Decision no. 2011−631 DC
of 9 JUNE 2011

Law on immigration, integration and citizenship

In the conditions provided for by Article 61-2 of the Constitution, the Constitutional Council was seized of an application relating to the Law on immigration, integration and citizenship on 17 May 2011 by Mr Jean−Pierre BEL, Ms Michèle ANDRÉ, Messrs Alain ANZIANI, David ASSOULINE, Bertrand AUBAN, Claude BÉRIT−DÉBAT, Ms Marie−Christine BLANDIN, Ms Maryvonne BLONDIN, Mr Yannick BODIN, Ms Nicole BONNEFOY, Messrs Yannick BOTREL, Didier BOULAUD, Ms Alima BOUMEDIENE−THIERY, Mr Martial BOURQUIN, Ms Bernadette BOURZAI, Mr Michel BOUTANT, Ms Nicole BRICQ, Messrs Jean−Pierre CAFFET, Jean−Louis CARRÈRE, Ms Françoise CARTRON, Mr Bernard CAZEAU, Ms Monique CERISIER−ben−GUIGA, Messrs Yves CHASTAN, Roland COURTEAU, Yves DAUDIGNY, Jean−Pierre DEMERLIAT, Ms Christiane DEMONTÈS, Messrs Jean DESESSARD, Claude DOMEIZEL, Bernard FRIMAT, Charles GAUTIER, Serge GODARD, Didier GUILLAUME, Edmond HERVÉ, Ronan KERDRAON, Ms Bariza KHIARI, Messrs Yves KRATTINGER, Serge LAGAUCHE, Jacky LE MENN, Ms Raymonde LE TEXIER, Ms Claudine LEPAGE, Messrs Jean−Jacques LOZACH, Roger MADEC, Marc MASSION, Rachel MAZUIR, Jean−Pierre MICHEL, Gérard MIQUEL, Jean−Jacques MIRASSOU, Ms Renée NICOUX, Messrs François PATRIAT, Bernard PIRAS, Ms Gisèle PRINTZ, Messrs Daniel RAOUL, François REBSAMEN, Daniel REINER, Thierry REPENTIN, Michel SERGENT, Raphaël SIGNÉ, Jean−Pierre SUEUR, Simon SUTOUR, Ms Catherine TASCA, Messrs Michel TESTON, René TEULADE, Richard YUNG, Mmes Nicole BORVO COHEN−SEAT, Eliane ASSASSI, Marie−France BEAUFILS, Evelyne DIDIER, Messrs Guy FISCHER, Thierry FOUCAUD, Ms Brigitte GONTHIER−MAURIN, Mr Robert HUE, Ms Marie−Agnès LABARRE, Messrs Jack RALITE, Ivan RENAR, Ms Odette TERRADE, Mr Bernard VERA, Robert TROPEANO, Jean Pierre CHEVÈNEMENT, Mme Anne−Marie ESCOFFIER, Messrs Jacques MÉZARD, Jean−Michel BAYLET, Ms Françoise LABORDE, Messrs Raymond VALL, Yvon COLLIN, Senators, and on the same day by Mr Jean−Marc AYRAULT, Ms Patricia ADAM, Ms Sylvie ANDRIEUX , Messrs Jean−Paul BACQUET, Dominique BAERT, Gérard BAPT, Jacques BASCOU, Christian BATAILLE, Ms Delphine BATHO, Ms Marie−Noëlle BATTISTEL, Ms Chantal BERTHELOT, Mr Jean−Louis BIANCO, Ms Gisèle BIÉMOURET, Messrs Serge BLISKO, Patrick BLOCHE, Jean−Michel BOUCHERON, Ms Marie−Odile BOUILLÉ, Mr Christophe BOUILLON, Ms Monique BOULESTIN, Mr Pierre BOURGUIGNON, Ms Danielle BOUSQUET, Messrs François BROTTES, Alain CACHEUX, Jérôme CAHUZAC, Thierry CARCENAC, Christophe CARESCHE, Laurent CATHALA, Bernard CAZENEUVE, Guy CHAMBEFORT, Jean−Paul CHANTEGUET, Gérard CHARASSE, Alain CLAEYS, Jean−Michel CLÉMENT, Ms Marie−Françoise CLERGEAU, Mr Gilles COCQUEMPOT, Ms Catherine COUTELLE, Ms Pascale CROZON, Mr Frédéric CUVILLIER, Ms Claude DARCIAUX, Mr Pascal DEGUILHEM, Ms Michèle ELAUNAY, Messrs Bernard DEROSIER, Michel DESTOT, Julien DRAY, Tony DREYFUS, Jean−Pierre UFAU, William DUMAS, Ms Laurence DUMONT, Messrs Jean−Paul DUPRÉ, Yves DURAND, Olivier DUSSOPT, Christian ECKERT, Henri EMMANUELLI, Laurent FABIUS, Albert FACON, Ms Martine FAURE, Mr Hervé

