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## Country-by-country updates on constitutional politics in Central and Eastern Europe and the ex-USSR.

# Constitution Watch

## Albania

During September and October the Albanian constitutional process quickened its pace due to a warning issued by the Council of Europe. According to the council, Albania must adopt a new constitution based on democratic principles before it can be integrated into the international structures of Europe, including the Council of Europe itself.

Recently the Albanian Constitutional Commission has discussed chapters concerning Parliament and the president and approved them. The Commission has now begun to debate constitutional provisions relating to the judiciary. After approval of this final section, the full constitution will be presented to Parliament.

The political situation continues to be very tense, especially between the two main political parties, the Democratic Party (DP) and the Socialist Party (SP). One can see this conflict at every level and in every organ where these parties are represented, whether it be central institutions, such as Parliament, or local government organs. However, the political quarrels and debates between the DP, on the one hand, and two smaller parties, the Party of the Democratic Alliance (PDA) and the Social-Democratic Party (SDP), on the other, are less severe.

Disagreements are also raging among the MPs of the DP. Two main sources of discord may be mentioned here. The minister of foreign affairs was severely attacked by a DP member of Parliament in the newspaper *Our Time* (an independent paper). The article accused the foreign minister of surrounding himself with a pack of "charlatans and incompetents." Another DP member of Parliament wrote a stinging criticism (published in *Alliance*, the newspaper of the PDA) of a draft decision submitted to the Council of Ministers for approval. That draft decision would have allowed the National Information Service, the successor to "the Sigurimi" (Hoxha's security police) which is now under the direct control of the president, to disseminate false information in an attempt to shape public opinion.

It is significant that, so far, important conflicts like these

have not found their way into the news on television or radio which, it seems, are strictly controlled by the most powerful wing of the DP, a point which a recent article in *Our Time* has stressed. As a result, newspapers alone have reflected this ongoing political feud.

All this political infighting in the newspapers has had its victims, including members of the press itself. The chairman of the Party of National Unity, a minor party in Albanian politics, was sentenced to 6 months in jail for calling President Berisha a "killer" in his party's newspaper. On October 22, after serving a little more than four months of this sentence and after numerous protests from abroad, he was abruptly released.

Another journalist was recently placed under house arrest because of an article he wrote in the SDP newspaper *Alternativa* in which he criticized the newly-appointed Albanian ambassador to Malaysia for being unable to speak English. After a few days, his case was quietly closed.

Some politicians regard the polemics of the current transitional period as unfair. One of the reasons for such exchanges, they argue, is the lack of a press law. Many journalists, who have themselves often been turned into targets by the political combatants, also claim that one way out of such situations might be the adoption of a press law.

In September, therefore, a group of MPs introduced a draft law on the press that was hastily adapted from a German model. Parliament passed it in mid-October. There has been considerable criticism (both within Albania and from outside) of its provisions, which include large fines and give governmental authorities many broadly-defined rights, such as confiscation of publications and suspension without a court order in some cases. The president delayed signing it but finally did so. The law has not yet been used.

On October 25, a newspaper published by the students of Tirana University's department of journalism was closed down after its first issue included an editorial critical of the new press law. Three graduate students from Columbia University in New York had been assisting the student editorial staff with a

small grant from the Soros Foundation and equipment supplied by the International Media Fund of Washington, D.C. The reasons for this shut-down are unclear, though it is reported that a compromise is in the offing and that the newspaper will soon be published again at the university.

The economic situation in the country has become more and more difficult. According to the president, this situation has arisen due to (1) the fact that no significant foreign investments have been made so far and (2) difficulties in privatizing state enterprises. "The grave situation in the Balkans and the unstable political situation in Albania do not favor foreign investments in the country. The old technology of the state enterprises makes them unattractive for Albanians or foreigners who, in order to bring such firms back to life, need to invest plenty of money," President Berisha explained at a recent press conference.

The delay in the constitution-making process, in particular, and of the establishment legal framework in general, as well as the exposure of corruption by some public officials have also had a stultifying effect on foreign investment.

A liberalized foreign investment law was passed on November 2, replacing the August 1991 version. The new law is relatively non-restrictive and attempts to remove barriers to investment while suspending the previously complex authorization procedures. Transfer of profits abroad is made easier and foreign investors are accorded the same rights as Albanians, except with respect to land ownership, which will be dealt with in future legislation.

## Belarus

Armored troop carriers, snipers and water cannons are becoming an essential part of the constitution-making process in the former Soviet Republics. Belarusian parliamentarians had to make their way to the thirteenth session of the Supreme Soviet, which opened on November 9, amidst lines of armed soldiers and policemen. On the eve of the session the government published an appeal to citizens accusing the democratic opposition and some trade unions of forming armed units in order to disrupt public order and seize power. The opposition vigorously denied the accusations and brought a case against the government to court. The chairman of the Supreme Soviet said he knew nothing of the filed appeal and was unaware of any threats to national security. While top government officials refused to make any comments, the chief of the KGB and the minister of interior declared that they knew nothing of the alleged intentions of the opposition and the trade unions. What is more, these two ministers addressed the deputies with an unprecedented letter titled "On Some Questions of State Building in Belarus." The authors criticized reforms in the army, informed deputies of a "parallel KGB" organized under the auspices of the border

guards, and recommended abolishing the office of state secretary on crime fighting and national security as an unconstitutional body. This office is believed to have been the real source of the government's appeal on the eve of the session.

A new constitution was the first question on the draft agenda of the thirteenth session. It was the last chance for Parliament to keep its promise to adopt a new constitution by the end of 1993 and to hold early elections in spring 1994. Chairman Stanislaw Shushkevich did his best to persuade Parliament to start the session with the constitutional debate. He argued that a way out of the current crisis would be possible only on the basis of a new constitution. His first deputy, Viachaslau Kuznetsov, was more realistic, saying that the main problem confronting the constitutional process in Belarus concerns the quorum and that chances for adopting a constitution would be much better at the beginning of the session, when most of the deputies are present, than at the end. However, the majority insisted on economic debates first.

The economic crisis is deepening every day. Prices are skyrocketing and the energy and fuel crisis is enhanced by financial disorder and a huge state debt. The Communist majority in Parliament and the government saw a way out in forming a closer union with Russia. Before the Moscow putsch, a group of Belarusian parliamentarians paid a visit to the Russian Parliament and discussed ways of joining Belarus and Russia on a federative basis. At every session of Parliament, the Belavezhsky agreement of 1991 is cursed and blamed for all misfortunes. Stanislaw Shushkevich who signed the death sentence on the USSR, along with Boris Yeltsin and Leonid Kravchuk, was at the point of being impeached at the last session in June 1993; his removal was planned for the thirteenth session. But events in Moscow and Yeltsin's victory shocked Belarusian conservatives. The idea of a close socialist brotherhood died; Russian pragmatists no longer want even a common ruble zone in the CIS and insist on the independent economic responsibilities of the former Soviet republics.

The reports of Shushkevich and Premier Viachaslau Kebich on ways out of the crisis differed greatly. The leader of Parliament gave a profound analysis of the situation and criticized the government sharply for the first time in three years. The premier's report was the usual mixture of free-market proclamations and old administrative means.

The opposition demanded the premier's retirement and collected 78 votes of the 174 necessary; a proposal to dismiss both leaders was supported by 55 deputies. After two weeks of heated debates, Parliament adopted a resolution wherein government efforts were deemed insufficient; at the same time the government was again given the right to propose an anti-crisis program and self-reorganization. Thus Parliament followed its favorite practice of making no real decisions no matter what the circumstances.

The deputies have started to discuss the draft constitution, but any serious progress is unlikely. Opinions about a presidency, new elections and various other issues differ even inside the largest and most disciplined parliamentary block, "Belarus." Besides, the first quorum crisis occurred even before a constitutional debate was held. The opposition aggravated this crisis by boycotting certain questions on the agenda.

This may force deputies to consider Shushkevich's proposal to convene a constitutional assembly. Two months before the session, the speaker prepared and sent to the deputies a package of draft laws on such an assembly. According to the drafts, the constituent assembly will be a body of 310 members elected along somewhat simpler rules than those governing parliamentary elections for a term of four months. The only task of the assembly will be to discuss the draft prepared by the constitutional commission and to adopt it on the first reading by a simple majority. After that, the assembly is to be dismissed and Parliament is to set a date for new elections.

Such is the new constitutional plan of Shushkevich. As for Belarusian political life, up till now it has continued to follow old paths.

## Bulgaria

The Council of Ministers approved a draft law aimed at solving the problem of bad bank credits. It proposed that credits advanced to state enterprises up to the end of 1990 should be covered by government securities.

Yanko Yaniv's Liberal Congress Party's membership in the Union of Democratic Forces was "frozen" because of "direct attacks against UDF leaders." Yanko Yankov accused the leader of the Democratic Party and former parliamentary Chairman Stefan Savov of having taken exams at the University of Sofia School of Law during a period he claims to have spent in exile in a village while serving a sentence for his dissident activities.

Former Prime Minister Georgi Atanasov and former Minister of the Economy Stoyan Oveharov were detained in the prison of Sofia to serve out their respective ten and nine year sentences.

President Zhelyu Zhelev suggested in a television interview a possibility for the formation of a new parliamentary majority comprising the Union of Democratic Forces (UDF), the Rights and Freedom Movement (RFM) and the New Union for Democracy (NUD). (The NUD is a faction formed from former UDF members.) UDF's parliamentary group rejected the idea. The president's press service announced that Zhelev planned to ask the United Nations for compensation for losses Bulgaria has sustained from the economic embargo imposed on Yugoslavia. Chairman of the National Security Parliamentary Committee, Nikolay Slatinsky, proposed warning inter-

national bodies that Bulgaria would have to violate the embargo if not compensated for its large losses. The president opposed that suggestion because of the negative impact it would have on Bulgaria's international reputation. The Union of Bulgarian Teachers warned that its members would go on strike because of low salaries.

The statute governing the internal organization of the UDF was amended declaring the incompatibility of high state positions with leadership roles in a political party. As a result, the acting chairman of the National Assembly, Aleksandar Jordanov, lost his position as deputy leader of the UDF.

Velko Vulkanov of the Bulgarian Socialist Party (BSP) presented a draft act on the control of corruption in the state and municipality apparatus. It followed a proposal of the BSP for the establishment of a parliamentary commission on corruption made a couple of days earlier.

The chairman of the Agency for Foreign Aid, Stefan Chavev, presented his report on his agency's activity in 1992 before Parliament. He accused the former chairman and close presidential associate, Petko Simeonov, of embezzling millions of leva. A parliamentary commission was established to investigate the case.

Tobacco producers began a hunger strike demanding higher rates for the state purchase of tobacco. (The state has a monopoly on tobacco processing.) In some places, tobacco was burned as a form of protest. A rally of private taxi drivers was organized in front of the cabinet building to protest the enormous (up to 90 times) increase in their taxes. Tobacco producers started to block roads in an attempt to force the government to raise prices.

