

GDP

*ABSTRACTS*



## **The transformations of the french Constitution since 1958**

LUIS MARÍA DÍEZ-PICAZO

This is not an original research paper, but a humble presentation of how a Spanish jurist, familiarized with French law, analyses the French constitutional evolution from 1958 until 2008, when the broadest constitutional reform in the Fifth Republic took place. The analysis of this last revision of the Constitution is out of this paper. Far from being a modification of specific aspects of the Constitution, it was a real updating of the whole Constitution of 1958.

## **Genesis and logic of the reform of the french Constitution for the Constitutional Law of june 23, 2008**

BERTRAND MATHIEU

This paper offers a critical analyze of the last constitutional reform to the Constitution of the French Fifth Republic, approved on July 2008 by a weak majority. The reform was proposed by President Nicolas Sarkozy, as a result of his 2007 election campaign's promises. In this paper, the author offers an overlook on the context, conditions, and actors of 2008 Constitutional reform. Added to that, he also analyzes the reform's logics such as «rebalancing» political power (he provides, for instance, arguments regarding the increased formal powers of the National Assembly but also about strengthening Presidency) or improving techniques of legislative production.

## **A new stage in the constitutionalization of rights in the fifth Republic**

MARC CARRILLO

The constitutional reform of 2008<sup>9</sup> has had a moderate incidence in the system of rights and freedoms. On the one hand it has ratified rights already recognized with a constitutional formulation of a certain normative density and it has incorporated new rights the contents of which depend on the future organic law. However, the most important advance has been produced with the incorporation of the question of unconstitutionality, of the incidental control a posteriori of the valid laws that attempt against the rights and freedoms. This way the Constitution reinforces its hierarchy about the law the French constitutional jurisdiction it approaches to the European continental model.

## **The 2008 revision of new distribution of powers**

MICHEL VERPEAUX

The revision of the Constitution has meant a change in the power relations in the Fifth Republic. This revision is based on the figure of the President of the Republic aiming a restriction of his powers. Those restrictions are adopted in several aspects such as the power of designating officers, the restriction of some powers in emergency crisis or the loss of the presidency of the High Council of Magistracy when is gathered as a plenary. However, the President's right to speak in front of the Parliament has been recognized, traditionally in the background. The most visible reforms in this case are the ones concerning agenda setting, the constitutionalization of inquiry commissions or the reform of the legislative procedure.

## **The revitalization of the Parliament in the reform of the french constitution of 2008**

PIEDAD GARCÍA-ESCUADERO MÁRQUEZ

The aim of this paper is to analyse different aspects of the 2008 French constitutional reform, insofar as they affect the Parliamentary institution, which they seek to revitalise. The paper is structured along four main points: the checks on the pre-eminency of the Presidential powers; the power of control over the Executive and the relations between Parliament and Government; the power to legislate and the status of the opposition. The author argues that the success of the reforms will depend on the legal implementation of the constitutional provisions, as well as on the political will of both the Government and the Members of Parliament.

## **The establishment of the referendum in France after the constitutional reform; a compared perspective**

NICOLÁS PÉREZ SOLA

In the history of the Republic V the referendum assumes a polemic leading role, which has re-revived last year on the occasion of the constitutional reform that incorporates the call of a referendum into initiative of 1/5 of the members of the Parliament supported by 1/10 of the electorate inscribed in the electoral list. However, the essential innovation of this procedure relapses into the power of initiative that is not exclusive of the Presidency of the Republic to be shared.

Nevertheless, numerous questions without responses not solved remain due to the meagers writing that presents the article 11.

The organic legislator who develops this constitutional reform will have to regulate the procedure of the starting of this initiative of minority referendum and will have to attend also not only to the constitutional frame, but also the peculiar entitlement of those who formulate the initiative –a fifth part of the members of the Parliament - and those who support it – a tenth part of the electorate.

**1958 Constitution, constitutional reform protection of fundamental rights, national human rights institution, *médiateur*, ombudsman, defensor del pueblo. *Défenseur des droits*, supervisión of the administration, independent administrative authorities**

JOSÉ MANUEL SÁNCHEZ SAUDINÓS

The recent reform of the 1958 Constitution has constitutionalized a protective institution the rights and freedoms, the «Defender of Rights». Based on a formulated proposal by and ad-hoc commission for the study of constitutional reform designed to give to France an ombudsman inspired by the Ombudsman of Spain, the government and the ulterior legislative procedure of constitutional reform have distorted the original proposal until turning rather in a review of the status and field of the *Médiateur de la République*, an institution created in 1973, and government-appointed for the supervision of the Administration, and that has transmitted most of its shortcomings to the new figure.