FÉRON, Ms Aurélie FILIPPETTI, Mr Pierre FORGUES, Ms Valérie FOURNEYRON, Messrs Jean−Louis GAGNAIRE, Guillaume GAROT, Jean GAUBERT, Paul GIACOBBI, Jean−Patrick GILLE, Joël GIRAUD, Daniel GOLDBERG, Marc GOUA, Ms Élisabeth GUIGOU, Mr David HABIB, Ms Danièle HOFFMAN−RISPAL, Ms Sandrine HUREL, Ms Monique IBORRA, Ms Françoise IMBERT, Messrs Michel ISSINDOU, Serge JANQUIN, Henri JIBRAYEL, Régis JUANICO, Ms Marietta ARAMANLI, Ms Conchita LACUEY, Messrs Jérôme LAMBERT, François LAMY, Jack LANG, Ms Colette LANGLADE, Messrs Jean LAUNAY, Jean−Yves LE BOUILLONNEC, Gilbert LE BRIS, Jean−Yves LE DÉAUT, Jean−Marie LE GUEN, Ms Annick LE LOCH, Mr Bruno LE ROUX, Ms Marylise LEBRANCHU, Ms Catherine LEMORTON, Ms Annick LEPETIT, Messrs Bernard LESTERLIN, Serge LETCHIMY, Albert LIKUVALU, Jean MALLOT, Ms Jacqueline MAQUET, Ms Jeanny MARC, Messrs Jean−René MARSAC, Philippe MARTIN, Ms Martine MARTINEL, Ms Frédérique MASSAT, Mr Didier MATHUS, Ms Sandrine MAZETIER, Messrs Michel MÉNARD, Kléber MESQUIDA, Jean MICHEL, Pierre MOSCOVICI, Pierre−Alain MUET, Philippe NAUCHE, Henri NAYROU, Alain NÉRI, Ms Dominique ORLIAC, Mr Christian PAUL, Ms George PAU−LANGEVIN, Messrs Germinal PEIRO, Jean−Luc PÉRAT, Ms Marie−Françoise PÉROL−DUMONT, Ms Sylvia PINEL, Ms Martine PINVILLE, Mr François PUPPONI, Ms Catherine QUÉRÉ, Messrs Jean−Jack QUEYRANNE, Dominique RAIMBOURG, Ms Marie Line REYNAUD, Messrs Alain RODET, Marcel ROGEMONT, Bernard ROMAN, René ROUQUET, Michel SAINTE MARIE, Michel SAPIN, Ms Odile SAUGUES, Mr Christophe SIRUGUE, Ms Christiane TAUBIRA, Mr Jean−Louis TOURAINE, Ms Marisol TOURAINE, Messrs Philippe TOURTELIER, Jean−Jacques URVOAS, Daniel VAILLANT, Jacques VALAX, André VALLINI, Manuel VALLS, Michel VERGNIER, André VÉZINHET, Alain VIDALIES, Michel VILLAUMÉ, Jean−Claude VIOLLET, Philippe VUILQUE, Ms Marie Hélène AMIABLE, Mr François ASENSI, Ms Martine BILLARD, Messrs Alain BOCQUET, Patrick BRAOUEZEC, Pierre−Jean BRARD, Ms Marie−George BUFFET, Messrs Jean−Jacques CANDELIER, André CHASSAIGNE, Jacques DESALLANGRE, Marc DOLEZ, Ms Jacqueline FRAYSSE, Messrs André GERIN, Pierre GOSNAT, Jean−Paul LECOQ, Roland MUZEAU, Daniel PAUL, Jean−Claude SANDRIER, Michel VAXÈS, Yves COCHET, Noël MAMÈRE, François de RUGY, Ms Anny POURSINOFF, Mr Alfred MARIE−JEANNE and Ms Huguette BELLO, Members of Parliament.

THE CONSTITUTIONAL COUNCIL,

Having regard to the Constitution;

Having regard to Ordinance no. 58-1067 of 7 November 1958 as amended, concerning the basic law on the Constitutional Council;

Having regard to the basic law no. 2009−403 of 15 April 2009 on the application of Articles 34−1, 39 and 44 of the Constitution;

Having regard to Regulation (EC) no. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code);

Having regard to Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals;

Having regard to Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment;

Having regard to Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals;

Having regard to the Civil Code;

Having regard to the Code on the Entry and Residence of Foreigners and the Right of Asylum;

Having regard to the Criminal Code;

Having regard to Decision no. 2003-484 DC of the Constitutional Council of 20 November 2003;

Having regard to decree no. 95-50096 of the Cour de Cassation (second civil chamber) of 18 December 1996;

Having regard to the observations of the President of the National Assembly, registered on 25 May 2011;

Having regard to the observations of the Government, registered on 27 May 2011;

Having regard to the observations in response presented by the applicant Senators registered on 31 May 2011;

Having regard to the observations in response presented by the applicant Members of Parliament registered on 31 May 2011;

Having heard the Rapporteur;

1. Considering that the applicant Senators and Members of Parliament have referred the Law on immigration, integration and citizenship to the Constitutional Council; that they claim that Articles 2, 4, 10, 12, 13, 16, 26, 33, 37, 40, 44, 47, 51, 56, 57, 58, 70, 94, 95 and 98 thereof are unconstitutional; that the applicant Members of Parliament moreover object to the procedure according to which the law was adopted as a whole; that they have requested the Constitutional Council to verify whether Articles 73 to 88 are constitutional;

− WITH RESPECT TO THE ADOPTION PROCEDURE:

2. Considering, in the first place, that the applicant Members of Parliament aver that the failure to convene the Conference of the Presidents of the National Assembly during the ten days after the tabling of the draft bill and the accompanying impact study precluded the possibility of objecting to the sincerity of the latter; that, consequently, it had disregarded the requirement of sincerity of parliamentary debate;

3. Considering that the third and fourth subparagraphs of Article 39 of the Constitution provide that: "The tabling of Government Bills before the National Assembly or the Senate, shall comply with the conditions determined by an organic law. Government Bills may not be included on the agenda if the Conference of Presidents of the first House to which the Bill has been referred declares that the rules determined by the organic law have not been complied with. In the case of disagreement between the Conference of Presidents and the Government, the President of the relevant House or the Prime Minister may refer the matter to the Constitutional Council, which shall rule within a period of eight days"; that the first subparagraph of Article 8 of the aforementioned basic law of 15 April 2009 provides that: "Draft bills shall be subject to an impact study. The documents setting out the results of this impact study shall be appended to the draft laws upon transmission to the Conseil d'État. They shall be filed with the bureau of the first assembly to take action at the same time as the draft bills to which they refer"; that, according to the first subparagraph of Article 9 of the same organic law, the Conference of Presidents of the Assembly for the bureau to which the draft bill was submitted shall have a time-limit of ten days after it was tabled in order to determine whether or not the rules on the impact studies have been complied with;

4. Considering that the draft bill was tabled on 31 March 2010 at the bureau of the National Assembly; that a meeting of the Conference of Presidents was held on 6 April 2010, within the time-limit of ten days after it was tabled; that the latter did not conclude that the rules on the impact study had not been complied with; that the objection averring the failure to hold a meeting of the Conference of Presidents that could have objected to the impact study fails on point of fact;

5. Considering, secondly, that according to the applicant Members of Parliament, the scheduling during the first reading before the National Assembly of a programmed legislative timetable with an insufficient duration of thirty hours and the lack of any supplementary time determined on the basis of the twelfth subparagraph of Article 49 of the Regulations of the National Assembly had the effect, taking account of the extent of the amendments made in the committee stage and the number of amendments tabled during the session, of violating the requirements of a clear and sincere parliamentary debate;

6. Considering, first, that in this case, the fixing at thirty hours of an initial programmed legislative timetable was not manifestly disproportionate having regard to the requirements of a clear and sincere parliamentary debate;

7. Considering, secondly, that pursuant to Article 49 of the Regulations of the National Assembly, it is for the Conference of Presidents to decide whether to grant supplementary debating time; that it emerges from the parliamentary debates that since no request was made for supplementary debating time during the meeting of that conference, which was especially convened for that purpose, the latter was not able to decide to

schedule additional debating time; that, accordingly, the objection averring the failure to set a timetable for additional debating time must rejected;

