L. 111-6 and L. 111-8 specify the instances in which the recusal of a judge may be required and allow the case to be referred to another court, in particular where there are legitimate grounds to question impartiality or if there are grounds for the recusal of more than one judge.

Article L. 662-2 of the Commercial Code provides that, when the interests involved justify it, the court of appeal may decide to refer the case to another court of comparable degree that has jurisdiction within the territorial jurisdiction of the court of appeal, to hear safeguard, reorganization or liquidation proceedings.

As a result of the foregoing, the provisions relating to the mandate of commercial court judges establish the guarantees prohibiting a commercial court judge from taking part in the consideration of a case in which he has an interest, even if it is indirect. None of these provisions infringe either the principles of impartiality and independence of the courts or the separation of powers.
*(2012-241 QPC, 4 May 2012, recitals 22 to 27, p. 236)*

### Legal capacity and impartiality requirements (Article 6 of the 1789 Declaration)

The commercial courts are the civil courts of first instance competent to hear disputes relating to commitments between commercial operators, between credit institutions or between commercial operators and credit institutions, as well as those relating to commercial companies and commercial acts. Pursuant to Article L. 723-1 of the Commercial Code, commercial court judges are elected by a board composed, on the one hand, of lay representatives elected from within the jurisdiction of the court and, on the other hand, the commercial court judges and former judges from the court who have applied for inclusion in the list of electors.

Article L. 723-4 sets the conditions of eligibility for appointment as a commercial court judge. It provides in particular that eligibility for appointment shall be open to persons of French nationality, who are at least thirty years old and are able to establish either that they have been registered for at least the last five years in the Trade & Companies Register or that they have

carried out, for a cumulative total of five years, functions involving management responsibilities in a commercial company or a public establishment of an industrial or commercial nature. Persons against whom safeguard, reorganization or liquidation proceedings have been initiated or who are members of a company or public establishment which has been subject to safeguard, reorganization or liquidation proceedings are not eligible.

Article L. 722-11 provides that the president of the commercial court shall be selected from the judges in the court who have performed their duties in a commercial court for at least six years. Article L. 722-14 provides that, in principle, no person may be appointed to exercise the functions of a lay judge under the conditions set forth in Book VI of the Commercial Code unless he has worked as a judge in a commercial court for at least two years.

The legislator is at liberty to amend the provisions relating to the conditions governing access to appointment as a commercial court judge in order to reinforce the requirements of legal capacity necessary for exercising those judicial functions. Nevertheless, with regard to the special competence of the commercial courts, which specialise in commercial disputes, the contested provisions, which, on the one hand, provide that commercial court judges shall be chosen by their peers from individuals with professional experience in economics and business, and, on the other hand, reserve the most important functions of these courts to judges with judicial experience, have not infringed the requirements of legal capacity resulting from Article 6 of the 1789 Declaration.
*(2012-241 QPC, 4 May 2012, recitals 28 to 32, p. 236)*

**Principles specific to the judicial authority**

*Jurisdiction of the organic law*

The encroachment by the legislator into the area which the Constitution has reserved to the organic law cannot be invoked in support of a priority preliminary issue of constitutionality on the basis of Article 61-1 of the Constitution. Accordingly, the challenge alleging that the contested legislative provisions relating to commercial court judges would encroach upon the power given to the organic legislator by Article 64 of the Constitution must in any event be rejected.
*(2012-241 QPC, 4 May 2012, recital 20, p. 236)*

Whilst the tenth paragraph of Article 65 of the Constitution provides that a litigant may refer a case to the Supreme Council of the Judiciary under the conditions specified in an organic law, the commercial court judges exercising an elected public role are not subject to the rules governing magistrates and are not in a situation identical to that of magistrates.
*(2012-241 QPC, 4 May 2012, recital 35, p. 236)*

## Access to judicial functions

**Principles**

The rules for recruiting judges from the ordinary courts fixed by the organic legislator must, in particular, by setting precise requirements as to the ability of the interested parties, ensure the compliance of the principle of equal access to public employments and support the independence of the judicial authority.

Article 16 of the Ordinance of 22 December 1958 relating to the rules governing the Judiciary sets the conditions required for applicants to one of the means of access to the National School for the Judiciary, in particular those relating to nationality, the enjoyment of civic rights, diplomas and physical fitness. The sub-paragraph 3 of this article also specifies that these candidates must "be morally virtuous". The purpose of the contested provisions is to allow the administrative authority to make sure that the applicants have the necessary guarantees to carry out the functions of magistrates and, in particular, to comply with the duties relating to their status. It is therefore up to the administrative authority, under the supervision of the administrative judge, to assess the facts that might seriously cast doubt over the

existence of those guarantees. The requirements of Article 6 of the 1789 Declaration do not force the organic legislator to specify the nature of these facts and the procedures by which they are assessed. Accordingly, the challenge alleging that the organic legislator had acted in excess of its powers must be rejected.
*(2012-278 QPC, 5 October 2012, recitals 4 and 5, p. 511)*

