



# INSTITUTIONAL ACT ON THE CONSTITUTIONAL COUNCIL

**Ordinance 58-1067 of 7 November 1958**

(As amended by Ordinance No 59-223 of 4 February 1959, Institutional Act No 74-1101 of 26 December 1974 and Institutional Act No 95-63 of 19 January 1995)

## TITLE I

### ORGANISATION OF THE CONSTITUTIONAL COUNCIL

#### Section 1

The members of the Constitutional Council other than *ex officio* members shall be appointed by decisions of the President of the Republic, the President of the National Assembly and the President of the Senate.

The President of the Constitutional Council shall be appointed by decision of the President of the Republic. He shall be selected from among the members of the Constitutional Council, including the *ex officio* members.

The decisions provided for by this section shall be published in the *Journal officiel*.

#### Section 2

The first Constitutional Council shall consist of three members appointed for three years, three members appointed for six years and three members appointed for nine years. The President of the Republic, the Speaker of the National Assembly and the Speaker of the Senate shall each appoint one member for each of those terms.

#### Section 3

Before taking up office, the appointed members of the Constitutional Council shall swear an oath before the President of the Republic.

They shall swear that they will properly and faithfully discharge their functions, perform them fully impartially in respect for the Constitution, preserve confidentiality as to proceedings and voting, make no public statement and enter into no consultancy with respect to matters within the Council's jurisdiction.

A formal record of the sworn oath shall be made.

#### Section 4

The functions of member of the Constitutional Council shall be incompatible with the functions of member of the Government or of the Economic and Social Council. They shall also be incompatible with the exercise of all electoral functions.

Members of the Government or of the Economic and Social Council and holders of electoral office who are appointed to the Constitutional Council shall be deemed to opt in favour of the latter function unless they make a declaration to the contrary within eight days of their appointment.

Members of the Constitutional Council who are appointed to the Government or to the Economic and Social Council or acquire electoral office shall be replaced.

The occupational incompatibilities with membership of Parliament shall apply in like manner to members of the Constitutional Council.

*Section 5* During their term of office members of the Constitutional Council may not be appointed to any public function nor, if they are civil servants, enjoy any discretionary promotion.

*Section 6* The President and members of the Constitutional Council shall receive an allowance of the same amount as the salary attaching to the two highest grades in State posts *hors échelle*.

The allowance shall be reduced by one half where a member of the Constitutional Council exercises another compatible occupation.

*Section 7* The obligations imposed on members of the Constitutional Council to secure the independence and dignity of their function shall be determined by Decree issued by the Cabinet on a proposal from the Constitutional Council. Such obligations shall include the prohibition applying throughout members' term of office on public statements and consultancy on all matters on which the Constitutional Council has given or is likely to give a decision.

*Section 8* Members of the Constitutional Council shall be replaced no later than eight days before their term of office expires.

*Section 9* A member of the Constitutional Council may resign his office by letter addressed to the Council. The replacement shall be appointed within one month following the resignation. Resignation shall take effect upon the appointment of the replacement.

*Section 10* The Constitutional Council shall record the automatic resignation of any member who exercises an occupation or function or an electoral office that is incompatible with membership of the Council or who does not enjoy his full civic and political rights.

Such member shall be replaced within eight days.

*Section 11* Section 10 shall apply likewise where a member of the Constitutional Council suffers a permanent physical disability preventing him definitively from performing his duties.

*Section 12* Members of the Constitutional Council appointed replace members who have ceased to perform their function before the normal expiry of their term of office shall serve the remainder of the term unserved by the retiring member. On the expiry of the term, they may be appointed as members of the Constitutional Council if they have served in that capacity for less than three years.

**TITLE II**      **FUNCTIONING  
OF THE CONSTITUTIONAL COUNCIL**

**Chapter I**      **General provisions**

*Section 13*      The Constitutional Council shall meet when convened by its President or, where the President is unable to act, by its oldest member.

*Section 14*      Decisions and opinions of the Constitutional Council shall be given by at least seven members, save in the event of *force majeure* recorded in the minutes.

*Section 15*      The organisation of the Constitutional Council’s Secretariat-General shall be determined by Decree issued by the Cabinet on a proposal by the Constitutional Council.

*Section 16*      The appropriations required to finance the functioning of the Constitutional Council shall be entered in the general budget. The President shall be authorising officer.

**Chapter II**      **Declarations of constitutionality**

*Section 17*      The Prime Minister shall transmit institutional acts enacted by Parliament to the Constitutional Council. The letter transmitting them shall indicate in appropriate cases if the matter is urgent.

Regulations and amendments to them adopted by one or other of the Houses of Parliament shall be transmitted to the Constitutional Council by the President of the relevant house.

*Section 18*      Where a statute is referred to the Constitutional Council on the initiative of members of Parliament, the referral shall be made to the Council by one or more letters containing the signatures of at least sixty Deputies or sixty Senators.

Where the Constitutional Council receives a referral in accordance with Article 54 or the second paragraph of Article 61 of the Constitution, it shall immediately inform the President of the Republic, the Prime Minister and the Presidents of the National Assembly and the Senate. The Presidents shall convey the information to the members of their respective Houses.

*Section 19*      Constitutional review shall proceed on the basis of a report from one of the members of the Constitutional Council within the time allowed by the third paragraph of Article 61 of the Constitution.

*Section 20*      The Constitutional Council shall give reasons for its decisions. They shall be published in the *Journal officiel*.

*Section 21*      The publication of a decision of the Constitutional Council declaring that a provision is not unconstitutional shall terminate the suspension of the promulgation period.

*Section 22* Where the Constitutional Council declares that a statute referred to it contains a provision that is unconstitutional and inseparable from the statute as a whole, the statute shall not be promulgated.

*Section 23* Where the Constitutional Council declares that a statute referred to it contains a provision that is unconstitutional but does not declare that it is inseparable from the statute as a whole, the President of the Republic may either promulgate the statute without the provision in question or ask the two Houses to proceed to a further reading.

Where the Constitutional Council declares that a parliamentary regulation referred to it contains a provision that is unconstitutional, that provision may not be applied by the House that adopted it.

### **Chapter III Review of instruments in statutory form**

*Section 24* Where the second paragraph of Article 37 of the Constitution applies, the referral to the Constitutional Council shall be made by the Prime Minister.

*Section 25* The Constitutional Council shall give its decision within one month. Where the Government declares the matter to be urgent, the time allowed shall be eight days.

*Section 26* The Constitutional Council shall by reasoned decision declare whether the provisions referred to it are in the nature of a statute or of a regulation.

### **Chapter IV Review to ascertain whether a matter is out of order**

*Section 27* Where the second paragraph of Article 41 of the Constitution applies, discussion of the Bill or amendment which the Government has declared out of order shall be suspended immediately.

The authority making the referral to the Constitutional Council shall forthwith inform the authority that is also empowered to act under Article 41 of the Constitution.

*Section 28* The Council shall give a reasoned decision within eight days.

*Section 29* The declaration shall be conveyed to the President of the relevant House and to the Prime Minister.

### **Chapter V Exercise of powers of the Constitutional Council in relation to the election of the President of the Republic**

*Section 30* The powers of the Constitutional Council in relation to the election of the President of the Republic shall be determined by the institutional act governing such elections.

*Section 31* Where a referral is made to the Constitutional Council by the Government under Article 7 of the Constitution for a declaration that the President of the Republic is unable to exercise his functions, the Constitutional Council shall decide by an absolute majority of its members.

**Chapter VI** **Litigation relating to the election of Deputies and Senators**

*Section 32* The Minister of the Interior and the Minister responsible for the Overseas Territories shall without delay notify the Assembly of the names of persons declared elected.