8. Considering, thirdly, that the applicant Members of Parliament consider that the adoption, during the examination by the National Assembly of the text drafted by the Joint Committee, of an amendment intended to ensure the constitutionality of an article of a draft bill, notwithstanding the rejection of a prior motion for dismissal based in particular on the unconstitutionality of the draft bill, disregarded the requirement that there be a sincere debate;

9. Considering that it follows from the scheme of Article 45 of the Constitution, and in particular its first subparagraph, according to which: "Every Government or Private Member's Bill shall be considered successively in the two Houses of Parliament with a view to the passing of an identical text", that the additions or amendments which may be made after the first reading by Members of Parliament and by the Government must be directly related to a provision that is under discussion; that, nonetheless, this obligation does not apply to amendments intended in particular to secure compliance with the Constitution; that, notwithstanding the rejection of a prior motion for dismissal, the adoption of an amendment intended to secure compliance with the Constitution does not breach constitutional requirements relating to parliamentary procedure; that, accordingly, the objection averring that the requirement for a sincere parliamentary debate was disregarded must be rejected;

− WITH RESPECT TO ARTICLE 2:

10. Considering that Article 2 amends Article 21−24 of the Civil Code, which subjects naturalisation to the requirement of assimilation into the French community; that it completes this Article with a second subparagraph, according to which: "Upon conclusion of the control procedure regarding his assimilation, the interested party shall sign the charter of rights and duties of French citizens. This charter, which has been approved by decree of the Conseil d'État, recalls the essential principles, values and symbols of the French Republic";

11. Considering that, according to the applicants, by reserving the approval of this charter to the administrative authorities, these provisions grant the administrative authorities the power to set the rules concerning fundamental rights and citizenship; that in this way they do not respect the scope of Parliament's jurisdiction and "the constitutional requirement that legislation be clear and intelligible";

12. Considering that pursuant to Article 34 of the Constitution, it is for the law to determine the rules concerning civil rights and the fundamental guarantees granted to citizens in order to regulate the exercise of public freedoms as well as citizenship;

13. Considering that it is for the legislator to exercise in full the jurisdiction granted to it under the Constitution, including in particular Article 34; that the full exercise of this jurisdiction and the constitutional law requirement that the law be intelligible and accessible as resulting from Articles 4, 5, 6 and 16 of the 1789 Declaration of the Rights of Man and the Citizen require that it adopt sufficiently precise precisions and unequivocal formulae; that it must in actual fact protect those to whom the law applies against an interpretation in breach of the Constitution or against the risk of arbitrary rulings, and may

not allocate to the administrative authorities or the courts responsibility for setting rules which determination has been granted under the Constitution solely to law;

14. Considering that the contested provisions are not obscure or ambiguous; that they are limited to reserving the task of approving a charter, the sole objective of which is to "recall the essential principles, values and symbols of the French Republic" to a decree of the Conseil d'État; that they do not delegate the power to determine the rules established by the Constitution or which it requires be determined by law; that, consequently, the objection fails on point of fact;

15. Considering that Article 2 does not violate the Constitution;

− WITH RESPECT TO ARTICLE 4:

16. Considering that paragraph 6 of section 1 of Chapter III of Title I bis of Book I of the Civil Code includes provisions common to several procedures for acquiring French citizenship; that Article 4 of the law referred completes this paragraph with Article 21−27−1, which provides that: "When acquiring French citizenship by decision of the public authorities or by declaration, the interested party shall indicate to the competent authority the citizenship or citizenships that he already holds, the citizenship or citizenships that he will retain in addition to French citizenship as well as the citizenships that he intends to renounce";

17. Considering that, according to the applicants, this Article establishes a distinction between French citizens depending upon whether they acquired citizenship by birth or by some other means; that in addition, the obligation to declare the citizenship or citizenships which the person acquiring French citizenship will retain or those which he intends to renounce would impose an excessive burden on those persons;

18. Considering that the contested provisions are limited to specifying that the persons acquiring French citizenship by declaration or decision of the public authorities shall indicate to the French authorities whether or not they will retain another citizenship; that it does not establish any difference in treatment between persons holding French citizenship; that they do not violate any other constitutional requirement; that, accordingly, they are not unconstitutional;

− WITH RESPECT TO ARTICLE 10:

19. Considering that paragraph II of Article 10 amends Article L. 221−2 of the Code on the Entry and Residence of Foreigners and on the Right of Asylum relating to the definition of the waiting areas; that it incorporates a second subparagraph into this Article, which provides that: "If it is clear that a group of at least ten foreign nationals is entering into France other than through a border crossing in the same place or at a variety of places no more than ten kilometres distant from one another, the waiting area shall, for a maximum period of twenty six days, be deemed to extend from the place or places where the interested parties were discovered until the closest border crossing";

20. Considering that, according to the applicants, the imprecise nature of these provisions has the effect of permitting "the transformation of potentially the entire national territory into a waiting area"; that, accordingly, they do not offer sufficient guarantees

against arbitrary action, impair the effective exercise of the right of asylum and violate the principle of the indivisibility of the Republic;

21. Considering, first, that the contested provisions are intended, having regard to the rules on entry into France, to deal with difficulties in the treatment of the situation in which a group of people that have just arrived in France other than through a border crossing; that the extension of the waiting area to between the place where the interested parties were discovered and the nearest border crossing has the effect of permitting the application of the rules contained in Title II of Book II of the Code on the Entry and Residence of Foreigners and on the Right of Asylum solely to foreign nationals from the group whose arrival justified the implementation of this measure; that this extension has no impact on the legal arrangements applicable to other foreign nationals located in this area but who do not belong to the group; that, accordingly, the objections averring the violation of the principle of the indivisibility of the Republic and the effective exercise of the right of asylum must be rejected;

22. Considering, secondly, that all members of the group concerned must have been identified within the perimeter defined by law, which cannot be extended; that the border crossings are precisely defined and published according to aforementioned Article 34(b) of the Regulation of the European Parliament and of the Council of 15 March 2006; that the waiting area is only established for a period of twenty six days, which cannot be extended or renewed; that the contested measures may only be implemented, under the control of the competent courts, if it is clear that a group has just arrived in France; that, under these conditions, the legislator has adopted sufficiently precise and targeted provisions in order to provide guarantees against the risk of arbitrary action;

23. Considering that paragraph II of Article 10 does not violate the Constitution;

− WITH RESPECT TO ARTICLES 12 AND 57:

24. Considering that Article 12 completes Article L. 222−3 of the Code on the Entry and Residence of Foreigners and on the Right of Asylum in respect of the procedure regulating the examination by the Custodial Judge of an application to hold a foreign national in a waiting area; that it completes this Article by a subparagraph which provides that: "No irregularity committed prior to the hearing concerning the first extension of detention in the waiting area may be raised during the hearing relating to the second extension, failing which the objection will be ruled procedurally inadmissible ex officio"; that Article 57 introduces Article L. 552−8 into the same Code, establishing the same rule of procedural inadmissibility in relating to the extension of administrative detention;

25. Considering that, according to the applicants, the procedural inadmissibility of irregularities raised after the first hearing on the extension of custody in the waiting area or of administrative detention disregards the requirements specified under Article 66 of the Constitution, which requires that the judicial authorities be able to exercise their task of upholding personal freedom in all circumstances; that they consequently request the Constitutional Council to rule these provisions unconstitutional or, at the very least, to create an exception where the grounds for procedural inadmissibility were ascertained after the first hearing;

26. Considering that Article 16 of the 1789 Declaration provides: "A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all"; that this provision guarantees the right of interested parties to obtain effective judicial remedy; that moreover, the proper administration of justice amounts to an objective of constitutional significance pursuant to Articles 12, 15 and 16 of the 1789 Declaration;

27. Considering that the contested provisions have the objective of establishing the applicability of the case law of the Cour de cassation, both in respect of administrative detention as well as custody in the waiting area, and to extend to all irregularities this case law, according to which the conditions governing the questioning of foreign nationals may only be challenged during the proceedings pending in relation to the first application for an extension of the detention of the foreign national and may no longer be brought before the court when hearing a new application for extension; that the irregularities which may no longer be raised after the first hearing for extension are those eligible to be raised during that hearing; that by requiring that these irregularities be raised during the first hearing before the Custodial Judge, the contested provisions pursue the goal with constitutional status of the proper administration of justice, without violating the right to effective judicial relief; that, consequently, Articles 12 and 57 are not unconstitutional;

− WITH RESPECT TO ARTICLE 13:

28. Considering that Article 13 also amends Article L. 222−3 of the Code on the Entry and Residence of Foreigners and the Right of Asylum; that Article 13(2) inserts a third subparagraph into this Article pursuant to which: "The provision of guarantees as to his subsequent appearance by the foreign national is not by itself capable of justifying the refusal to extend his detention in a waiting area";

29. Considering that, according to the applicants, by removing the right for the Custodial Judge to take account exclusively of the guarantees by the foreign national as to his subsequent appearance for the purposes of deciding on his release, this provision violates the judge's role as the guardian of individual freedom; that it is also claimed to violate the principle according to which the deprivation of freedom amounts to an exceptional measure and should not become a principle;

30. Considering that pursuant to Article L. 221−1 of the same Code, the detention in a waiting area of a foreign national who has arrived in France may be ordered both if he was not authorised to enter into France and also if he requests admission on the grounds of asylum; that, accordingly, in preventing a decision with the effect of permitting that foreign national to enter into France from being grounded exclusively on the fact that he provided guarantees as to his subsequent appearance, the contested provision does not violate any constitutional requirement; that Article 13 does not violate the Constitution;

− WITH RESPECT TO ARTICLES 16 AND 58:

31. Considering that Articles 16 and 58 amend respectively Articles L. 222−5 and L. 222−6 of the Code on the Entry and Residence of Foreigners and the Right of Asylum, applicable to the procedure for the extension of custody in the waiting area, and Article L. 552−10 of the same Code, applicable to the procedure for extending

administrative custody; that they increase from four to six hours the time-limit during which the foreign national is nonetheless detained by the judicial authorities, if the Custodial Judge has decided to put an end to the custody in the waiting area or the administrative detention, in order to enable the Public Prosecutor, if he appeals against that decision, to apply to the first president of the court of appeal seeking a ruling that his appeal has suspensory effect;

32. Considering that, according to the applicants, the extension from four to six hours of the time-limit for the detention by the judicial authorities of a person whose release has been ordered by the Custodial Judge violates Article 66 of the Constitution;

33. Considering that, in the aforementioned decision of 20 November 2003, the Constitutional Council upheld the provisions from which those amended by Articles 16 and 58 of the law referred originated; that, due to their limited effect, the latter cannot be deemed to violate the aforementioned constitutional requirements; that, accordingly, Articles 16 and 58 are not unconstitutional;

− WITH RESPECT TO ARTICLES 26, 40 AND 70:

34. Considering that Article 26 amends the first phrase of Article L. 313 11(11) of the Code on the Entry and Residence of Foreigners and the Right of Asylum; that this phrase provides for the automatic issue of a temporary residence card designated for "private life and family" purposes to a foreign national ordinarily resident in France whose state of health requires medical provision, the lack of which could entail exceptionally serious consequences for him; that, in the current formulation of this phrase, the issue of the aforementioned card is conditional upon the prerequisite that it is impossible for the foreign national to "benefit effectively from appropriate treatment in his country of origin"; that Article 26 on the one hand replaces this condition with that of the "lack" of appropriate treatment in his country of origin, whilst on the other hand introduces an exception for "exceptional humanitarian circumstances assessed by the administrative authorities after an opinion has been obtained from the general director of the regional health authority"; that Article 40 of the law referred, which amends Article L. 511 4 of the same Code, infers the consequences of this amendment in the event that the obligation to leave France cannot be imposed upon a seriously ill foreign national; that Article 70, which amends Articles L. 521 3 and L. 532 4 of the Code, provides to the same effect in the first place if the seriously ill foreign national cannot be issued with an expulsion order other than "in cases involving conduct of such a nature as to infringe the fundamental interests of the State, or which is related to activities of a terrorist nature, or which constitutes express and deliberate incitement to discrimination, hatred or violence against a specific person or group of persons" and, secondly, in the event that the seriously ill foreign national is placed under house arrest in order for the expulsion order issued against him to be enforced;

35. Considering that, according to the applicants, these provisions do not comply with the constitutional law requirement that the law be intelligible and accessible; that in particular, they consider that the lack of precision in the concept of "exceptional humanitarian circumstances" will have the effect of causing interpretative differences that are contrary to the principle of equality; that they also consider that, due to its lack of precision, the procedure that results in the assessment of this concept being left to the administrative authorities will translate into a violation of medical confidentiality of such a nature as to violate the right to respect for one's private life;