Prime Minister Berov presented the cabinet's draft of an amendment to the act on transformation and privatization of state and municipality owned enterprises. The draft amendment proposed that every Bulgarian citizen receive a privatization check worth BGL 900 that would allow him or her to buy shares for BGL 25,000. Significantly, Parliament also abolished the privileges previously granted to foreign investors by Decree 56 on economic activity. In the meantime, the city court of Sofia called a halt to the "Moscow fund" case against Todor Zhivkov because Zhivkov had been deprived of the chance to exercise his right to defense during the preliminary investigation. (The "Moscow fund" was a source of money created to support Communist parties in capitalist countries. Hard currency had secretly been transferred by the Bulgarian Communist Party to Moscow for subsequent distribution.)

The Constitutional Court ruled that only students admitted to state universities could postpone their military service.

Parliament announced its decision on the "Yakorouda" report dealing with cases in which certain persons had been forced to declare themselves Turks in the December 1992 cen-

sus. Parliament voided the results from the districts of Yakorouda and Gotse Delchev concerning ethnic identity, religion and mother tongue. At a municipal conference of RFM in Kurdzhali, Mehmed Kodzha (an RFM member of Parliament and chairman of the Parliamentary Committee on Human Rights) argued that Turks should be re-designated as a national minority in Bulgaria. The presidential adviser on ethnic matters, Mikhail Ivanov, declared that the parliamentary decision on the Yakorouda case contradicted the constitution. He said that there were no reasons to declare void the census results concerning religion, since they had reflected the truth; and he announced that the president would not bring the case before the Constitutional Court. BSP reacted strongly against this.

Alexander Yantehoulev (mayor of Sofia and a member of UDF) published a declaration of the "blue" (UDF) mayors accusing the government of trying to hamper their activity through state budget subsidies.

A plenary session of the Higher Council of the BSP was held. It declared that, for now, the Socialists were not prepared to form a cabinet and promised "support and criticism" to the Berov government. Elections were foreseen in 1994, and the BSP announced its readiness to govern the country should the people so decide in these elections.

A draft resolution on the illegitimacy of the constitution had been presented at the parliamentary assembly of the Council of Europe by Luchesar Toshev (UDF). The leader of the Bulgarian Socialist Democratic Party (BSDP), Dr. Peter Dertliev, suggested that Toshev should be charged with high treason.

An announcement was made concerning a statement of the newly appointed U.S. ambassador, William Montgomery, that he would collaborate with certain members of Parliament for the amendment of the constitution. He envisaged the abolition of the ban on political parties based on ethnic or religious grounds, claiming that it could hamper the participation of RFM in the next elections as well as the formation of a Macedonian party.

Three members of Parliament, Toshko Peykov, Vasil Mihailov and Zdravko Katsarov, presented a draft resolution declaring illegitimate the coup of September 9, 1944, and annulling all its legal consequences, including the referendum that had transformed Bulgaria from a monarchy into a republic. The draft resolution also called for the restoration of the 1879 Turnovo Constitution. At the same time, Georgi Panev (UDF) presented a draft act on the declaration of the illegitimacy of the Communist regime in Bulgaria. Panev's proposal was promptly matched by Yuri Borisov (BSP), who presented a draft act on the declaration of the illegitimacy of the UDF.

An act on the value added tax was passed imposing a uniform tax of 18 percent. The act will come into force on April 1, 1994.

A confederation of industrialists uniting some of the richest entrepreneurs in Bulgaria was founded. Newspaper publishers launched a protest action against the new value-added tax that was almost double the current turnover tax they had to pay.

Ahmed Dogan declared that, in his opinion, Parliament was capable of forming a new cabinet before the elections. He announced that talks were being held with the UDF. A day later, Filip Dimitrov denied the existence of any such talks and declared that the current National Assembly, having exhausted all its potential, could not form a new cabinet.

BSP, RFM and NUD representatives voted for a resolution directing Parliament to discuss a draft act on the amendment of the Act on the Supreme Judicial Council. On November 10, this resolution was passed by the National Assembly on a first reading. It aims at the dismissal of the acting prosecutor general, Ivan Tatarchev, and chairman of the Supreme Court, Ivan Grigorov, who are open UDF supporters. The amendment supported by the parliamentary majority, proposes that 15 years of judicial practice as judge, prosecutor and/or investigator be required for appointment as a judge or prosecutor, and that the prosecutor general should have at least 5 years of experience as a prosecutor and the chairman of the Supreme Court should have at least five years of experience as a judge. (The acting prosecutor general and chairman of the Supreme Court, aligned with the parliamentary minority, have been attorneys only.)

The Supreme Judicial Council declared that the Council of Ministers unlawfully interfered with the judiciary thus violating the constitution. At a meeting with parliamentary groups Prime Minister Berov and other ministers rated the activity of the Supreme Judicial Council and the office of the prosecutor as unsatisfactory.

A critical letter was sent by Nikolai Kolev-Bosiya (a prominent dissident, poet, and a founder of the UDF who has stayed close to Zhelev) to the president accusing him of having surrounded himself with Communist supporters as advisers.

In a populist move, former head of state Todor Zhivkov also sent a letter to the president suggesting that a comparison be made between any four years of his socialist rule and the last four years with regard to prices, unemployment, number of Mercedes used by high public officials, and so forth.

## Croatia

The *East European Constitutional Review's* editorial board has decided to suspend temporarily its coverage of constitutional developments in the Republic of Croatia. Constitutional issues do not play a prominent role in contemporary Croatian politics, and there seems to be no good reason to treat Croatia differently from Serbia (never covered in the *EECR* updates). For nonconstitutional develop-

ments in Croatia, see the article by Branko Smerdel in this issue of the *Review*.

## Czech Republic

October saw the confirmation by Parliament of two more members of the Constitutional Court, bringing the total number of justices to fourteen, out of the fifteen provided for by the constitution. At the same time, Parliament scotched President Havel's nomination of Ivan Prusa to a seat on the court. Prusa had served as head of the Czechoslovak premier's office during the time of the "velvet transition," when the communist Marion Calfa was prime minister.

The court, which met for the first time, albeit as an incomplete body, last July, has already been flooded with something on the order of three thousand petitions. Though citizens can petition the court directly (allowing numerous cases to make their way higher than they should), certain procedural stipulations have permitted the court to dismiss about ninety percent of these requests out of hand. There are, nonetheless, a number of important cases waiting to be heard. Legislation in a town in northern Bohemia, requiring prospective renters to obtain approval from town officials before moving into a house or apartment (a rule that apparently allows the town to discriminate against gypsies who have been arriving in increasing numbers from Slovakia since the split), is being challenged as an infringement of the right to housing written into the Charter on Human Rights and Freedoms. The Communist Party has threatened to challenge recent educational legislation on the grounds that it breaches the "right to free education" by not insuring that students enjoy access to free textbooks and by abolishing life tenure for university professors. (The party says that the latter provision would drive the best experts out of the educational system.) Parties on the left are also contesting the constitutionality of a recent bill which declares the former Communist regime illegal and which extends the statute of limitations on certain crimes committed during the Communist era (see *EECR*, Summer 1993). They argue that this bill infringes the Charter of Fundamental Human Rights and Freedoms by ascribing collective guilt. The Czech Social Democratic Party (CSDP) plans to challenge the constitutionality of a property law that went into effect on July 1, which they claim violates the equal right of ownership by favoring land-owners over building-owners. (The law allows land to be sold by an owner regardless of whether or not he owns the buildings on it.)

The Constitutional Court is fairly evenly composed of law professors, lawyers and former judges. (Four of the justices previously served on the Czechoslovak Federal Constitutional Court.) A law that went into effect on July 1 declares that the court will have a chief justice, two deputy justices and four "senates" containing three justices each. But a fundamental

decision remains to be taken. It has yet to be determined whether cases will be assigned arbitrarily to the four senates or whether each senate will hear cases exclusively in a well-defined area. Though the former system would insure a degree of "blindness" or impartiality in determining which justices hear which cases, some observers warn that such a system might create four equally powerful mini-courts handing down conflicting decisions on similar cases. A rationalized division of labor in which each of the four senates would have its own jurisdiction (e.g., civil law, criminal law, administrative law, etc.) would avoid this problem, these commentators add, and would allow the justices to specialize in criminal law or administrative law, and so forth, according to their expertise. But such a division-of-labor approach might also give rise to seriously unbalanced case loads. (For example, an administrative senate would almost certainly receive a surfeit of cases compared to the other three judicial senates.) The justices will have to agree among themselves what procedure to follow in distributing cases.

Also in October, the government declined to recommend to Parliament a bill considerably broadening the possibilities for initiating referenda. Prime Minister Vaclav Klaus asserted that the draft bill was rejected because it would have introduced an element of direct democracy into a constitutional system based on indirect or representative democracy. (The hundreds of millions of crowns that frequent referenda would cost, he added, was a minor consideration.) The Civic Initiative for a Prospering Czecho-Slovakia subsequently sent an open letter to parliamentary groups, along with a petition bearing some 10,000 signatures, demanding that a law on referenda be passed. The Initiative's leader, Lubos Olejar, said that Klaus's position contradicts the constitution—violating citizens' sovereignty and depriving them, during the lengthy interval between elections, of the right both to express disagreement with party secretaries and to protest the failure of deputies to fulfill electoral promises. Rudolph Opatril, spokesman for the Movement for Self-governing Democracy for Moravia and Silesia (MSDMS), which helped draft the referendum bill, said that the government's rejection of the bill should serve as a warning to all citizens that their constitutional rights could be endangered. Jiri Payne, chairman of the parliamentary Foreign Relations Committee and member of Klaus's Civic Democratic Party, noted in response that, so far as he knew, nowhere in the world do parliaments declare referenda, and that such an innovation would jeopardize legislative democracy. Frequent recourse to referenda, some observers claimed, would make it more difficult for the public to blame politicians for policy decisions gone awry.

On September 1, the MSDMS presented to the House of Deputies a draft constitutional law on territorial self-administration and state administration. The law envisages the estab-



lishment in Bohemia and Moravia-Silesia or two self-administered lands (*vyšší územní celky*) whose official names would be chosen by their representatives. The MSDMS has stressed that this would not mean a division of the country, dismissing fears about dualism. The party plans a mail-in referendum in which Moravian and Silesian citizens would have the opportunity to express their opinions concerning the future territorial and administrative structure of the republic. The results would ostensibly be used to help the MSDMS members of Parliament (14 in a house of 200) make up their minds on the proposed legislation (which they have drafted), though it is not unlikely that the outcome of such a referendum would also be used to make the case for an administrative and territorial division between Bohemia and Moravia-Silesia. The MSDMS said that, if this legislation as well as its drafted legislation on referenda were not accepted, it would appeal to the Council of Europe. The second of these draft laws has now been rejected, and therefore an appeal can be expected soon.

