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Sarkozy Seeks Changes That Would Reinforce Presumed Innocence of Suspects

By Edward Cody
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PARIS, Jan. 7 -- Since the days of Napoleon, [France's](#) investigating magistrates have been at the heart of the justice system, legendary as crusaders taking down criminals, exposing official corruption and providing the grist for law-and-order television dramas.

But President Nicolas Sarkozy declared Wednesday that the "little judges," as they are known in the media, have become outdated and should be done away with. The magistrates, who work with police in a partnership unique to France and a handful of other Napoleonic-law countries, should be eliminated to reinforce the idea that suspects are innocent until proven guilty, he said.

"How can we ask him to take coercive measures, measures touching on the intimacy of private lives, while he is above all guided by the needs of his investigation?" Sarkozy said in a speech to France's supreme tribunal, the Cassation Court. "The time thus has come for the investigating magistrate to make way for a magistrate of the investigation, who will supervise investigations but will no longer direct them."

The formula, beneath its semantics, means that police would run their criminal investigations under supervision of the local prosecutor's office. The investigating magistrate -- now empowered to command police, jail suspects and compel high officials to cough up documents -- would be reduced to another legal bureaucrat on the prosecutor's staff with no independent authority.

Changing the investigating magistrate's status is an idea that Sarkozy has had under study for some time. Since coming to office in May 2007, he repeatedly has suggested pushing the French judicial system closer to the "habeas corpus" legal concept that requires police in the United States and other countries to provide evidence to a judge before they can jail suspects.

The flaw, he said, is that investigating magistrates have the power to judge the likelihood of guilt as well as investigate. That power, while it enables the magistrate to push forward against political winds in sensitive investigations, also has proved to be an invitation to abuse.

A French editor, for instance, was hauled away from his home at 6:40 a.m., handcuffed and strip-searched twice in November on orders from an investigating magistrate who wanted to talk to him about a libel case. The magistrate explained that the journalist, Vittorio de Filippis of the Liberation daily in Paris, had ignored written summonses. But her tactics were widely condemned, including by Sarkozy, as

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an exaggeration and another sign the system should be changed.

Although Sarkozy presented his decision as a way to strengthen individual rights against such abuses, his political opponents and several lawyers accused him of seeking to impose stronger government controls over the courts. Without the independence of the investigating magistrates, they said, the government and its friends in high finance would be insulated from corruption probes. Prosecutors, they noted, are appointed by the government and not immune to its influence.

"It is altogether clear that we are going to end up with a powerless prosecutor's office," said Gilbert Thiel, a well-known investigating magistrate specializing in terrorism cases.

Christophe Régnard, president of the Magistrates Union, said Sarkozy was setting out "to avenge the politicians for the positive actions of investigating magistrates in the official corruption cases of the 1980s and 1990s."

"This is the death of an independent judicial system, because the prosecutor's office is in the hands of the government," complained Emmanuelle Perreux of the Magistrates Syndicate, another professional grouping designed to promote the magistrates' interests.

The main political opposition group, the Socialist Party, said Sarkozy was trying to consolidate more power by asserting control over the courts. The party's Parliamentary leader, Jean-Marc Ayrault, warned against what he called a "totalitarian temptation" toward which Sarkozy was sliding.

Despite the political opposition, Sarkozy's proposal seemed likely to go forward. His center-right coalition has a solid majority in Parliament, and some judicial figures favorable to his presidency said the change was long overdue.

Georges Fenech, a pro-Sarkozy member of Parliament and member of a commission that studied the issue, said the role of investigating magistrate, or "criminal lieutenant," began under French royalty centuries ago. Its modern incarnation has descended from a Napoleonic-era official who was notorious as an enforcer for the dictatorship, he said, and needs to be replaced by a system that provides more respect for the presumption of innocence.

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