

DECISION 93-325 DC OF 13 AUGUST 1993

Act on the control of immigration and conditions of entry, reception and residence for aliens in France

On 15 July 1993 the Constitutional Council received a referral from Mr Claude ESTIER, Mr Robert LAUCOURNET, Mr William CHERVY, Mr Paul RAOULT, Mr Jean-Pierre MASSERET, Mr Jean-Louis CARRERE, Mr Marcel BONY, Ms Françoise SELIGMANN, Ms Marie-Madeleine DIEULANGARD, Ms Josette DURRIEU, Mr Jacques BELLANGER, Mr Jacques BIALSKI, Mr Aubert GARCIA, Mr Roland BERNARD, Mr Guy PENNE, Mr Michel DREYFUS-SCHMIDT, Mr Gérard MIQUEL, Mr Fernand TARDY, Mr Robert CASTAING, Mr Gérard DELFAU, Mr Pierre BIARNES, Ms Maryse BERGE-LAVIGNE, Mr André VEZINHET, Mr Louis PHILIBERT, Mr Michel SERGENT, Mr Germain AUTHIE, Mr Jean BESSON, Mr Jean-Pierre DEMERLIAT, Mr Paul LORIDANT, Ms Monique BEN GUIGA, Mr Guy ALLOUCHE, Mr Léon FATOUS, Mr Claude FUZIER, Mr Claude CORNAC, Mr Gérard ROUJAS, Mr François LOUISY, Mr Mark BOEUF, Mr Francis CAVALIER-BENAZET, Mr Jacques CARAT, Mr Jean PEYRAFITTE, Mr René-Pierre SIGNE, Mr Marcel CHARMANT, Mr Claude PRADILLE, Mr André ROUVIERE, Mr Louis PERREIN, Mr Marcel VIDAL, Mr Frank SERUSCLAT, Mr Jean-Luc MELENCHON, Mr Charles METZINGER, Mr René REGNAULT, Mr François AUTAIN, Mr Michel MOREIGNE, Mr Michel CHARASSE, Mr Gérard GAUD, Mr Pierre MAUROY, Mr Roland COURTEAU, Mr Claude SAUNIER, Mr Bernard DUSSAUT, Mr Albert PEN, Mr Rudolphe DESIRE, Senators and on the same day by Mr Martin MALVY, Mr Jean-Marc AYRAULT, Mr Jean-Pierre BALLIGAND, Mr Claude BARTOLONE, Mr Christian BATAILLE, Mr Jean-Claude BATEUX, Mr Jean-Claude BEAUCHAUD, Mr Michel BERSON, Mr Jean-Claude BOIS, Mr Augustin BONREPAUX, Mr Jean-Michel BOUCHERON, Mr Jean-Pierre BRAINE, Mr Laurent CATHALA, Mr Jean-Pierre CHEVENEMENT, Mr Henri d'ATTILIO, Ms Martine DAVID, Mr Bernard DAVOINE, Mr Bernard DEROSIER, Mr Michel DESTOT, Mr Julien DRAY, Mr Pierre DUCOUT, Mr Dominique DUPILET, Mr Jean-Paul DURIEUX, Mr Laurent FABIUS, Mr Jacques FLOCH, Mr Pierre GARMENDIA, Mr Jean GLAVANY, Mr Jacques GUYARD, Mr Jean-Louis IDIART, Mr Frédéric JALTON, Mr Serge JANQUIN, Mr Charles JOSSELIN, Mr Jean-Pierre KUCHEIDA, Mr André LABARRERE, Mr Jack LANG, Mr Jean-Yves Le DEAULT, Mr Louis Le PENSEC, Mr Alain Le VERN, Mr Marius MASSE, Mr Didier MATHUS, Mr Jacques MELLICK, Mr Louis MEXANDEAU, Mr Jean-Pierre MICHEL, Mr Didier MIGAUD, Ms Véronique NEIERTZ, Mr Paul QUILES, Mr Alain RODET, Ms Ségolène ROYAL, Mr Georges SARRE, Mr Henri SICRE, Mr Camille DARSIERES, Mr Jean-Pierre DEFONTAINE, Mr Gilbert ANNETTE, Mr Kamilo GATA, Mr Roger-Gérard SCHWARTZENBERG, Mr Didier BOULAUD, Mr Bernard CHARLES, Mr Aloyse WARHOVER, Mr Gérard SAUMADE, Mr Régis FAUCHOIT, Mr Emile ZUCCARELLI, Mr Bernard TAPIE, Mr Gilbert BAUMET, Mr François ASENSI, Mr Rémy AUCHEDÉ, Mr Gilbert BIESSY, Mr Alain BOCQUET, Mr Patrick BRAOUEZEC, Mr Jean-Pierre BRARD, Mr Jacques BRUNHES, Mr René CARPENTIER, Mr Daniel COLLIARD, Mr Jean-Claude GAYSSOT, Mr André GERIN, Mr Michel GRANDPIERRE, Mr Maxime GREMETZ, Ms Janine JAMBU, Mr Georges HAGE, Mr Guy HERMIER, Ms Muguette JACQUAINT, Mr Jean-Claude LEFORT, Mr Georges MARCHAIS, Mr Paul MERCIECA, Mr Louis PIERNA, Mr Jean TARDITO and Mr Ernest MOUTOUSSAMY, Deputies, pursuant to Article 61(2) of the Constitution, asking it to rule on the constitutionality of the Act governing immigration and conditions of entry, reception and residence for aliens in France;

THE CONSTITUTIONAL COUNCIL,

Having regard to the Declaration on Human and Civic Rights of 26 August 1789;

Having regard to the Preamble to the Constitution of 27 October 1946;

Having regard to the Constitution of 4 October 1958;

Having regard to the Geneva Convention of 28 July 1951 on the status of refugees, together with Act 54-290 of 17 March 1954 authorising its ratification;

Having regard to the protocol on the status of refugees, signed at New York on 31 January 1967, together with Act 70-1076 of 25 November 1970 authorising the commitment of France to this protocol;

Having regard to the Convention signed in Dublin on 15 June on the determination of the State responsible for examining a request for asylum submitted to a Member State of the European Communities;

Having regard to the Convention for the Application of the Schengen agreement signed on 19 June 1990;

Having regard to Ordinance 45-2658 of 2 November 1945, as amended, on conditions of entry and residence for aliens in France;

Having regard to the Civil Code, together with Act 93-333 of 22 July 1993 reforming the right to nationality;

Having regard to the Criminal Code;

Having regard to the Construction and Housing Code;

Having regard to the Family and Welfare Assistance Code;

Having regard to the Code of Criminal Procedure, and in particular section 78-2;