The formal reports drawn up by the counting commissions, to which the Prefect or the Leader of the Territory shall append the certified copy of the birth certificate and sheet No 2 of the police record of the persons declared elected and their replacements, shall be made available to persons registered on the electoral roll and persons having declared their candidacy for a period of ten days.

Thereafter, the reports and the documents appended to them shall be deposited in the archives of the département or of the territory. They may be communicated only to the Constitutional Council, if it so requests.

*Section 33* The election of a Deputy or a Senator may be contested before the Constitutional Council within ten days following the declaration of the results of the ballot.

The right to contest an election shall be enjoyed by all persons registered on the electoral roll for the constituency in which the election was held and by all persons having declared their candidacy.

*Section 34* The referral to the Constitutional Council shall be made in writing, addressed to the Secretariat-General of the Constitutional Council, the Prefect or the Leader of the Territory.

The Prefect or the Leader of the Territory shall forthwith notify the Secretariat-General by telegram and transmit the referral received by them.

The Council's Secretary-General shall without delay notify the relevant House of the referrals received or announced.

*Section 35* Referrals shall contain the name, forename(s) and status of the applicant, the name of the successful candidates whose election is contested and the grounds on which the election is contested.

The applicant shall append to the referral all documents pleaded in support. The Council may in exceptional circumstances allow additional time for production of such documents.

The referral shall have no suspensory effect. No stamp duties or registration charges shall be payable.

*Section 36* The Constitutional Council shall establish three sections each composed of three of its members selected by drawing of lots. Separate lots shall be drawn from among members appointed by the President of the Republic, members appointed by the Speaker of the National Assembly and members appointed by the Speaker of the Senate.

In the first half of October each year, the Constitutional Council shall draw up a list of ten assistant rapporteurs selected from among the Masters of the Council of State and the Advisers to the Audit Court. Assistant rapporteurs shall have no right to speak and vote in the Constitutional Council.

*Section 37* As soon as a referral is received, the President shall instruct one of the sections to examine it and shall designate a rapporteur, who may be one of the assistant rapporteurs.

*Section 38* The sections shall examine cases thus referred to them, which shall be brought before the full Council.

However, the Council may, by reasoned decision given without prior adversarial hearings, dismiss referrals that are inadmissible or make complaints that are manifestly not such as to influence the outcome of the election. The decision shall be transmitted without delay to the relevant House.

*Section 39* In all other cases, the member of Parliament whose election is contested shall be notified, as shall his replacement, if any. The section shall appoint a period of time in which they shall take cognisance of the referral and of the documents presented to the Council's Secretariat and present their written observations.

*Section 40* As soon as these observations have been received or as soon as the period appointed for their presentation has expired, a report on the case shall be made to the Council, which shall issue a reasoned decision. The decision shall be transmitted without delay to the relevant House.

*Section 41* Where the Council upholds the applicant, it may, as the case requires, annul the election that is contested or rescind the decision of the census commission and itself declare the proper candidate elected.

*Section 41-1* Where the Council's examination of a case reveals that a candidate is in one of the situations mentioned in the second paragraph of section LO 128 of the Electoral Code, it shall declare him ineligible as provided by that section and, if he has been declared elected, annul the election.

*Section 42* The Council and the sections may, where appropriate, order an inquiry and call for all documents and reports relating to the election, and in particular the candidate's campaign accounts, together with all such documents, reports and decisions as may have been gathered or prepared by the commission established by section L 52-14 of the Electoral Code.

The rapporteur shall receive witnesses' statements under oath. He shall make a formal record thereof and notify all concerned, who shall have three days in which to register their written observations.

*Section 43* The Council and its sections may depute one or more of their members or an assistant rapporteur to take investigative measures *in situ*.

*Section 44* When giving judgment in a case, the Constitutional Council shall have jurisdiction to hear and determine all related questions and objections made at the

time of the application. In such cases its decision shall be valid solely in relation to the election to which it refers.

*Section 45* The Constitutional Council's decision shall relate to the election both of the principal candidate and of his replacement, save where it is subsequently ascertained that one or other is ineligible.

**Chapter VII Monitoring referendums and declaring results**

*Section 46* The Constitutional Council shall be consulted by the Government on the organisation of referendums. It shall be notified forthwith of all measures taken to that end.

*Section 47* The Constitutional Council may make observations on the list of organisations entitled to use public advertising facilities.

*Section 48* The Constitutional Council may designate one or more delegates selected in agreement with the relevant ministers from among judges of the administrative and ordinary courts to monitor operations *in situ*.

*Section 49* The Constitutional Council shall itself monitor the general census.

*Section 50* The Constitutional Council shall examine and definitively settle all complaints.

Where the Council ascertains that an irregularity has been committed, it shall decide whether, having regard to the nature and seriousness thereof, the operations should be confirmed or annulled in whole or in part.

*Section 51* The Constitutional Council shall declare the results of the referendum. Its declaration shall be cited in the Decree promulgating the Act enacted by the people.

**Chapter VIII Consultation of the Constitutional Council in special circumstances**

*Section 52* Where it is consulted by the President of the Republic in the circumstances provided for by the first paragraph of Article 16 of the Constitution, the Constitutional Council shall meet immediately.

*Section 53* The Council shall give an opinion on the conditions required by that paragraph. Its opinion shall state reasons and shall be made public.

*Section 54* The President of the Republic shall notify the Constitutional Council of the measures he is contemplating.

The Constitutional Council shall give its opinion without delay.

**TITLE III MISCELLANEOUS  
AND TRANSITIONAL PROVISIONS**

*Section 55* Detailed rules for the application of this Ordinance shall be laid down by Decree issued by the Cabinet after consulting the Constitutional Council and seeking the Opinion of the Council of State.

*Section 56* The Constitutional Council shall by its Standing Orders amplify the procedural rules laid down by Title II of this Ordinance. It shall in particular specify how the inquiries and investigations provided for by sections 42 and 43 shall be conducted under the supervision of a rapporteur.



# INSTITUTIONAL ACT LAYING DOWN THE STATUS OF NEW CALEDONIA

*Institutional Act 99-209 of 19 March 1999*

(Extracts)

## TITLE III THE INSTITUTIONS OF NEW CALEDONIA

### Chapter II The statutes of the country

Section 99

Instruments whereby the Congress enacts provisions governing the matters specified in the next paragraph shall be called “statutes of the country”.

Statutes of the country shall be enacted in the following matters, being those in respect of which powers are exercised by New Caledonia or are transferred to it pursuant to this Act:

- 1° The identity symbols and name mentioned in section 5;
- 2° Rules relating to the base, methods of collection of taxes of all types;
- 3° Fundamental principles of labour law, trade-union law and social security law;
- 4° Rules relating to aliens’ access to employment;
- 5° Customary civil status, customary land-holding and customary assemblies; limits of customary areas; rules for the designation of members of the customary Senate and customary councils;
- 6° Rules concerning hydrocarbons, nickel, chrome and cobalt;
- 7° Rules governing publicly-owned land in New Caledonia and the provinces, subject to section 127(13°);
- 8° Rules relating to access to employment pursuant to section 24;
- 9° Rules concerning the status and legal capacity of persons, matrimonial regimes, inheritance and gifts;
- 10° Fundamental principles governing ownership, rights *in rem* and civil and commercial obligations;
- 11° Distribution between the provinces of the operating budget and the infrastructure budget mentioned in section 181(I) and (II);
- 12° Powers transferred and the schedule for their transfer, as provided by section 1 of chapter I of title II.

Section 100

Government draft statutes of the country shall be submitted for the opinion of the Council of State prior to their adoption by the government deliberating in council.

Private members’ proposals for statutes of the country shall be submitted for the opinion of the Council of State by the President of Congress prior to

their first reading. Congress shall vote after the Council of State has given its opinion.

