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Congress Reforms Pinochet-era Constitution

by LADB Staff

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Representatives from all sectors of the Chilean government reached an Oct. 6 agreement in the Senate, which would allow lawmakers to alter the "authoritarian bonds" of the Constitution imposed in 1980 under the dictatorship of Gen. Augusto Pinochet (1973-1990).

Senators from Concertacion, the coalition that has governed since 1990, the rightist Alianza por Chile, and Interior Minister Jose Miguel Insulza, representing the executive branch, all signed on to the agreement, an accord that has undergone repeated failed efforts since Pinochet's departure in 1990. The willingness of the Chilean right to allow the constitutional reform was the element that finally allowed its passage.

Historic reform ninth effort since 1990 return to democracy

This is the ninth attempt to reform the Constitution since the Concertacion coalition came to power in 1990 and democracy returned to the country (see Chronicle, 1989-12-19, 1990-01-18). The standout reforms include restoring the president's ability to remove commanders in chief of the armed forces, although only with a prior consultation with the Senate, and the elimination of nine "designated" senators and one senator for life.

Senator-for-life and former President Eduardo Frei Ruiz-Tagle (1994-2000) should leave office March 11, 2006, along with the nine other designated senators. The Senate will then have 38 members, and Interior Minister Insulza said on Oct. 7 that the government would not be presenting any proposals to increase the size of the body to its previous total. The accord will also allow Chileans living abroad to vote, and it facilitates granting nationality to the children of Chileans born outside the country.

The Tribunal Constitucional will also be reformed it was another of the organs created by the dictatorship in 1980 and had the ability to repeal laws passed by the Congress. Its seven members were designated by the Consejo de Seguridad Nacional (CSN), but now all members will be designated by the Supreme Court, the Senate, and the president.

Three of the most problematic constitutional provisions were the "binomial-majority" elections system, the establishment of the nine designated Senate positions of whom four must be former military commanders, and the removal of the president's authority to appoint or fire commanders in chief of the armed forces.

The election system, unique to Chile, forced political parties to form alliances to get enough votes to have parliamentary representation. The top vote-getting coalition is awarded only one of two seats in a district unless it receives more than twice as many votes as the coalition in second place (see NotiSur, 2003-06-27). The system has allowed the opposition, with only one-third of the vote, to
control half the offices of popular representatives and has excluded important political sectors, like the traditional left, from taking those offices.

President Ricardo Lagos called the binomial system "aberrant" and "unjust," saying that in no other part of the world are two people elected per district. Now the binomial electoral system will no longer be a part of the Constitution and may be incorporated into the Ley Organica (governing law) sobre Votaciones Populares y Escrutinios before it is reformed.

Reform of the system was controversial, and it was not resolved in this wave of negotiations, but it will be possible to raise it for debate again. To change the law, however, will require a three-fifths vote in favor. The only issue on which the parties could not agree was the duration of the president's term in office, which Concertacion believes should be lowered to four years, while the Alianza por Chile believes it should be maintained at six years.

As of Oct. 13, former President Frei said he would not vote to reduce the presidential term length, rebelling against the dictum of his Partido Democata Cristiana (PDC). "I am free, and I do and say what I want," said Frei when PDC leaders announced that their national council was in favor of the four-year term and their parliamentarians should adhere to that stance.

Chilean right opens up to reform

The last attempt to reform the Constitution came in January 2003, when President Lagos sent a reform package to parliament that also included changes to the CSN and to the Tribunal Constitucional, reforms that did not pass in the legislature during that session of Congress. That and all nine previous efforts failed under opposition from the right, which stood to lose power if reforms passed.

Argentine daily Clarin speculated that the right was willing to approve reforms this time because it is convinced that Alianza candidate Joaquin Lavin will win the 2005 presidential election (see NotiSur, 2004-10-15) and that when he assumes power he will be able to start a new "founding historic cycle" for the right after 16 years of Concertacion governments. The daily called the reforms a "consolidation of trans-Andean democracy."

The present document, considered historic by legislators and news outlets alike, was signed by Hernan Larrain, president of the Senate from the ultraconservative Union Democrata Independiente (UDI), Partido Socialista Sen. Jaime Gazmuri, and Interior Minister Insulza. The timeline established for the Senate to analyze and vote on the reforms allowed for extraordinary sessions the week of Oct. 6 and the following week.

Insulza and Larrain praised the agreement and emphasized the consensus reached among the different political sectors. "This is an agreement made by the parliament in a period of full democratic force; we therefore hope that its value is founded on the durability that it should have so that the Constitution may be the unifying element among all political sectors," said Larrain. Insulza said the government was "very pleased" with the consensus the parties reached, although he added that the reforms are not those he would have wanted at the beginning of deliberations.
"Now, we feel much better reflected in this Constitution, which can always be perfected," said Insulza. Socialist Sen. Jose Antonio Viera Gallo said that he believed these changes would "put an end to entire heritage of Pinochetism.....Of the Pinochet Constitution, only his signature remains, but almost nothing of its substance remains."

-- End --