Law prohibiting the cultivation of varieties of genetically modified maize

Under the terms provided for by Article 61-2 of the Constitution, the Constitutional Council was seized of an application relating to the Law prohibiting the cultivation of varieties of genetically modified maize on 6 May 2014 by Mr Jean-Claude GAUDIN, Mr Gérard BAILLY, Mr Philippe BAS, Mr René BEAUMONT, Mr Michel BÉCOT, Mr Joël BILLARD, Mr Jean BIZET, Ms Françoise BOOG, Mr Pierre BORDIER, Mr Joël BOURDIN, Ms Marie-Thérèse BRUGUIÈRE, Mr François-Noël BUFFET, Mr François CALVET, Mr Christian CAMBON, Mr Jean-Pierre CANTEGRIT, Mr Jean-Noël CARDOUX, Mr Jean-Claude CARLE, Ms Caroline CAYEUX, Mr Gérard CÉSAR, Mr Pierre CHARON, Mr Alain CHATILLON, Mr Jean-Pierre CHAUVÉAU, Mr Gérard CORNU, Mr Raymond COUDERC, Mr Jean-Patrick COURTOIS, Ms Isabelle DEBRÉ, Mr Francis DELATTRE, Mr Robert DEL PICCHIA, Mr Gérard DÉRIOT, Mr Philippe DOMINATI, Ms Marie-Annick DUCHÈNE, Mr Alain DUFAUT, Mr André DULAIT, Mr Hubert FALCO, Mr André FERRAND, Mr Alain FOUCHÉ, Mr Jean-Paul FOURNIER, Mr Yann GAILLARD, Mr René GARREC, Ms Colette GIUDICELLI, Mr Alain GOURNAC, Mr Francis GRIGNON, Mr Charles GUENÉ, Mr Pierre HÉRISSON, Mr Michel HOUEL, Mr Alain HOUPERT, Mr Benoît HURÉ, Mr Jean-François HUSSON, Mr Jean-Jacques HYEST, Ms Sophie JOISSAINS, Mr Roger KAROUTCHI, Ms Elisabeth LAMURE, Mr Gérard LARCHER, Mr Robert LAUFOAULU, Mr Daniel LAURENT, Mr Antoine LÉFÈVRE, Mr Dominique de LEGGE, Mr Philippe LEROY, Mr Michel MAGRAS, Ms Hélène MASSON-MARET, Mr Jean-François MAYET, Ms Colette MÉLOT, Mr Albéric de MONTGOLFIER, Mr Philippe NACHBAR, Mr Louis NÉGRE, Mr Philippe PAUL, Mr Jackie PIERRE, Mr Rémy POINTEREAU, Mr Ladislas PONIATOWSKI, Ms Catherine PROCACCIA, Mr Jean-Pierre RAFFARIN, Mr Henri de RAINCOURT, Mr Bruno RETAILLEAU, Charles REVET, Mr Bernard SAUGEY, Mr René-Paul SAVARY, Mr Michel SAVIN, Mr Bruno SIDO, Ms Esther SITTLER, Ms Catherine TROENDLÉ and Mr Jean-Pierre VIAL, Senators;

And on 12 May 2014 by Mr Christian JACOB, Mr Élie ABOUD, Mr Bernard ACCOYER, Mr Yves ALBARELLO, Mr Julien AUBERT, Mr Sylvain BERRIOS, Mr Etienne BLANC, Ms Valérie BOYER, Mr Dominique BUSSEREAU, Mr Guillaume CHEVROLLIER, Mr Philippe COCHET, Mr François CORNUT-GENTILLE, Ms Marie-Christine DALLOZ, Mr Gérald DARMANIN, Mr Bernard DEBRÉ, Mr Bernard DEFLESSELLES, Ms Sophie DION, Mr Daniel FASQUELLE, Ms Marie-Louise FORT, Mr Yves FOULON, Mr Marc FRANCINA, Mr Laurent FURST, Mr Sauveur GANDOLFI-SCHEIT, Ms Annie GENEVARD, Mr Guy GEOFFROY, Mr Franck GILARD, Mr Claude GOASGUEN, Mr Jean-Pierre GORGES, Mr Philippe GOSSELIN, Ms Arlette GROSSKOST, Mr Christophe GUILLOTEAU, Mr Michel HENRICH, Mr Michel HERBILLON, Mr Antoine HERTH, Mr Patrick HETZEL, Mr Guénaël HUET, Ms Valérie LACROUTE, Mr Marc LAFFINEUR, Mr Jacques LAMBLIN, Mr Jean-François LAMOUR, Mr Alain LEBŒUF, Mr Philippe LE RAY, Ms Geneviève LEVY, Mr Jean-François MANCEL, Mr Thierry MARIANI, Mr Hervé MARITON, Mr Alain MARLEIX, Mr Olivier MARLEIX, Mr Philippe MARTIN, Mr Jean-Claude MATHIS, Mr Pierre MOREL-A-L’HUISINGER, Mr Jacques MYARD, Mr Jean-Frédéric POISSON, Mr Axel PONIATOWSKI, Ms Josette PONS, Mr Frédéric REISS, Mr Franck RIESTER, Mr Paul SALEN, Mr François SCHELLER, Mr Thierry SOLÈRE, Mr Jean-Charles TAUGOURDEAU, Mr Michel TERROT, Mr Jean-Marie TETART, Mr Dominique TIAN, Mr Jean-Pierre VIGIER and Mr Philippe VITEL, Members of the National Assembly.