## Career development

### Appointment

Article 2 of Organic Law no. 2012-208 of 13 February 2012 laying down various provisions relating to the rules governing the Judiciary amends Article 3-1 of Ordinance no. 58-1270 of 22 December 1958 relating to magistrates appointed. It relaxes the rules applicable to the appointment of said magistrates, after two years' service, to the regional court of the seat of the court of appeal to which they are attached or to the most important regional court in the department. It is constitutional.
*(2012-646 DC, 9 February 2012, recital 3, p. 111)*

### Promotion

*Seniority*

Article 3 of Organic Law no. 2012-208 of 13 February 2012 laying down various provisions relating to the rules governing the Judiciary amends Article 39 of Ordinance no. 58-1270 of 22 December 1958 to reduce the proportion of vacancies as a judge or Advocate General to the Cour de Cassation which are filled by the appointment of a chief magistrate who has carried out the functions of an auxiliary judge or an auxiliary Advocate General for at least eight years. It is constitutional.
*(2012-646 DC, 9 February 2012, recital 4, p. 111)*

### Administrative positions

*Secondment, availability and statutory mobility*

Article 5 of Organic Law no. 2012-208 of 13 February 2012 laying down various provisions relating to the rules governing the Judiciary amends Article 76-4 of Ordinance no. 58-1270 of 22 December 1958 to relax the conditions under which magistrates can fulfil their statutory mobility. It is constitutional.
*(2012-646 DC, 9 February 2012, recital 6, p. 111)*

*Leave*

Article 4 of Organic Law no. 2012-208 of 13 February 2012 laying down various provisions relating to the rules governing the Judiciary amends Article 69 of Ordinance no. 58-1270 of 22 December 1958 to give new powers to the National Medical Committee specific to magistrates and to set up a National Medical Appeal Committee. It is constitutional.
*(2012-646 DC, 9 February 2012, recital 5, p. 111)*

*Retirement, cessation of functions*

Article 1 of Organic Law no. 2012-208 of 13 February 2012 laying down various provisions relating to the rules governing the Judiciary amends Article 2 of the organic law of 10 November 2010 relating to the age limit for ordinary court magistrates. For magistrates born from 1st January 1952, it amends the time frame by which the age limit for ordinary court magistrates increases progressively from sixty-five to sixty-seven. It is constitutional.
*(2012-646 DC, 9 February 2012, recital 2, p. 111)*

### Disciplinary regulations

The first sub-paragraph of Article L. 724-3 of the Commercial Code reserves to the Minister for Justice the power to refer the matter to the disciplinary national committee of commercial court judges. Whilst the tenth paragraph of Article 65 of the Constitution provides that a litigant may refer a case to the Supreme Council of the Judiciary under the conditions specified in an organic law, the commercial court judges exercising an elected public role are not subject to the rules governing magistrates and are not in a situation identical to that of magistrates. Accordingly, the challenge alleging that the disciplinary regulations applicable to commercial court judges are not identical to those applicable to magistrates must be rejected.
*(2012-241 QPC, 4 May 2012, recital 35, p. 236)*

## ORGANISATION OF THE COURTS

### Composition

#### Specialised courts

*Professional courts*

The arbitral committee of journalists, established by Article L. 7112-4 of the Labour Code, is the appropriate jurisdiction to assess the compensation due to a journalist, member of staff, with more than fifteen years of seniority. It is also appropriate to reduce or cancel the compensation in all cases of serious or repeated misconducts of a journalist. To this effect, the arbitral committee of journalists, composed of an equal number of arbitrators nominated by the professional organisations of employers and employees, is chaired by a civil servant or by an active or retired magistrate. By entrusting the evaluation of this severance pay to this specialised court made up mainly of individuals appointed by professional organisations, the legislator intended to take account of the specific nature of that profession for assessing, when the employment contract is terminated, the sums due to journalists with the longest services or those accused of gross negligence or recurrent misconduct. Consequently, the challenge alleging breach of the principle of equality before the law must be rejected and the contested provisions is not contrary to any other right or freedom guaranteed by the Constitution.
*(2012-243/244/245/246 QPC, 14 May 2012, recital 12, p. 263)*

# DECENTRALISED ORGANISATION OF THE REPUBLIC

## GENERAL PRINCIPLES

### Freedom of administration of local authorities

#### Lack of breach of the principle

Whilst, according to the third paragraph of Article 72 of the Constitution, the local authorities "shall be self-governing through elected councils", each of them shall do so "according to the conditions provided for by law". Its Article 34 reserves for the legislator the ability to determine the fundamental principles governing the freedom of administration of local authorities.

