

STATUTES OF THE COUNTRY OF NEW CALEDONIA

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Organic law n° 99-209 of 19 march 1999 laying down the status of New Caledonia

Title III: The institutions of New Caledonia

Chapter II: The statutes of the country

Section 99

As amended by organic law no. 2009-969 of 3 August 2009, Articles 34 and 46

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 law:

- 1° The identity symbols and name mentioned in Section 5;
- 2° Rules relating to the base and methods of collection of taxes of all types;
- 3° Fundamental principles of labour law, trade union law and social security law; "fundamental guarantees given to the officials of New Caledonia and the communes";¹
- 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 ", subject to the provisions of Sections 137, 138 and 138-1"²;
- 6° Rules concerning hydrocarbons, nickel, chrome and cobalt;
- 7° Rules governing publicly-owned land in New Caledonia and the provinces, subject to Section 126 (13°);
- 8° Rules relating to access to employment pursuant to section 24;

¹ Provision on officials inserted by organic law no. 2009-969 of 3 August 2009, Article 34

² Subjectivity inserted by organic law no. 2009-969 of 3 August 2009, Article 46

- 9° Rules concerning the status and legal capacity of persons, marriage settlements, 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

As amended by organic law no. 2009-969 of 03 August 2009, Article 49

Government draft statutes of the country shall be submitted for the opinion of the Conseil d'État prior to their adoption by the government deliberating council.

Private members' proposals for statutes of the country shall be submitted for the opinion of the Conseil d'État by the President of Congress prior to their first reading. Congress shall vote after the Conseil d'État has given its opinion.

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

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.

"A member of Congress cannot take part in the adoption of a statute of the country if he/she is directly interested in the matter that it involves both personally and as a representative." ³

Section 101

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

Section 102

As amended by organic law no. 2009-969 of 3 August 2009, Articles 34 and 36

Congress, "or, if Congress is not sitting, the permanent committee" ⁴ shall designate one of its members to act as Rapporteur on every 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 "sent to the members of Congress eight days before the meeting" ⁵.

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

³ Restrictive paragraph inserted by organic law no. 2009-969 of 3 August 2009, Article 49.

⁴ Restrictive paragraph inserted by organic law no. 2009-969 of 3 August 2009, Article 49.

⁵ Distribution to Members of Congress inserted by organic law no. 2009-969 of 3 August 2009, Article 34. Previous wording: "published according to the conditions set by the internal regulations".

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

As amended by organic law no. 2009-969 of 03 August 2009, Article 47
As amended by organic law no. 2009-1523 of 10 December 2009, Article 3

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.

The provisions of a statute of the country can be subject to a preliminary priority ruling on the issue of constitutionality, which shall comply with the rules defined by Sections 23-1 to 23-12 of Ordinance no. 58-1067 of 7 November 1958 concerning organic law on the Constitutional Council⁶.

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 Conseil d'État, which shall rule on the reference within three months. No decision shall be taken on the substance of the case until the Conseil d'État has given its ruling on the status of the relevant provision.

“The Conseil d'État may also be referred to by the President of Congress, the President of the Government, the President of a Provincial Assembly or the High Commissioner, in order to observe that a statute of a country is outside of the matters mentioned in Section 99⁷

“The authority referring to the Conseil d'État shall immediately inform the other authorities mentioned in the previous paragraph of the said referral. The latter may present their observations within a fifteen day deadline.”⁸

⁶ Paragraph inserted by organic law no. 2009-1523 of 10 December 2009, Art. 3. Effective date 1st March 2010 (Cf. Art. 5 of that organic law).

⁷ Paragraph inserted by organic law no. 2009-969 of 03 August 2009, Article 47

“The Conseil d’État pronounces within three months following the application provided for in the two previous paragraphs.”⁹

Decision no. 99-410 DC of the Constitutional Council of 15 March 1999. Organic law on New Caledonia (extracts)¹⁰

1. Whereas, on 5 May 1998, the Government of the French Republic and the representatives of the main political parties of New Caledonia signed an "agreement on New Caledonia" in Nouméa, which, in addition to a "Preamble", includes a "Guidance document" relating, in its point 1, to "the Kanak identity", in its point 2, to the "institutions", in its point 3, to the "skills", in its point 4, to the "economic and social development" and, in its point 5, to "the change in the political organisation of New Caledonia"; whereas, as provided for by point 6 of the same document, relating to "the application of the agreement", a constitutional law was adopted by the Parliament that met in Congress on 6 July 1998, which reestablished a title XIII of the Constitution henceforth entitled: "Temporary provisions relating to New Caledonia" and consisting of the two Articles 76 and 77 rewritten thus:

(...)