Having regard to the Social Security Code;

Having regard to the Labour Code;

Having regard to the Public Health Code;

Having regard to Act 52-893 of 25 July 1952, as amended, creating a French office for the protection of refugees and stateless persons;

Having regard to Act 73-548 of 27 June 1973, as amended, on collective housing;

Having regard to Act 78-17 of 6 January 1978, as amended, on computer technology, files and freedoms;

Having regard to Decision 91-294 DC of 25 July 1991 and Decision 92-307 DC of 25 February 1992;

Having heard the rapporteur;

On the following grounds:

1. The Senators, authors of the first referral, refer to the Constitutional Council the Act on the control of immigration and conditions of entry, reception and residence for aliens in France; to support their referral they state that the content of sections 1, 3, 8-IV, 14-II, 15, 16, 17, 23, 25 and 27 of the Act which they refer to the Constitutional Council is unconstitutional; the Deputies, authors of the second referral, state for their part that the following sections of the same Act are unconstitutional: sections 3, 5, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 21, 23, 24, 25, 27, 29, 30, 31, 33, 34, 35, 36, 38, 40, 41, 43, 44, 45 and 46;

ON THE PARAMETERS FOR CONSTITUTIONAL REVIEW OF THE ACT REFERRED:

2. There are no constitutional rules or principles securing the absolute general right of aliens to enter France and reside there; the conditions for entry and residence may be restricted by

administrative measures conferring extensive powers on the authorities on the basis of specific rules; the legislature may thus implement general-interest objectives set out in the legislation; aliens are accordingly in a different legal situation from French nationals; the assessment of the constitutionality of provisions which the legislature has seen fit to enact may not proceed from a comparison of successive enactments or from conformity with international conventions but solely from review in the light of the demands set out in the Constitution;

3. However, while the legislature is entitled to enact specific provisions applying to aliens, it behoves it to respect the fundamental rights and freedoms secured by the Constitution to all persons residing in the territory of the Republic; these rights and freedoms, which must be reconciled with the constitutional objective of preserving public order, include individual freedom and suretyship, in particular the freedom of personal movement, freedom of marriage and the right to lead a normal family life; aliens also enjoy the right to welfare protection, provided they are lawfully and stably resident in France; they must be able to exercise the rights of redress to enforce their rights and freedoms;

4. Moreover, aliens may claim their entitlement to the right conferred to certain of them by the fourth paragraph of the Preamble to the 1946 Constitution, to which the French people solemnly expressed its attachment, whereby “any man persecuted in virtue of his actions in favour of liberty may claim the right of asylum upon the territories of the Republic”;

ON THE GENERAL CONDITIONS FOR ENTRY AND RESIDENCE OF ALIENS IN FRANCE:

Regarding section 1:

5. This section states that the decision to refuse entry to an alien may be made automatically by the administrative authorities;

6. The Senators, the authors of the first referral, state that this provision deprives the aliens concerned of guarantees offered by the system of criminal procedure, in particular on the rights of the defence;

7. The legislature is entitled, when enacting measures governing the entry of aliens, to decide that measures to give effect to the objectives it sets for the preservation of public order may be based either on specific police regulations applicable to aliens or on a scheme of criminal penalties or on a combination of the two; decisions taken under administrative police rules may be enforced forthwith; the grounds for complaint are therefore removed;

Regarding section 3:

8. This section introduces regulations regarding the housing certificate which may be required of an alien for a private visit into the Ordinance of 2 November 1945 on the conditions of entry and residence for aliens in France;

according to this the mayor, who is required to stamp the certificate, may refuse if it is clear either from the content of the certificate or from visits to the home of the signatory that the alien may not be accommodated under normal conditions or that the certificate details are false; the staff of the international migration office in charge of visits at the mayor's request may enter accommodation only with the written consent of the owner, but should permission be refused the accommodation will be considered not to fulfil the normal conditions required;

9. The Senators maintain that these measures violate principles of individual freedom and, in particular, the inviolability of the home, unless the conditions, methods and extent of the checks carried out are specified and the procedure has been verified by judicial authority; the

Deputies state that these measures are a breach of the respect for private life which, in their opinion, is a constitutional principle;

10. When exercising the powers conferred on him by Section 3 of the Act referred, the mayor acts as an agent of the State; his decisions are subject to review on a hierarchical basis by the prefect representing the State in the department; both the mayor and the prefect must give their decisions without delay; any decision to object to a visit by the staff at the international migration office must be notified unequivocally;

11. The provisions attacked accordingly do not violate individual freedom, neither do they violate the respect for private life;

Regarding section 5:

12. The second paragraph of this section provides: “Apart from identity checks, foreign nationals must be able to produce those items or documents which authorise their circulation or residence in France when so required by the criminal investigation police, on their orders and those of criminal investigation police officers and deputy officers within the meaning of sections 20 and 21(1) of the Code of Criminal Procedure”;

13. The Deputies, authors of the second referral, state that this measure removes legal guarantees from the constitutional demand for respect for individual freedom and attacks the principle of equality before the law by placing an obligation on aliens which does not apply to nationals;

14. Under an administrative arrangement providing for prior authorisations, the legislature may properly require aliens to possess, carry and present evidence that their entry and residence in France are lawful; it may to that end provide for checks even where suspected offenders are not being sought and in the absence of circumstances pointing to a breach of the peace;

15. On the one hand with regard to the objectives as set out by the legislature, aliens and nationals are placed in different situations; the provisions attacked accordingly do not violate the principle of equality;

16. On the other hand, the performance of checks entrusted by the law to the criminal investigation police must be based on purely objective criteria, to the exclusion of all forms of discrimination between persons in strict compliance with the principles and provisions of the Constitution; it is for the judicial and administrative authorities to secure the full enforcement of this rule and to condemn all violations of it, ordering compensation for violations where they are committed; subject to this interpretation, the provision under review is not unconstitutional;

Regarding section 7:

17. Section 7 amends the terms on which a temporary residence card may be issued as of right to an alien who is a minor or attained the age of eighteen less than one year previously; such a card may never be issued unless the alien’s presence in France is no threat to public order; the period during which the applicant must have resided in France is reduced from ten to six years;

18. The Deputies, authors of the second referral, maintain that this section removes legal guarantees from the constitutional demands for individual freedom; it corrupts the procedure to allow for expulsions from French territory; moreover, it amounts to a violation of the right to lead a normal family life by not recognising the rights of the child;

19. The legislature must guarantee that the constitutional objective of preserving public order is reconciled with individual freedom and the right to a normal family life;