That opinion shall be deemed to have been given after one month has elapsed.

The opinions provided for by this section shall be transmitted to the President of the Government, the President of Congress, the High Commissioner and the Constitutional Council.

Section 101

Statutes of the country shall be enacted by Congress, acting by a majority of its constituent members voting publicly.

Section 102

Congress shall designate one of its members to act as rapporteur on every Government or private member's draft or proposal for a statute of the country.

No draft or proposal for a statute of the country may be set down for debate or voting unless a written report has first been tabled, printed and published in manner provided by the Standing Orders.

Section 103

During the fifteen days following the enactment of a statute of the country, the High Commissioner, the Government, the President of Congress, the President of a Provincial Assembly or eleven members of Congress may submit the statute or selected provisions for fresh deliberation by Congress.

The fresh deliberation may not be refused; it may not take place less than eight days after the request for it. If Congress is not in session, it shall reconvene for the specific purpose and the second paragraph of section 66 may not be relied on to prevent it from doing so.

Section 104

A statute of the country on which there has been a fresh deliberation by Congress pursuant to section 103 may be referred to the Constitutional Council by the High Commissioner, the Government, the President of Congress, the President of a Provincial Assembly or eighteen members of Congress. They shall have ten days in which to do so. Where a statute of the country is referred to the Constitutional Council at the initiative of members of Congress, the reference shall be made to the Council by one or more letters signed in aggregate by at least eighteen members of Congress.

Every such reference shall contain a statement of the grounds in law and fact on which it is based; it shall be deposited with the Registrar of the Administrative Court, who shall forthwith inform the other authorities entitled to make a reference; these authorities may then present their observations within ten days.

Section 105

The Constitutional Council shall give its decision within three months of receiving the reference. Its decision shall be published in the *Journal officiel de la République française* and the *Journal officiel de la Nouvelle Calédonie*.

If the Constitutional Council concludes that the statute of the country contains a provision which is unconstitutional and inseverable from the statute as a whole, the statute shall not be promulgated.

If the Constitutional Council concludes that the statute of the country contains a provision which is unconstitutional but is not inseverable from the statute as a whole, that provision alone shall not be promulgated.

Where the foregoing paragraph applies, the Government deliberating in council may, within ten days following publication of the decision of the

Constitutional Council in the *Journal officiel de la Nouvelle Calédonie*, ask for a fresh deliberation by Congress on the relevant provision to ensure that it is constitutional. The fresh deliberation shall be held in accordance with the second paragraph of section 103.

Section 106

The High Commissioner shall promulgate the statute of the country, with the counter-signature of the President of the Government, either within ten days of its transmission to him by the President of Congress upon the expiry of the time allowed by section 104 for a reference to the Constitutional Council or within ten days of publication of the decision of the Constitutional Council in the *Journal officiel de la Nouvelle Calédonie*.

Section 107

Statutes of the country shall have statutory force in the matters specified in section 99. No proceedings for their review shall lie after their promulgation.

Provisions of a statute of the country governing matters other than those specified in section 99 shall have the force of regulations. Where, in the course of proceedings in the administrative or ordinary courts, the legal status of a provision of a statute of the country is contested on a serious basis, such court, by judgement against which there shall be no appeal, shall refer the matter to the Council of State, which shall rule on the reference within three months. No decision shall be taken on the substance of the case until the Council of State has given its ruling on the status of the relevant provision.



# OBLIGATIONS OF MEMBERS OF THE CONSTITUTIONAL COUNCIL

**Decree 59-1292 of 13 November 1959**

- Section 1** Members of the Constitutional Council shall be under a general obligation to refrain from doing anything that might compromise the independence and dignity of their functions.
- Section 2** Members of the Constitutional Council shall in particular refrain throughout their term of office from:
- taking any public position or engaging in any consultancy on questions on which the Council has given or might have to give a decision;
  - occupying any leadership or managerial post within a political party or grouping and more generally from exercising any function that would be irreconcilable with section 1;
  - allowing their membership of the Constitutional Council to be mentioned in any document that may be made public and which relates to any other public or private activity.
- Section 3** Members of the Constitutional Council shall keep the President informed of all changes in their outside activities.
- Section 4** A member of the Constitutional Council who stands for electoral office shall apply for leave of absence for the duration of the election campaign. Leave shall automatically be given.
- Section 5** The Constitutional Council shall in appropriate cases decide whether one of its members has breached the general and specific obligations imposed by sections 1 and 2.
- Section 6** Where a decision falls to be taken pursuant to section 5, the Constitutional Council shall act by a simple majority of its members, including *ex officio* members, expressed at a secret ballot.
- Section 7** For the purpose of applying this Decree the Constitutional Council may, should the need arise, follow the procedure laid down by section 10 of the Ordinance of 7 November 1958.
- Section 8** Where in pursuance of sections 10 and 11 of the Ordinance of 7 November 1958 the Constitutional Council declares one of its members to be removed from office, it shall immediately notify the President of the Republic and the authority that is to appoint a replacement.



# ORGANISATION OF THE SECRETARIAT-GENERAL OF THE CONSTITUTIONAL COUNCIL

**Decree 59-1293 of 13 November 1959**

The President of the Republic,  
Having regard to the proposal from the Constitutional Council,  
Having regard to the Ordinance of 7 November 1958 enacting the  
Institutional Act governing the Constitutional Council, and in particular section 15  
thereof,  
Having consulted the Cabinet,

## **HEREBY DECREES:**

- Section 1*      The Secretary-General of the Constitutional Council shall be appointed by Decree of the President of the Republic on a proposal from the President of the Constitutional Council.
- Section 2*      The Secretary-General shall direct the Constitutional Council's administrative departments under the authority of the President. Power to sign all manner of documents and administrative decisions may be delegated to him.
- Section 3*      The Secretary-General shall take such measures as may be required for the preparation and organisation of the Council's business. He shall prepare summary records of the Council's proceedings.
- Section 4*      Expenditure incurred in the operation of the Constitutional Council shall be authorised by its President or by the Secretary-General pursuant to the second sentence of section 2. A treasurer appointed by and answerable to the President of the Constitutional Council shall be responsible for making payments.
- Section 5*      Within the limits allowed by the appropriations set aside for the operation of the Council, the President may recruit the requisite staff, either direct or by secondment.
- Section 6*      Official correspondence of the President and the Secretary-General of the Constitutional Council shall be eligible for postal delivery free of charge in manner provide by the Decree of 27 December 1958. The President and the Secretary-General may post free of charge to any person such registered letters with advice of delivery as are required for proceedings in relation to disputes as to the election of Deputies and Senators.
- Section 7*      This Decree shall be published in the *Journal officiel de la République française*.



# STANDING ORDERS

## ***Proceedings in the Constitutional Council relating to Disputes as to the Election of Deputies and Senators<sup>1</sup>***

### **Order 1**

The election of one or more Members of Parliament may be contested before the Constitutional Council, which, subject to application of section LO 136-1 of the Electoral Code by the National Campaign Accounts and Political Financing Commission, may hear only such applications as are made by persons specified in section 33(2) of the Ordinance of 7 November 1958 enacting the Institutional Act on the Constitutional Council.

The application shall be made within ten days either to the Secretariat-General of the Constitutional Council or to the Prefect of the département or to the State Representative of the territory or territorial entity where the electoral operations were conducted.

The period of time allowed by the foregoing paragraph shall run from the day following that on which the results of the election are declared. The last paragraph of section 642 of the new Code of Civil Procedure shall apply to this period.

The application shall have no suspensory effect, and no stamp duties or registration charges shall be payable.

Where an application is made to it pursuant to section LO 136-1 of the Electoral Code, the Constitutional Council, without prejudice to measures of investigation pursuant to section LO 187 of that Code, shall receive from the National Campaign Accounts and Political Financing Commission the documents in the proceedings that have taken place before it or copies thereof if it has decided to refer them to the prosecution service.