2. Whereas, pursuant to the aforementioned Article 77, on 16 February 1999, the Parliament adopted the organic law on New Caledonia submitted to the Constitutional Council;

- REGARDING THE REFERENCE STANDARDS AND THE EXTENT OF THE CONTROL EXERCISED BY THE CONSTITUTIONAL COUNCIL OVER THE ORGANIC LAW PROVIDED FOR IN ARTICLE 77 OF THE CONSTITUTION:

3. Whereas, firstly, subject to the requirements of Articles 7, 16 and 89 of the Constitution, nothing prevents the constituting power from bringing new provisions into the wording of the Constitution that, in the cases which they refer to, waive rules or principles of constitutional value, with such waivers only being able to be implicit; whereas, this is this case in this instance; whereas it follows in fact from the provisions of the first paragraph of Article 77 of the Constitution that the control of the Constitutional Council over the organic law must be exercised not only with regard to the Constitution, but also with regard to the guidelines defined by the Nouméa agreement, which waives a certain number of rules or principles of constitutional value; whereas, however, such waivers can only apply to the extent strictly necessary for the implementation of the agreement;

4. Whereas, secondly, because of this change in the circumstances of law, there is every reason, for the Constitutional Council, to review all of the provisions of the organic law, even though some of them have a wording or content identical to those of the provisions previously declared to be constitutional by the Constitutional Council or appearing in law no. 88-1028 of 9 November 1988 concerning statutory provisions preparatory to the self-determination of New Caledonia in 1998, adopted by French people following a referendum;

(...)

⁸ Paragraph inserted by organic law no. 2009-969 of 03 August 2009, Article 47

⁹ Paragraph inserted by organic law no. 2009-969 of 03 August 2009, Article 47

¹⁰ Journal officiel of 21 March 1999, p. 4234.

20. Whereas chapter II, which comprises Sections 99 to 107, relates to the "statutes of the country", deliberations of Congress having force of law; whereas Section 99 defines their scope of application; whereas Sections 100, 101 and 102 determine their conditions of adoption; whereas Section 103 establishes a procedure for a new deliberation on all or part of these statutes; whereas Sections 104 and 105 define the conditions in which the Constitutional Council can be referred to and pronounces on these statutes; whereas Section 106 relates to their promulgation; whereas Section 107 sets their legal regime;

21. Whereas Section 103 gives the High Commissioner, the Government, the President of Congress, the President of a Provincial Assembly or eleven members of Congress the authority to ask for a second deliberation of a "statute of the country" or of some of its provisions within fifteen days of its adoption;

22. Whereas Section 104 provides that a "statute of the country" which has been subject to a fresh deliberation pursuant to Section 103 can be referred to the Constitutional Council, per the terms of an application containing a statement of the grounds in fact and law on which it is based, by the High Commissioner, the Government, the President of Congress, the President of a Provincial Assembly or eighteen members of Congress, within ten days of the fresh deliberation;

23. Whereas Article 77 of the Constitution provides that: "...organic law determines... : the rules governing the organisation and operation of the institutions of New Caledonia and particularly the conditions in which certain categories of acts of the deliberative assembly may be checked, before publication, by the Constitutional Council..." ;

24. Whereas Section 104 provides that a "statute of the country" must have been subject to a fresh deliberation to be referred to the Constitutional Council and therefore makes the admissibility of the appeal subject to the condition that the contested provisions of a "statute of the country" have been subject to a fresh deliberation; whereas the procedure thus established, which implements the aforementioned provisions of Article 77 of the Constitution, does not infringe any rule or principle of constitutional value;

25. Whereas Section 107 defines the legal nature of the "statutes of the country", and also the procedure by which it can be determined by the Conseil d'État that a provision of a "statute of the country" is outside of the matters mentioned in Section 99; whereas in such a case, the legality of that provision may be critically examined before the relevant administrative court;

26. Whereas the provisions stated by Sections 99 to 107 are constitutional; whereas, the same applies to the other provisions of title III.