France: Recent Constitutional Reforms

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Executive Summary

On July 21, 2008, both houses of the French Parliament met in a special joint cession to approve major changes to the Constitution. The constitutional reform had been one of the major electoral campaign promises of President Nicolas Sarkozy. Some of the key points of the reform are outlined below.

The President of the Republic may only serve two consecutive five-year terms. He may address the joint houses of Parliament, a privilege he did not have before. The President’s right to pardon is limited to individual cases and he is no longer the President of the High Council of the Judiciary, an independent constitutional body that plays a central role as guarantor of judges’ independence in recommending promotions and appointments and as a disciplinary council. Individuals now have the right to directly complain to the High Council about either judicial dysfunctions or individual judges. Previously, only the Minister of Justice or the presidents of the appellate courts could do so. A law will be drafted to set forth the implementing conditions of this new right.

The reform gives more power to Parliament. Parliament may set half of its agenda instead of having the government decide the entire agenda. The President must inform Parliament of the deployment of troops overseas, and parliamentary approval is required for any deployment of over four months. Parliamentary commissions may veto some major presidential appointments, such as the appointment of the President of the Constitutional Council or the President of the High Council of Audiovisual Matters. A majority of three-fifths of the competent commission is required for the veto. A referendum is necessary to approve a new European Union member. However, this requirement may be waived by “the vote on a motion adopted in identical language by each house by a majority vote of three-fifths.”

Another key point of the reform concerns the Constitutional Council. A party to a trial who considers that a law or one of its provisions applicable to his/her case infringes the rights and liberties set forth in the Constitution may refer the law or provision to the Constitutional Council through the Cour de Cassation (France’s highest judicial court) or the Conseil d’État (France’s highest administrative court). In France, the review of the constitutionality of laws is solely entrusted to a Constitutional Council. The Council expresses an opinion on the constitutionality of a law before its promulgation. Until this reform, it was mandatory to refer to the Constitutional Council all laws relating to the institutions and the rules of procedures of both parliamentary assemblies. While ordinary laws could only be submitted to the Council by the President of the Republic, the Prime Minister, the President of the National Assembly, or the...
President of the Senate, or, more commonly, by 60 deputies or senators. Additional legislation will be drafted to implement this right.

Finally, the Constitutional Law creates a “citizens’ rights defender” who will replace the current “mediator” and whose role is reinforced. Any citizen or legal entity that feels wronged by any public service will be able to bring a claim before the “defender.” (Loi Constitutionnelle No. 2008-724 of July 23, 2008, on Modernizing the Institutions of the Vth Republic, [J.O.] [Official Gazette of France], July 24, 2008, 11890.)

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