### **Order 2**

Applications and referrals made pursuant to section LO 136-1 of the Electoral Code shall be registered by the Secretariat-General of the Constitutional Council in the order in which they are received.

Where applications are transmitted direct by the Prefect or by the State Representative of a territory or territorial entity, the registration at the Secretariat-General of the Constitutional Council shall specify the date on which they were received at the offices of Prefect or the State Representative of the territory or territorial entity.

### **Order 3**

Applications on which proceedings are based shall state the name, forename(s), address and status of the applicant(s) and the name of the successful

1. Orders amplifying the Standing Orders laid down by Chapter VI of Title II of the Ordinance 58-1067 of 7 November 1958, adopted by the Constitutional Council (*Journal officiel*, 31.5.1959) pursuant to section 56 of the Ordinance; as amended by decisions of the Constitutional Council on 5.3.1986, 24.11.1987, 9.7.1991 and 28.6.1995.

candidate(s) whose election is contested, together with a statement of the facts and arguments pleaded. They shall be signed by the applicants.

The applicant may designate a person of his choice to represent or assist him in other procedural acts. He shall do so explicitly and in writing.

**Order 4**

The applicant shall append to the application all supporting documentary evidence.

In exceptional cases, the Constitutional Council or the section examining the application pursuant to order 8 may allow an applicant additional time to present part of such documentary evidence.

**Order 5**

Where supplementary pleadings are subsequently presented, they may not present new arguments but only develop arguments already presented.

**Order 6**

As soon as the application or the telegram announcing it has been received, the Secretary-General shall notify the House concerned. The National Assembly shall also be notified of referrals made by the National Campaign Accounts and Political Financing Commission pursuant to section LO 136-1 of the Electoral Code which relate to a Deputy's eligibility.

The Secretary-General shall notify the National Campaign Accounts and Political Financing Commission for information purposes of all applications contesting the regularity of the election of one or more Deputies in a given constituency.

He shall also supply that Commission for information purposes with pleadings exchanged between the parties where the Constitutional Council has a referral before it alleging that the Deputy or Deputies whose election is contested exceeded the maximum amount of campaign expenditure permitted pursuant to section L 52-11 of the Electoral Code.

**Order 6-1**

Where the third paragraph of order 6 applies, the Constitutional Council shall receive from the National Campaign Accounts and Political Financing Commission, for information purposes, the decisions given as to the regularity of the campaign accounts of all the candidates or lists standing in the relevant constituency, even if no use has been made of section LO 136-1 of the Electoral Code.

**Order 7**

The performance of all procedural acts, the deposit of all documents and of all new items shall be recorded in the register at the Secretariat-General.

**Order 8**

The President of the Constitutional Council shall instruct one of the sections provided for by section 36 of the Ordinance of 7 November 1958 to examine the application. He shall designate a rapporteur, who may be selected from among the assistant rapporteurs.

**Order 9**

The section shall order notice of the application to be given to the member or members of Parliament elected at the same ballot in the relevant constituency and, if need be, to their replacements. Such members may, in manner provided in the second paragraph of order 3, designate a person of their choice to represent and assist them, jointly or individually, in the various procedural acts. The section shall appoint the period in which they shall be allowed to take cognisance of the

application and of the documents in the case and to present their written observations. In exceptional circumstances it may, on request, allow additional time.

Where section LO 136-1 of the Electoral Code is applied, any person against whom the second paragraph of section LO 128 of that Code may be applied shall be notified of the referral to the National Campaign Accounts and Political Financing Commission. All persons concerned shall be invited by the section to present all the arguments in their defence in writing in accordance with the first paragraph of this section.

The section shall invite the applicant to take cognisance of the observations and shall appoint a period for reply. It may order any other communication which it considers useful.

The section may delegate powers to the Secretary-General to perform all the preliminary acts provided for by this order.

**Order 10**

Wherever the procedure so requires, and in particular in the cases to which order 9 applies, documents may be consulted by persons to whom orders 3 and 9 apply at the Constitutional Council but may not be removed.

**Order 11**

The section may, without awaiting the presentation of defence arguments, request from administrative authorities all such reports as it considers useful in the treatment of the case and all documents relating to the election, notably the reports on electoral operations and documents appended thereto.

**Order 12**

The section may propose that the Council dismiss applications without prior adversary hearings where they are inadmissible or make only such complaints as can manifestly not influence the outcome of the election.

**Order 13**

When the case is ripe for judgment, the section shall hear the rapporteur. The rapporteur's report shall set out all material points of fact and law and shall contain a draft decision. If the rapporteur considers that further inquiries or other preliminary measures are required, he shall give reasons.

**Order 14**

The section shall deliberate on the rapporteur's proposals and bring them before the full Council for final judgment. If it considers it useful, it may either itself order further inquiries or other preliminary measures or bring the matter before the full Council for that purpose; the Council shall then decide the issue and, if appropriate, proceed forthwith to judgment.

**Order 15**

Where an investigation is ordered by the section or the Council pursuant to section 42 of the Ordinance of 7 November 1958, the decision shall specify:

- the facts to be proved;
- the name of the rapporteur empowered to receive witnesses' statement under oath;
- the list of witnesses to be heard, unless the section or the Council decides to leave this to the rapporteur's discretion.

Sections 205 and 211 of the new Code of Civil Procedure shall apply to the oath provided for by this order.

Witnesses shall be heard in the absence of the persons referred to in orders 3 and 9. The report of the hearings prepared by the rapporteur shall be transmitted to

those persons. They shall have three days to present their written observations, either to the Secretariat-General of the Council, the Prefect or the State Representative in a territory or territorial entity, or to the rapporteur in person.

**Order 16**

Where measures of investigation are ordered pursuant to section 43 of the Ordinance of 7 November 1958 by decision of the section or of the Council, the decision shall specify the name of the member of the Council or the assistant rapporteur deputed to conduct them, the nature of the measures to be taken and the place or places where they are to be conducted.

**Order 17**

The decision to enter a case on the Council's agenda shall be taken by the President of the Constitutional Council.

The deliberations of the Constitutional Council shall not be in public. However, the persons referred to in orders 3 and 9 may ask to be heard.

The Secretary-General and the rapporteur for the case shall attend the Council's deliberations. The rapporteur shall put the decision resulting from the Council's deliberations into proper form.

**Order 18**

Decisions of the Constitutional Council shall contain citations to applicable legislation, recitals stating the grounds on which they are based and the decision proper. They shall record the members who took part in the sitting at which they were adopted. They shall be signed by the President, the Secretary-General and the rapporteur and shall be notified by the Secretary-General to the National Assembly or the Senate, as the case may be. Decisions shall be published in the *Journal officiel de la République Française*. They shall be addressed for information purposes to the relevant minister.

Where the Constitutional Council has a case before it on the basis of section LO 136-1 of the Electoral Code, the decision shall be notified to the Chairman of the National Campaign Accounts and Political Financing Commission.

Persons directly concerned shall be notified without delay of decisions recording their ineligibility or annulling their election on the basis of the second paragraph of section LO 128 or section LO 186-1 of the Electoral Code.

**Order 19**

The application, the pleadings and documents or copies or photocopies thereof appended thereto shall be kept in the record office of the Constitutional Council. The same shall apply to referrals made pursuant to section LO 136-1 of the Electoral Code and to the observations prompted by them.

However, campaign accounts, annexes to them and documents in proceedings before the National Campaign Accounts and Political Financing Commission shall be returned to that Commission.

Moreover, at the end of their period of regular use, documents referred to in the first paragraph of this order shall be transferred to the Archives Administration in accordance with Act No 79-18 of 3 January 1979.