36. Considering that, on the one hand, in adopting the criterion of the "lack" of appropriate treatment in the country of origin or of return, the legislator intended to put an end to the uncertainties and interpretative differences arising out of the appreciation of the socio-economic conditions in which the interested party could "effectively benefit" from appropriate treatment in this country; that on the other hand, by creating an exception for cases involving exceptional humanitarian circumstances, it intended to be able to take account of individual situations in which, notwithstanding the existence of appropriate treatment in the country of origin or of return, the maintenance of the interested party in France was justified; that, in order to achieve this, it vested the power to assess this individual situation in the administrative authorities, after obtaining an opinion from the director general of the regional health agency, the latter in turn having received medical advice; that in these circumstances, only the interested party may provide the administrative authority with the information regarding his state of health that may be capable of justifying his request; that accordingly, the contested provisions are precise and unequivocal; that it follows from the above that the objections averring the violation of the requirement that the law be accessible and intelligible and the violation of the private sphere must be rejected; that Articles 26, 40 and 70 are not unconstitutional;

− WITH RESPECT TO ARTICLE 33:

37. Considering that Article 33 completes the first subparagraph of Article L. 623 1 of the Code on the Entry and Residence of Foreigners and the Right of Asylum; that it specifies that "if a foreign national who has contracted marriage has concealed his intentions from his spouse" provision is also made for a term of imprisonment of up to five years and a 15 000 euro fine as punishment for the contracting of a marriage or the recognition of a child for the sole purposes of obtaining leave to reside or to benefit from protection against deportation, either in person or through a third party, or for the sole purposes of acquiring French citizenship, either in person or through a third party;

38. Considering that, according to the applicants, these provisions establish an unconstitutional difference in treatment between French citizens and foreign nationals;

39. Considering that Article 6 of the Declaration of 1789 provides that the law “must be the same for all, whether it protects or punishes”; that the principle of equality does not prevent the legislator from resolving different situations in different ways, or from derogating from equality on the grounds of the general interest, provided that in both cases the resulting difference in treatment is directly related to the objective of the law establishing it;

40. Considering that in adopting the aforementioned provisions, the legislator limited itself to recalling that the fact that a foreign national has concealed from his spouse, who is in good faith, his intention only to contract marriage for the purpose of obtaining leave to reside or to benefit from protection against deportation or to obtain French citizenship is punished; that it does not establish any difference in treatment; that accordingly, the objection averring the violation of the principle of equality must be rejected; that Article 33 is not unconstitutional;

− WITH RESPECT TO ARTICLE 37:

41. Considering that Article 37 has the objective of transposing the provisions of the aforementioned Directive 2008/115/EC; that to this effect it amends the wording of Article L. 511−1 of the Code on the Entry and Residence of Foreigners and on the Right of Asylum relating to the procedures for deporting foreign nationals in an irregular situation;

With regard to the absence of time-limit for voluntary departure from the country:

42. Considering that the amended Article L. 511−1 provides in paragraph II that the foreign national shall be granted a time-limit of thirty days starting from the service upon him of the notice to leave the country, and that in exceptional circumstances and having regard to his personal situation the administrative authorities may grant him a time-limit for voluntary departure in excess of thirty days; that the same provision however provides that "the administrative authorities may rule by decision supported by reasons that the foreign national is obliged to leave France forthwith:

"1. If the conduct of the foreign national constitutes a threat to public order,
"2. If the foreign national has been refused the issue or renewal of his residence permit, his receipt for an application for a residence card or his temporary authorisation to reside on the grounds that his application was manifestly groundless or fraudulent,
"3. If there is a risk that the foreign national will not comply with this obligation";

43. Considering that the applicants aver that the legislator adopted provisions that were manifestly incompatible with the directive which the law is intended to transpose;

44. Considering that the first subparagraph of Article 88 1 of the Constitution provides: "The Republic shall participate in the European Union, constituted by States which have freely chosen to exercise some of their powers in common, by virtue of the treaties on the European Union and on the Functioning of the European Union, as derived from the Treaty signed in Lisbon on 13 December 2007"; that accordingly, the transposition into internal law of a Community directive is required under constitutional law;

45. Considering that it is for the Constitutional Council to ensure compliance with this requirement, where it is seized of a law concerning the transposition into national law of a Community directive in the conditions provided for under Article 61 of the Constitution; that nonetheless, the review that it carries out to this effect is subject to a twofold limit; that in the first place, the transposition of a directive cannot run contrary to a rule or principle that is inherent in the constitutional identity of France, unless the constituent power has consented to it; that secondly since it is required to rule before the law is promulgated within the time-limit provided for under Article 61 of the Constitution, the Constitutional Council cannot make a reference to the Court of Justice of the European Union on the basis of Article 267 of the Treaty on the Functioning of the European Union; that consequently, it will only be able to rule that a legislative provision is incompatible with Article 88−1 of the Constitution if it is manifestly incompatible with the directive that it is intended to transpose; that in any case, it is for the ordinary and the administrative courts to review the compatibility of the law with France's European commitments and, depending on the circumstances, to make a preliminary reference to the Court of Justice of the Union;

46. Considering that Article 7(4) of the aforementioned Directive 2008/115/EC on voluntary departure provides that, "If there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security, Member States may refrain from granting a period for voluntary departure, or may grant a period shorter than seven days"; that Article 3(7) of the same directive provides that "risk of absconding" means "the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is the subject of return procedures may abscond";

47. Considering that the contested provision releases the administration from the requirement to grant a time-limit for the foreign national to leave voluntarily if there is a risk that he will not comply with the obligation incumbent upon him to leave the country; that it provides that "absent special circumstances, this risk shall be deemed to subsist in the following cases:
"a) if the foreign national who is not able to establish that he entered France lawfully has not applied for the issue of a residence permit;
"b) if the foreign national remains in France in excess of the duration of his visa or, if he is not under an obligation to obtain a visa, upon expiry of a time-limit of three months starting from the time he entered France if he has not applied for the issue of a residence permit;
"c) if the foreign national remains in France for longer than one month after the expiry of his residence permit, his receipt for an application for a residence card or his provisional authorisation to reside and has not applied for a renewal;
"d) if the foreign national has failed to comply with a previous deportation order;
"e) if the foreign national has forged, falsified or obtained a residence permit or an identity or travel document in a name other than his own;
"f) if the foreign national does not present sufficient assurances as to his subsequent appearance, in particular on the grounds that he cannot establish that he possesses currently valid identity or travel documents, or that he has concealed elements of his identity, or that he has not declared his place of actual or permanent residence, or that he has previously failed to comply with the obligations provided for under Articles L. 513−4, L. 552−4, L. 561 1 and L. 561−2";