20. On the one hand, section 17 of the Act makes provision for aliens who are able to do so to justify in any way that they have been normally resident in France from the age of six years old; these aliens may not be removed to the border; an alleged threat to public order in the absence of aggravating circumstances, is not a sufficient ground for expulsion;

21. On the other hand, the legislature must assess the conditions under which the rights of the family may be reconciled with the public interest in the case of aliens who have unlawfully entered French territory;

22. Accordingly, the demands set out by the Act do not excessively violate individual freedom nor the right to family life;

Regarding section 8:

23. This section modifies the conditions under which, by law, a residence card may be issued; paragraph I of this section precludes the issue of this card if the presence of the alien is illegal or constitutes a threat to public order; it obliges the alien spouse of a French national to have been married and lived together for at least one year in order to benefit from this card; paragraph III states that this card may only be issued, by right, to the spouse and children (minors) of anyone having obtained the status of refugee subject to the marriage having occurred before this status was obtained or having occurred at least one year before application for the card with effective life together having begun at that time; paragraph IV states that an alien having been in a legal situation for more than ten years shall, with the reservations expressed in paragraph I, receive a residence card as of right “unless he has held a temporary residence card inscribed “student” for the entire period”; the last paragraph of the section states that the residence card shall be issued, as of right, to any alien who fulfils the conditions for acquiring French nationality set out in section 21-7 of the Civil Code;

24. The Senators, authors of the first referral, argue that section 8-IV violates the principle of equality before the law by precluding those aliens who have been in a legal situation for more than ten years from receiving a residence card on the sole ground that, for the whole of this period, they held a temporary residence card inscribed “student”, despite the fact that this right is granted to other aliens, having legally resided for the same period; the Deputies, authors of the second referral, claim that the provisions of this section deprive the constitutional demands for respect of individual freedom of their legal guarantees and violate the principle of equality before the law, the right to lead a normal family life and the right to asylum, since the spouse and children of a refugee would no longer have the right to a residence card in the year following their marriage when this has taken place after they have been given refugee status or if they have stopped living together;

25. Firstly, the residence card, valid for a period of ten years, is fully renewable; bearing in mind public order requirements and taking account of the general-interest objectives set out in the legislation, the legislature has made the issue of this card subject to two conditions; the absence of a threat to public order and the legality of the previous residence of the parties concerned; there is no excessive violation of constitutional principles as maintained by the Deputies, authors of the referral; there is also a requirement that the spouses of French nationals should have been married for one year and should have resided normally together during that time;

26. Secondly, in order to obtain the rights conveyed by the residence card, aliens who have resided previously on French territory with the sole aim of carrying out studies of at least ten years’ duration are in a different situation to other aliens as to the reasons justifying the residence taken into account by the legislature this cannot be considered to violate the principle of equality;

27. Thirdly, by providing for the same conditions to apply to the issue of the residence card to spouses of aliens having obtained the status of refugees as to spouses of French nationals, the legislature is not in violation of either the principle of equality or the right of asylum;

28. Fourthly, on the one hand, alien minors may not be removed to the border or expelled and, on the other hand, having been born in France, the child of a refugee has the right, according to the last paragraph of the contested section, to the residence card, as of right, if he meets the criteria for French citizenship set out in section 21-7 of the Civil Code; the application of the provisions set out in this paragraph is not to be regarded as subject to the absence of a threat to public order; subject to this interpretation, the legislature has not violated the right of refugees to a normal family life nor therefore the right of asylum;

Regarding section 9:

29. This section forbids the issuing of this residence card to aliens living in a situation of polygamy and to spouses of the same;

30. The Deputies, authors of the second referral, state that this section does not recognise the role of the judicial authority in guaranteeing the respect of individual freedom and that this is contrary to the principle of equality since this provision only applies to aliens and implies that children of the same father would be treated differently with regard to their right to reside in the same country as their father;

31. In the first place, a residence card is only issued to aliens; therefore, with regard to the regulations on the issuing of this card there can be no question of discrimination between nationals and aliens;

32. Secondly, the contested provision must be understood as applicable only to aliens living in France in a situation of polygamy; subject to this interpretation, the legislature acting in the public interest, as set out in the legislation, has not violated any constitutional principles or regulations;

Regarding section 11:

33. This section, which amends section 18 bis of the Ordinance of 2 November 1945 abolishes referral by the Prefect to the Committee on Alien Residence when the Prefect envisages to refuse to renew a temporary residence card and obliges the Prefect to issue a residence permit in the case of a favourable decision by the Committee;

34. The Deputies, authors of the second referral, state that this section removes legal guarantees from the constitutional requirements of the respect of individual freedom;

35. It is for the legislature to determine, with respect for constitutional principles, bearing in mind that it must act in the public interest, the conditions under which the freedom of residence for aliens in France may be exercised; by amending the rules of procedure provided for in section 18 bis of the abovementioned Ordinance by limiting the cases and restricting the scope for prior intervention by the relevant committee without interfering with the legal guarantees provided under ordinary law and applicable to the aliens concerned, the legislature has not violated any constitutional provision or principle;

Regarding section 12:

36. Section 12 increases from 5 000 to 10 000 francs the maximum fine to be paid by any road transport company which, under certain conditions, transports an alien who is not a national of a Member State of the European Economic Community on to French territory without a valid travel document or the visa required;

37. The Deputies, authors of the second referral, state that the principles of legality and proportionality of penalties are violated by this section;

38. On the one hand, as a result of Constitutional Council Decision 92-307 DC of 25 February 1992, the provision contested is not contrary to the principle of legality of penalties;

39. On the other hand, by increasing from 5 000 to 10 000 francs the maximum fine to be paid by the road transport companies concerned, the legislature has not set an amount which is clearly disproportionate to the offence in question;

Regarding section 13:

40. This section, by amending section 21a of the abovementioned Ordinance of 2 November 1945, deletes the principle, except with regard to minors, whereby a ban from French territory shall not be invoked where residence regulations have been flouted, provided for by sections 19, 21 and 27 of the same Ordinance regarding specific categories of aliens; it provides for cases in which this penalty may not be invoked by the courts “unless by a decision taken specifically with regard to the gravity of the offence”; the new rules are extended to infringements provided for by section 33 inserted in the Ordinance by section 25 of the Act referred;

41. The Deputies, authors of the second referral, contest that this provision seriously violates individual freedom and fails to provide sufficient clarification of how grave an offence would provoke a court to ban an alien from French territory;

42. The implementation of the contested provision is up to the judicial authority, which must note the gravity of the offence in its decision; thus, the legislature has not violated the principle of the legality of offences and penalties nor excessively violated individual freedom;

Regarding section 14:

43. Section 14 applies to section 22(I) of the Ordinance of 2 November 1945 those circumstances under which an alien may be removed to the border; it adds the rule whereby “removal to the border entails an automatic ban from the territory for a period of one year”;

44. The Senators, authors of the first referral, state that this final provision automatically establishes criminal penalties without regard for individual circumstances; it violates the authority of the judiciary to ensure the respect of individual freedom and the principle of equality and it infringes the rights of the defence; the Deputies, authors of the second referral, state that this provision removes the legal guarantees from the respect for individual freedom of aliens resident in France; they maintain a similar violation with regard to removing aliens to the border; moreover, they allege that a ban from the territory resulting from removing these aliens to the border violates “the demand for an individualisation of offences and penalties” and the principle of proportionality of offences and that it constitutes a violation of the principle of equality, since it entails the application of the same reaction to different situations;

45. The changes made to the circumstances in which a person may be removed to the border concern aliens who do not hold a valid residence document or whose residence card has been withdrawn or who, for whatever reason, have been refused a residence card on grounds of a threat to public order; by thus extending the circumstances in which police measures may be taken in the absence of a valid residence document without adversely affecting the judicial remedies available in such cases, the legislation is in no way unconstitutional;

46. Moreover, Article 8 of the Declaration of Human and Civic Rights states that: “Only punishments that are strictly and clearly necessary may be provided for by law, and no-one

shall be punished otherwise than by virtue of a statute passed and promulgated prior to the offence and applied by due legal process”;

47. As a result of these provisions, as with the fundamental principles recognised by the laws of the Republic, a penalty may be imposed only according to the principles of legality of offences and penalties, necessity of penalties, non-retroactivity of criminal legislation imposing heavier penalties and rights of the defence;

48. These demands concern not only penalties imposed by the criminal courts but all penalties in the nature of a punishment, even where the legislature leaves the power to impose them in the hands of a non-judicial authority;

49. In accordance with the contested provisions, any order to remove an alien to the border automatically entails a ban from the territory for a period of one year without consideration of the gravity of the behaviour which motivated the order, with no possibility of dispensation for the party concerned or of a change in the length of the ban; in these circumstances the pronouncement of a ban from the territory by the administrative authority does not meet the demands set out in Article 8 of the Declaration of 1789; thus the last paragraph of section 14 of the Act is contrary to the Constitution;

Regarding sections 15 and 16:

50. These sections aim to remove cases where an opinion in conformity with the commission referred to in the Ordinance of 2 November 1945 would be required;

51. The Senators, authors of the first referral, state that by no longer making the decision of the administrative authority subject to the opinion of this commission, the legislature has removed the legal guarantees from the rights of the defence of the aliens concerned; the Deputies, authors of the second referral, maintain that the provisions of these sections violate Article 66 of the Constitution;

52. The cases targeted by the contested provisions concern decisions on expulsion and requests for a repeal of the orders governing these decisions; by separating here the administrative authority decisions from the opinion of an advisory commission, the legislature has changed an administrative procedure without infringing against judicial guarantees applicable under ordinary law; there has been no violation of any constitutional principle or rule;

Regarding section 17:

53. Section 17 changes the circumstances provided for in the Ordinance of 2 November 1945 in which an alien may not be subject to an expulsion order; this section lowers the age limit from ten to six; if an alien has been ordinarily resident in France from the age of six, he will not be subject to an expulsion order; this protection is not extended to persons having been ordinarily resident in France solely because for the whole of the period concerned they have held a temporary residence card inscribed “student”; it states that aliens married to a French spouse do not enjoy the same protection unless they have been married for at least one year and lived together as man and wife for that time and the spouse has retained French nationality; in any case, for some categories of aliens, it provides for the pronouncement of an expulsion order when the alien concerned has been sentenced to a period of imprisonment of at least five years;

54. The Senators, authors of the first referral, and the Deputies, authors of the second referral, claim that this section violates the principle of equality before the law by excluding from the category of aliens protected from expulsion, those aliens holding a student residence card; moreover the Deputies, authors of the second referral, state that this section removes the legal

guarantees from the constitutional requirements of respect for individual freedom; it violates, without alleging a serious threat to public order, the principles of legality of offences and penalties and their proportionality; finally, by removing all protection from expulsion and removal to the border, for aliens having entered France between the ages of six and ten and for the spouses of French nationals during the first year of marriage or if they stop living together as man and wife, it constitutes a violation of the right to a normal family life;

55. With regard to their links with France, those aliens who have resided in France solely in order to study are not in the same situation as those who have resided there for the same period for other purposes; therefore, bearing in mind the objectives set by the legislature, the exception provided for some students is not in violation of the principle of equality;

56. The legislature must reconcile the right to lead a normal family life with the constraints of public order; it may empower the authority responsible for issuing expulsion orders against aliens to have regard to all their personal and family circumstances and it is not unconstitutional for it to provide that, where there is a serious threat to public order, that consideration shall prevail;

57. Decisions on expulsion which constitute police actions are not within the scope of Article 8 of the Declaration of 1789; thus there is no violation of the judicial protection available under the ordinary law applicable to them and the legislature cannot be considered to have violated the principle of individual freedom;

Regarding section 18:

58. This section sets the conditions in which expulsion may take place on the basis of an absolute urgency or pressing necessity for State or public safety;

59. The Deputies, authors of the second referral, allege that this section removes the legal protections from the constitutional demands of respect for individual freedom;

60. With regard to the conditions set by this section arising from pressing demands of public order, the specific circumstances it outlines for expulsion decisions and administrative authority action do not represent an excessive violation of individual freedom;

Regarding section 21:

61. This section impedes the submitting of a request for removal of a ban or repeal of an expulsion order submitted after the expiry date for administrative redress when the alien resides in France, except when he has been given a non-suspended prison sentence;

62. The Deputies, authors of the second referral, submit that this section impedes the exercise of the right of redress and the rights of the defence;

63. The contested provisions do not violate the rights of redress of the parties concerned by actions of removal from French territory; nor do they violate the suspensory effect which might be part of such redress; they apply only should these decisions be contested after the expiry of the period of redress; by stating that these decisions may only be contested at the request of the party concerned when they reside in France, unless they are serving a prison sentence, the legislature has taken into account cases where it would be required to take such action and not those where individuals returned to French territory legally following the execution of this provision; thus, with regard to the specific situation of the aliens concerned, the legislature responsible for reconciling the protection of the right of redress with constraints of public order has not violated either the principle of equality nor any other constitutional principle;

Regarding section 30:

64. Section 30 introduces section 40 into the Ordinance of 2 November 1945 which sets out, for five years from the implementation of the deferred law, specific actions regarding the provisions of this Ordinance for the overseas departments and those of Saint-Pierre-et-Miquelon; regarding removal to the border, it provides that, at the request of the consular authority, such a provision may only be implemented one full day after the notification of the order regarding it without any possibility of prior, suspended redress; it also excludes calling on the Commission for Alien Residence provided for in section 18 bis of the Ordinance;

65. The Deputies, authors of the second referral, believe that this section violates the rights of the defence and the right of redress; by discriminating on the rights of those residing in the local authorities concerned this constitutes a violation of the principle of equality before the law; moreover, this violates the constitutional principle of the indivisibility of the Republic and extends beyond the scope of changes authorised by Article 73 of the Constitution;

66. The contested provisions maintain the existence of the judicial guarantees of the ordinary law applicable to administrative authority actions which allow for appeal against decisions taken prior to their execution; there is no provision for consultation of a non-judicial commission and therefore these measures are limited to an administrative procedure; the specific actions they provide for a limited period may be justified by the migration trends in some of the areas concerned and the existence of administrative constraints linked to the remoteness or insularity of the local authorities in question; thus section 30 does not violate any provision of the Constitution nor any constitutional principle;

ON THE RIGHT TO FAMILY REUNIFICATION:

67. Section 23 of the Act introduces sections 29, 30 and 30a) into the Ordinance of 2 November 1945 making up chapter VI entitled “Family reunification”; section 29 sets out the conditions under which the right to family reunification may be exercised for foreign nationals having resided lawfully in France for a period of at least two years; specifically it lists cases in which reunification may be refused; paragraph II sets out, in particular, conditions in which staff of the international migration office may proceed with inspections; paragraph III states that family members having legally entered France for family reunification shall automatically receive a residence permit; if, at the time when this permit is requested, the conditions for family reunification are no longer fulfilled, this permit may be refused; section IV provides for cases where renewal of the residence permit is denied or where the permit is withdrawn, particularly when its holder has sent for a spouse or children outside family reunification; section 30 sets the limitations on the right to family reunification for polygamous aliens and provides for the withdrawal of the residence permit from aliens when they have sent for more than one spouse or children other than those of the first spouse or children of another spouse since deceased or no longer holding parental rights;

68. The Senators, authors of the first referral, and the Deputies, authors of the second referral, state that this section violates the authority of the judicial authority to protect individual freedom as well as the right to a normal family life provided for by the tenth paragraph of the Preamble to the 1946 Constitution; the Senators, authors of the first referral, moreover invoke an attack on the inviolability of the home due to the intervention of international migration office staff; the Deputies, authors of the second referral, state for their part that these sections violate the principle of the legality of offences and penalties and the proportionality of offences and penalties by authorising the withdrawal of the residence permit of an alien who has sent for his spouse or children outside the procedure of family reunification; by allowing the regulatory authority to stipulate the deadlines for family reunification beyond which the prefectural authorisation for reunification becomes null and void, the legislature has

overstepped its authority; moreover the contested provisions violate the principle of equality by excluding alien students from the right to family reunification and refusing to take into account family benefits in the finances to be taken into account in conjunction with family reunification although these are included in amounts calculated for nationals when this is required by law;

69. The tenth paragraph of the Preamble to the 1946 Constitution states that: “The Nation shall provide the individual and the family with the conditions necessary to their development”;

70. As a result of this provision aliens who have resided ordinarily and legally in France have the right to lead a normal family life in the same way as French nationals; this right specifically allows these aliens to send for their spouses and children who are minors on condition of restrictions relating to preserving public order and protecting public health which are constitutional objectives; the legislature must reconcile all these demands and at the same time respect this law;

71. Firstly, as a condition for family reunification the legislature has imposed a two year qualifying period of lawful residence in France; the application for reunification must be submitted before the end of this period in order for this right to be effective and accessible at the end of this period; subject to this qualified interpretation this condition is constitutional;

72. Secondly, family reunification as provided for by the contested provisions only concerns aliens; therefore there is no infringement of the principle of equality for aliens and nationals with regard to finances to be taken into account;

73. Thirdly, the legislature having provided that partial family reunification could be authorised on grounds of the interests of the children, it had inevitably to be accepted that an application for partial family reunification could be presented to that end; subject only to that qualified interpretation the general rule permitting the exercise of the right to family reunification concerns the family as a whole and is constitutional;

74. Fourthly, exclusion of persons who, at the time of their application are residing in France as students from the right to family reunification, is unwarranted given the general wording conferred by the Preamble to the 1946 Constitution on the situation of these persons with regard to their right to family reunification as different from the situation of other applicants; the paragraph which states that “aliens residing in France with a residence card inscribed “student” are not eligible for family reunification” is accordingly unconstitutional;

75. Fifthly, the period of two years imposed on every alien to send for their new spouse in the event of dissolution or annulment of a previous marriage, for the purpose of family reunification, violates the right to lead a normal family life; accordingly, the paragraph stating “where a marriage between an alien residing in France and his/her spouse, who has been admitted as a family member, is dissolved or annulled by a procedure provided for by law, the alien may not be joined by a new spouse under the reunification scheme until two years have elapsed since the dissolution or annulment of the marriage”, is accordingly unconstitutional;

76. Sixthly, when the representative of the State in the department orders, according to the contested provisions, residential accommodation to be visited by staff of the international migrations” office, any conclusion from a refusal by the occupant to admit them that the conditions on the premises are not being fulfilled must proceed from an unequivocal statement of intention;

77. Seventhly, the conditions for normal family life are those generally accepted in France, the host country, which excludes polygamous marriages; therefore the restrictions imposed by the law on the right to family reunification of polygamous persons and the penalties provided for its enforcement, are constitutional;

78. Eighthly, with a view to the respect for the conditions of family reunification, the legislature may provide that an alien’s residence card be withdrawn if his conduct shows that

he is not complying with these conditions and further, to provide that if the terms are not satisfied at the time of the application for a residence card, the application may be refused;

79. Ninthly, the legislature is within its authority to refer back to a decree in the Council of State for the setting of a period following which the authorisation given for family reunification would become null and void;

80. With the exception of the abovementioned provisions declared unconstitutional, and subject to the abovementioned interpretations, section 23 of the Act referred does not violate any constitutional principle or rule;

ON THE RIGHT OF ASYLUM:

81. The fourth paragraph of the Preamble to the Constitution of 27 October 1946, incorporated by the 1958 Constitution, provides: “Anyone persecuted because of his pursuit of liberty has the right to asylum within the territories of the Republic”; while certain guarantees as to the effect of this principle have been provided by international agreements transposed into domestic law, it is for the legislature to ensure that the constitutional principle is given full effect at all times; since the question concerns a fundamental right, recognition of which conditions the exercise of the rights and freedoms secured generally to resident aliens by the Constitution, the legislation may do no more than determine conditions to see that it is effectively secured and reconciled with other rules and principles of constitutional status;