**Order 20**

There shall, in accordance with Article 62 of the Constitution, be no appeal against decisions of the Constitutional Council.

**Order 21**

Where the Constitutional Council ascertains that one of its decisions is vitiated by a material mistake, it may rectify it of its own motion.

**Order 22**

Any interested party may bring before the Constitutional Council a request for rectification of a material mistake in one of its decisions.

Such request shall be made within twenty days of notification of the decision to be rectified.

Where a decision was published in the *Journal officiel* before the date on which this order was published in the *Journal officiel*, the twenty-day period shall run from that date.



## STANDING ORDERS

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### *Proceedings in the Constitutional Council relating to Disputes as to Referendum Operations<sup>1</sup>*

#### **Order 1**

Any elector may contest the validity of the ballot by causing his complaint to be registered in the returning officer's official report. In such event the report shall be transmitted to the Constitutional Council by the census commission.

#### **Order 2**

Within forty-eight hours of the closing of the ballot, the State's Representative in the *départements*, the overseas territories and the special-status territorial entities shall by the most expeditious means refer direct to the Constitutional Council the voting operations in a constituency where the forms and conditions imposed by statute or regulation have not been fully observed.

#### **Order 3**

The powers conferred on the State's Representative by order 2 shall be exercised, in relation to polling stations for French citizens resident abroad, by the Minister of Foreign Affairs.

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1. Orders amplifying the Standing Orders laid down by Chapter VII of Title II of Ordinance No 58-1067 of 7 November 1958, adopted by the Constitutional Council on 5 October 1988 pursuant to section 56 of the Ordinance.



# ACT ON THE ELECTION OF THE PRESIDENT OF THE REPUBLIC BY UNIVERSAL SUFFRAGE

## **Act 62-1292 of 6 November 1962**<sup>1</sup>

*(As amended by Institutional Acts 76-528 [18 June 1976], 83-1096 [20 December 1983], 88-35 and 88-36 [13 January 1988], 88-226 [11 March 1988], 90-383 [10 May 1990], 95-62 [19 January 1995], 95-72 [20 January 1995], 99-209 [19 March 1999] and 2001-100 of 5 February 2001)*

### **(Extracts)**

#### **SECTION 3**

**Ordinance 58-1064 of 7 November 1958 enacting the Institutional Act on the election of the President of the Republic is replaced by the following institutional provisions:**

- I No less than fifteen days before the first ballot for the election of the President of the Republic, the Government shall cause the list of candidates to be published.

The list shall be drawn up by the Constitutional Council on the basis of the nominations made to it, no later than eighteen days before the first ballot, by at least five hundred citizens being Members of Parliament, of the Regional Councils, of the Assemblée de la Corse, of the Département Councils, of the Councils of Mayotte and of Saint-Pierre-et-Miquelon, of the Paris Council, of the Assembly of French Polynesia, of the Congress and Assemblies of the Province of New Caledonia, or of the Territorial Assembly of the Wallis and Futuna Islands, Mayors, Delegated Mayors of Associated Communes, Mayors of Districts in Lyon and Marseille, or elected members of the Council of French Citizens Resident Abroad. The Presidents of the decision-making bodies of the Urban Communities, of the Conurbation Communities or of the Communities of Communes, and French nationals being Members of the European Parliament elected in France may also likewise nominate candidates for the election of the President of the Republic. A candidacy may be accepted only if the signatories of the nomination include elected members from at least thirty départements or overseas territories and no more than one tenth of them are from the same département or overseas territory.

For the purposes of the foregoing paragraph, Senators representing French citizens resident abroad and the elected members of the Council of French Citizens

<sup>1</sup>. Enacted by referendum pursuant to article 11 of the Constitution.

Resident Abroad shall be deemed to have been elected by the same département. For the purposes of the same provisions, deputies and the senator elected in New Caledonia and members of the assemblies of the Province of New Caledonia shall be deemed to have been elected by the same overseas département or overseas territory. For the purposes of the same provisions, French nationals being Members of the European Parliament elected in France shall be deemed to have been elected by the same département. For the same purposes, the Presidents of the decision-making bodies of the Urban Communities, of the Conurbation Communities or of the Communities of Communes shall be deemed to have been elected in the département in which the commune they represent is situated. For the same purposes, Regional Councillors and Councillors of the Assemblée de la Corse shall be deemed to have been elected in the départements among which they are distributed in accordance with the rules provided for by sections L 293-1 and L 293-2 of the Electoral Code, in the amended form in force following publication of Institutional Act 2001-100 of 5 February 2001 amending Act 62-1292 of 6 November 1962 on the election of the President of the Republic by universal suffrage.

The Constitutional Council shall verify that persons nominated have given their consent. Nominees shall make a written declaration of their assets in a sealed envelope, in accordance with the requirements of section LO 135-1 of the Electoral Code, together with an undertaking that in the event of election they will, no more than two months nor less than one month before the expiry of their term of office, or should they resign, no later than one month after their resignation, make a fresh declaration complying with the same provisions, which shall be published in the *Journal officiel de la République Française* within eight days of its deposit; otherwise, the nomination shall not be valid.

The name and status of the citizens nominating the candidates entered on the list shall be made public by the Constitutional Council no later than eight days before the first ballot, up to the number required for the validity of the nomination.

- II Electoral operations shall be organised in accordance with the versions of sections L1, L2, L5 to L7, L9 to L21, L23, L25, L27 to L43, L45, L47 to L52-2, L52-4 to L52-11, L52-12, L52-16, L53 to L55, L57 to L78, L85-1 to L111, L113 to L114, L116, L117, LO127, L199, L200, L202, L203, L385 to L387, L389 and L393 of the Electoral Code in force on the date of publication of Institutional Act No 2001-100 of 5 February 2001 on the financing of campaigns for the election of the President of the Republic, subject to the provisions below.

The maximum amount of campaign expenditure provided for by section L 52-11 shall be €13.7 million for each candidate for election as President of the Republic. It shall be €18.3 million for each candidate standing at the second ballot.

For the purposes of section L52-8 of the Electoral Code, bodies corporate may not make loans or repayable advances to candidates.

The audit costs incurred for the purposes of section L52-12 of the Electoral Code shall be entered in the campaign accounts.

The campaign account and documents appended thereto shall be laid before the Constitutional Council no later than two months after the date of the ballot at which the election yielded a final result. The Constitutional Council shall enjoy the powers conferred by the first, fourth and last paragraphs of section L52-15 and by section L52-17 of the Electoral Code.

In the cases mentioned in the last paragraph of section L52-15 of the Electoral Code, the Constitutional Council shall determine the amount that the candidate shall be required to reimburse the Treasury, which shall not exceed the amount of the excess recorded.

For the purposes of the fourth paragraph of section L52-5 and of the fourth paragraph of section L52-6 of the Electoral Code, the time allowed for the automatic dissolution of the electoral financing association and for the termination of the functions of the financial agent shall be one month following publication of the decisions of the Constitutional Council provided for by the third subparagraph of paragraph III of this section.

The credit balance if any of the accounts of electoral associations and financial agents of candidates shall be transferred to the Fondation de France.

The amount of the advance provided for by the second subparagraph of paragraph V of this section shall be recorded on the revenue side of the campaign accounts.

### III

The Constitutional Council shall ensure that operations are properly conducted and shall investigate complaints in the manner provided in relation to referendums by sections 46, 48, 49 and 50 of Ordinance 58-1067 of 7 November 1958 enacting the Institutional Act on the Constitutional Council.

The Constitutional Council shall determine and declare the results of the election, which shall be published in the *Journal officiel* within twenty-four hours of the declaration. The successful candidate's declaration of assets shall be appended to the declaration.