48. Considering that, in estimating that, absent special circumstances, in the six cases listed under paragraph II of Article L. 511−1 there is a risk that the foreign national will not comply with the obligation incumbent upon him to leave the country, the legislator has laid down objective criteria that are not manifestly incompatible with the directive which the law was intended to implement; that, accordingly, the contested provisions do not violate Article 88−1 of the Constitution;

With regard to the prohibition on return:

49. Considering that paragraph III of Article L. 511−1 as amended provides that the administrative authority may issue a decision supported by reasons associating the obligation to leave France with a prohibition on return;

50. Considering that the applicants aver that the legislator has failed to comply with the requirements resulting from Article 8 of the 1789 Declaration, the rights to a defence and the principle of a fair hearing, as well as the fourth recital of the Preamble to

the 1946 Constitution, according to which: "All persons who are persecuted on the grounds of their actions in support of freedom shall have a right of asylum in the territories of the Republic";

51. Considering that pursuant to paragraph III(7) of Article L. 511−1: "The prohibition on return and its duration shall be decided by the administrative authorities taking account of the duration of the foreign national's presence in France, the nature and length of his links with France, the fact as to whether or not he has already been subject to a deportation order and the threat for public order that his presence in France constitutes"; that the prohibition on return may also be revoked by the administrative authorities; that, absent special circumstances relating to the situation or conduct of the interested party, such revocation is automatic where he complies with the time-limit imposed upon him in respect of the obligation to leave the territory concerned;

52. Considering, first, that the prohibition on return with which the obligation to leave the country may be associated amounts to a policing measure and not a penalty with the nature of a punishment pursuant to Article 8 of the 1789 Declaration; that accordingly, the objection averring the violation of this provision is groundless;

53. Considering secondly that, except in relation to decisions imposing a penalty with the nature of a punishment, the rules and principles with constitutional status do not in themselves require that the executive decisions issued by an administrative authority involve a prior procedure in which the interested party may be heard; that it follows that the objection averring the violation of the rights to a defence and the principle of a fair hearing must be rejected;

54. Considering thirdly that the application for the revocation of the prohibition on return is only admissible if the foreign national who submits it establishes that he resides outwith France; that this requirement is not of such a nature as to violate the right of asylum since, as provided for under Article L. 213−2 of the aforementioned Code, the refusal of entry into the country does not preclude the filing of an asylum application at the border;

55. Considering fourthly that a measure issued in this manner is not manifestly incompatible with Article 11 of Directive 2008/115/EC which it is intended to transpose;

56. Considering that Article 37 of the law referred is not unconstitutional;

− WITH RESPECT TO ARTICLES 44, 47, 51 AND 56:

57. Considering that Articles 44, 47, 51 and 56 have the objective of transposing Directive 2008/115/EC; that to this effect they amend the wording of Articles L. 551−1, L. 561−1 à L. 561−3, L. 552−1 and L. 552−7 of the Code on the Entry and Residence of Foreigners and the Right of Asylum and introduce Articles L. 552−4−1 and L. 562−1 to L. 562−3;

58. Considering that the applicants aver that, insofar as they provide for a time-limit of five days before a Custodial Judge is required to authorise the holding of a foreign national in administrative custody, Articles 44 and 51 violate Article 9 of the 1789

Declaration and Article 66 of the Constitution; that they also argue that, insofar as they amend the wording of Article L. 561−2 of the Code on the Entry and Residence of Foreigners and the Right of Asylum, Article 44 and Article 47 violate the objective laid down by the Directive which the legislation is intended to transpose; that the provisions of Article 47 also violate individual freedom or at the very least the freedom of movement; that they also object that Article 56 violates Article 9 of the 1789 Declaration in requiring a rigour that is not necessary having regard to individual freedom;

With regard to the objection averring the violation of the objectives of the Directive:

59. Considering that Article 44 of the law referred amends Article L. 551−1 of the Code on the Entry and Residence of Foreigners and the Right of Asylum; that this Article as amended provides that, unless he is placed under house arrest in accordance with Article L. 561−2, any foreign national that cannot immediately leave France may be detained by the administrative authorities in facilities which do not fall under the authority of the prison administration for up to five days;

60. Considering that Article 47 reforms Article L. 561−2: "In the situations provided for under Article L. 551 1, the administrative authorities may decide to place under house arrest a foreign national for whom the implementation of the obligation to leave the country remains a reasonable prospective and who provides effective assurances as to his subsequent appearance precisely in order to avoid the risk referred to under paragraph II of Article L. 511 1 that he fail to comply with that obligation. The three last subparagraphs of Article L. 561 1 shall apply, upon condition that the maximum duration of the house arrest may not exceed forty five days, and may be renewed once";

61. Considering that Article 15(1) of Directive 2008/115/EC provides that: "Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when: (a) there is a risk of absconding or, (b) the third-country national concerned avoids or hampers the preparation of return or the removal process. − Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence"; that according to these provisions, detention is only possible if house arrest will not be sufficient in order to avoid the risk that the interested party not comply with the obligation to leave the country that applies to him;

62. Considering that the contested provisions contained in Articles 44 and 47 are not manifestly incompatible with the objectives of the Directive which the law referred is intended to transpose;

With regard to the objection averring the violation of individual freedom:

63. Considering that Article 66 of the Constitution provides that: “No one shall be arbitrarily detained. − The Judicial Authority, guardian of the freedom of the individual, shall ensure compliance with this principle in the conditions laid down by statute"; that, when exercising this power, the legislator may determine the procedures governing the intervention by the judicial authorities that differ in line with the nature and scope of the measures affecting individual freedom that it intends to enact; that the

individual freedom which Article 66 of the Constitution provides is to be protected by the judicial authorities may not be deemed to be safeguarded unless the courts intervene within as short a period as possible;

64. Considering that no rule with constitutional status grants foreign nationals rights of access to and residence in the national territory that are general and absolute in nature; that the conditions governing their entry and residence may be restricted by administrative policing measures that grant the public authorities enhanced powers and are based on specific rules; that the objective of combating illegal immigration contributes to safeguarding public order, which is a requirement with constitutional status;

65. Considering that, in accordance with the French conception of the separation of powers, the fundamental principles recognised by the law of the Republic include that according to which, except for matters that are by their nature reserved to the ordinary courts, the annulment or amendment of decisions taken in exercising prerogatives of public order by the authorities vested with executive powers, their agents, the local authorities of the Republic or the public bodies placed under their authority or control shall ultimately fall under the jurisdiction of the administrative courts;