The provisions of Article L. 2122-16 of the General Local Authorities Code allow sanctions to be imposed on the mayor whether he has acted in his capacity as an official of the State or as an executive officer of the municipality The imposition of sanctions punishing breaches by mayors of the obligations accruing to their functions does not in itself violate the principle of freedom of administration of local authorities. The suspension or removal from office, which has effects for all of the mayor's powers, is adopted according to the law. Accordingly, the contested provisions are not contrary to the freedom of administration of local authorities.
*(2011-210 QPC, 13 January 2012, recitals 6 and 7, p. 78)*

In Article L. 3334-18 of the General Local Authorities Code, the legislator introduced a mechanism for sharing revenue emanating from the departmental share of transfer tax where there has been valuable consideration. The proportion of the revenue emanating from tax received by a department on transfers involving valuable consideration which can be collected is limited to 10%. The criteria for determining the contributing and the beneficiary departments and also the redistribution criteria used are objective and rational. The freedom of administration of the departments is not infringed.
*(2012-255/265 QPC, 29 June 2012, recital 8, p. 315)*

Point e) of subsection 1 of Article 3 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed on 2 March 2012 in Brussels provides that States undertake to set up a correction mechanism which must be "triggered automatically if significant deviations from the medium-term objective or the adjustment path towards it are observed" and must include "the obligation of the Contracting Party concerned to implement measures to correct these deviations over a defined period". The stipulations of the Treaty indicate that the implementation of this correction mechanism leads to measures concerning all of the public administrations, especially the State, the local authorities and the Social Security. This mechanism is not contrary to the freedom of administration of the local authorities.
*(2012-653 DC, 9 August 2012, recital 25, p. 453)*

The fact that the legislature has acted in excess of its powers may only be invoked in support of a preliminary ruling on the issue of constitutionality where this breach itself affects a right or freedom guaranteed under the Constitution.

Whilst, pursuant to the third paragraph of Article 72 of the Constitution, the local authorities "shall be self-governing through elected councils", each of them shall do so "according to the conditions provided for by law". Article 34 of the Constitution reserves to primary legislation the determination of the fundamental principles of free administration of local authorities, along with their powers and resources.

Article 20 of Law no. 2010-597 of 3 June 2010 on Grand Paris relates to the transfer of ownership or the use of the items of property mentioned in Article 7 belonging to the Société du Grand Paris after the handover thereof. Paragraph I of this Article provides that the lines, works and installations shall be "consigned" to the Paris Public Transport System [Régie autonome des transports parisiens] which shall ensure their technical management and that the rolling stock is transferred to the full ownership of the Île-de-France Transport Union.

Paragraph II authorises the Conseil d'État to adopt a decree specifying, in particular, the terms governing payment of remuneration to Société du Grand Paris for the use or transfer of ownership of its lines, works, installations and materials. By not determining the particular terms and conditions of the financial participation likely to be requested in exchange for the transfer of the property between the Société du Grand Paris and the Île-de-France Transport trade union, both public entities, the contested provisions do not deprive of legal guarantees the requirements arising from the constitutional principle of freedom of administration of the local authorities which make up the Île-de-France transport trade union.
*(2012-277 QPC, 5 October 2012, recitals 3, 4 and 6, p. 508)*

## LOCAL AUTHORITY FINANCES

### Revenue

#### Own revenue

*Notion of decisive share*

Article L. 3334-18 of the General Local Authorities Code, which introduces a mechanism for sharing revenue emanating from the departmental share of transfer tax where there has been valuable consideration, relates to the revenue received by the departments from local taxable income and according to the rate which may be adjusted by each Departmental Council. It results in the redistribution of a share of such own revenue of the departments within that category of local authorities. It does not therefore result in the modification of the decisive share of the own revenue of that category of authorities. Accordingly, the challenge alleging infringement of the principle of financial autonomy of the departments must be rejected.
*(2012-255/265 QPC, 29 June 2012, recital 9, p. 315)*

Under the terms of the first three paragraph of Article 72 -2 of the Constitution: "The local authorities shall have the benefit of revenue which they can freely dispose of according to the conditions set by law. - They can receive all or part of the proceeds from taxes of any nature. They can be authorised by law to set the taxable income and rate thereof, within the limits determined by law. - Tax revenue and other own revenue of local authorities shall, for each category of authorities, represent a decisive share of their revenue... ". Article L.O. 1114-2 of the General Local Authorities Code defines, for the purposes of the third paragraph of Article 72-2 of the Constitution, the notion of "own revenue of the local authorities". It provides that this income "is made up of the proceeds from taxes of any nature, the taxable income and rate of which the law authorises them to set or whose rate or local share of the taxable income the law determines, per authority... ". According to the combination of these provisions, the tax revenue falling within the category of the local authorities' own revenue are deemed, within the meaning of Article 72-2 of the Constitution, to be proceeds from taxes of any nature not only when the law authorises these authorities to set their taxable income or rate or when the law determines, per authority, their rate or local share of the taxable income, but also when the law allocates this tax revenue within a category of local authorities.
*(2012-255/265 QPC, 29 June 2012, recital 6, p. 315)*

### Revenue sharing (Article 72-2, paragraph 5)

To ensure the implementation of the last paragraph of Article 72-2 of the Constitution, the legislator, in Article L. 3334-18 of the General Local Authorities Code, introduced a mechanism for sharing revenue emanating from the departmental share of transfer tax where there has been valuable consideration. The legislator thus intended to ensure a redistribution of this revenue which is split very unequally nationally. The proportion of the revenue emanating from tax received by a department on transfers involving valuable consideration which can be collected is limited to 10%. The criteria for determining the contributing and the

beneficiary departments and also the redistribution criteria used are objective and rational. They are directly linked to the objective sought by the legislator to redistribute the revenue emanating from the departmental share of transfer tax where there has been valuable consideration. There has been no clear breach of the equality of local authorities in the payment of public dues. Nor has the freedom of administration of the departments been infringed.
*(2012-255/265 QPC, 29 June 2012, recital 8, p. 315)*