Campaign accounts addressed to the Constitutional Council by candidates shall be published in the *Journal officiel* within one month of the expiry of the two-month period allowed by the fifth subparagraph of paragraph II. The Constitutional Council shall cause to be published all decisions which it takes approving, rejecting or modifying candidates' campaign accounts pursuant to the fifth subparagraph of paragraph II. For the examination of these accounts and of complaints referred to in the first subparagraph of this paragraph, the President of the Constitutional Council shall designate rapporteurs, selected from among the members of the Constitutional Council and the assistant rapporteurs provided for by the second paragraph of section 36 of Ordinance 58-1067 of 7 November 1958

enacting the Institutional Act on the Constitutional Council. Staff of the Administration of Direct Taxes shall be released from the obligation of professional secrecy as regards Members of the Constitutional Council and its assistant rapporteurs when conducting investigations into the campaign accounts of candidates for the election of the President of the Republic.

**IV** All candidates shall be entitled to the same facilities from the State for the campaign for the presidential election.

**V** A Decree of the Council of State shall lay down the rules for the application of these institutional provisions; it shall in particular determine the terms on which the State contributes to campaign advertising expenditure.

When the list of candidates for the first ballot is published, the State shall pay to each of them the sum of €153 000 by way of advance on the flat-rate reimbursement of campaign expenses provided for in the foregoing paragraph. If the amount to be reimbursed is less than this sum, the excess shall be repaid.

An amount of one twentieth of the maximum permissible amount of campaign expenses shall be reimbursed as a flat rate to all candidates; this amount shall be increased to one half for each candidate who receives more than 5% of the votes cast at the first ballot. It may not, however, exceed the amount of expenses recorded in the candidate's campaign accounts.

The flat-rate reimbursement provided for in the foregoing paragraph shall not be made to candidates who have not complied with the second and fifth subparagraphs of paragraph II or to candidates whose campaign accounts have been rejected, save in the event of a decision to contrary effect by the Constitutional Council in cases where the violation of the relevant provisions was unintentional and of limited impact.



# DECREE IMPLEMENTING ACT 62-1292 OF 6 NOVEMBER 1962 RELATING TO THE ELECTION OF THE PRESIDENT OF THE REPUBLIC BY UNIVERSAL SUFFRAGE

**Decree 2001-213 of 8 March 2001**

*(As amended by Decree 2002-243 of 21 February 2002)*

*Section 1* | All French nationals registered on one of the electoral rolls of the Metropolis, the Overseas Departments, French Polynesia, the Wallis and Futuna Islands, New Caledonia, Mayotte or Saint-Pierre-et-Miquelon shall take part in the election of the President of the Republic.

## **TITLE I**     **DECLARATIONS AND CANDIDATURES**

*Section 2* | Nominations for the election of the President of the Republic shall be presented to the Constitutional Council following the publication of the Decree announcing the election and must reach it no later than midnight on the nineteenth day preceding the first ballot.

However, nominations may be presented within the same time-limit:

1. – In the overseas departments, French Polynesia, the Wallis and Futuna Islands, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon, to the Representative of the State;

2. – By elected members of the Higher Council of French Citizens Residing Abroad, to the Head of the Diplomatic or Consular Representation responsible for the consular district where the author of the nomination resides.

The Representative of the State or the Head of the Diplomatic or Consular Representation shall ensure that the Constitutional Council is notified of nominations by the most rapid means possible after they have received them.

*Section 3* | Nominations shall be made on forms printed by the administration in accordance with the model adopted by the Constitutional Council.

When the election takes place under the conditions provided for in the third paragraph of Article 7 of the Constitution, forms shall be sent by the administrative authority to the citizens entitled by law to nominate a candidate from the date set by decree, which must be at least fifteen days earlier than the publication of the decree summoning the voters.

If the post of President of the Republic is declared vacant by the Constitutional Council or the President is declared definitively incapable of acting, forms shall be sent by the administrative authority to the citizens entitled by law to nominate a candidate from the date of publication of the declaration by the Constitutional Council that there is a vacancy or that the incapacity is definitive.

- Section 4** The nomination shall be written in capital letters and shall bear the handwritten signature of its author. It shall specify the elective office under which, pursuant to the second subparagraph of section 3(I) of the Act of 6 November 1962, it is made. Where it is made by a Mayor or Deputy Mayor, it must bear the stamp of the town hall.
- Section 5** The Constitutional Council shall perform such verifications as it considers useful.
- Section 6** The citizens referred to by the second subparagraph of section 3(I) of the Act of 6 November 1962 may nominate no more than one candidate.  
Under no circumstances may a nomination be withdrawn after it has been sent or deposited.  
The name and status of the citizens nominating a candidate entered on the list provided for by section 7 shall be published in the *Journal officiel*.
- Section 7** The Constitutional Council shall approve the list of candidates after checking that the nominations are in order and that the candidates have accepted the nomination.  
The list shall be published in the *Journal officiel* no later than the sixteenth day preceding the first ballot. Notification shall be sent as rapidly as possible to the Representatives of the State in the departments, French Polynesia, the Wallis and Futuna Islands, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon and to the Heads of Diplomatic and Consular Representations.
- Section 8** Any person who has been nominated shall have the right to object to the list of candidates.  
Objections must reach the Constitutional Council before the end of the day following that on which the list of candidates was published the *Journal officiel*.  
The Constitutional Council shall take its decision without delay.
- Section 9** Where no candidate obtains an absolute majority of the votes cast at the first ballot, withdrawals if any shall be communicated to the Constitutional Council by the candidates no later than midnight on the Thursday following the first ballot. The Government shall be informed by the Constitutional Council of the names of the two candidates who are alone entitled to stand at the second ballot; they shall be announced immediately in the *Journal officiel*. Notification shall be sent as rapidly as possible to the Representatives of the State in the departments, French Polynesia, the Wallis and Futuna Islands, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon and to the Heads of Diplomatic and Consular Representations.

**TITLE II ELECTION CAMPAIGN**

- Section 10** The campaign for the election of the President of the Republic shall be open from the day of the publication of the list of candidates in the *Journal officiel*. It shall end at midnight on the Friday preceding the poll.

Where a second ballot is required, the campaign shall be opened from the day of the announcement in the *Journal officiel* of the names of the two candidates entitled to stand. It shall end at midnight on the Friday preceding the poll.

Section 11

The Constitutional Council shall be informed without delay by the Representative of the State in the departments, French Polynesia, the Wallis and Futuna Islands, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon of the deposit by an agent provided for by the first subparagraph of section L52-4 of the Electoral Code of the declaration completed by him under either the first paragraph of section L52-5 or the first paragraph of section 52-6 of that Code.

The Constitutional Council shall likewise be informed of any change of agent pursuant to the second paragraph of section L52-7 of the Electoral Code.

Section 12

The agent provided for by the first subparagraph of section L52-4 of the Electoral Code shall give each donor, whatever the amount of the authorised gift, a detached receipt from a numbered counterfoil book, published by the Constitutional Council. The receipt shall be produced in support of any declaration giving an entitlement to a reduction of income tax under section 200 of the General Tax Code.

The stub and the receipt shall state the amount and date of the payment and the donor's identity and the address of his domicile for tax purposes or place of taxation. The receipt shall be signed by the donor.

The receipt shall reproduce the name and address of the agent provided for by the first paragraph of section L52-4 of the Electoral Code where the amount of the gift exceeds €3 000.

The stubs of the receipts used shall be annexed to the campaign accounts submitted for review by the Constitutional Council. They shall be accompanied by a statement from the single postal bank account opened by the agent provided for by the first paragraph of section L52-4 of the Electoral Code, attesting to the reality of receipt of the corresponding funds. The unused receipts and the corresponding stubs shall be returned to the Constitutional Council with the campaign accounts.