While the MSDMS advocates a separate "land" for Moravia and demands a referendum on the territorial organization of the state, several other parties, from both the governing coalition and the opposition, seem to favor a solution resembling the pre-1989 structure with three levels of administration: local, district and regional. At that time, there were seven regions in the Czech Republic and about sixty districts. The number of regions to be introduced now range from seven, proposed by the Communists, to 13, proposed by Civic Democratic Alliance (CDA). Klaus's Civic Democratic Party has yet to show much enthusiasm for this reform, pointing to the costs of any such an operation. Indeed, Klaus appears to be in no hurry to launch any administrative reform. He is strongly opposed to the Moravian party's proposals (which, incidentally, provide that party with its only *raison d'être*) and argues that they would recreate the dualistic instability which led, only a year ago, to the break-up of Czechoslovakia. However, as President Havel put it in the last week of October, legislation concerning administrative reform should be passed no later than the end of 1993, in order to be in place by the time of the communal elections to be held next year. But the whole issue seems to be stalled at the moment. Indeed, the legislative proposals have yet to be placed on the government's agenda.

Also on September 1, the constitutional and foreign affairs committees of Parliament approved a draft amendment to a law on acquiring and losing Czech citizenship. The amendment has been advertised as softening the law's harshness regarding several groups. Among these are Slovak citizens born on Slovak territory before December 31, 1939, one or both of whose parents were born on Czech territory. Though it is not immediately clear, the justification for such a change may be that many Czechs went to Slovakia during the period of the First Republic, 1918-39, ostensibly to help Slovakia fill a large

demand for professionals that it could not satisfy alone. (This explanation is rejected by many indignant Slovaks who argue that, even if this were the case, the Czechs long overstayed their welcome.) The amendment, in any case, would prevent the citizenship law from punishing the children of the generation of Czechs who helped Slovakia through the interwar period. The proposed amendment also allows people meeting the requirements of the bill (such as those having lived in the Republic for two years and having no criminal record) to choose Czech citizenship by December 31, 1993. If passed by Parliament, the amendment would also moderate the law's effect on people who had remained on Czech territory as a result of any resettlement instigated by the government, a provision written primarily to cover a number of Romany (gypsy) Slovaks resettled in the Czech Republic by the Communist regime.

Parliament failed to override a presidential veto of a controversial customs law. The law was passed during the summer but Havel vetoed it July 22, on the grounds that it would have exempted parliamentarians from inspections at the border (see *EECR*, Summer 1993). The Czech press had covered in some detail the fact that parliamentary deputies had imported cars, computers and other goods without paying the normal customs duties. Thus, in the face of Havel's veto, too few votes could be gathered for an override. Now the bill will have to be redrafted.

Among upcoming legislation to be considered by Parliament is a bill concerning the conditions of audio-visual production, distribution and archival storage, which, among other things, would belatedly legalize private film production. Film production in the republic has come to a near standstill in the past two years.

According to a poll carried out by the Empirical Research Center in August, Parliament had earned the trust of a mere 27 percent of the 1,507 people interviewed, down nine percentage points since July. Parliamentary Chairman Milan Uhde said that he hoped that, with the ending of the period of post-revolutionary tasks—such as the passage of the Czech Constitution and legislation connected with the split of Czechoslovakia—Parliament will improve the quality of its and thereby halt its steady decline in popularity. (In September, Parliament was equipped with an electronic voting system to accelerate and record voting, and—it is hoped—to rule out future challenges to voting results.)

The new constitution establishes a yet-to-be-elected upper house, the Senate, which will probably be only slightly more popular than the current House of Deputies. Left-wing, opposition parties now question the utility of this body, whose 81 members are to be elected by the majoritarian system in November 1994. Opponents of the Senate assert that the republic is too small to need a two-chamber legislature. On October 14, the CSDP proposed legislation that would have abolished the

body. A left-wing coalition of the Socialist Party, the Greens and the Agrarian Party, as well as the Communist Party (the latter two, along with the Social Democrats, voted in favor of the constitutional provisions establishing a Senate) supported the bill. The Left Bloc (LB) also publicly announced its opposition to the Senate and said that it was drafting its own legislation to abolish the upper house. The Liberal National Social Party (LNSP), an offshoot of the Socialist Party, may be the only left-wing party favoring the Senate. The right-wing parties of the ruling coalition—Civic Democratic Alliance and Civic Democratic Party—do not support efforts to attempt to eliminate the Senate. Klaus has officially admitted that he does not see the point of the institution, but adds that the government will not consider tampering with the institutional framework established by the constitution. Havel has also defended the upper house, because, for one thing, "to abolish the Senate would require re-writing the whole constitution." The Senate, it has also been argued, plays an important function in the constitutional system. Unlike the Chamber of Deputies, the Senate cannot be dissolved by the president and might therefore come to be the only legislative body capable of adopting emergency legislative measures in case they prove necessary.

At a meeting of NATO foreign ministers in Poland on October 21 and 22, Havel expressed his opinion that Poland, the Czech Republic, Slovakia and Hungary should be accepted into the western security organization as quickly as possible. In a letter published by the *New York Times* around the same time he said that the West "would commit the most fatal of possible mistakes" if it refused to accept these countries because of pressures from Moscow. (Either genuinely reluctant to fuel Russia's traditional siege mentality, or using this concern as a plausible excuse, U.S. Secretary of Defense Les Aspin, and German Foreign Minister Klaus Kinkel, along with many other NATO foreign ministers, stated that accepting these countries at the cost of a serious rift with Russia would do all sides a disservice. Instead, they offered to include these countries in joint peacekeeping and military exercises without actually committing themselves to officially incorporating the central European four.) Klaus stated coolly that, though he looked forward to future inclusion in NATO, it should not be expected overnight but should rather be seen as a long-term goal.

On October 27, a bill was submitted to Parliament providing for the return of property both to the Federation of Jewish Communities in the Czech Republic and to individual persons. The proposed legislation aims to redress property wrongs committed by the Nazis during World War II, but yet unresolved because proceedings were interrupted by the Communist putsch of February 1948. The Communists are now expected to vote against this bill. The Jewish community had originally complained that it was having difficulty getting the legislation submitted due to parliamentary indifference. Klaus's

Civic Democratic Party apparently wanted to avoid opening up this can of worms for fear that it would lead to demands for the return of property by Sudeten Germans, some 2.5 million of whom were expelled from Czechoslovakia after World War II and whose property was seized by the Czechoslovak state. (The Jewish community expressed resentment at being placed on a level with those Germans who had originally seized their property.) The property currently being discussed includes a number of synagogues, a Jewish museum, and the Prague Jewish cemetery, which dates back to the twelfth century, the oldest such cemetery in Europe.

While there is widespread nonpartisan agreement that confiscated Jewish property should be returned to Jewish communities and individuals, the restitution of substantial properties formerly belonging to the Roman Catholic church and some minor Protestant churches has led to disputes within the governing coalition. Klaus's Civic Democratic Party, refuses to restore to the Roman Catholic church its former forests, fields and fishponds. The other coalition parties—CDA, Christian Democratic Party (ChDP) and Christian Democratic Union—Czechoslovak People's Party (CDU-CPP)—look more favorably on the restitution of church property. The Civic Democratic Party—last July Klaus came out strongly in favor of a strict separation of church and state—argues that there have been so many transfers of former church property in the past four decades that any attempt at restitution would unduly snarl up the whole privatization process. The other coalition parties are trying to find a restitution formula which would return property to religious bodies but, at the same time, continue to rule out restitution claims raised by the Sudeten Germans.

October 28 marked the seventy-fifth anniversary of the founding of the Czechoslovak Republic, an anniversary celebrated with ambivalence and acrimony in the Czech Republic. The extreme-right Republican Party, led by Miroslav Sladek, played on popular displeasure over the separation of Czechoslovakia. The party stated that because it had always favored the maintenance of the federation, it would observe the holiday by laying a wreath at the statue of Saint Wenceslas, the patron saint of the Czechs. The party went a step further, warning that it would physically prevent Havel and others from laying wreaths at the statue of Saint Wenceslas, since they had been responsible for the dismantling of Czechoslovakia. For his part, Havel announced that, the founding of the Czechoslovak Republic represented a moment in the history of the Czech Republic ("our accession to democracy, to certain humanistic values, to certain traditions") and therefore could not be forgotten. He, too, as a consequence, announced plans also to lay a wreath. These announcements set off an exchange of memos between Sladek and Havel, with Sladek claiming that members of Havel's entourage were planning to sabotage his party's commemoration and Havel expressing fears of vio-

lence. Entering the fray, Klaus and the Social Democrats then declared that they, too, would lay wreaths at the statue of Saint Wenceslas. All this resulted in the mayor of Prague, Jan Koukal, reserving Wenceslas Square on October 28 for the next twenty years in order to make sure that all constitutional officials would continue to have the opportunity lay wreaths there.

It seems clear that many political figures wanted to celebrate October 28 but feared being seen as nostalgic for the old federation. The Christian Democrats even went so far as to suggest that the national holiday be changed to September 28 to commemorate the death of Saint Wenceslas, killed by his brother Boleslav in 929 A.D. In the end, October 28 was celebrated, without major incidents, by thousands on Wenceslas Square. Miroslav Sladek at one point climbed onto the statue of Saint Wenceslas and had to be talked down by three police officers. His Republican Party has said that it will press charges against those whom, in its view, disrupted its celebration.

## Estonia

With the holding of its first post-Soviet municipal and local elections in October, Estonia underwent another test of its emerging political system. Preferring various opposition parties, voters handed the ruling Fatherland coalition a clear defeat in all of Estonia's major cities. The elections also represented a reappearance of Russian political forces, since non-citizens (who are mostly Russian) were allowed to vote and did so actively. On constitutional matters, a law on cultural autonomy for ethnic minorities was passed. And Estonia's long process of judicial reform was completed with the establishment of district courts which rounds out a new three-tier system.

Like most mid-term elections in democratic countries, Estonia's municipal elections on October 20 served as a rejuvenation of local government as well as a test of the ruling party in the national government—the Fatherland coalition led by Prime Minister Mart Laar. Although economic conditions in the country have slowly begun to stabilize, other political controversies (including a brief mutiny by Estonian soldiers in western Estonia) have kept the government in the hot seat. The effect of this was especially apparent in the capital, Tallinn, where Fatherland won only 5 seats in the 64-seat city council. The centrist Coalition Party (CP), led by former Prime Minister Tiit Vahi and including former Estonian leader Arnold Ruutel, came out on top with 18 seats.

The election solidified the Coalition Party's recent rise as the strongest opposition party in Estonia. Though mostly made up of former nomenklatura officials, the CP has successfully cast its image as one of technocrats and professionals. In the wake of Fatherland's electoral defeat, the CP sought to make a move in the national Parliament as well, calling for a no-confidence vote in the government on November 15. The measure

was defeated thanks to quick negotiations between Fatherland and its coalition partners to shore up their accord; but the incident underscored the growing weakness of the current government, which has been rocked by allegations of corruption.