**French Constitution and European union law: a review of the history of the relations between the two legal systems**

MARIE-JOSÉ GAROT

Since the Maastricht Treaty of 1992, France has been particularly prone to adapt its Constitution to the European integration process to the extent of speaking of Europeanization of the Constitution of the V Republic. The present work studies the different steps given towards an explicit acknowledge of the European Legal System, thanks to, among other things, the notable impulse of the Constitutional Council. In order to have a global vision of relations between the French Constitution and European Law, this study is divided into two main parts: The first one analyzes how the Constitution has acknowledged specifically the new Legal System created by the European Union (that is to say, the relations between the French Constitution and the European Primary Law) and the second one studies how the Constitutional Council has interpreted the constitutionality of the regulation of application of European Law (Transposition Law).

## **The Constitutional Council after the constitutional revision of July 23rd 2008**

PIERRE BON

The subject of this paper is the relevance for the French Law of the modification introduced by the Constitutional Act n° 2008-724, July 23. This change makes it possible that the French Constitutional Court acquires competencies, under certain conditions, to supervise a posteriori the constitutionality of a law, and not only before its definitive approval, as it happened previously.

The proposed reform, which has been discussed for a long time in France, represents a great advance in the control of the constitutionality of the laws, especially taking into account the great respect that has always existed in France for the rousseauian myth of the sovereignty of the law.

## **The always open review of the Fifth french Republic through its constitutional reforms**

ITZIAR GÓMEZ FERNÁNDEZ

The 1958 French Constitution has been modified 24 times during 50 years of life. Really, some of these reforms are basic for the configuration of the form of Government. We can answer the question about if France walks towards a new political system, or it is immersed in a political system different from the system dreamed by General De Gaulle, only analyzing the scope of the realized reforms, especially the last one. But the object of this study is to answer a previous question, which refers to the qualification of the French Constitution as rigid or as flexible depending on her resistance to the modifications. The exclusive mention of the number of reviews induces to believe that the level of resistance of the fundamental French norm is not excessive, but a deeper analysis forces us to check this conclusion once will be analyzed the procedural mechanisms of constitutional reform and the material content of all these reforms.

## **The new parliamentary's replacement in the reformed 25 article of french Constitution of 2008**

ROSA MARÍA FERNÁNDEZ RIVEIRA

The new 25 article of French Constitution says: «An organic law fixes ... the rules of inelegibility and incompatibilities. At also sets conditions under which the people elected are required to ensure, in case of vacancy, the replacement of deputies or senators to general or partial renewal of the meeting to wich they belonged or temporary replacement in case of acceptance by them of government functions.

A independent commission, whose law determines the composition and rules of organization and operating rules by a public notice on the drafts and bills delimiting the constituencies for the election of deputies or changing the distribution of seats deputies or senators».

Is the first time that French basic Law accepts a temporary substitution insomuch as old constitutional version told only like *final replacement*. The French constitutional history shows that intensify independence between cabinet and parliament member, do easier and more efficient, without doubt, old principle of separation of powers.

### **The constitutional acknowledgement of parliamentary groups and of opposition in France**

ÁNGEL J. SÁNCHEZ NAVARRO

One of the main innovations of the last French Constitutional reform is the constitutional acknowledgement of parliamentary groups, and very particularly the affirmation of some specific rights of opposition and minority groups. In this way, these main actors in parliamentary life reach a constitutional status which, even if unsatisfactory, may be regarded as an important step towards the institutional representation of social and political pluralism. In this sense, it may also be considered as an evolution in the classical theory of political representation within the contemporary new framework of «party politics» or «party democracy», which certainly seems to improve the effectiveness of the traditional right of citizens to participate in public affairs through their freely elected representatives.

