DECISION 2001-446 DC OF 27 JUNE 2001
Voluntary Interruption of Pregnancy (Abortion) and Contraception Act

On 7 June 2001 the Constitutional Council received a referral from Mr Bernard SEILLIER, Mr Jean CHÉRIOUX, Mr Claude HURIET, Mr James BORDAS, Mr Paul GIROD, Mr Philippe ADNOT, Mr Denis BADRÉ, Mr Jean BERNARD, Mr Roger BESSE, Mr Laurent BÉTEILLE, Mr Jean BIZET, Mr Maurice BLIN, Mr André BOHL, Mr Robert CALMEJANE, Mr Auguste CAZALET, Mr Jean CLOUET, Mr Philippe DARNICHE, Mr Paul d'ORNANO, Mr Charles-Henri de COSSÉ-BRISSAC, Mr Philippe de GAULLE, Mr Christian de LA MALÈNE, Mr Henri de RICHEMONT, Mr Robert del PICCHIA, Mr Désiré DEBAVELAERE, Mr Fernand DEMILLY, Mr Marcel DENEUX, Mr Jacques DONNAY, Mr Roland du LUART, Mr Hubert DURAND CHASTEL, Mr Daniel ECKENSPIELLER, Mr Michel ESNEU, Mr Hilaire FLANDRE, Mr Gaston FLOSSE, Mr Alfred FOY, Mr Patrice GÉLARD, Mr Adrien GOUTEYRON, Mr Georges GRUILLOT, Mr Hubert HAENEL, Mr Emmanuel HAMEL, Ms Anne HEINIS, Mr Jean-Jacques HYEST, Mr Charles JOLIBOIS, Mr Bernard JOLY, Mr Alain JOYANDET, Mr Patrick LASSOURD, Mr Robert LAUFOAULU, Mr Edmond LAURET, Mr Guy LEMAIRE, Mr Jean-Louis LORRAIN, Mr Jacques MACHET, Mr André MAMAN, Mr Philippe MARINI, Mr Pierre MARTIN, Mr Louis MERCIER, Mr Michel MERCIER, Mr Louis MOINARD, Mr Georges MOULY, Mr Philippe NOGRIX, Mr Joseph OSTERMANN, Mr Jacques OUDIN, Mr Jacques PEYRAT, Mr Charles REVET, Mr Henri REVOL, Mr Philippe RICHERT, Mr Michel SOUPLET, Mr Louis SOUVET, Mr Martial TAUGOURDEAU, Mr Alex TURK, Mr André VALLET, Mr Alain VASSELLE, Mr Nicolas ABOUT, Mr Serge FRANCHIS, Mr Michel PELCHAT, Mr Bernard BARRAUX, Mr Jacques BIMBENET, Mr Alain DUFAUT, Mr Jean PÉPIN and Mr Christian DEMUYNCK, Senators, pursuant to the second paragraph of Article 61 of the Constitution, for constitutional review of the Voluntary Interruption of Pregnancy (Abortion) and Contraception Act.

THE CONSTITUTIONAL COUNCIL,

Having regard to the Constitution;
Having regard to Ordinance 58-1067 of 7 November 1958 enacting the Institutional Act governing the Constitutional Council, as amended, and in particular Chapter II of Title II thereof;
Having regard to Institutional Act 96-312 of 12 April 1996 on the statute of French Polynesia;
Having regard to the Civil Code;
Having regard to the Criminal Code;
Having regard to the Code of the Public Health;
Having regard to the observations of the Government, registered at the Secretariat-General on 15 June 2001;
Having heard the rapporteur;

On the following grounds:

1. The Senators making the referral submit to the Constitutional Council the Voluntary Interruption of Pregnancy (Abortion) and Contraception Act, definitively passed on 30 May 2001, and challenge the constitutionality of sections 2, 4, 5, 8 and 19, in whole or in part;

ON THE EXTENSION TO TWELVE WEEKS OF THE PERIOD DURING WHICH A PREGNANCY MAY BE TERMINATED WHERE THE PREGNANT WOMAN IS IN A SITUATION OF DISTRESS:

2. Section 2 of the Act referred, which amends section L2212-1 of the Code of Public Health, raises from ten to twelve weeks of pregnancy the period during a pregnancy may be terminated where the pregnant woman is, because of her condition, in a situation of distress;
3. The applicants submit that this provision:
– Violates the principle of the safeguard of human dignity against any form of deterioration because, in particular, of the "unquestionable risk of eugenic practices tending to the selection of children that are to be born" since, they argue, it is possible at this stage of the growth of the foetus to detect "a larger number of anomalies" and "to distinguish the sex of the child to be born";
– Violates "the principle of the respect due to any human being from the commencement of its life" since the Act permits the interruption of the development "of a human being having reached the foetus stage", which "constitutes a potential human being" and is eligible for "strengthened legal protection";
– Violates, by disregarding the obligation of prudence which is incumbent on the legislature "in the absence of a medical consensus" on these questions, the precautionary principle which constitutes a constitutional objective set by Article 4 of the Declaration of Human and Civic Rights of 1789;
– Violates the eleventh subparagraph of the Preamble to the Constitution of 1946 since the "change of nature and technique of the procedure" exposes women to increased risks;
4. It is not for the Constitutional Council, which does not have a general discretionary decision-making power comparable to that of Parliament, to call into question the provisions enacted by the legislature on the basis of the state of knowledge and techniques; it is always legitimate for Parliament, acting within its powers, to amend earlier legislation or to repeal it and substituting fresh provisions for it if necessary; the exercise of this power must not, however, have the effect of depriving constitutional requirements of their legal guarantees;
5. By raising from ten to twelve weeks the period during which a pregnancy may be voluntarily terminated where the pregnant woman is, because of her condition, in a situation of distress, the Act has not, in the current state of knowledge and techniques, destroyed the balance that the Constitution requires between safeguarding human dignity against any form of deterioration and the freedom of women under Article 2 of the Declaration of Human and Civic Rights; it follows from the second paragraph of section 16-4 of the Civil Code that the word eugenics can only be used to qualify "any practice... tending to the organisation of human selection"; such is not the case here; by reserving the right to terminate pregnancy to "pregnant woman whose condition places them in a situation of distress", the legislature intended to exclude any fraud against the law and, more generally, any denaturing of the principles that it laid down, and these principles include "respect for the human being from the beginning of its life" under section L2211-1 of the Code of Public Health;
6. Contrary to what applicants state, the precautionary principle is not a principle of constitutional status;
7. Finally, if the termination of pregnancy is medically more delicate when practised between the tenth and twelfth weeks, it can, in the current state of knowledge and medical technique, be practised safely enough for women's health to be unthreatened; the Act referred comprises sufficient guarantees in this respect; it follows that the objection based on violation of the eleventh subparagraph of the Preamble to the Constitution of 1946 must be rejected;

ON THE PROCEDURE PRECEDING THE DECISION TO PRACTISE A VOLUNTARY INTERRUPTION OF PREGNANCY:

8. Section L2212-3 of the Code of Public Health, as amended by section 4 of the Act referred, relates to the first medical examination requested by a woman with a view to the interruption of her pregnancy and provides that a guidance file must be given to her, specifying its contents; the Act no longer requires this file to include "the enumeration of the rights, aid and benefits given by the law to families, mothers, married or unmarried, and their children, and the possibilities offered by the adoption of a child to be born"; section L2212-4 of the same Code, as amended by section 5 of the Act referred, relates to the preliminary social consultation; under the first two paragraphs of this section as amended, this consultation remains obligatory only for non-emancipated women who are minors; it is merely "proposed" to major woman;
9. The applicants submit that the changes thus made to sections L2212-3 and L2212-4 of the Code of Public Health "call into question the level of the legal guarantees which were previously available to safeguard the mother's personal freedom" and no longer ensure that the pregnant woman will give her "free and enlightened assent, inherent in the exercise of freedom not to abort"; the Act accordingly violates the "constitutional principle of personal freedom";
10. Sections L2212-3 and L2212-4 of the Code of Public Health as amended respect the freedom of pregnant woman who wish to terminate their pregnancy; the information concerning aid and help available to mothers and their children is provided to women who are of age and have accepted the preliminary social consultation provided for by the first paragraph of section L2212-4 of that Code; this consultation "is systematically proposed before... the termination of pregnancy, to woman who are of age" and "comprises an individual interview in which she will be offered suitable assistance or advice on her situation"; under the second paragraph of the same section, the preliminary consultation is compulsory for non-emancipated woman who are minors; consequently, the disputed provisions do not violate the principle of freedom laid down by Article 2 of the Declaration of Human and Civic Rights;

ON THE REMOVAL OF THE POSSIBILITY FOR A HEAD OF DEPARTMENT OF A PUBLIC HEALTH ESTABLISHMENT TO OPPOSE TERMINATIONS OF PREGNANCY BEING PRACTISED IN HIS DEPARTMENT:

11. Section 8(2°) of the Act referred, repealing the last two paragraphs of section L2212-8 of the Code of Public Health, removes the possibility previously available to heads of department in public health establishments to refuse to allow terminations of pregnancy to be practised in their department;
12. The Senators making the referral submit that the repeal of these provisions violates the principle of freedom of conscience and the principle of independence of the university professors;
13. Article 10 of the Declaration of Human and Civic Rights of 1789 provides: "No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established Law and Order"; the fifth paragraph of the Preamble to the 1946 Constitution states that "No person may suffer prejudice in his work or employment by virtue of his origins, opinions or beliefs"; freedom of conscience is one of the fundamental principles recognised by the laws of the Republic;
14. Under the first paragraph of section L2212-8 of the Code of Public Health, "a doctor may never be obliged to practise a termination of pregnancy"; by the second paragraph, "no

midwife, nurse or medical auxiliary of whatever status may be required to contribute to a termination of pregnancy"; no penalty may be imposed in the event of a refusal; the freedom of those likely to be involved in such interventions is thus respected;
15. Even though the head of a department in a public health establishment cannot, pursuant to the disputed provision, oppose pregnancies being terminated in his department, he retains the right under the relevant provisions the Code of Public Health to refrain from terminating them himself; this safeguards his freedom of personal conscience, which cannot be exerted at the expense of that of other doctors and medical staff working in his service;
these provisions contribute in addition to respect for the constitutional principle of the equality of users before the law and before the public service;
16. The objection based on violation of the principle of independence of the university professors is inoperative since the freedom of the doctor in his capacity as head of department is all that is involved in this case;
17. It follows from the foregoing that section L2212-8 of the Code of Public Health violates no constitutional principle or rule;

ON THE PROVISIONS CONCERNING FRENCH POLYNESIA:

18. Section 19(V)(A) of the Act inserts a new section L2442-1 in the Code of Public Health, which makes applicable in French Polynesia section L2212-1 of that Code, whereby: "A pregnant woman who is, because of her condition, in a situation of distress may request a doctor to interrupt her pregnancy. Such interruption may be practised only before the end of the twelfth week of pregnancy"; section L2212-7 concerning the conditions for the exercise of parental authority where woman is a minor and has not been emancipated; and the first subparagraph of section L2212-8, whereby "a doctor may never be obliged to practise a termination of pregnancy, but he must immediately inform the interested party of his refusal and give her the name of experts likely to perform this procedure";
19. The Senators making the referral submit that by extending these provisions of the Code of Public Health to French Polynesia, the legislature exceeded its jurisdiction and violated Article 74 of the Constitution, since pursuant to the combined provisions of sections 5 and 6 of the Institutional Act of 12 April 1996, the authorities of French Polynesia alone have power to regulate public health; moreover, the Parliament of French Polynesia having had a draft before it, "which differed considerably in substance from that submitted to Parliament", the parliamentary procedure was irregular;
20. For one thing, health is not among the matters to be regulated by the State listed exhaustively in section 6 of the Institutional Act of 12 April 1996, and is consequently, under section 5 of that Act, a matter to be regulated by the authorities of French Polynesia; however, sections L2212-1, L2212-7 and L2212-8 of the Code of Public Health, referred to above, which deal with the possibility for a pregnant woman who is in a situation of distress because of her condition to ask for her pregnancy to be interrupted, with the exercise of parental authority where the woman is a minor who has not been emancipated and with the doctor's freedom to refuse to practise a voluntary interruption of pregnancy himself, relate in the first two cases to the law of persons and therefore to civil law, and, in the third, to a guarantee of freedom public, all these being matters which under section 6 of the Institutional Act are matters for the state; but their implementation in the area of public health is within the powers of the territory; consequently, the objection based on the alleged lack of power of the ordinary legislator cannot be accepted;
21. For another, although the Act referred makes certain provisions of the Code of Public Health applicable to French Polynesia, these provisions, as has been seen, relate to matters falling within the powers of the state, without amending any of the conditions and

reservations attaching to it under the Institutional Act of 12 April 1996; they do not introduce, amend or repeal any provisions specific to the territory of French Polynesia relating to the way in which it is organised; consequently, it was legitimate to make them applicable there without consulting the Territorial Assembly in accordance with Article 74 of the Constitution; the objection based on the irregularity of the legislative procedure is accordingly inoperative;
22. In this case it is not necessary for the Constitutional Council to raise other questions of constitutionality of its own motion;

Has decided as follows:
Article 1
Sections 2, 4, 5, 8 and 19(V) of the Voluntary Interruption of Pregnancy (Abortion) and Contraception Act are constitutional.
Article 2
This decision shall be published in the *Journal officiel de la République française.*

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