Russian political parties were also big winners in the local elections, re-emerging on the political scene after being shut out from the national Parliament last year. Most of Estonia's 500,000 Russian-speakers were declared non-citizens by Estonia's 1992 citizenship legislation, making them ineligible to vote and run in the national elections. As a consolation, however, the Estonian Constitution did grant non-citizens the right to vote in local elections. As a further concession, the government agreed to grant citizenship to many Russians running for office, thus facilitating their campaign. In the end, two Russian parties (the Russian Democratic Movement [RDM] and the more nationalist Russkii Sobor [RS]) together captured nearly half (27) of the seats in Tallinn. Their upset victory sent mild shockwaves through Estonian political circles, which are now forced back into a position of having to work with Russian politicians, at least in governing Estonia's capital.

In the overwhelmingly Russian towns of Sillamae and Narva (see the article by David Laitin in this issue), where residents called for regional autonomy in a referendum last July, many lingering ex-Communist leaders were removed. As a result, the new city council members are expected to take a less obstructionist line vis-a-vis the central government and begin concentrating on the industrial region's economic problems.

On October 26, the Law on Cultural Autonomy of National Minorities was passed by Parliament, fulfilling an outstanding provision written into the constitution. The law draws on Estonia's pre-war system of cultural autonomy, providing state funding to national minorities for the organization of their cultural affairs. Ethnic groups numbering at least 3,000 registered members will be eligible. Although the law is expected to help Estonia's smaller minorities (Ukrainians, Belarusians, Jews) to organize more easily, it is seen as insufficient by many Russian leaders, who make up 30 percent of the population.

In mid-September, two district (or regional) courts were installed in Tallinn and Tartu, completing Estonia's long process of judicial reform. The district courts will hear appeals from city courts and will be subordinate to the National Court seated in Tartu. The Soviet-era Supreme Court was liquidated on October 1. In September, the National Court issued one of its more important rulings as the constitutional arbiter, declaring the Narva and Sillamae autonomy referendums unconstitutional. (The court ruled that municipalities lack jurisdiction to rule on autonomy issues.) Leaders in both towns promised to abide by the ruling.

Meanwhile, opposition leaders planned to appeal a gov-

ernment decree issued in August which allows the security police to wiretap phones and look through mail. They argue that such measures would again breed suspicion in society. The government also came under attack in August for a decision to sell off the largest state-owned daily newspaper *Rahva Haal* to a group of Fatherland Party associates. The decision was rescinded after a public outcry.

## Hungary

In March 1993, President Arpad Goncz submitted to the Constitutional Court a yet-to-be-promulgated law, retroactively extending the statute of limitations for crimes committed during the Revolution of 1956. (For further analysis of the court's decision in this "historical justice" case [53/1993. (X.13)], see the article by Krisztina Morvai in this issue.) The president, perhaps dubious of the political wisdom of re-opening old wounds, asked the court to review two articles of the law for their conformity with both the constitution and two international agreements—Art. 7(1) of the European Convention of Human Rights and Art. 15(1) of the International Convention on Civil and Political Rights. This second reason for review presented a jurisdictional problem for the court, since technically its competence to review a law not yet promulgated is limited to the question of the law's constitutionality. Nonetheless, the court claimed the right and responsibility to judge the law's conformity with international law, because the court is required, under Art. 7(1), to ensure harmony between domestic law and obligations assumed under international law when evaluating a law's constitutionality. The court stated that the "harmony prescribed [in Art. 7(1)] is part of the constitutionality of regulations which undertake international law obligations." As a consequence, the court was able to consider questions of international law, too, when ruling on the law's constitutionality.

Ordinarily, Hungarian law prohibits the retroactive modification of statutes of limitation in criminal cases. The court has found an exception to this principle in two types of cases: (1) where the Hungarian law in force at the time the crime was committed provided no statute of limitations, or (2) where the crime is a crime against humanity or a war crime, and the non-application of a statute of limitations is an obligation undertaken by Hungary in an international agreement.

Under this rule, the court held that the first article of the law in question, which did not deal with international crimes, was unconstitutional. By contrast, the constitutionality of the second article, referring to war crimes and crimes against humanity as defined by the Geneva Convention (1949), was upheld. In making this two-part decision, the court referred back to one of its earlier rulings, where it was stated that, if the court can find other constitutional means to ensure constitutionality and rule of law, then the law under review should not be

declared void (38/1993. (VI.11), p. 8801).

In deciding whether Hungary undertook an international obligation not to apply a statute of limitations with respect to this specific range of crimes, the court referred to a second international convention. By signing the New York Convention of 1968, according to the court, Hungary undertook an obligation not to apply its own statute of limitations in cases involving war crimes and crimes against humanity. The European Convention makes possible the extension of statutes of limitations, but only "in principle." The court held, however, that a state ratifying either the Geneva convention or the New York convention assumed the obligation to punish war crimes and crimes against humanity, and not to apply the statute-of-limitation rules (p. 8799). According to this argument, it seems irrelevant which convention Hungary signed, and even (in the view of the court) whether the international convention was properly promulgated according to Hungarian law.

On the question of whether or not the non-application of the statute-of-limitation rules to these crimes falls afoul of Art. 57(4) of the Hungarian Constitution ("No one may be pronounced guilty of, or sentenced for, any act that was not considered a criminal offense under Hungarian law at the time it was committed"), the court ruled that Art. 57(4) shall be interpreted, in such a case, in the light of Art. 7(1) ("The legal system of the Republic of Hungary accepts the universally recognized rules and regulations of international law, and harmonizes the domestic laws and statutes of the country with obligations assumed under international law"). The court tried to find a method to regulate retroactivity similar to that adopted in the European Convention and the International Convention on Civil and Political Rights. In these documents, non-retroactivity is regarded as a domestic obligation, while retroactivity regarding war crimes and crimes against humanity is still possible. But the Hungarian Constitution does not refer explicitly to the possibility of retroactivity in the case of (any) international crimes, while it does explicitly prohibit retroactivity. This is why the court had to deal with the relation between domestic law (including the constitution) and international law—ultimately declaring, it seems, that international law prevails over the constitution. ("The constitution and the domestic regulation are to be interpreted in such a way, that generally accepted rules of international law shall be effective" [p. 8795].)

The Ministry of Justice will soon give to the chief prosecutor the results of investigations into fifty episodes of mass shootings that took place between October 23 and December 28, 1956. The precise number of court cases or people to be charged for these crimes has not been announced. These investigations, therefore, will not necessarily lead to fifty prosecutions. The investigations implicate members of the Military Council formed on October 24, 1956: Rakosi supporters; leaders of country-level Communist Party organizations; those who

were members of local militias; and the leadership of the Communist Party in 1956.

In the past few months, no important laws relating to constitutional issues have been passed. But several drafts dealing with modification of the constitution have come before Parliament.

The Ministry of Foreign Affairs submitted a draft bill (September 1993) to amend the constitution's provisions governing the power to make treaties. In the absence of these changes, Parliament has been unable to pass a law regulating the making of international agreements.

The most important aspect of the draft is its treatment of the hierarchy of legal regulation. As it provides, international agreements already in force rank below the constitution but above laws passed by Parliament. (This provision should be compared with the court's reasoning in its retroactivity decision discussed above.) In cases of conflict between a treaty in force and an internal regulation or law, the international agreement shall prevail. Special rules, however, apply in cases of conflict between the constitution and treaties not yet concluded. In such cases, modification of the constitution is needed either before the treaty is concluded or at the same time. While the Constitutional Court has the power to decide whether the concluded and promulgated international agreement is unconstitutional, it has no power to review the treaty before it is concluded. Thus the judgment of constitutionality must be made before review by the Constitutional Court.

Other regulations of the draft amendment make more clear the content of the relevant (and quite ambiguous) articles of the constitution on the treaty-making power. The draft provides that each relevant institution (Parliament, the president and the government) has the power to conclude those types of international agreements which are assigned to it by a separate law (now in draft) dealing explicitly with making international agreements. However, the draft amendment does not provide any guidelines for what types of treaties can be concluded by what agency or branch of government; this matter is to be determined by law, which might be considered a weakness of the draft constitutional amendment.

Parliament has begun a general debate on the draft law, submitted by the Ministry of Interior in March 1993, dealing with the police. Because the law requires a two-thirds majority to pass, the three parties of the governing coalition will need to compromise with the parties of the opposition to gain the majority required. This need for compromise puts great pressure on some of the more controversial aspects of the draft.

The most sensitive issue appears to be the extent of the power of the minister of interior. Under the draft, the minister is given sole power to control the police forces. This aspect of the proposed law is criticized by the opposition for increasing the powers of an already too powerful ministry. By centraliz-

ing power in the hands of the ministry, moreover, the draft seriously diminishes the role played by local governments in regulating the police. Participation by local governments in decision-making about police administration—regarding such issues as the establishment of a new police station or the appointment of the police superintendent and the chiefs of local police stations—is limited to the expression of opinions only. The draft permits local governments to conclude agreements with affected police stations on certain matters specified by the draft law. New police officers, for example, can be commissioned either by the central police station or on the basis of such agreements. If a local government opts for the latter method, however, the expenses incurred by the agreement will probably be borne by the local government or possibly by the police, since a guarantee of state funding for such agreements is not included in the draft. State funding is guaranteed only when the expense is incurred by the central administration. As a consequence, it is unclear what interests would induce either the state or local government to provide new local services.

The opposition demands, at a minimum, that local governments be no weaker than they are under current regulations in force since 1974. (The 1974 law gives local government veto power over the appointment of the police superintendent and the chiefs of local police stations.) Furthermore, the opposition wants expenses for the establishment of new police forces to be covered by the state budget. With respect to the possibility of agreements between local governments and the police, the opposition criticizes the lack of any guarantees to ensure compliance with such agreements.

In February, the Ministry of Defense submitted to Parliament two related draft laws on defense. One deals with needed constitutional changes; the other is the defense law itself. Both measures were passed by the required two-thirds majority on December 4.

The first law, which adds Article 19(e) to the Hungarian Constitution, provides a new power for the executive. Under the new law, the government may, in three limited cases, order immediate military action without specific agreement from the president and without a declaration of emergency by Parliament. The government is obliged to inform Parliament of any such decision, however. The three cases are, first, an intentional invasion of Hungarian airspace; second, a surprise air attack; and third, a surprise invasion of military forces into the territory of Hungary.

The law follows a decision by the Constitutional Court (4/1991), in which the court held that those powers relating to defense, but which are not assigned explicitly either to Parliament or to the president, shall be assigned by default to the government. Previously, the constitution assigned the power to order the deployment of military forces in a state of emergency to Parliament (Art. 19, para. C (1)). But a state of emer-

gency had to be declared by Parliament or, if Parliament was unable to pass on the question, by the president. The constitutional provisions dealing with emergency situations, however, did not explicitly cover the three situations contemplated by the draft law. Hence, under the court's reasoning, these powers are assigned by default to the government. To provide for the ability of the executive to respond unilaterally in military situations, the powers in question have now been relocated to the executive. The question is how best to empower the executive to repel sudden attacks without a parliamentary declaration of a state of emergency.