66. Considering that the detention of a foreign national who cannot immediately leave the country must respect the principle, resulting from Article 66 of the Constitution, according to which individual freedom should not be limited with unnecessarily rigour; that it is incumbent upon the legislator to ensure that a balance is struck between, on the one hand, the prevention of public order offences that is necessary in order to safeguard rights and principles with constitutional status, as well as the requirements of the proper administration of justice, and on the other hand, the exercise of the freedoms guaranteed under the Constitution; that these include individual freedom which Article 66 of the Constitution specifies be protected by the ordinary courts; that the violations of the exercise of these freedoms must be adapted to, necessary for and proportionate with the objectives pursued;

67. Considering that Article 34 of the Constitution provides that statutes shall determine the rules concerning the fundamental guarantees granted to citizens for the exercise of their civil liberties; that the legislator is free at any time, when ruling on matters within its competence, to adopt new provisions that are in its view appropriate, and to amend previous legislation or repeal it and, depending on the circumstances, replace it with other provisions, provided that when exercising this power, it does not deprive these constitutional requirements of legal guarantees;

− With regard to house arrest provided for under Article L. 561−2, as amended:

68. Considering that the contested Article provides that the administrative authority may place under house arrest a foreign national who could be detained in facilities which do not fall under the authority of the prison administration if the implementation of the obligation to leave the country remains reasonably foreseeable and if he provides assurances as to his subsequent appearance; that since such a measure does not entail any deprivation of individual freedom, the objection averring the violation of Article 66 of the Constitution is groundless;

− With regard to the extension of detention beyond five days:

69. Considering that Articles 44 and 51 provide that a foreign national who is not able to leave France immediately may be detained by the administrative authorities for a period of up to five days and extend from forty eight hours to five days the period following which an application must be made to the Custodial Judge in order to extend detention; that the judge deciding on provisional detention is to rule within twenty four hours of the application;

70. Considering moreover that the Article L. 554−1 of the Code on the Entry and Residence of Foreigners and the Right of Asylum, which has not been amended, reiterates that a foreign national may only be detained for the period of time that is strictly necessary for his departure, and that the administration must exercise all diligence to this effect;

71. Considering that the law referred also has the objective, under Articles 48 et seq, of amending the rules governing administrative disputes concerning deportation; that it provides in particular that the interested party may apply to the administrative courts seeking an annulment of the decision obliging him to leave the country, the decision relating to his residence, the decision refusing a voluntary time-limit for departure, the decision specifying the country of destination and, where appropriate, the accompanying decision to prohibit his return to France; that if he is detained, the foreign national may not only contest the deportation order, but may also request the annulment of the decision to detain him within forty eight hours of its notification; that the administrative courts must decide at the latest seventy two hours after the application is received; that the interested party shall be released if this order is annulled; that the same applies if the obligation to leave France or the decision not to grant a time-limit for voluntary departure is annulled;

72. Considering that the legislator intended for the administrative courts to rule quickly, in accordance with the rules governing the division of competences between the different court systems, on the legality of the administrative measures relating to the deportation of foreign nationals before the intervention of the ordinary courts; that in making such provision for disputes, the goal of the legislator was to ensure that the legality of these measures was examined as a matter of priority and, in the interest of the proper administration of justice, to permit a more effective treatment of the deportation procedures for foreign nationals in an irregular situation; that in providing that the ordinary courts could only be seised for the purposes of extending the period of detention following the expiry of a period of five days starting from the decision to detain the individual, it struck a balance that is not unreasonable between the protection of individual freedom and the objectives with constitutional status of the proper administration of justice and the protection of public order;

73. Considering that when the foreign national has been placed under administrative detention following expiry of a provisional custody order, the constitutional protection of individual freedom requires that the duration of the provisional custody be taken into account when determining the deadline before which the ordinary courts must intervene; that if the provisional custody is renewed by the Public Prosecutor, its duration may be extended to forty eight hours; that, nonetheless, the contested provisions could not permit a foreign national who has been deprived of his freedom to be actually brought before a judge after expiry of the time-limit of seven days calculated from the start of the period in provisional custody without violating Article 66 of the Constitution; that, subject to this reservation, Articles 44 and 51 do not violate Article 66 of the Constitution;

− With regard to the extension of detention for a maximum duration of forty five days:

74. Considering that pursuant to Article 56 of the law referred, which amends Article L. 552−7 of the Code on the Entry and Residence of Foreigners and the Right of Asylum, an application may be made to the judge deciding on provisional detention if a period of twenty days has passed following the expiry of the time-limit of five days specified under Article L. 552−1, and in situations of absolute urgency or involving a particularly serious threat to public order, or if it is impossible to enforce the deportation order due to the loss or destruction of the interested party's travel documents, his concealment of his identity or the intentional obstruction of his deportation; that, if the judge orders that the detention be continued, the extension order shall commence starting from the expiry of the time-limit of twenty days for a further period with a maximum duration of twenty days;

75. Considering that the contested provisions do not amend the aforementioned provisions according to which the foreign national may only be detained for the period of time strictly necessary for his departure, and that the administration must exercise all diligence to this effect; that, as held in recital 66 to the aforementioned decision of 20 November 2003, the judicial authorities retain the right to order the termination of the extension to detention at any time, either ex officio or pursuant to an application by the foreign national, if justified by the legal situation and the facts of the case; that, subject to this reservation, the objections averred must be rejected;

− With regard to the extension of detention for a maximum duration of eighteen months:

76. Considering that the contested provisions contained in the fourth subparagraph of Article 56 of the law referred which amend the fourth subparagraph of Article L. 552−7 of the Code on the Entry and Residence of Foreigners and the Right of Asylum have the effect of permitting the extension to eighteen months of the duration of a foreign national's administrative detention; that this measure is applicable to foreign nationals who have been banned from entering the country due to terrorist acts provided for under Title II of Book IV of the Criminal Code or to those who have been expelled due to conduct associated with terrorist activities with which they have been charged; that the maximum duration of detention is in the first instance set at six months; that it cannot be renewed if there are reasonable prospects that the deportation order will be enforced and that the decision to place him under house arrest would not enable the foreign national to be controlled sufficiently; that by permitting an extension by twelve months of the administrative detention of a foreigner "when, despite the efforts of the administration, the deportation order cannot be enforced either due to a lack of cooperation by the foreign national or due to the delays incurred in order to obtain the necessary travel documents from the consulate concerned", these provisions violate individual freedom in a manner contrary to Article 66 of the Constitution; that, accordingly, the last phrase of the fourth subparagraph of Article L. 552−7 of the same Code, as drafted according to Article 56 of the law referred, must be ruled unconstitutional;