Under the terms of the last paragraph of Article 72 -2 of the Constitution: "The law provides revenue sharing mechanisms intended to foster equality between local authorities". The legislator is free to implement a financial revenue sharing between these authorities by grouping them together into categories, provided that their definition is based on objective and rational criteria. This revenue sharing can correct not only the inequalities affecting the revenue, but also the inequalities relating to expenditure. It can be implemented by a State allocation or by means of a fund consisting in local authority revenue.

The rules set by law based on the last paragraph of Article 72-2 of the Constitution must not restrict the revenue of local authorities to the point of undermining the principle of the freedom of administration of those authorities, as defined by Article 72 of the Constitution.
*(2012-255/265 QPC, 29 June 2012, recital 7, p. 315)*

## TRANSITIONAL PROVISIONS RELATING TO NEW CALEDONIA (Article 77)

### Priority preliminary issue of constitutionality

Article 99 of Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia defined the scope of the territory laws of New Caledonia and its Article 107 gave them "force of law" on those matters. On the one hand, that article, in its third and fourth paragraphs, establishes a procedure by which the Conseil d'État, asked to rule by an administrative or an ordinary court, or by the President of the Congress, the President of the Government, the President of a Provincial Assembly or the High Commissioner, rule, where applicable, that a provision of a dependent territory law has been enacted in excess of the scope defined in Article 99. On the other hand, Article 3 of Organic Law no. 2009-1523 of 10 December 2009 relating to the application of Article 61-1 of the Constitution inserted a paragraph in that Article 107 under the terms of which: "The provisions of a dependent territory law can be subject to a priority preliminary issue of constitutionality which meets the rules defined by Articles 23-1 to 23-12 of Ordinance no. 58-1067 of 7 November 1958 concerning the organic law on the Constitutional Council". According to these provisions of Article 107, the procedure relating to considering a priority preliminary issue of constitutionality regarding a dependent territory law of New Caledonia excludes the application of the provisions of the third and fourth paragraphs of Article 107.

Dependent territory Law no.2011-6 of 17 October 2011 validating the acts adopted pursuant to Articles 1 and 2 of resolution no. 116/CP of 26 May 2003, on the regulation of the importation of meat and offal into New Caledonia, was adopted according to the procedure provided for by Articles 100 to 103 of the organic law of 19 March 1999 on New Caledonia. Since then, it has not been subject to a decision by the Conseil d'État ruling that it was enacted in excess of the matters specified under Article 99. Accordingly, it is a provision which can be subject to a priority preliminary issue of constitutionality.
*(2012-258 QPC, 22 June 2012, recitals 2 and 3, p. 308)*

# INDEPENDENT AUTHORITIES

## GUARANTEES OF INDEPENDENCE

### Members

#### Obligations of impartiality

*Principle*

The principle of the separation of powers, or any other principle or rule of constitutional standing, does not preclude an independent administrative authority, acting within the scope of its prerogatives as a public authority, from being able to exercise a power to impose penalties insofar as necessary to fulfil its mission, provided that the exercising of this power is associated by law with measures intended to ensure protection of the rights and freedoms guaranteed under the Constitution. In particular, the principle of the legality of criminal offences and punishments as well as defence, which are principles applicable to any sanction in the form of a punishment, even if the legislator delegated the task of imposing it to an authority of a non-judicial nature, must be respected. The principles of independence and impartiality arising from Article 16 of the 1789 Declaration must also be respected.
*(2012-280 QPC, 12 October 2012, recital 16, p. 529)*

*Competition Authority*

The provisions of subsection II of Article L. 461-1 of the Commercial Code make provision for the composition of the board of the Competition Authority, of which different bodies are competent to exercise the powers to impose penalties vested by the legislator in that independent administrative authority. Article L. 461-2 of the Code states the obligations by which the members of the Authority are bound. The third and fourth paragraphs of that article stipulate inter alia that: "All members of the Council must inform the chairman of the interests which they hold or have recently acquired and of the functions which they perform in relation to an economic activity. - No member of the Authority can deliberate on a matter in which they have an interest or in which they represent or have represented one of the interested parties". Article L. 461-3 of the Code lays down the rules governing the adoption of resolutions by the Authority.

On the other hand, the first three paragraphs of Article L. 461-4 of the Commercial Code provide that: "The Competition Authority disposes of investigation services directed by a general rapporteur appointed by decision of the minister in charge of the economy after hearing the views of the board. – These services shall carry out the investigations necessary in relation to the application of titles II and III of this book. – The assistant rapporteurs general, the permanent or non-permanent rapporteurs and the researchers with the investigation services shall be appointed by the rapporteur general by decision published in the *Journal Officiel*". According to the penultimate paragraph of that article: "The chairman shall oversee the income and expenditure of the Authority. He shall delegate the payment orders relating to the expenses of the investigation services to the rapporteur general". These provisions aim to guarantee the independence of the rapporteur general and of the services with regards to the bodies of the Competition Authority which are competent to impose penalties.