### **The reinforcement of Permanent Commissions in french Constitutional reform of 2008**

IGNACIO CARBAJAL IRANZO

This paper analyses article 43 of the French Constitution as amended by the 2008 Constitutional reform, and aims to provide an overview of the Parliamentary Committee system in France and its evolution since 1958. With the Spanish reader in mind, the author compares the French Committee system, set out after the crisis of the IV Republic to limit the powers of Parliament, with the regulation of Committees in the Spanish *Cortes*, based in the traditional principle of Parliamentary autonomy. The paper follows the structure of article 43 of the Constitution: (i) the first part of the paper reviews the different types of committees in France and mentions other parliamentary bodies that, although not being legally established as full-blown committees, do serve a similar role; and (ii) the second part examines the procedures put in place in the French Constitution to assign a bill to a committee.

## **Setting the Agenda of the parliamentary sessions in the 48th article of the Constitution**

MERCEDES ARÁUJO DÍAZ DE TERÁN

The paper deal with the importance of the new Constitutional provisions regarding the setting of the agenda of the parliamentary Chambers.

The agenda of the Chamber is analysed in relation to each of the different parliamentary timeframes: legislatures, periods of sessions and sitting. The author also provides elements of comparison with the Spanish parliamentary system at the Plenary as well as in Committees.

The paper argues that the French regulations, characterised by their complexity and their case-by basis, seek a balance between the prerogatives of Parliament and those of the Government.

Notwithstanding the existing limitations, the underlying guiding principle is that the Chambers may set their own agendas. How this principle will be applied will eventually depend on the use the Chambers will make of their powers and on the will of the Government to make a restrictive use of their own prerogatives.

## **The last reform of the french constitution in 2008 has includes important changes. This is the case of the legislative procedure**

LUIS DE LA PEÑA RODRÍGUEZ

In one hand, the initiative legislative is dominated by the government, but there are new requirements for the draft of Organic Law. In the other hand, about the right to amendment, the President of the Chamber can oppose to the introduction of propositions or amendments that invade the domain reserved to the law.

Another important and polemic question is that the amendment must be directly connected with the main objet of the initiative legislative. Finally, other new regulations about discussions and the Organic Law are studied in this work.

## **The reform of the french Constitution concerning parliamentary control**

FRANCISCO MARTÍNEZ VÁZQUEZ

The reform implement through Constitutional Act num. 2008-724, of 23 July 2008, pursues an ambitious aim, as described in the Act's very title: to modernise the institutions of the V Republic. This modernising

drive also touches on Parliament and, in particular, the interaction between Parliament and the Government. In its new wording, Article 24 adds to the traditional role of passing statutes the power to «monitor the action of the Government» and «assess public policies», thus anticipating the substance of a reform geared, to a great extent, towards improving the effectiveness of parliamentary oversight. From this perspective, a number of channels and means have been incorporated as constitutional provisions allowing Parliament to exercise scrutiny in conditions worthy of a modern democracy, with special emphasis on the oversight of foreign and defence policy, as well as aspects related to the European Union.

### **The recent French constitutional reforms in European Community subjects**

MANUEL DELGADO-IRIBARREN

Firstly, this paper focuses, systematically, the new roles of the national Parliaments in the European Union after the adoption of the Treaty of Lisbon in 2007, referring the developments since the Treaty of Maastricht, in 1992.

The second part of this article attempts to show the four constitutional reforms undertaken by France between 2003 and 2008 regarding the adjustment of the French Parliament to the new functions of the national Parliaments. It reviews the «Reservation as to legislation» for implementing the European arrest warrant; the creation of a parliamentary Commission on each Chamber, which is taken charge on these business (up to now, it was a «division», by the constitutional limit on the number of standing Commissions) and the authority to meet outside the sessions; the parity in the matching ratification procedure of Treaties of accession of new Member states of the European Union's draft constitutional reform; the constitutional entrenchment of authority to the Chambers regarding the principle of subsidiarity control and the opposition to simplified revision acts of the Treaties.

### **Update version of the french Constitution of october 4, 1958**

MARINA CUETO APARICIO

The Constitutional Law nº 2008-724 of 23 July 2008, of modernization of the institutions has been considered as the first attempt of facing a reform in depth of the French Constitution in its fifty years of existence. That is why, as part of a monographic devoted to the scope of such reform, it seemed appropriate to present an updated version in Spanish language of the Constitution, referring, where appropriate,

the modalities of entry into force of each item concrete. In addition, there are included also in Spanish the three basic texts aforementioned in the Preamble: the Declaration of the Rights of Man and Citizen of 1789, the Preamble to the Constitution of 1946 and the Charter for the Environment of 2004.