The Constitutional Council may challenge the validity of the receipt issued by the agent provided for by the first paragraph of section L52-4 of the Electoral Code and recorded by him if, when auditing the campaign account, it notes an irregularity in terms of this section or sections L52-4 to L52-12 and L52-16 of the Electoral Code as applied to presidential elections by section 3(II) of the Act of 6 November 1962.

The sale of merchandise connected with the campaign shall be presented, in an annex to the campaign account, by a member of the order of chartered accountants and approved auditors in an operating account recording the charges, products and operating results. The yield from collections of cash gifts at public meetings shall be detailed by date and by meeting in a specific annex to the campaign account.

For the purposes of this section, the National Campaign Accounts and Political Funding Committee shall assist the Constitutional Council.

Section 13

In accordance with the institutional provisions of section 3(IV) of the Act of 6 November 1962, all the candidates shall enjoy the benefit of the same facilities for the presidential election campaign from the state.

A National Election Campaign Committee shall ensure compliance with the foregoing provisions. It shall perform the functions provided for in the following sections. It shall, if necessary, approach the competent authorities to ensure that all measures likely to ensure equality between the candidates and the observation of the rules laid down by this title are taken. It shall automatically notify the Constitutional Council of irregularities brought to its attention that may affect the candidates' campaign accounts.

The Committee shall consist of five members:

- the Vice-President of the Council of State, in the chair;
- the First President of the Court of Cassation;
- the First President of the Audit Court;
- two active or honorary members of the Council of State, the Court of Cassation or the Audit Court, designated by the three *ex officio* members.

Where one of the *ex officio* members is prevented from acting, he shall be replaced by the persons who normally deputise for him in his body; the other two members of the Committee shall be replaced if necessary by alternates designated in the same manner as themselves.

The Committee may secure the services of rapporteurs selected from among the members of the Council of State, the Court of Cassation or the Audit Court.

It shall be assisted by four officials:

- a representative of the Minister of the Interior;
- a representative of the Minister responsible for the Overseas Departments and Territories;
- a representative of the Minister responsible for the Post Office;
- a representative of the Minister responsible for Communication.

These officials may, if they are prevented from acting, be replaced by officials designated in the same manner as themselves.

The National Committee shall be set up on the day following publication of the Decree setting the date when the administrative authority is to send the forms provided for by section 3 to the citizens entitled to nominate a candidate. In the case envisaged by the last paragraph of Section 3, the National Control Committee shall be installed the day after the day of the publication of the Decree summoning the voters.

Section 14

Public meetings and the press campaign shall be governed by sections L47 and L48 of the Electoral Code.

Section 15

From the date of publication of the list of the candidates in the *Journal officiel* and until the ballot which yields an election result, the principle of equality between the candidates shall be respected in all news programmes broadcast by the national programme companies and by broadcasting services operating under licence or concession with regard to the reproduction of or comments on oral and written statements by the candidates and the presentation of them.

Each candidate shall enjoy the same duration of television coverage and of programmes broadcasted in the schedules of the national programme companies at both ballots. This duration shall be determined by decision of the *Conseil supérieur de l'audiovisuel* after consulting all the candidates. It shall be no less than fifteen minutes per candidate at the first ballot. At the second ballot, it shall be no less than one hour, unless the two candidates agree to reduce this duration.

The television broadcasting time shall be used personally by the candidates. People designated by each candidate can take part in his or her emissions.

The *Conseil supérieur de l'audiovisuel* shall monitor compliance with this section and with the rules and recommendations that it issues pursuant to section 16 of the Act of 30 September 1986.

Section 16

Special sites shall be reserved for the campaign posters of each candidate as provided by sections L51, L52 and R28 of the Electoral Code. Hoardings shall be allotted in the order of the list of the candidates drawn up by the Constitutional Council.

Section 17

Each candidate may, during the electoral campaign preceding each ballot, have affixed on the sites provided for by section 16 only a poster announcing his manifesto statements and another announcing his electoral meetings and, if he so wishes, the programme times set aside for him in the national companies' schedules. These posters must fulfil the conditions laid down in sections R26 and R27 of the Electoral Code.

The text of the poster announcing his manifesto statements must be uniform for the entire Republic. It must be submitted to the National Election Campaign Control Committee no later than 8 p.m. on the second Sunday preceding the first ballot, and the second Saturday preceding the second ballot.

The National Control Committee shall send this text forthwith to the Representatives of the State in the departments, French Polynesia, the Wallis and Futuna Islands, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon. The candidate or his representatives shall arrange for the posters to be printed. After they have been checking for conformity by the Representatives of the State in the departments, French Polynesia, the Wallis and Futuna Islands, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon, they shall be posted up by the local subcommittees provided for by section 19.

The posters announcing electoral meetings shall be printed and posted up by the candidate or his representatives.

Section 18

Each candidate may send voters, before each ballot, only a text of his manifesto statements on a double sheet in accordance with the specifications determined by section R29 of the Electoral Code.

This text shall be uniform for the entire Republic. It shall be submitted to the National Election Campaign Control Committee in the time allowed by the second paragraph of section 17 for the submission of the text of the posters.

The National Control Committee shall send it forthwith to the Representatives of the State in the departments, French Polynesia, the Wallis and Futuna Islands, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon. The candidate or his representatives shall arrange for the statements to be printed. After they have been checking for conformity by the Representatives of the State in the departments, French Polynesia, the Wallis and Futuna Islands, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon, they shall be sent to voters by the local subcommittees provided for by section 19.

Section 19

In each department, French Polynesia, the Wallis and Futuna Islands, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon, there shall be a local control

subcommittee, placed under the authority of the National Election Campaign Control Committee. The membership, functions and operation of these subcommittees shall be governed by sections R32 to R35 of the Electoral Code; they may secure the services of rapporteurs designated by the chairman and selected from among serving or honorary judges of the administrative or ordinary courts or civil servants.

The local subcommittee shall arrange for the posters announcing the candidates' manifesto statements to be posted up on the sites provided for by section 16 and in the order determined therein.

The national subcommittee may instruct the chairman of the local subcommittee to undertake any investigation into the questions covered by the remit of the national committee.

Section 20

The following shall be settled direct by the state:

- the cost of paper, printing and supply of ballot papers and of the texts of the manifestos referred to in section 18;
- the cost of paper, printing and posting up of the posters referred to in section 17;
- expenditure incurred in the course of operations conducted by the committee and subcommittees established by Sections 13 and 19 and their administrative costs.

Section 21

The charges for printing and postage shall be determined by order of the Representatives of the State in the departments, French Polynesia, the Wallis and Futuna islands, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon, in accordance with the rules laid down by section R39 of the Electoral Code.

### TITLE III

## ELECTORAL OPERATIONS

Section 22

The times at which polling commences and ends shall be determined by the decree announcing the election.

Without prejudice to Section 3(II) of the Act of 6 November 1962, electoral operations shall be organised in accordance with the rules laid down by sections R40 and R42 to R96 of the Electoral Code.

A copy of the official reports shall be transmitted without delay to the Representatives of the State in the departments, French Polynesia, the Wallis and Futuna Islands, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon for transmission to the Counting Commission provided for by section 25.

Section 23

The administration shall arrange for ballot papers, following a uniform model for all candidates and comprising only their name and first name, to be printed and made available to the local control subcommittees.

Section 24

The following shall be disregarded in the result of the count:

- printed ballot papers differing from those provided by the administration;
- ballot papers drawn up on behalf of a candidate who is not found on the official list adopted by the Constitutional Council and published in the *Journal officiel* before each ballot pursuant to sections 7 and 9.