With regard to these legal guarantees, the control of compliance with which is a matter for the courts, subsection II of Article L. 461-1 and Article L. 461-3 of the Commercial Code do not violate the principles of independence and impartiality which are indissociable from the exercise by an independent administrative authority of the power to impose penalties.
*(2012-280 QPC, 12 October 2012, recitals 17 to 19, p. 529)*

### Investigation and prosecution services

**Competition Authority**

According to the first three paragraphs of Article L. 461-4 of the Commercial Code: "The Competition Authority disposes of investigation services directed by a general rapporteur appointed by decision of the minister in charge of the economy after hearing the views of the board. – These services shall carry out the investigations necessary in relation to the application of titles II and III of this book. – The assistant rapporteurs general, the permanent or non-permanent rapporteurs and the researchers with the investigation services shall be appointed by the rapporteur general by decision published in the *Journal Officiel*". According to the penultimate paragraph of that article: "The chairman shall oversee the income and expenditure of the Authority. He shall delegate the payment orders relating to the expenses of the investigation services to the rapporteur general". These provisions have the objective of guaranteeing the independence of the rapporteur general and of the services vis-à-vis the bodies of the Competition Authority which are competent to impose penalties.
*(2012-280 QPC, 12 October 2012, recital 18, p. 529)*

## DUTIES AND POWERS

### Powers of checking and powers of inquiry

**Competition Authority**

Whilst the provisions of subsection III of Article L. 462-5 of the Commercial Code authorise the Competition Authority to take up cases "*ex officio*" on certain practices and failures to comply with commitments made in relation to decisions authorising concentration operations, this is subject to this having been proposed by the rapporteur general. These provisions, relating to the initiation of the procedure controlling the enforcement of orders, requirements or commitments imposed by a decision authorising a concentration operation, do not lead the authority to formulate a prior opinion in relation to the failures under examination. The case is then investigated by the rapporteur general under the conditions and according to the guarantees laid down by Articles L. 463-1 and L. 463-2 of the Commercial Code. The board of the Authority is, for its part, competent to rule, according to the procedures laid down by Article L. 463-7 of the Code, on objections notified by the rapporteur general and, where applicable, to impose penalties. The two last paragraphs of this article provide that the rapporteur general may make observations during the session, whilst also providing that if the authority is to rule on practices referred to it in accordance with Article L. 462-5, the rapporteur general and the rapporteur will not attend the meeting at which it reaches its decision.

With regard to these legal guarantees, the control of compliance with which is a matter for the courts, the referral of a case to the Competition Authority does not involve any confusion between the functions of initiating legal proceedings and investigation and the powers to impose penalties. Under these conditions, the provisions of subsection III of Article L. 462-5 of the Commercial Code do not infringe the principles of independence and impartiality resulting from Article 16 of the 1789 Declaration.
*(2012-280 QPC, 12 October 2012, recitals 20 and 21, p. 529)*

### Power to impose penalties

**Separation of the prosecution and judgement functions**

Whilst the provisions of subsection III of Article L. 462-5 of the Commercial Code authorise the Competition Authority to take up cases "*ex officio*" on certain practices and failures to com-

ply with commitments made in relation to decisions authorising concentration operations, this is subject to this having been proposed by the rapporteur general. These provisions, relating to the initiation of the procedure controlling the enforcement of orders, requirements or commitments imposed by a decision authorising a concentration operation, do not lead the authority to formulate a prior opinion in relation to the failures under examination. The case is then investigated by the rapporteur general under the conditions and according to the guarantees laid down by Articles L. 463-1 and L. 463-2 of the Commercial Code. The board of the Authority is, for its part, competent to rule, according to the procedures laid down by Article L. 463-7 of the Code, on objections notified by the rapporteur general and, where applicable, to impose penalties. The two last paragraphs of this article provide that the rapporteur general may make observations during the session, whilst also providing that if the authority is to rule on practices referred to it in accordance with Article L. 462-5, the rapporteur general and the rapporteur will not attend the meeting at which it reaches its decision.

With regard to these legal guarantees, the control of compliance with which is a matter for the courts, the referral of a case to the Competition Authority does not involve any confusion between the functions of initiating legal proceedings and investigation and the powers to impose penalties. Under these conditions, the provisions of subsection III of Article L. 462-5 of the Commercial Code do not infringe the principles of independence and impartiality resulting from Article 16 of the 1789 Declaration.
*(2012-280 QPC, 12 October 2012, recitals 20 and 21, p. 529)*

# RESERVATIONS OF INTERPRETATION

## CIVIL LAW

### Civil Code

**Article 26-4 (timeframe for the public prosecutor to challenge the declaration of acquisition of citizenship by marriage)**

The combined application of the provisions of the first and second sentences of the third paragraph of Article 26-4 of the Civil Code would, from the mere fact that the cohabitation ceased in the year after the registration of the declaration of citizenship, lead to rules of evidence being established, the purpose of which is to force a person who has acquired French citizenship through marriage to be able to prove, during his/her lifetime, that at the date of the declaration, for the purposes of acquiring citizenship, the cohabitation between the spouses, both physical and emotional, had not ceased. The temporally unlimited benefit thus conferred on the public prosecutor, as the applicant, in the administration of evidence would result in an excessive breach of defence rights.