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 observations of the Government, registered on 19 May 2014;

Having heard the Rapporteur;

1. Considering that the applicant Senators and Members of the National Assembly have referred to the Constitutional Council the Law prohibiting the cultivation of varieties of genetically modified maize; that they assert that this prohibition runs contrary to the principle of primacy of European law, Articles 55 and 88-1 of the Constitution and the provisions of various European Union directives and regulations, including in particular Article 23 of Directive 2001/18/EC and Article 34 of Regulation 1829/2003; that the applicant Senators also assert that the definitive and general prohibition imposed by these provisions violates the precautionary principle; that, in their view, the provisions of this Law violate the requirement that the law be accessible and intelligible, in particular in failing to define the terms "genetically modified";

2. Considering first that, pursuant to Article 55 of the Constitution: "Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party"; that whilst these provisions grant treaties a status higher than laws, under the terms stipulated by them, they do not require or imply that compliance with this principle is compulsory within the ambit of proceedings involving the constitutional review of legislation; that the legal ground pertaining to the incompatibility of a legislative provision with the international law and European commitments of France cannot be used as base for an objection of unconstitutionality; that the examination of such a challenge based on EU law or on the EU treaties falls under the jurisdiction of ordinary and administrative courts;

3. Considering on the other hand that pursuant to Article 88-1 of the Constitution: "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 European Union directive is required under constitutional law;

4. 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 European Union directive under the terms provided for by
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 deadline 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;

5. Considering that in the present case, the law referred does not have the objective of transposing a European Union directive; that accordingly, the objection alleging that Article 88-1 of the Constitution has been violated must be rejected;

6. Considering secondly that, pursuant to Article 5 of the Charter for the Environment: "When the occurrence of any damage, albeit unpredictable in the current state of scientific knowledge, may seriously and irreversibly harm the environment, public authorities shall, with due respect for the principle of precaution and the areas within their jurisdiction, ensure the implementation of procedures for risk assessment and the adoption of temporary measures commensurate with the risk involved in order to preclude the occurrence of such damage"; that the provisions of paragraph I of the single Article of the Law referred have the objective of prohibiting the cultivation of varieties of genetically modified maize without any temporal limit; that accordingly, the objection alleging that the permanent prohibition of the cultivation of these varieties of maize violates the precautionary principle is misconstrued;

7. Considering thirdly that the objective of constitutional standing that the law should be accessible and intelligible, which results from Articles 4, 5, 6 and 16 of the 1789 Declaration of the Rights of Man and the Citizen, requires the legislator to adopt legislation that is sufficiently precise and framed in unequivocal terms; 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 according to the Constitution may only be determined by law; that, contrary to the assertions of the applicant Senators, the provisions of paragraph I of the single Article of the Law referred, which provides that "the cultivation of varieties of genetically modified maize shall be prohibited" are not unintelligible; that accordingly, the objection must be rejected;

8. Considering that according to all of the above, the provisions of the single Article of the Law referred, which do not violate any other requirement of constitutional law, must be ruled constitutional;

HELD:

Article 1.- The Law prohibiting the cultivation of varieties of genetically modified maize is constitutional.

Article 2.- This decision shall be published in the Journal Officiel of the French Republic.

Deliberated by the Constitutional Council in its session of 28 May 2014, sat on by: Mr Jean-Louis DEBRÉ, President, Ms Claire BAZY MALAURIE, Ms Nicole BELLLOUBET, Mr Guy CANIVET, Mr Michel CHARASSE, Mr Renaud DENOIX de SAINT MARC, Mr Valéry GISCARD d'ESTAING, Mr Hubert HAENEL and Ms Nicole