- Section 25* In each department, French Polynesia, the Wallis and Futuna Islands, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon, a counting commission, sitting in the administrative capital, shall add up the results of the communes or administrative districts, as from the closure of polling and as and when the official reports reach it.
- This committee shall include three magistrates designated by the First President of the Court of Appeal, one of whom shall be its chairman.
- Section 26* A representative of each candidate may witness the operations of the committee and request that his complaints, if any, be recorded in the official report.
- Section 27* The chairman of the committee shall maintain contact with the delegate designated by the Constitutional Council to monitor electoral operations on the spot, pursuant to Section 3(III) of the Act of 6 November 1962.
- He shall provide all information and communicate all documents that the delegate considers useful for the performance of his function.
- Section 28* The committee shall settle all questions arising from the counting of the ballot papers, with the exception of complaints, if any, and shall make any requisite corrections, without prejudice to the review power of the Constitutional Council.
- In each department, French Polynesia, the Wallis and Futuna Islands, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon, the counting of the votes must be completed no later than midnight on the Monday following the ballot. Results shall be recorded in official reports drawn up in duplicate and signed by all the members of the committee. The first copy shall be transmitted without delay to the Constitutional Council; the official reports of voting in the communes or administrative districts which record complaints made by voters shall be attached with their annexes. The second copy shall be filed in departmental files.
- Section 29* The general counting of votes shall be conducted under the control of the Constitutional Council, at its headquarters. An official report shall be drawn up.
- If no absolute majority is attained at the first ballot, the Constitutional Council shall announce the number of votes obtained by each candidate no later than 8 p.m. on Wednesday.
- The Constitutional Council shall declare the results of the election within ten days following the ballot at which one of the candidates attained an absolute majority of the votes cast.

**TITLE IV**

**DISPUTES**

- Section 30* Any voter may dispute the regularity of electoral operations by having his complaint recorded in the official report.
- The Representatives of the State in the departments, French Polynesia, the Wallis and Futuna Islands, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon shall, within forty-eight hours following the closure of polling, submit direct to the Constitutional Council the electoral operations at constituencies where the conditions and forms laid down by statute or regulation were not observed.

Any candidate may also, within the same forty-eight hour period, submit electoral operations direct to the Constitutional Council.

Section 31

Decisions of the Constitutional Council ruling definitively on candidates' campaign accounts shall be published in the *Journal officiel* and notified to the Minister for the Interior.

## TITLE V

## SPECIAL PROVISIONS FOR THE OVERSEAS TERRITORIES

### Chapter I

### Provisions applicable to French Polynesia, the Wallis and Futuna Islands, New Caledonia, Saint-Pierre-et-Miquelon and Mayotte

Section 32

For the purposes of this Decree and of the part of the Electoral Code consisting of provisions within the jurisdiction of the authority empowered to make regulations to which it refers, the following provisions of that Code shall apply:

- 1° In French Polynesia, section R 202;
- 2° In the Wallis and Futuna Islands, sections R 203 and R 213-1;
- 3° In New Caledonia, sections R 201 and R 213;
- 4° In Saint-Pierre-et-Miquelon, section R 172-1;
- 5° In Mayotte, sections R 176-1, R 176-2 and R 176-6.

Section 33

For the purposes of the first paragraph of section 12, the reference to section 200 of the General Tax Code is replaced by a reference to the corresponding provisions that are applicable locally.

Section 34

For the purposes of section 15, where no television service is provided by the public broadcasting company, only radio electoral campaign broadcasts shall be retransmitted.

Moreover, television and other programmes shall not be retransmitted where, by reason of differing time-zones or of the time needed to transfer the recordings, it is impossible to retransmit them overseas before the end of the period allowed for the election campaign. Nor shall programmes be retransmitted where, although it is possible to broadcast them in good time, the effect by virtue of the foregoing provisions would be to breach equality between candidates.

Section 35

The second copy of the documents provided for by section 28 shall be deposited in the archives in the same manner as other State archives.

### Chapter II

### Special provisions applicable to French Polynesia, the Wallis and Futuna Islands and New Caledonia

Section 36

For the purposes of section 12, which refers to sections L 52-4 to L 52-12 of the Electoral Code, section L 392 of that Code shall apply.

For the purposes of the third paragraph of that section, the reference to “€3 000” is replaced by a reference to “363 600 F CFP”.

*Section 37* For the purposes of section 16, outside the capitals of the communes or, in the Wallis and Futuna Islands, the territorial constituencies, special locations shall be reserved for each candidate's election posters by the Heads of Administrative Subdivisions or, in the Wallis and Futuna Islands, by the Higher Administrator, there being one hoarding of the same surface area for each candidate beside each polling station.

*Section 38* The representative of the State shall take all requisite measures to ensure that the Counting Commission is in possession of the formal reports and annexed documents from the polling stations in good time.

Where the formal reports do not reach the Commission in good time, by reason of the remoteness of a polling station, communication difficulties or any other factor, the Commission may announce its findings on the basis of telegrams, faxes or e-mails from the Mayor or the delegate of the representative of the state confirming the results for the polling stations for the communes and the results for the polling stations for their constituencies and setting out objections that have been registered, specifying the objector or objectors and the ground or grounds.

As soon as it has completed its proceedings the Counting Commission shall send the complete results to the Constitutional Council by the fastest possible means enjoying absolute priority, and shall specify the objections (if any) entered by voters and registered in the formal report.

**Chapter III**

**Special provisions applicable to the overseas departments, Saint-Pierre-et-Miquelon and Mayotte**

*Section 39* In case of need, the results for the overseas departments, Saint-Pierre-et-Miquelon and Mayotte may be transmitted in the manner provided for by section 38.

*Section 40* The Prime Minister, the Minister for the Economy, Finance and Industry, the Keeper of the Seals, Minister of Justice, the Minister of the Interior, the Minister of Foreign Affairs, the Minister of Culture and Communication and the State Secretary for the Overseas Departments and Territories shall be responsible, each in his own area, for implementing this Decree, which shall be published in the *Journal officiel de la République française*.



# DECISION ON STANDING ORDERS CONCERNING THE ARCHIVES OF THE CONSTITUTIONAL COUNCIL

*Decision of the Constitutional Council of 27 June 2001*

## THE CONSTITUTIONAL COUNCIL,

Having regard to the Constitution, and in particular article 63 thereof;

Having regard to Archives Act (No 79-18) of 3 January 1979, and in particular Title II thereof;

Having regard to Ordinance 58-1067 of 7 November 1958 enacting the Institutional Act on the Constitutional Council, and in particular section 56 thereof;

Having regard to Decree 59-1293 of 13 November 1959 on the organisation of the Secretariat-general of the Constitutional Council, and in particular section 3 thereof;

Having regard to Decree 79-1037 of 3 December 1979 on the powers of public archive services and cooperation between administrative authorities for the collection, conservation and communication of public archives;

### Has decided as follows:

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| Article 1 | The period after which records drawn up pursuant to section 3 of the Decree of 13 November 1959 may be available for free consultation shall be sixty years.<br>The same shall apply to other documents flowing from the Council's business.     |
| Article 2 | After deliberation by its members, the President of the Constitutional Council may, on such terms as it shall determine, authorise consultation of the documents referred to in section 1 before the time-limit set by that section has expired. |
| Article 3 | The documents mentioned in section 1 shall be deposited at the Archives de France in manner provided by Decree 79-1037 implementing Title II of the Archives Act of 3 January 1979.  |
| Article 4 | This decision shall be published in the <i>Journal officiel de la République française</i> .   |

Deliberated by the Constitutional Council at its sitting of 27 June 2001, attended by Mr Yves GUÉNA, President, Mr Michel AMELLER, Mr Jean-Claude COLLIARD, Mr Olivier DUTHEILLET de LAMOTHE, Mr Pierre JOXE and Mr Pierre MAZEAUD, Ms Monique PELLETIER, Ms Dominique SCHNAPPER and Ms Simone VEIL.