Consequently, the presumption provided for by the second sentence of the third paragraph of Article 26-4 can only be applied in cases initiated within two years of the date of registration of the declaration. If the proceedings are initiated after this time, it will be for the public prosecutor to provide proof of the false statement or fraud alleged. Subject to this reservation, Article 26-4 of the Civil Code does not disregard compliance with defence rights.
*(2012-227 QPC, 30 March 2012, recitals 13 and 14, p. 175)*

In its decision no. 2012-227 QPC of 30 March 2012, the Constitutional Council examined Article 26-4 of the Civil Code, relating to the conditions for the Public Prosecutor to challenge the acquisition of French citizenship through marriage. It deemed it to be constitutional, subject to a reservation lodged on recital 14 of that decision.

Whilst Law no. 2003-1119 of 26 November 2003 amended Article 21-2 of the Civil Code to make the conditions allowing the foreign spouse of a French person to acquire French citizenship through marriage stricter, those amendments are not of a sort to alter the assessment of the compliance of Article 26-4 of that Code with the rights and freedoms guaranteed by the Constitution. Accordingly, subject to the same reservation, Article 26-4 of the Civil Code must be ruled to be constitutional.
*(2012-264 QPC, 13 July 2012, recital 9, p. 330)*

## ENVIRONMENTAL CODE

The second and third paragraphs of Article L. 581-9 of the Environmental Code establish a system of prior administrative authorisation for the installation of certain arrangements for external advertising. These provisions do not have the object and could not have the effect of granting to an administrative authority which has received an application on the basis of this legislation the power to exercise prior control over the contents of the advertising messages which it is intended to convey. Subject to this reservation, these provisions do not infringe the freedom of expression.
*(2012-282 QPC, 23 November 2012, recital 31, p. 596)*

### Article L. 221-2 (slaughter of sick animals)

Whilst the decision to withdraw the compensation paid in the event of an administrative decision to slaughter sick animals in accordance with Article L. 221-2 of the Rural and Marine Fishing Code could be the result of a breach, by the owner, of the animal health rules without such a breach having contributed to the situation which was the reason for his/her animals being slaughtered, two owners having committed the same breach of those rules were apparently treated differently for a reason not related to the behaviour of one of them which led to the animals being slaughtered. Such an interpretation was contrary to the principle of equality before the law.

It follows that the decision of the loss of compensation could only be pronounced against an owner if it is established that the breach of the animal health rules justifying that that decision contributed to the situation which was the reason for the animals being slaughtered. Subject to this reservation, Article L. 221-2 of the Rural and Marine Fishing Code is not contrary to the principle of equality.
*(2012-266 QPC, 20 July 2012, recitals 12 and 13, p. 390)*

The contested provisions of Article L. 221-2 of the Rural and Marine Fishing Code establish an administrative penalty which can be accumulated with the criminal penalties provided for under Articles L. 228-1 and R. 228-1 of the Rural and Marine Fishing Code. The principle of such a combination is not, in itself, contrary to the principle of the proportionality of sentences guaranteed by Article 8 of the 1789 Declaration.

However, when an administrative penalty which can be accumulated with a criminal penalty, the principle of proportionality means that, in any event, the overall amount of the penalties that may be pronounced cannot exceed the highest amount of one of the penalties incurred. It will therefore be up to the competent administrative and judicial authorities to make sure that this requirement is complied with. Subject to this reservation, Article L. 221-2 of the Rural and Marine Fishing Code are not contrary to the principle that punishments must be proportional.
*(2012-266 QPC, 20 July 2012, recitals 8 to 10, p. 390)*

## SOCIAL LAW

### Articles L. 2411-1 (13°), L. 2411-3 and L. 2411-18 of the Labour Code (dismissal of a protected employee)

The dismissal of a protected employee in breach of the provisions relating to the administrative authorisation procedure is automatically null and void. Such a dismissal exposes the employer to an obligation to reinstate the employee and to pay compensation to him as redress for the detriment suffered as a result of his unfair dismissal.