Regarding section 24:

82. Section 24 adds chapter VII to the Ordinance of 2 November 1945, entitled “Asylum seekers”, comprising five sections, 31, 31 bis, 32, 32 bis and 32 ter; it sets the conditions in which the admission to France of an asylum seeker may be refused and the ways in which, when there is no refusal, a residence card is issued to the party concerned and may, if the case arises, be withdrawn or not renewed; it sets out the guarantees for the status of the party concerned on French territory for as long as they have not been officially recognised as refugees;

83. The Deputies, authors of the second referral, state that this section violates the legal guarantees of the right of asylum which is a constitutional principle, by allowing asylum to be refused according to the stipulations of the Schengen and Dublin Conventions or other similar conventions, despite the fact that the fourth paragraph of the Preamble to the 1946 Constitution does not authorise such a restriction; this section leads the prefects to encroach on the areas of authority of the French Office for the Protection of Refugees and Stateless Persons and the Redress Commission; it refuses the asylum seeker, who is not admitted and who has been turned down by the office, the right to remain on national territory pending the Redress Commission’s appraisal of his case; these provisions moreover violate the principles of rights of the defence and a right to redress;

84. The respect for the right of asylum, a constitutional principle, means in general terms that an alien seeking this right must be allowed to stay in the country provisionally pending a decision on his application; subject to reconciliation of this requirement with the need to preserve order, he must be admitted on such terms that he can actually exercise the rights of the defence that are a fundamental constitutional right enjoyed by all persons of French or foreign nationality and stateless persons;

85. Firstly, under section 31 bis of the Ordinance of 2 November 1945, certain types of asylum seeker may be refused admission to France “subject to respect for Article 33 of the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January

1967”; this is to be understood as applying to all the stipulations of this Convention which might be applied; failing this the Act would be in violation of Article 55 of the Constitution; subject to this interpretation, the said provision is not unconstitutional;

86. Secondly, section 31 bis of the aforementioned Ordinance enumerates four cases in which an asylum seeker may be refused admission to reside in France; the first, provided for under point I of this section, concerns examination of asylum requests that “are within the jurisdiction of another State by virtue of the Dublin Convention of 15 June 1990 on the determination of the State responsible for examining asylum requests presented to Member States of the European Communities or Chapter VII of Title II of the Convention signed at Schengen on 19 June 1990 or commitments identical to those of the Dublin Convention entered into with other States in accordance with the declaration annexed to the minutes of the conference for signing of the Convention of 15 June 1990, from such time as they enter into force”; this section further provides that where in such circumstances admission is refused the applicant may not apply to the French Office for the Protection of Refugees and Stateless Persons for recognition of refugee status; by thus depriving the aliens concerned of the opportunity to have their rights enforced, the legislation violates the abovementioned constitutional principles; thus, since it contains this restriction, the words “for one of the reasons provided for in paragraphs 2 to 4 of the present section”, which appear in the last paragraph of section 31 bis of the Ordinance are unconstitutional;

87. Thirdly, in the three situations provided for in paragraphs 2 to 4 of section 31 bis, if the administrative authority is empowered to oppose the admission of aliens wishing to reside in France, such aliens enjoy the right under section 32 bis to remain in the country pending notification of a negative decision by the French Office for Refugees and Stateless Persons; given the Constitution’s requirements for the maintenance of public order, it is legitimate for the legislature to provide that the applicant has no right to remain in French territory in the interim, as long as a redress procedure is available; the relevant provisions accordingly do not violate the right of asylum and are in no way unconstitutional;

88. Fourthly, the eighth paragraph of the same section states that: “The provisions of this section are without effect on the sovereign right of the State to grant asylum to any person who is within one of the situations described in sub-sections 1-4”, being the four situations in which entry may be refused; as the Constitutional Council held in Decision 91-294 DC dated 25 July 1991, the determination of another State responsible for processing an application for asylum by virtue of an international convention is admissible only if the convention confers the right to consider the same application on France by virtue of its domestic law; the fourth paragraph of the Preamble to the 1946 Constitution requires the judicial and administrative authorities of France to consider the situation of persons applying for asylum and covered by that paragraph i.e. those who are persecuted on account of their action to secure liberty; compliance with that requirement presupposes temporary admission to France pending consideration of the applicant’s situation; the sovereign rights of the State in relation to other parties to the convention must be treated as having been reserved by the legislature for the full observance of the obligation; subject only to that rule of interpretation, the provision referred can be declared constitutional;

Regarding section 25:

89. Section 25, which introduces section 33 into the Ordinance of 2 November 1945, enumerates cases in which an alien who is not a national of a State within the European Economic Community and who is residing illegally in France, may be referred to the responsible authorities of the Member State of the European Economic Community which has granted him admission or residence on its territory; it provides, in the second paragraph of this

section 33, for the decision taken to be implemented automatically by the administrative authorities after the alien has been allowed to submit his comments and to contact his embassy, a consultant or another person of his choice;

90. The Senators, authors of the first referral, state that this section is contrary to the Constitution, in that it removes essential guarantees from the rights of the defence of aliens who are not Community nationals and who have entered France from another state belonging to the European Economic Community; the Deputies, authors of the second referral, believe that this section constitutes a serious violation of the need for safeguarding public order and also violates the rights of the defence and the right to redress by not providing either for the respect of the procedure of removal to the border or for any suspended redress;

91. This section enumerates police measures that the legislature may permit for the attainment of its avowed objective of restricting the number of aliens allowed to enter France in order to reside there; applicants are not deprived of the redress procedures in the ordinary courts against administrative police measures; but these provisions must be read subject to the rule of interpretation to the effect that aliens must seek direct application of the fourth paragraph of the Preamble to the 1946 Constitution; subject to that reservation, the section contested is in no way unconstitutional;

Regarding sections 45 and 46:

92. Sections 45 and 46 state notably that the French Office for the Protection of Refugees and Stateless Persons and the Redress Commission are not responsible for the request submitted by an asylum seeker requiring the application by the State representative in the department and the prefect of police in Paris of the rule set in paragraph 1 of section 31 bis of the Ordinance of 2 November 1945, according to which the admission to France of an asylum seeker may be refused if the examination of the request for asylum is the responsibility of another State with application of the stipulations of international conventions or agreements; section 45 moreover states that “the office may not be required to handle any request for the recognition of refugee status until the State representative in the department or the prefect of police in Paris have registered the request for admission to reside submitted by the asylum seeker”;