The second law deals in part with the organization of the border-guard forces. The question here was whether the border-guard forces should fall within the jurisdiction of the military (as they now do) or of the police. This decision was significant because it determines who controls the border forces. If they were assigned to the military, then ultimate control over them could lie with Parliament. If the border guards were subordinated to the police, by contrast, then control would rest with the executive or, more specifically, with the minister of interior. In the bill, except for a state of war, the border guards fall under the jurisdiction of the police, and thus are ultimately subject to executive control. This provision was intensely but futilely opposed by the opposition.

On another front, Art. 40(b) of the constitution has been amended, prohibiting members of the armed forces, police, and security services from joining political parties or taking part in political activities. Also, the controversy about government control of the media continues unabated. After a mass protest in Budapest on October 30 in favor of press freedom, President Goncz published a letter deploring the state of Hungarian television and radio. Citizens are being hindered from freely expressing their opinions, he wrote. Prime Minister Jozsef Antall quickly registered his disagreement with this assessment, denouncing the government's critic.

*On December 12 Prime Minister Antall died. With his death the government's mandate legally ends. The interim government (which functions with reduced powers) under Interior Minister Peter Boross will continue to operate until the president nominates a new prime minister. According to the constitution, the new PM must be confirmed by a majority vote in Parliament. Failure to appoint a government within 40 days would result in new elections called by the president.*

## Latvia

The first hundred days of the new government of the Republic of Latvia passed without any serious political conflicts. The new Saeima (Parliament) now consists of eight political parties or factions, all of which represent coalitions tied to specific movements and electoral blocs. To address some essential problems of coordi-

nating parliamentary activity, an inter-factional council has been formed. Furthermore, the pre-Soviet *Parliamentary Regulations* of the Saeima have been restored in accordance with the original law of April 10, 1929. (The *Regulations* have been amended and supplemented for current circumstances.)

The *Parliamentary Regulations* stipulate that there are 15 parliamentary committees. The standing committees include: foreign affairs (12 members); budget and finance (14 members); judicial affairs (8 members); human rights (8 members); education, culture and science (12 members); defense and internal affairs (11 members); state government and a local self-government (7 members); environmental and public affairs (7 members); economy, agriculture and regional policy (14 members); labor and social policy (7 members); credentials (8 members); [government] inquires (12 members); national security (8 members); inspection; and, management matters (3 members in each).

The largest parliamentary faction, Latvian Way, received half of the committee chairmanships. However, the chairmanship of the Foreign Affairs Committee, a key parliamentary committee, was entrusted to Aleksandrs Kirshteins, head of the opposition party, Movement for National Independence of Latvia (MNIL). This appointment indicates, not only the power of the parliamentary opposition, but further exemplifies the growing influence of the national MNIL forces.

The Saeima also created a special committee to investigate the activities of the Supreme Soviet and the Council of Ministers during the period from May 1990 to July 1993. The committee will assess the legality of their activities and determine any possible "breaches of sovereignty." The Saeima took this action in response to numerous parliamentary and public accusations of abuse and corruption by several high-ranking officials in the former republic. As stated in the Saeima resolution, special attention will be paid to (1) expenditures from the state budget, (2) the use of foreign financial credits and foreign humanitarian aid, (3) management of state property and privatization, (4) restoration of property formerly held by the Soviet army and KGB, (5) the activity of high-ranking officials in January and August 1993 and (6) foreign-policy decisions made on behalf of the republic.

A minimum of new legislation has been passed by the Saeima during the last three months. Instead, the assembly has focused on amending and supplementing laws adopted by the former Supreme Soviet. During the summer, legislative drafts were prepared and published for future parliamentary discussions concerning trade, the civil service, press freedoms, election of local authorities and staff reforms for state organizations and local self-government. The latter is a thinly veiled attempt to place limits on the occupation of government posts by former Communist Party and Komsomol members.

Some movement occurred in preparing the long-awaited



citizenship law. Five drafts have already been submitted to the Saeima by various factions, the ruling Latvian Way bloc, MNIL, Equality Movement, For Motherland and Freedom caucus, and the coalition of Latvian Concord/Revival of the National Economy. These drafts all have a lot in common—qualifications for residency, knowledge of Latvian, and an oath of loyalty to the republic. But there are differences as well. For example, the draft of the Latvian Concord/Revival of the National Economy envisages the possibility of dual citizenship for those having pre-war Latvian citizenship and their descendants. This version is categorically rejected by the national MNIL faction, and the ruling coalition. Several factions have called for a referendum on any citizenship law, since the Saeima is so deeply divided on its content.

President Guntis Ulmanis has been active during the first hundred days. Through the cabinet and a group of his advisors and aides, Ulmanis has essentially created the institution of the presidency. Furthermore, he has established contacts with all parliamentary factions and has staffed the diplomatic corps.

Using his right of legislative initiative, Ulmanis introduced a draft law on the creation of a council of national security. This council is a new state organ for Latvia, and, in Ulmanis's proposal, will be chaired by the president himself. Other members of the council will include the chairman of parliament, the head of the government, the ministers of foreign affairs, defense and internal affairs, and the chairmen of the parliamentary committees on defense, internal affairs and national security. The draft proposes that the council will regularly consider the most important issues concerning the internal and external security of the republic. In a sense, the council will continue the work of the existing Council of State Defense of Latvia.

During the last three months the Cabinet of Ministers was largely concerned with the creation of the new structures of executive power in accordance with the requirements of the restored (and amended) law of April 1, 1925. This law concerns the organization of the cabinet. Ministerial authority is also governed by a parliamentary declaration on future ministerial activities, approved on July 20, 1993.

Despite early progress in organizing a postcommunist political system, the new government already shows symptoms of instability. This visible shakiness stems from the government's failure to create a working majority in Parliament. During parliamentary discussions on the introduction of oil and gas taxes and a value added tax, the government repeatedly failed to secure a majority of votes for its program. Finally, after long and difficult consultations and a rash of compromises, on October 14, the ruling coalition finally secured a slim majority in favor of its proposals. From the very beginning, the government has been faced with serious difficulties in building a cohesive and stable coalition in parliament.

The October events in Moscow had an important effect on Latvian domestic politics. Like other European states, the government supported the actions taken by Boris Yeltsin in September and October. At the same time, the eventual defeat of Yeltsin's enemies was used by Latvian ruling authorities to take action against "irreconcilables." On October 5, the Cabinet of Ministers ordered the Ministry of Internal Affairs to apply "appropriate measures" to prevent any similar "oppositional" activity from occurring in Latvia. Though it is not known what was meant by "appropriate," it is clear that authorities are targeting former Communists and parties dominated by Russians—the Union of Communists of Latvia, the Union to Secure Veteran's Rights and the Latvian Association of Russian Citizens. Several reported attempts to start a large-scale anti-communist campaign were also reported. On the day after the crisis in Moscow ended, a high-ranking officer in the Ministry of Defense disclosed to a Swedish radio station that a plan for a coup d'état in Latvia had been uncovered. The plan was purportedly prepared in Moscow by Victor Alksnis, a former peoples' deputy of the USSR, along with former leaders of the Latvian Communist Party and KGB officers. Rumors of the plot, however, have now apparently died down.

## Lithuania

During August, the most pressing issue in the country's political life was undoubtedly the withdrawal of Russian troops from Lithuanian territory. Negotiations became tense, and the Russians demanded that Lithuania sign a bilateral political agreement before the last troops departed on the scheduled date of August 31, 1993. The proposed agreement would have allowed Russian troops to obtain official legal status in the country prior to their final withdrawal. The Lithuanian side refused to sign on the grounds that the very presence of the Russian troops stemmed from a violation of international law—the occupation of the state in 1940. In response, Russia terminated negotiations about compensation to Lithuania for damages (estimated by Lithuanian experts at almost \$150 billion) committed by the Soviet Union during more than 50 years of annexation. (Russia is a party to the discussions in its role as presumptive successor to the Soviet state.) At one point, the Russians stated that their troops would not withdraw by the deadline that had been agreed upon earlier. President Algirdas Brazauskas intervened directly in the negotiations, arguing that the official delegations were ineffective. Under strong criticism by the opposition, however, he canceled his visit to Moscow to meet Yeltsin. As it turned out, the Russian troops were withdrawn ten minutes before the deadline without Lithuania acceding to Russian demands.

On September 16, a group of military servicemen, from volunteer units whose official status falls somewhere between

that of the regular army and the national guard, left their barracks for the woods near Kaunas in what they called a "protest action." The armed troops issued a list of demands that included a call for the resignations of the defense minister, Andrius Butkevicius, and several other high-ranking military officers—Jonas Gecas, the leader of the Volunteer Militia, and Virginijus Vilkelio, the Kaunas district military security chief. In addition, the insurrectionist militiamen asked the government to reassess its decision to merge the volunteer militia within the military command structure. The volunteers also requested permission to fight organized crime and sought more money to buy additional weapons. On September 20, Defense Minister Butkevicius met with the armed opposition and following a discussion over the demands, offered his resignation to President Brazauskas. The crisis was settled when a so-called "trust committee" of MPs intervened. So far, none of the implicated servicemen has been convicted. After the incident Butkevicius resigned. Butkevicius was replaced by Linas Linkevicius, a 32-year former deputy chairman of the parliamentary Committee on Foreign Affairs and a member of the ruling Democratic Labor Party. President Brazauskas used the opportunity to nominate Jonas Andriskevicius, a military professional and former officer in the Soviet army, as chief commander of the army.

The prosecutor's office is currently investigating criminal allegations against the recently appointed chairman of the National Bank of Lithuania, who has now been removed from office and replaced by one of his deputies. The latter is a professional lawyer, who had served earlier on the Supreme Court and has little experience in banking affairs.

On September 10, the Seimas (Parliament) reconvened after its summer recess. No major legislative acts have been adopted yet, except the Law on Statistics and the Law on the Protection of Human Beings at Work.

The nine-member Constitutional Court of Lithuania has now started its proceedings. Three cases have already been decided. In its first finding (September 17), the court ruled, in favor of the opposition, that the Seimas's decision to dissolve the Vilnius City Council was unconstitutional. The second ruling (October 1) went against the opposition, the court holding that the Seimas acted constitutionally when it decided not to include on its agenda the opposition's draft resolution suspending Kazys Bobelis, a Lithuanian Democratic Labor Party deputy, on the grounds that he is still a U.S. citizen (see *EECR*, Summer 1993). The third case (October 13) was to have dealt with a request filed by a group of MPs for a ruling on the constitutionality of a controversial provision in a statute on the news media, requiring state radio and television as well as national newspapers reporting on plenary sessions of the Seimas to broadcast or publish official government communiqués. The article in question, which never proved very effective, also

required that mass media reporting be devoid of commentary on Seimas activities. The court granted *certiorari* to the suit. On October 12, however, the Seimas altered the offending article so that it now applies only to state-owned media, leading the court to dismiss the case.