The protection of the employee ensured by the provisions of point 13° of Article L. 2411-1 of the Labour Code and Articles L. 2411-3 and L. 2411-18 of that Code arises from holding an office outside the company. Accordingly, were these provisions to enable a protected employee to invoke such protection where it has been established that he did not inform his employer at the latest in the pre-dismissal interview, this would result in a disproportionate violation of freedom of enterprise and freedom of contract. Reservation of interpretation.
*(2012-242 QPC, 14 May 2012, recital 10, p. 259)*

### Articles L. 5134-111 and L. 5134-115 of the Labour Code and L. 322-46 and L. 322-50 of the Labour Code applicable to Mayotte (Law no. 2012-1189 of 26 October 2012 on the creation of future oriented jobs, Articles 1 and 11)

Since recruitment for jobs of the future is reserved for young people with no qualification, public entities can only use the said jobs for fixed-term employment contracts. Subject to this reservation, Articles L. 5134-111 and L. 5134-115 of the Labour Code and L. 322-46 and L. 322-50 of the Labour Code applicable to Mayotte, resulting from Articles 1 and 11 of Law no. 2012-1189 of 26 October 2012 on the creation of future oriented jobs, are not unconstitutional.
*(2012-656 DC, 24 October 2012, recitals 12 to 16, p. 560)*

### Articles L. 5134-21 and L. 5134-24 of the Labour Code and L. 322-7 and L. 322-13 of the Labour Code applicable to Mayotte (employment support contracts)

Local authorities and other public entities can only use employment support contracts for fixed-term employment contracts. Subject to this reservation applicable to contracts entered into after the publication of the decision of the Constitutional Council, Articles L. 5134-21 and L. 5134-24 of the Labour Code and Articles L. 322-7 and L. 322-13 of the Labour Code applicable to Mayotte are not unconstitutional.
*(2012-656 DC, 24 October 2012, recitals 18 and 19, p. 560)*

## STATE AND SOCIAL FINANCE LAW

### Insurance Code

#### Article L. 425-1 (tax on sludge)

By inserting an Article L. 425-1 in the Insurance Code, Law no. 2006-1772 of 30 December 2006 introduced a fund guaranteeing risks associated with the agricultural spreading of urban and industrial sludge. By creating this fund, the legislator intended to encourage the elimination of sludge by means of agricultural spreading by guaranteeing compensation to farmers and land owners for the ecological damage associated with the spreading which was not foreseeable and is not covered under the third party liability policies of the producer of the sludge spread. Paragraph II of Article L. 425-1 provides that this compensation fund is "financed by an annual tax due by the producers of sewage sludge and which base is the quantity of dry sludge produced".

As a result of the parliamentary work on the law of 30 December 2006, by basing the tax on the amount of sludge produced and not on the amount of sludge spread, the legislator intended, whilst ensuring that this compensation fund has sufficient resources, to avoid the tax from dissuading sludge producers to resort to spreading. Thus, the difference established between sludge able to be spread which the producer is authorised to spread and other waste which it produces and which can only be disposed of by storage or incineration is directly linked to the purpose of the tax. The same does not apply to sludge able to be spread but which the producer is not authorised to spread. Whilst the tax introduced by subsection II of Article L. 425-1 of the Insurance Code was also based on the sludge which the producer is not authorised to spread, it would involve a difference in treatment not directly linked to the purpose of the tax and, consequently, contrary to the principle of equality in the payment of public dues. Accordingly, this tax cannot be based only on the sewage sludge the producer has the right to spread. Subject to this reservation, the contested provisions are not contrary to the principle of equality in the payment of public dues.
*(2012-251 QPC, 8 June 2012, recitals 4, 6 and 7, p. 285)*

## General Tax Code

### Tax on vacant dwellings (Article 232)

The object of the tax established by the provisions of Article 232 of the General tax Code is to encourage the persons liable of this tax to rent housing likely to be rented. It results from the constitutional principles of equality before the law and the public dues that the difference in tax treatment established by this article with regard to persons liable of this tax is unconstitutional only if the chosen liability criteria is directly related to the pursued objective. The said tax cannot, therefore, strike only habitable and empty housings and which vacancy depends only on the willingness of their owner.

Firstly, dwellings which could only be made habitable if significant work, which would have to be paid for by the proprietor, is carried out, cannot be liable to this tax.

Secondly, furnished dwellings used for housing purposes and, as such, subject, under point 1° of subsection I of Article 1407 of the General Tax Code, to housing tax, cannot be regarded as vacant.

Thirdly, dwellings which are vacant for a reason outside of the lessor's control, preventing their prolonged occupation, for valuable consideration or free of charge, in normal conditions of habitation, or not allowing their occupation, for valuable consideration, in normal conditions of remuneration of the lessor, cannot be liable to this tax. Thus, dwellings intended, in the near future, to disappear or be subject to work as part of town planning, restoration or demolition operations, or dwellings made available for rent or sale but for which no lessee or purchaser has been found must, inter alia, be exempt from this tax.

The Council is thus using the same reservations as those put forward in recitals 17 to 19 of its decision no. 98-403 DC of 29 July 1998 (Framework law on measures to combat exclusion)
*(2012-662 DC, 29 December 2012, recitals 134 to 139, p. 724)*

## Organic Law concerning the programming and the governance of public finances (no. 2012-1403 of 17 December 2012)

### Content of the statement of reasons for the bills on finances and on the financing of Social Security

The last paragraph of Article 7 of Organic Law no. 2012-1403 of 17 December 2012 concerning the programming and the governance of public finances defines the content of the statement of reasons, for the introductory article, of the finance bills for the year, the amending bills on finances and the amending bills on the financing of Social Security. The last sentence of Article 8 defines the content of the statement of reasons, for the introductory article, of the discharge bill.