93. The Deputies, authors of the second referral, invoke, with regard to these sections, a violation of the right of asylum;

94. On the one hand, the abovementioned provision from section 45 is to be understood as concerning only aliens not in possession of a legal residence card before application for refugee status;

95. On the other hand, the circumstance where, according to national conventions, asylum seekers would be refused admission to reside could only occur in violation of their rights of the defence, depriving them of the ability to inform the French Office for the Protection of Refugees and Stateless Persons of their situation or, failing that, the Redress Commission; therefore section 45, final paragraph is unconstitutional where it states that: “The office is not responsible for examining the request submitted by an asylum seeker when the State representative in the department or in Paris the prefect of police, apply paragraph 1 of section 31 bis of this Ordinance” and section 46 of the Act referred;

ON THE RESPECT FOR ESSENTIAL PRINCIPLES OF INDIVIDUAL FREEDOM:

Regarding section 27:

96. This section modifies the conditions in which an alien may be held in premises which do not belong to the prison service, for the time which is strictly necessary for their departure; it provides that the alien may be held if there is “necessity” and no longer “absolute necessity”; it confers on the judicial authority, after a period of 24 hours has passed, the responsibility of prolonging the detention without there being any requirement for this action to be taken “only in exceptional circumstances”; this restriction therefore would concern the assignation of residence previously provided for; paragraph III of this section provides that the period of detention may be extended to 72 hours by order of the president of the Tribunal de Grande Instance or a *magistrat du siège* designated by the Tribunal when the alien has not submitted any travel document to the authority responsible which would justify an expulsion order or removal to the border;

97. The Senators and the Deputies state that the provisions of this section do not safeguard the rights secured by the Constitution and do not replace these rights by any equivalent guarantees;

98. The legislature has the power to amend the cases in which a detention order may be ordered for an alien who is required to leave the country for the time strictly necessary for his removal provided all rights secured by the Constitution are duly safeguarded; this detention may be ordered only in the cases and under the conditions specified by the legislature, subject to review by the judge and with respect for the rights of the defence;

99. By providing for this action, if necessary, under the abovementioned limiting circumstances, without depriving the judicial authority of the possibility of interrupting the prolongation of detention, the legislature has not violated any constitutional demand;

100. An administrative detention order, even if it is subject to judicial review, may not be renewed except in the cases of absolute urgency and where there is a particularly serious threat to public order, without violating individual freedom secured by the Constitution; by extending to all aliens against whom an expulsion order or an order for removal to the border has been made but who are not in possession of valid travel documents, the possibility of detention for an additional 3-day period in premises not belonging to the prison service, point III of section 27 of the Statute under review is unconstitutional;

Regarding section 29:

101. Section 29 introduces section 36 into the Ordinance of 2 November 1945 which states, in its first paragraph, that any alien resident in France is free to leave the territory; the second paragraph of section 36 states, however, that nationals of States which do not belong to the European Economic Community may be required to declare their intention to leave French territory and to produce an exit visa to this end, when this declaration is necessary to preserve national security;

102. The Deputies, authors of the second referral, believe that this section creates a regime of authorisation which is incompatible with the freedom to come and go and with the right to leave the country;

103. The legislature must reconcile freedom to come and go, which is not confined to national territory but includes the right to leave the country, with the need to preserve national security, both being necessary to preserve rights of constitutional status;

104. By conferring on administrative authorities the power to require certain categories of aliens to make a prior declaration before leaving France for the purposes of preserving national security, the legislature does not subject the right to leave French territory to prior authorisation; the issuance of an exit visa does not enable the authority to consider the value of the grounds advanced by the applicant for his travel; the visa application is a formal notification and the visa must be issued as of right upon its presentation; subject to this rule of

interpretation, the section 29 of the Statute under review does not impose excessive restrictions on the right to come and go;

Regarding section 31:

105. Section 31 of the Statute, applicable to nationals and to aliens, amends the provisions of the Civil Code on marriage by inserting several new sections; it provides that where there are grounds for suspecting that a marriage is to be contracted for purposes other than for living together as man and wife, the registrar reports to the prosecutor who may decide on a postponement of the celebration of the marriage for a period not exceeding three months;

106. The Deputies, authors of the second referral, allege that this section constitutes a penalty manifestly disproportionate to the circumstances, “moreover these circumstances cannot be fully established”, and violates the right of redress, infringing the freedom of marriage and respect for private life;

107. Section 175-2 inserted in the Civil Code by point III of section 31 of the Act referred, requires the Registrar to report to the prosecutor situations where he suspects that a marriage is to be contracted for purposes other than for living together as husband and wife; the prosecutor has fifteen days to decide whether to order postponement of the celebration of the marriage for up to three months, no provision being made for appeal against his order; by imposing these conditions in advance of a marriage, the relevant provisions violate the principle of freedom of marriage, which is a component of individual freedom; the provisions not being severable from the rest of section 175-2 of the Civil Code, that section must be regarded in its entirety as unconstitutional;

Regarding sections 33, 35, 43 and 44:

108. The implementation of these provisions allow the judicial authority to prohibit specific categories of aliens from entering the country where they have been convicted of specific crimes and have not been penalised up until then;

109. The Deputies, authors of the second referral, submit that these measures impose excessive restrictions on individual freedom and are insufficiently clear on the gravity of the offence which would allow a tribunal to prohibit admission to French territory for an alien;

110. The implementation of the contested provisions is amenable to judicial review; review decisions must give reasons based on the gravity of the offences; consequently the powers conferred by the legislature do not violate the principle of that penalties must be determined by statute and do not impose excessive restrictions on individual freedom;

Regarding section 34:

111. Paragraphs I, II and IV of this section provide that, when an alien is pronounced guilty by a court of an offence against the second paragraph of section 27 of the Ordinance of 2 November 1945 for not having submitted his travel documents to the responsible administrative authority, thereby exposing himself to a decision refusing admission to France, removal to the border or expulsion, the court may defer sentencing and place the alien under the judicial detention regime for a maximum period of three months, enjoining him to submit his travel documents to the administrative authority; this action implies detention in premises not belonging to the prison service; if the alien submits to the injunction the prosecutor informs the court before the expiry of the postponement period, either automatically or at the request of the alien in order that sentence may be passed; the court may also be informed at the request of the administrative authority;

112. The Deputies, authors of the second referral, state that these provisions constituting a violation of procedure, “the judicial form being used for administrative police purposes”, does not provide the necessary legal guarantees for the constitutional demands for the respect of individual freedom and the principles arising from Article 8 of the Declaration of Human Rights;

113. Under Article 66 of the Constitution; “No one may be arbitrarily detained. As the guardian of individual freedom, the judiciary shall ensure respect for the principle within the conditions provided for by legislation”;