On October 19 the Seimas failed to pass a constitutional amendment granting foreigners the right to purchase land. (Art. 47 of the constitution declares that only citizens and the state itself may own land in Lithuania.) The debate on the amendment pitted hopes for foreign investment against fears of a foreign buy-out. Proposed by the LDLP, the amendment came well short of the three-fifths majority of all members needed for passage. On October 25, it should be noted, one year after the promulgation of the constitution, the procedure for amending the constitution became still more stringent. As demanded by Article 148, a constitutional amendment not only requires a two-thirds majority (92 out of 141 deputies) but must also be voted on twice with at least three months between each vote. So far there have been no amendments to the Lithuanian Constitution.

## Poland

On September 23, the State Electoral Commission announced the official results of the September 19 parliamentary elections. In an effort to avoid the severe fragmentation that had plagued the previous Parliament, the 1991 Sejm electoral law had been rewritten to include representation hurdles (five percent for parties and eight percent for coalitions) and the D'Hondt counting system, which rewards larger groups and penalizes smaller ones during the distribution of seats (see *EECR*, Summer 1993). Both of these changes had major ramifications. As a result of the representation hurdles, only eight electoral groupings (as opposed to 29 in 1991) received seats in the Sejm. They are the postcommunist Union of the Democratic Left (UDL) with 20.5 percent of the popular vote and 37.2 percent of the mandates, the Polish Peasant Movement (PPM, a former ally of the Communist Party) with 15.4 percent and 28.7 percent of votes and seats, respectively, the Democratic Union (DU) with 10.5 percent and 16 percent, the Union of Labor (UL) with 7.3 percent and 8.9 percent, the Confederation for an Independent Poland (CIP) with 5.8 percent and 4.8 percent, the Non-Party Bloc to Support Reform (NPBSR, initiated by President Walesa) with 5.4 percent and 3.5 percent and two German minority parties with 0.5 percent and 0.8 percent. (As minority parties they are exempt from percentage requirements.)

Almost 35 percent of the electorate voted for parties or coalitions that are not represented in the Sejm, leading some politicians, including President Walesa, to question the Sejm's legitimacy to act in matters of national importance. The Solidarity Labor Union received 4.9 percent of the vote and conse-



quently missed the five percent cut off by a mere 14,000 votes. The Ojczyzna ("Fatherland") coalition which was dominated by the Christian National Union (CNU) registered as a coalition even though a loophole in the law allowed *de facto* coalitions to register as parties. The 6.37 percent of the vote they received would have cleared the five percent hurdle for parties but fell well short of the eight percent they needed. As a consequence no "rightist" party gained any seats in the new Sejm, because the rest of the right's electorate divided itself between five small parties. The inability of the right to coalesce into a larger coalition that could have cleared the percentage barrier was described by one observer as a "collective suicide."

The D'Hondt counting system, together with the large percentage of "wasted" votes, magnified the victory of the two largest parties. Although the UDL and the PPM together received only 36 percent of the vote, they hold almost 66 percent of the seats in the new Sejm, allowing them to form a governing coalition comfortably. Their success was duplicated in the pluralist "first past the post" Senate elections. The UDL won 37 of the 100 Senate seats while the PPM won 36. This turn to the left was forecast in early electoral polls, although the extent of the victory of these two parties (who share Communist origins) surprised many. While the success of the Polish reforms was celebrated in the West, these reforms were roundly criticized during the campaign for ushering in "capitalism without a human face." Exit polls seem to indicate that those voting for the ex-Communists were not voting for a return to the old system but against the hardships caused by four years of painful economic reform. In other words, as in 1989, it was not a vote *for* but a vote *against*. In any case, the coalition formed by the UDL and the PPM has pledged to continue the reforms, albeit with what they are calling "certain corrections."

The creation of this coalition was not without its difficulties; there was considerable in-fighting over the division of government and parliamentary leadership posts. The final agreement gave the premiership to the Polish Peasant Movement leader, Waldemar Pawlak, who had previously served as the premier for 33 days during 1992. In exchange the UDL received the post of marshal of the Sejm and control over the most important economic ministries. Furthermore, the coalition agreement stipulates that Pawlak must obtain the approval for most appointment and policy decisions from the UDL's leader Aleksander Kwasniewski, dubbed by one paper as a "premier without portfolio." This coalition was tested to the limit early as Pawlak attempted to present the UDL with a *fait accompli* when he unilaterally replaced two UDL people with two PPM deputies on the list of ministerial appointments submitted to President Walesa. This was in direct contradiction to what the coalition had agreed the night before. After the UDL threatened to quit the coalition, a compromise was reached.

Under the interim Little Constitution, the premier is re-

quired to consult the president regarding appointment of the ministers of foreign affairs, defense, and internal affairs. The coalition, however, allowed President Walesa, in effect, to make these appointments on his own. This concession to the presidency seems to have been made in order to gain Walesa's appointment of Pawlak as premier. Walesa had promised to appoint one of three names forwarded to him by the party receiving the greatest number of votes. He continued, however, to insist on three names even when it was clear that the coalition only intended to give one: Pawlak. The coalition could have secured the premiership without Walesa's support because, according to the Little Constitution, if the president's appointee fails to create a government that can pass a vote of confidence, initiative shifts to the Sejm, and the coalition controls more than half the seats in the chamber. However, the coalition may have desired Walesa's appointment in order to increase the coalition's legitimacy which has been questioned by some due to both the coalition members' Communist heritage and the supposed unrepresentative composition of the Sejm. Pawlak's government easily passed the vote of confidence in the Sejm on November 10.

During the last Parliament the UDL and the PPM in conjunction with the Union of Labor submitted draft constitutions to the Constitutional Commission of the National Assembly (see *EECR*, Spring 1993). Both these drafts called for parliamentary cabinet systems and a ceremonial presidency. Between them these three parties make up 75 percent of both the Sejm and Senate, well over the two-thirds required to pass a new constitution or to amend the old. Several politicians from centrist and rightist parties have questioned this Parliament's legitimacy to pass any new constitution based on the absence of any rightist parties. President Walesa has joined this chorus and also threatened to adopt the "Yeltsin option" if economic reforms were threatened or his constitutional powers directly attacked. In response to these charges the UDL has stressed that the constitutional drafts are merely a starting point for negotiations and that they do not seek to deprive Walesa of his constitutional prerogatives. They have committed themselves to developing ways for parties outside of Parliament to participate in the work of the Constitutional Commission and to decide many constitutional questions through nation-wide referendum. At the first meeting of the Constitutional Commission on November 9, Kwasniewski was elected chairman while Senator Stefan Pastuszka (PPM) was elected vice chairman.

In other developments, on November 9 the Constitutional Tribunal ruled that a legal provision, allowing the removal of judges who had violated the principle of judicial independence, is unconstitutional. This clause which passed Parliament this summer was designed to enable the dismissal of those judges who had compromised themselves during the Communist era. The Constitutional Tribunal's decision still must be confirmed

by the Sejm.

On October 29, the trial of Jaroslaw Kaczynski ended with his acquittal. The case concerned the release of a classified document, which purportedly instructed the Office of State Protection to spy on political parties (see *EECR*, Summer 1993). The court ruled that, in making public the document, Kaczynski did not break the law because he was acting in his capacity as a member of Parliament.

Finally, the leader of the Samoobrona (self-defense) political party, Andrzej Lepper, is currently on trial for insulting the "supreme organs of the state." During the recent electoral campaign, Lepper referred to the Suchocka government and President Walesa as thieves, Poland's plunderers, thugs, and criminals. According to Article 270 of the Criminal Code, insulting or defaming the supreme organs of the state is a criminal offense, punishable by fines and imprisonment. Lepper is also charged with abetting crime for praising the actions of his supporters who, having forced the mayor of a small town into a wheelbarrow, pushed him around town. Lepper reportedly said that the same should be done to others including the entire government.

## Romania

At the end of the parliamentary recess, on August 30 and 31, the lawmakers of the Social Democratic Party of Romania (SDPR), the former Democratic Front of the National Salvation Front, convoked an extraordinary session of the two chambers of Parliament on August 30 and 31 to debate the preliminary report of the Anticorruption Commission, a parliamentary inquiry committee set up in June 1993. This report dealt with evidence revealed by General-Major Gheorghe Florica, former high commissioner of the Financial Guard, against individuals belonging to the military and security forces. At the same time, the opposition forces lodged a simple motion against the cabinet, while the cabinet members themselves participated in the joint session. After heated discussions lasting several hours, Parliament voted to hear testimony from General-Major Gheorghe Florica in plenum for all of 15 minutes. The former high commissioner of the Financial Guard took the floor and spoke confusedly, generating roars of laughter in the audience. The new facts he revealed were minor and his inept presentation helped the governmental coalition reject the motion. After 12 hours of debate, a final decision was postponed pending future debates.

The ordinary fall session of Parliament started on September 1, 1993. In the first meeting of each chamber, elections were held for the members of the standing committees, in order to implement the provisions of Articles 61 (2) and (3) of the constitution. Parliamentary factions were also constituted. In accordance with the constitution, Oliviu Gherman and Adrian Nastase kept their positions as president of the Senate

and as speaker of the Chamber of Deputies, respectively.

The second preliminary report of the Anticorruption Commission concerned an investigation of the cabinet of Petre Roman's government. This report was also debated, but again no concrete measures were taken.

President Ion Iliescu accepted a proposal by Prime Minister Nicolae Vacaroiu to reshuffle the cabinet in late August. Misu Negritoiu, deputy prime minister and head of the Department for Economic Coordination, Strategy and Reform, was replaced by Mircea Cosea. Negritoiu, in turn, was appointed councilor to the president of Romania. Also, Constantin Teculescu (commerce), Mihai Golu (culture) and Gheorghe Angelescu (youth and sports) were replaced by Cristian Ionescu, Petre Saloudeanu and Alexandru Mironov. The second echelon of the cabinet was even more broadly affected; 15 state secretaries were replaced. Prime Minister Vacaroiu stated that the purpose of the reshuffle was "to improve the executive's performance and speed up reform." The statement is puzzling, since the outgoing Negritoiu was regarded as the only pro-reform official on Vacaroiu's team.

The opposition lodged on October 19 a (simple) motion demanding that the president appoint a new prime minister who should form a new cabinet, because the reshuffle of August 28 was not debated in Parliament within 45 days. According to Article 85 (2) of the constitution, "In the event of a reshuffling of the cabinet or vacancy of office, the president shall dismiss and appoint, on the proposal of the prime minister, some new members of the cabinet." But the opposition argued that any reshuffle must be debated by Parliament within 45 days, referring to Article 106 (3) of the constitution, which says, "In case of the inability of a minister to exercise his powers, the president shall designate another minister on the proposal of the prime minister, for a period of 45 days." The motion interpreted the combination of Articles 85 (2) and 106 (3) to mean that the president can appoint new ministers without the approval of Parliament for no more than 45 days, and that after the completion of this term the reshuffle becomes unconstitutional. Nevertheless, the majority of Parliament voted not to include the motion on its agenda, arguing that this was really a motion of censure disguised as a simple motion.