These provisions, the purpose of which is to improve the information to the Parliament, cannot prevent the consideration of finance bills for the year, amending bills on finances and amending bills on the financing of Social Security according to the conditions set by Articles 47 and 47-1 of the Constitution. Accordingly, their infringement cannot give rise to the application of the procedure provided for by the fourth paragraph of Article 39 of the Constitution.
*(2012-658 DC, 13 December 2012, recitals 24 and 25, p. 667)*

### Passing on of the opinion of the High Council for public finances

If, due to the circumstances, the opinion of the High Council for public finances were to be given after the opinion of the Conseil d'État, the Constitutional Council would, where applicable, from the viewpoint of the requirements for the continuity of the Nation, assess compliance with the provisions of Articles 13, 14 and 15 of the organic law concerning the programming and the governance of public finances.
*(2012-658 DC, 13 December 2012, recitals 46, 47 and 54, p. 667)*

## PUBLIC ORDER AND CRIMINAL LAW

### Article L. 3341-1 of the Public Health Code (public drunkenness - QPC)

When the person is placed under police custody after having been deprived of his/her freedom because of public drunkenness, pursuant to the first paragraph of Article L. 3341-1 of the Public Health Code, the constitutional protection of individual freedom by the judicial authority requires that he/she is placed in a detention room, which must be recorded in all cases by the officers of the national police or gendarmerie, should be taken into account in the period of the police custody. Subject to this reservation, Article L. 3341-1 of the Public Health Code is not contrary to either Article 66 of the Constitution or any other right or freedom guaranteed by the Constitution.
*(2012-253 QPC, 8 June 2012, recitals 9 and 10, p. 289)*

## PUBLIC AUTHORITIES

### Legislative validation (Law of the dependent territory of New Caledonia)

By the dependent territory Law no. 2011-6 of 17 October 2011, the legislator validated the regulatory and individual acts adopted pursuant to Articles 1 and 2 of resolution of 26 May 2003 on the regulation of the importation of meat and offal into New Caledonia shall be valid notwithstanding that their lawfulness has been contested on the grounds that the exclusive right which the provisions grant the office of marketing and refrigerated storage over the importation of meat and offal of bovine, suidian, ovine, caprine, equine and cervid species causes an excessive violation to the principle of freedom of trade and industry which is not justified by sufficient reasons of general interest". Nevertheless, no reason of sufficient general interest justifies the applicability of these provisions to proceedings which were pending before the courts on the date of entry into force of the contested dependent territory law. Accordingly, the latter can only apply to actions initiated after that date. Subject to this reservation, the contested provisions are not contrary to Article 16 of the 1789 Declaration, or to any other right or freedom guaranteed by the Constitution.
*(2012-258 QPC, 22 June 2012, recital 9, p. 308)*

## CRIMINAL PROCEDURE

### Code of Criminal Procedure

#### Article 78, paragraph 1 (interviewing the suspected person)

It necessarily follows that the provisions of the first paragraph of Article 78 of the Code of Criminal Procedure, following the enactment of Law no. 2004-204 of 9 March 2004, that a person against whom it appears to exist reasonable suspicion that he or she has committed or tried to commit a crime may be heard by the investigators outside of police custody when he or she is not kept at their disposal under coercion.

However, respecting the rights of the defence requires that a person about whom it seems, before he/she is interviewed or during the interview, that there are plausible reasons to suspect that he/she has committed or attempted to commit an offence, can only be interviewed or continue to be interviewed by the officers in charge of the investigation if he/she has been advised of the nature and the date of the offence that he/she is suspected of having committed and of his/her right the leave the police or gendarmerie premises at any time. Subject to this reservation applicable to hearing carried out after the publication of this decision,

the provisions of the first paragraph of Article 78 of the Code of Criminal Procedure do not infringe defence rights.
*(2012-257 QPC, 18 June 2012, recitals 8 and 9, p. 298)*

## MISCELLANEOUS

### Code on Expropriation in the Public Interest

According to the contested provisions of Article L. 13-17 of the Code on Expropriation in the Public Interest, other than cases where the expropriated person can show that changes occurring in the material or legal consistency, the occupation condition or situation of his/her property have meant that it has increased in value, the expropriation judge is bound by the estimate of the public services if this is higher than the declaration or the valuation made at the time of the transfer of the property.

By adopting these provisions, the legislator intended to encourage owners not to under-estimate the value of the property that is passed on to them or to hide part of the acquisition price of such property. It therefore pursued the goal of contrasting tax fraud, which constitutes an objective of constitutional standing. However, if contested provisions have the effect of depriving the interested party of the ability to furnish proof that the administration has not taken due account of the evolution of the real estate market, this will result in a violation of the requirements of Article 17 of the 1789 Declaration. Subject to this reservation, they do not infringe the requirement by which nobody can be deprived of their property unless they have been previously and fairly compensated. Nor do they infringe the independence of the judicial authority and the separation of powers.
*(2012-236 QPC, 20 April 2012, recitals 6 and 7, p. 211)*
*w*

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