With regard to the objection averring the violation of the freedom of movement:

77. Considering that the applicants object that Article L. 561−2, as drafted according to Article 47, violates the freedom of movement;

78. Considering that it is for the legislator to ensure that a balance is struck between, on the one hand, the prevention of public order offences and, on the other hand, the respect for the rights and freedoms granted to all persons resident in the Republic; that these rights and freedoms include the freedom of movement;

79. Considering that the house arrest provided for under the contested legislation operates as a substitute for an order for detention in facilities which do not fall under the authority of the prison administration; that, where it is subject to a review by the administrative courts as to its necessity, such a measure does not disproportionately violate the freedom of movement;

80. Considering that it follows that, with the exception of the last phrase of the fourth subparagraph of Article L. 552−7 of the Code on the Entry and Residence of Foreigners and the Right of Asylum, and subject to the reservations specified under recitals 73 and 75, Articles 44, 51 and 56 of the law referred, as well as Article L. 561−2 of the aforementioned Code, are constitutional;

− WITH RESPECT TO ARTICLES 73 TO 88:

81. Considering that the applicants do not raise any objection against these Articles; that there is no need to examine them ex officio;

− WITH RESPECT TO ARTICLE 94:

82. Considering that Article 94 extends to foreign nationals who are prohibited from entering the country the penalty of three years' imprisonment provided for under the first subparagraph of Article L. 624−1 of the Code on the Entry and Residence of Foreigners and the Right of Asylum for foreigners who fail to comply with their obligations relating to deportation;

83. Considering that, according to the applicants, these new provisions amounts to a manifest error in the transposition of Articles 15 and 16 of Directive 2008/115/EC in that they punish foreign nationals who fail to comply with their obligations relating to deportation; that they indicate that the Court of Justice of the European Union has ruled that this Directive precludes legislation providing for the sentencing of an illegally resident third country national to a term of imprisonment on the sole grounds that he remains within the territory of the State without justification in breach of an order to leave the State within a certain time-limit;

84. Considering that the contested provisions do not have the objective of transposing Directive 2008/115/EC; that, accordingly, the objection averring the violation of Article 88−1 of the Constitution is groundless;

85. Considering that Article 94 of the law referred is not unconstitutional;

− WITH RESPECT TO ARTICLE 95:

86. Considering that Article 95(2) completes Article L. 731 2 of the Code on the Entry and Residence of Foreigners and the Right of Asylum with a subparagraph drafted as follows: "Legal aid may not be applied for in relation to an appeal filed against a

decision of the French Office for the Protection of Refugees and Stateless Persons to reject an application for review if, during his previous application, the applicant was heard by the office as well as by the National Court for the Right of Asylum assisted by a legal aid lawyer";

87. Considering that the applicants argue that the withdrawal of entitlement to legal aid in cases involving the review of an asylum application violates the right to effective judicial relief; that they add that it is manifestly incompatible with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status;

88. Considering that legal aid may be applied for by any foreign national who files an initial asylum request; that it may also be applied for during a review of the application if legal aid was not awarded when the initial application was filed; that the contested provisions, which also guarantee the foreign national that he will be heard once by the National Court for the Right of Asylum with the assistance of a lawyer, do not violate the right to effective relief before a court;

89. Considering secondly that the contested provisions do not have the objective of ensuring the transposition of a directive; that, accordingly, the objection averring that they violate Article 88−1 of the Constitution is groundless;

90. Considering that Article 95 of the law referred is not unconstitutional;

− WITH RESPECT TO ARTICLE 98:

91. Considering that Article 98 completes Article L. 733 1 of the Code on the Entry and Residence of Foreigners and the Right of Asylum; that it permits the National Court for the Right of Asylum to use audio-visual means of communication in order to hear applicants who wish to submit observations in support of their appeal; that it orders, in particular, that "an applicant who is resident in metropolitan France and refuses to be heard by a means of audio-visual communication shall be summoned, at his request, to appear before the court";

92. Considering that, according to the applicants, by reserving the right to require that they be heard in person by the court solely to individuals located in the metropolitan territory, these provisions are contrary to the principle of equality as well as the right to a fair and equitable procedure;

93. Considering, in the first place, that by permitting hearings to be held by means of audio-visual communication, the legislator intended to contribute to the proper administration of justice and the efficient use of public funds; that it has provided that the room used for the hearing must be specifically fitted out to this effect, open to the public and located in the relevant premises of the Ministry of Justice; that the hearing must be conducted live and the confidentiality of the transmission must be ensured; that the interested party has the right to be notified of his case file in its entirety; that, if he is assisted by counsel, the latter be physically present with him; that a report or audio-visual or sound registration of the hearing be made; that it results from these measures as a whole that the contested provisions sufficiently guarantee the conduct of a fair and equitable trial;

94. Considering secondly that the National Court for the Right of Asylum, which has jurisdiction over the entire territory of the Republic, has its seat in the metropolitan territory; that, under these circumstances, the difference in treatment between persons located within the metropolitan territory and others does not violate the principle of equality;

95. Considering that Article 98 of the law referred is not unconstitutional;

96. Considering that there are no grounds for the Constitutional Council to raise any question of compatibility with the Constitution ex officio,

HELD:

Article 1.− In Article 56 of the Law on immigration, integration and citizenship, the last phrase of the fourth subparagraph of Article L. 552−7 of the Code is ruled unconstitutional.

Article 2.− Articles 44 and 51 of the same Law, and the remainder of Article 56 are ruled constitutional, subject to the reservations contained in recitals 73 and 75.

Article 3.− The following provisions of the same Law are ruled constitutional:

− Articles 2, 4, 12, 13, 16, 26, 33, 40, 57, 58, 70, 73 to 88, 94, 95 and 98;
− subparagraph II of Article 10;
− in Article 47, amending Article L. 561-2 of the Code on the Entry and Residence of Foreigners and on the Right of Asylum:

Article 4.− This decision shall be published in the Journal Officiel of the French Republic.

Deliberated by the Constitutional Council in its session on 9 June 2011, sat on by: Mr Jean-Louis DEBRÉ, President, Mr Jacques BARROT, Mrs Claire BAZY MALAURIE, Mr. Guy CANIVET, Mr. Michel CHARASSE, Mr. Renaud DENOIX de SAINT MARC, Mrs Jacqueline de GUILLENCHMIDT, Mr. Hubert HAENEL and Mr. Pierre STEINMETZ.