After the establishment in June 1993 of a parliamentary oversight commission for the Romanian Intelligence Service (RIS), Parliament heard, in its joint session of September 14, 1993, Virgil Magureanu, director of RIS. Magureanu had been appointed "temporarily" by Ion Iliescu in March 1990. President Iliescu again proposed Magureanu be appointed as director of RIS, and after hearings in the parliamentary oversight commission for RIS (which passed the proposal by five votes to four opposed), Parliament (in joint session) appointed Magureanu on October 12, 1993.

In August, the Democratic Movement of the Hungarians

of Romania (DMHR) delivered a memorandum to the Council of Europe. In the memorandum, the DMHR requested that Romania be denied membership in the Council of Europe until it revises its judicial system and modifies Article 1 of its constitution where it is asserted that Romania is a "national state." All political parties, including the opposition, criticized the DMHR's memorandum as unfair and misinformed.

Nevertheless, in October, by a procedure involving the Parliamentary Assembly and the Ministers' Committee of the Council of Europe, Romania was finally admitted to the Council of Europe as the thirty-second member with full rights. Also, on the proposal of President Clinton, the U.S. Congress reluctantly granted most favored nation status to Romania in October. Former dictator Nicolae Ceaucescu had relinquished MFN status in 1988 just as the U.S. was about to revoke it.

## Russia

In August and September, Moscow was gripped by a fierce confrontation between the executive and legislative powers, increasing the disconnectedness of Moscow politics from the rest of Russia. The Supreme Soviet started its offensive in the beginning of August, passing a package of anti-government bills. The most important assaults concerned privatization and the budget. The privatization law required parliamentary approval of all major steps in its implementation, radically slowing the process of privatization. The Supreme Soviet budget plan called for profligate increases in social welfare spending and subsidies to the state sector, especially to the defense industries.

In addition to the assault on the economy, legislators ordered investigations of corruption charges that had been leveled at a number of highly placed government officials. The presidential side responded to Parliament with equal resolve. Yeltsin brought order to his ranks, firing Security Minister Viktor Barannikov whom he suspected of striking *sub rosa* deals with Supreme Soviet Chairman Ruslan Khasbulatov. Yeltsin also suspended the two most controversial figures mentioned in the corruption allegations: Vice President Aleksandr Rutskoi, who had become the leader of the opposition, and First Deputy Prime Minister Vladimir Shumeiko. The suspension of Rutskoi was immediately challenged by the Supreme Soviet as unconstitutional.

More significantly, Yeltsin resumed his attempts to bypass the Supreme Soviet by reaching out to the regions and republics for support. He attempted to create a new Federation Council, consisting of both executive and legislative leaders from all 89 regions and republics. By creating the council, he apparently hoped to pressure the Supreme Soviet into passing an electoral law and agreeing to pre-term elections.

But neither the Supreme Soviet nor the president managed to garner nation-wide support. Regional leaders showed

no inclination to align with either side, preferring to use the deadlock in Moscow to extract increasing concessions from both. Less than two-thirds of the regions and republics approved the idea of a Federation Council, and those who endorsed the idea demanded from the president that the new body be given more than simply a consultative status.

With the central governing system near collapse, Yeltsin, on September 21, dissolved the Supreme Soviet, and its parent organization, the Congress of People's Deputies and promised to organize elections to a new Parliament in December. He acknowledged that his decision violated the constitution, but argued that extra-constitutional action was necessary "to break the ruinous, vicious cycle." To demonstrate his sincerity and prove that he had taken power unconstitutionally only to save the country, he promised that he too would stand for early reelection in June 1994 after the new Parliament was in place.

The presidential team expected or hoped that the Supreme Soviet would show little resistance when confronted with a tough executive stance. To entice deputies and other important players to the presidential side, Yeltsin held out offers of lucrative positions in a variety of government agencies. Perhaps as a result of such unseen deal-making, the leading media, the military, and the central bank sided with Yeltsin.

But the will to resist displayed by some deputies of the Supreme Soviet turned out to be much stronger than the president and his entourage had hoped or feared. The deputies unceremoniously voted Yeltsin out of office and replaced him with Rutskoi. The new acting president assembled his own government; and the Constitutional Court accused Yeltsin once again of perpetrating a coup. The Supreme Soviet simultaneously called for a general strike. In a relatively short time, some regional leaders began to express support for the Supreme Soviet. The Novosibirsk legislature, for example, offered to host the Congress of People's Deputies dissolved by Yeltsin. Conservative legislators from 60 of the regions and republics convened in Moscow to condemn and protest against Yeltsin's decisions.

Within a week, it appeared that Yeltsin's extra-constitutional "coup" had not resolved the fundamental crisis of authority. Indeed his action had only exacerbated it. In an attempt to break the standoff, negotiations began between the two sides, presided over by Patriarch Aleksy II, head of the Russian Orthodox Church. The talks led nowhere. Meanwhile, highly positioned presidential envoys sent to the provinces failed to generate support for the president. With the president's position eroding even faster than that of the Supreme Soviet, Yeltsin decided to use force, ordering security forces to seal the White House. Members could freely leave the building but were prohibited from reentering.

It is no exaggeration to say that Yeltsin was saved by a miracle. On October 3 and 4, opponents of the president un-

wisely decided to break the deadlock by violent means. A collection of 15,000 protesters supporting Parliament attacked the police lines around the White House, stormed and vandalized the Moscow mayor's office, and briefly seized Ostankino, the national TV broadcasting center. The violent behavior of these parliamentary supporters swiftly turned the public against the Supreme Soviet and untied the president's hands. He ordered special units within the military to retake Ostankino and the Parliament building. After fierce fighting on October 4, defenders of the White House capitulated to the president's larger forces. According to official reports, nearly one hundred and thirty had been killed in the conflict (although the number remains subject to public controversy). A handful of ring-leaders who surrendered at the White House (including Rutskoi and Khasbulatov) were arrested and charged with treason.

Immediately following the October crisis, the president suspended several opposition parties, closing down their newspapers (while introducing censorship for other papers), tightened his control over national television, and called on all regional Soviets to resign. The idea of a federation council was abruptly dropped, and many recent concessions to the regions and republics were rescinded. The Constitutional Court was closed pending parliamentary elections. The president reversed his earlier promise to hold presidential elections in June of 1994 (though he later waffled on this point), and he introduced a new draft constitution providing for extraordinarily strong presidential powers, with limited rights and responsibilities assigned to the two-house legislature.

Yeltsin's constitution squeaked through in the December 11 and 12 elections, leaving Parliament powerless to obstruct the reform policy of the president. But the regions and republics are unlikely to roll over and accept the diminished status they receive in the new charter. Nothing has happened to diminish the appetite of regional elites for increasing political and economic independence from Moscow. At first, the hastily written electoral law stirred protests that the entire system was stacked against parties or groups with views hostile to the president and his economic reform agenda. Nevertheless, anti-reform forces of both left and right did shockingly well in the elections, seeming to confirm the wisdom of the president's controversial decision to strip the new Parliament of any serious power to check future governments. According to the new constitution, Parliament can override a presidential veto only if the opposition can muster a two-thirds majority. Thus, all Yeltsin needs to control completely the lawmaking process in Russia is support of one-third of the deputies. It remains to be seen how much or how little will be resolved after the new Parliament convenes.

One could hazard some predictions about political developments in Russia in the near future. If the referendum were actually a vote of confidence in Yeltsin, rather than in the

technicalities of his constitution, then it seems that he remains the most popular political figure in the country. (But notice that Yeltsin's constitution would never have received the necessary quorum if many voters had not turned out to support Yeltsin's new hypernationalist rival, Vladimir Zhirinovskiy, who had endorsed the constitution during the campaign.) The president controlled the central media and in particular television, considerably limiting opportunities for opponents of his constitution. The success of this strategy may now be doubted due to the low turnout in the referendum and the slim margin by which the constitution was ratified.

Indeed Yeltsin's constitution contains the seeds of its own destruction. The new Parliament will almost certainly become the center of opposition to the president, especially given its political composition. The new legislature will seek power, looking for a function of which it is deprived in the constitution. The most likely outcome of a confrontation between the president and the legislature will be a presidential decision to disband the legislature on the pretext of its obstructionist position on specific issues (for example, the law on land). Less likely is an early presidential election forced by the legislature.

In any case, the constitution will be an interim document that will not last for too long. One problem here is that it is very difficult to change the constitution—if the cumbersome amending procedures are used. Attempts at amendment may therefore lead to political deadlocks and perhaps even compromise the whole idea of constitutionalism in Russia.

## Slovakia

Accusations of minority rights violations have again been lodged against the government of Prime Minister Vladimir Meciar. On August 31, leaders of the Hungarian minority sent an official letter to the Council of Europe charging that Slovak officials had neglected required council obligations concerning the treatment of ethnic minorities. (Slovakia officially joined the council on June 30.) The Hungarian petition focused on Minister of Transportation Roman Hofbauer's decision to remove Hungarian language road signs from use in predominately Hungarian areas and the government's veto of a name-registration law (see *EECR*, Summer 1993). Responding to the Hungarian charge, Hofbauer petitioned the Constitutional Court to rule on the matter. On September 11 the Court ruled that the Council of Europe's recommendation concerning minority rights standards "do not and cannot have ... legal implications for the state organs of the Slovak Republic."

A Slovak journalist for the Czech News Agency broadcast a report alleging that Prime Minister Meciar made racist statements in a September 3 speech on Slovakia's Romany (gypsy) population. International Romany organizations sharply condemned the prime minister for the reported statement and

asked the Council of Europe to reconsider Slovakia's membership. Claiming the broadcast was a paraphrase which misrepresented the content of his remarks, Meciar lodged a complaint against the journalist with the prosecutor's office. The head of the official Slovak news agency added that this was an example of the media campaign designed to damage independent Slovakia's reputation abroad. Other journalists who read the transcript of Meciar's speech claimed that the Czech News Agency reporter's paraphrase accurately reflected Meciar's words. In a related development, on September 7 two Slovak Romany organizations filed a protest with the Constitutional Court claiming that the government and the Ministry of Culture had repeatedly violated the rights of the Romany population. The protest specifically accused the Ministry of Culture of arrogating decision-making rights which should belong only to ethnic organizations and their members.

On October 19 a coalition was formed in Parliament between the Movement for a Democratic Slovakia Party (MDSP) and the Slovak National Party (SNP). Chairman of the SNP, Ludovit Cernak indicated that his party entered the coalition to overcome the current political crisis and to solve crucial problems in Slovakia. The executive committees of the two parties approved the coalition on October 23. The coalition has 80 of the 150 seats in parliament.