114. Judicial detention is not a penalty; since it is an action which aims to deprive a person of his freedom completely for a fixed period during a criminal trial, it must be accompanied by equivalent guarantees to those granted to persons in temporary detention; thus the contested provision does not satisfy the legal guarantees of individual freedom; thus I, II and IV of section 34 of the Statute are unconstitutional;

ON THE SOCIAL RIGHTS OF ALIENS:

Regarding section 36:

115. This section modifies various provisions of the Social Security Code; paragraph I requires affiliation to a compulsory social security scheme on condition of lawfulness of residence and employment for aliens or proof that a request has been submitted for the renewal of a residence permit; where these conditions are violated, contributions remain due and the authorities in charge of the compulsory social security scheme are required to check the lawfulness of the situation of alien clients when they sign up and at regular intervals; paragraph II of this section requires lawfulness of residence as a condition for entitlement to invalidity benefit and pension for all foreign nationals; paragraph III on entitlement to sickness insurance, maternity and death benefit applies the same rule to which there is only one exception which is minors when the head of household is himself in a lawful situation; with this provision the legislature does not intend the exclusion of the persons concerned nor their dependents from the right to apply an automatic prolongation of their rights to benefit provided for by section L. 161-8 of the social security code;

116. The provisions of section 36 are moreover to be combined with those of section 48 which, apart from invalidity benefits, preserve free right to benefits for all foreign nationals on the basis of contributions made before the Statute came into effect; the legislature, by imposing a condition of lawful residence on the drawing of invalidity benefits and pension, legally acquired by them after the Statute came into effect or legalised by virtue of said section 48, intends that the administrative authority, while bearing in mind public order constraints, shall grant aliens requesting admission to France to draw these benefits, a short-term residence permit allowing them to do so;

117. The Deputies, authors of the second referral, allege that these provisions violate the respect for individual freedom, the principle of equality and the right to private life, which are, in their opinion, constitutional principles; they state moreover that this section swells the social security coffers for no good reason;

118. Aliens residing and working legally on French territory who do not satisfy the same conditions on lawfulness are not in the same situation with regard to the object of the Statute; according to this Statute, nationals and aliens are in different situations; therefore there is no violation of the principle of equality;

119. The contributions made to compulsory social security schemes resulting from affiliation to these schemes are compulsory payments made by employers and insured persons; these contributions open up access to rights to services and benefits coming out of these regimes;

120. By requiring conditions of lawfulness of residence and employment, the legislature has been able, without violating any constitutional principle, to draw the conclusions it has laid down with regard to rights to insurancesickness benefits, maternity benefits and death benefits and with regard to drawing invalidity benefits and pension in France;

121. When providing that bodies responsible for managing compulsory social security schemes may have access to State data files to ensure that foreign insured persons are lawfully resident in France, the legislature explicitly extended the application of provisions to secure individual freedom laid down by the data-protection legislation;

Regarding section 38:

122. Section 38 of the Statutes modifies section 186 of the Code on the Family and social aid and sets the conditions in which aliens have the right to benefit from certain forms of social aid;

123. The Deputies, authors of the second referral, state that the provisions of this section violate the eleventh paragraph of the Preamble to the 1946 Constitution;

124. Under the eleventh paragraph of the Preamble to the Constitution of 27 October 1946, confirmed by the Constitution of 4 October 1958, the Nation “shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have to the right to receive suitable means of existence from society”;

125. The legislature and the government, each in their respective areas of authority, are to determine how these principles are to be implemented in compliance with the principles set out in the eleventh paragraph of the Preamble;

126. On the one hand, the legislature has provided, for foreign nationals, social aid in the form of child benefit, admission to a residential centre and social rehabilitation, medical aid in the case of treatment by a health authority or prescriptions issued in conjunction with this, including for cases of external consultation, home help care on the condition that the parties concerned are lawfully resident in France, i.e. have lived in metropolitan France for a continuous period of at least three years, benefits for aged persons on the condition that they can prove continuous residence in metropolitan France for at least fifteen years before their seventieth birthday;

127. On the other hand, the legislature has made other forms of social benefit conditional on the lawfulness of residence of the persons concerned; however, it has handed over responsibility to the minister for social affairs regarding exceptions to this general rule as well as conditions of residence in the case of home help care to take account of exceptional circumstances; this provision shall be extended to ensure the effective implementation of the principles set out in the provisions quoted in the 1946 Preamble to the Constitution; under this qualified interpretation the contested provisions do not violate the Constitution;

Regarding section 40:

128. Section 40 introduces into the Construction and Housing Code a provision according to which housing benefit is not payable to aliens not having justified the lawfulness of their residence in France;

129. The Deputies, authors of the second referral, maintain that this restriction is contrary to the eleventh paragraph of the Preamble to the Constitution of 27 October 1946;

130. With regard to the nature of the benefit concerned and given the state of the legislation on social aid, the restriction introduced by the legislature does not violate constitutional demands set out in the above mentioned provisions; therefore no infringement has occurred;

Regarding section 41:

131. Section 41 introduces into the Labour Code a provision which ensures that registering with the national employment agency is conditional on the lawfulness of an alien's situation with regard to residence and employment legislation; it authorises this office access to this end to State services files;

132. The Deputies, authors of the second referral, maintain that this provision violates the principle of equality between nationals and aliens and infringes against the respect for private life which they believe to be a constitutional principle;

133. With regard to the purpose of the Statute, nationals and aliens are not placed in the same situation and the legislature explicitly seeks to ensure the application of provisions to secure individual freedoms laid down by the data-protection legislation; therefore there is no violation;

134. The Constitutional Council does not of its own motion review provisions other than those of the Statute referred for constitutionality;

Has decided as follows:

Article 1

The following are unconstitutional:

- Section 14(II);
- In section 23, the words: “Aliens residing in France with a residence card inscribed “student” are not eligible for family reunification.”; and the words: “where a marriage between an alien residing in France and his/her spouse who has been admitted as a family member is dissolved or annulled by a procedure provided for by law, the alien may not be joined by a new spouse under the family reunification scheme until two years have elapsed since the dissolution or annulment”;
- In section 24, regarding the last paragraph of section 31 bis of the Ordinance of 2 November 1945, the words “for one of the reasons mentioned in points 2 to 4 of the present section”;
- Section 27(III);
- Section 31(III), section 175-2 of the Civil Code;
- Section 34(I, II and IV);
- In section 45 the final paragraph;
- Section 46;

Article 2

This decision shall be published in the *Journal officiel de la République française*.

Deliberated by the Constitutional Council at its sittings of 12 and 13 August 1993.