One of the first tasks of the newly formed coalition was to constitute the cabinet. After two weeks of deliberation, the coalition agreed on the list of cabinet members and Meciar submitted this list to the president on November 5. The proposed composition of the cabinet was submitted on the condition that the president could not refuse to appoint a particular minister, but had to reject or accept the entire proposed list. Jan Carnogursky, chairman of the opposition Christian Democratic Movement (CDM), claimed that accepting or rejecting the proposed cabinet members en bloc was unconstitutional.

President Michal Kovac agreed that this condition was unconstitutional, and therefore on November 8 he decided he could appoint only six of the seven ministers proposed by the new coalition, rejecting the nomination of Ivan Lexa as privatization minister. Kovac had already refused to appoint Lexa to the position of director of the Slovak Information Service as well as that of privatization minister this year, claiming that he was unqualified for the positions and that there was a clear conflict of interest, since Lexa's father, Vladimir Lexa, works for the Harvard Privatization Fund in Slovakia. On November 9 Meciar withdrew all seven nominations for the cabinet and, on the same day, resubmitted a new list to the president, identical to the first one minus Lexa. The six ministers appointed were Marian Andel, education; Sergej Kozlik, economic transformation; Julius Toth, finance minister; Jaroslav Paska, education minister; Jan Ducky, economy minister; and Jozef Prokes, now responsible for Slovakia's integration into

European institutions.

Because the president did not accept Ivan Lexa as a member of the cabinet, Prime Minister Meciar criticized the president for going back on his promise to accept the list agreed on by the coalition as a group. President Kovac claims to have never promised to accept the nominees en bloc. Ludovit Cernak, chairman of the SNP, the new coalition partner of the MDSP, said that his party would not join Meciar in criticizing the president. On November 17, Cernak was elected to the post of parliament deputy chairman.

Health Minister Viliam Sobona received a vote of no confidence in the Slovak Parliament. With only 138 deputies present, the vote was 76 to 60. This vote represents a political defeat for Meciar because he has resisted efforts of the opposition to recall the minister. Members of the opposition and the SNP have repeatedly accused Sobona of incompetence and the number of votes cast against him suggests that members of Meciar's MDSP voted against him too.

On September 29 Parliament passed a law on restitution of property to churches and religious communities. After the president vetoed the bill, on October 19 Parliament, taking the president's objections into account, passed a second version. Kovac had disagreed with some of the amendments included in Parliament's first version because it allowed the church to receive the property rights to buildings presently owned by the state and by individuals and cooperative farms, financially supported by local administrations. The first bill would have returned the property to the church without compensating the individuals or organizations holding rights to the property. Because these provisions contradicted the protection of ownership rights guaranteed in the constitution, Kovac vetoed the bill. The final version of the church restitution bill excluded cooperative farms and trade companies from giving up their property without compensation. Also, any property that is already under private ownership will not be returned. Under this restitution law, property that was owned by Jewish Slovaks and seized after November 1938 can be reclaimed. The world Jewish Congress has promised to assist Slovak Jews reclaim their property.

On October 26 Parliament voted to establish a parliamentary commission for privatization. All of the parties voted in favor of forming this commission, with the exception of the MDSP. The chairman of the economic and budget commission, Jan Michelko, claimed that establishing the commission would undermine "the cabinet's and ministries' jurisdiction over the whole privatization process." Parliament could not agree on a chairman for the commission.

## Slovenia

In the period from August to the end of October, the National Assembly has come

under immense time pressure. According to Article 1 of the Enabling Statute for the Implementation of the Constitution, any legislative measure which does not yet conform to the constitution must do so no later than December 31, 1993. It has become apparent that such an immense task, which consists of re-casting more than two hundred legislative acts, cannot be carried out by the end of the year. For this reason, a group of 20 deputies has proposed a one-year postponement of the deadline (i.e., until December 31, 1994). In spite of criticism from the opposition, there is little doubt that two-thirds of all deputies of the National Assembly, the majority required for any constitutional change, will vote for such an amendment to the Enabling Statute for the Implementation of the Constitution.

In September and October, the National Assembly and its commissions and committees have been in almost permanent session. The government and the National Assembly were predominantly focused on legislative activities. The governing coalition remains relatively stable, although divisions among the political parties composing the coalition (Liberal Democratic Party, Slovenian Christian Democrats, Associate List of the Social Democrats, Social Democratic Party of Slovenia) are becoming more and more transparent.

Scandals are still on the agenda of the National Assembly. The Commission for Parliamentary Inquiry continues its work. According to Article 93 of the constitution, this commission has powers of investigation and examination comparable to those of a court. However, the National Assembly decided to regulate parliamentary inquiry by a special law on parliamentary inquiries and by standing orders on parliamentary inquiries. Both acts shall come into force before the end of the year. These acts should, on the one hand, secure the rights of those under investigation by the commission. On the other hand, they should also promote the effectiveness of the commission by imposing penalties on those who would in any way try to obstruct its work.

The most sensational recent scandal is undoubtedly the discovery of a huge stash of army weapons at the Naribor airport. The destination and the purpose of these weapons, which were hidden at the airport for about a year, is still unknown. On October 29 the deputies began an investigation of this affair in closed session. After the session they ordered the government to provide new and more detailed information about the presumed illegal trade in weapons.

The re-organization of local governments, to bring them into line with constitutional provisions, remains an important issue. The bill on local self-government is still being debated. Parliament will soon have to decide whether local elections should be carried out in the spring of next year or if the restructuring of communes into new municipalities should precede the local elections.

Despite no serious ethnic or nationalistic conflicts, some right-wing parliamentary and nonparliamentary political parties continually express their disapproval of liberal Slovenian legislation on citizenship. On the basis of this legislation, people from other republics of the former Yugoslavia could acquire Slovenian citizenship relatively easily. In addition, there are probably about 170,000 people in Slovenia with dual citizenship. The government has already proposed a bill on the abrogation of dual citizenship, and the Assembly will have to decide this matter in the coming months. The parliamentary debate will not be concerned exclusively with the political dimensions of this issue. It will also raise some legal questions, such as whether such a law would not violate Article 155 of the constitution which prohibits any infringement of established rights.

While ethnic conflict has not been politically prominent, there have been some disputes between Slovenian National Television and Television Koper (Capodistia) which broadcasts its programs mainly in Italian. The Italian ethnic community is in favor of Italian as a predominant broadcasting language on Television Koper, while Slovenian national television insists on equal use of Italian and Slovenian.

In October the agency for privatization received 42 privatization proposals. This is just a beginning of the privatization process which was much delayed, since political compromise on this issue proved difficult to achieve. Thirty-nine of 41 enterprises have decided to implement privatization on the basis of internal share purchases. In addition, certificates have been issued to every citizen. The value of these certificates varies according to the age of the person, but the certificates, which can be invested in different ways, cannot be converted into money for a period of two years.

In October unemployment increased to almost 15 percent. The economic situation in Slovenia is not critical, but some social strata, mainly workers, pensioners and some others, are undoubtedly suffering from the deteriorated economic and social situation. Many workers went on strike during the last months seeking to increase their wages or to preserve their jobs. Slovenians were surprised when the Slovenian police went on strike. The government decided not to respond to the demands of the police trade union for better salaries, since any increase in payments to policemen would have badly affected governmental budgeting policy.

After several days of striking, the situation became difficult. International traffic across state borders was being disrupted. In order to put a halt to the strike, an extraordinary session of the Assembly was convened on October 13 at the behest of the government. The deputies adopted an amendment to the Law on Internal Affairs, following the one-step procedure designed for exceptional circumstances. The amendment requires that the striking policemen, in line with the instructions of the Ministry of Internal Affairs, promptly and



fully exercise their most important duties, as explicitly enumerated in the amendment's provisions. Upon the enactment of this law, the policemen stopped striking, while their representatives continued to negotiate with the government.

## Ukraine

Ukraine's deep political and economic crisis continues to interfere with attempts to redesign the constitutional system. Stunned by the Donbas miners' strike of late summer, the condition of the country has continued to deteriorate leaving many observers wondering how far the country can decline before there is a total collapse. The Massandra agreement (see *EECR*, Summer 1993) has drawn near universal criticism from parliamentary forces and the public, throwing the president and his government on the defensive. Revelations about the agreement have been used especially by nationalist forces whose actions have made governing the country more difficult. With the departure of Prime Minister Leonid Kuchma, President Leonid Kravchuk has taken near complete control of the government but has seen a new challenger to his authority emerge—speaker of the Rada (Parliament), Ivan Plushch. For its part, the Rada continues to procrastinate more than legislate, while the country grows increasingly divided over almost every fundamental issue. Remarkably, despite all of the political chaos, Ukraine decided to join the Commonwealth of Independent States as an associate member and political forces agreed to early elections.

The circumstances surrounding the Massandra agreement were, from the start, politically volatile. No sooner was the presidential agreement between Russia and Ukraine over the latter's nuclear missiles and use of the Black Sea fleet supposedly resolved when the Ukrainian side found itself defending what it had done before the public. The mess over Massandra began immediately following the meetings between Ukraine's and Russia's heads of state, premiers and foreign and defense ministers. On September 3 and 4, the Russian side announced that Ukraine had agreed to give up its half of the Black Sea fleet and its nuclear missiles in return for Russia's forgiving Ukraine's huge energy debt, and that Russia would lease the port at Sevastopol, home to the fleet. When news of the agreement disseminated in Ukraine, there were instant calls from all political sides for an explanation of why the president and government had "sold-out" Ukraine (as well as calls for the impeachment of the president). The Ukrainian leadership was stunned by the Moscow announcements, which were only partially true and extremely damaging to the Ukrainian leadership.

On the defensive both with Moscow and at home, Kravchuk called a press conference and announced that Russia had indeed demanded the arrangement, which had been announced in the Russian press but that he and government

representatives had agreed only to study the Russian proposal in a joint commission. He went on to assert that he had entertained some sort of sale of Ukrainian weapons because of the country's debt but that no firm deal had been struck. Moreover, he asserted that the nuclear issue would not be resolved until Ukraine had signed Start-1 (which would require parliamentary approval) and that Ukraine was seeking compensation for the tactical weapons it had turned over to Russia in 1992. Later the Massandra Protocols were published, confirming Ukraine's position that Start-1 would have to be ratified before their nuclear weapons would be returned to Russia. However, the protocols also exposed the fact that Ukraine had agreed to form a commission that would, within one month of the signing of the protocols, make arrangements to turn over the Black Sea fleet and the Sevastopol port in return for a negotiated sum of money. Given the unreasonable deadline and the political fallout in Ukraine, the one month deadline came and went without final agreement.

The protocols are now dead but Kravchuk and his closest advisors have been damaged politically by the incident. In addition, the "sell-out" has had a unifying effect on Ukrainian nationalists. Kravchuk, showing rare resolve, has continued to argue for a deal with the Russians. His argument centers on the fact that Russia is the predominant force in the Crimea and in the Black Sea fleet. Without some sort of agreement with Russia, Ukraine is bound to lose everything. With some sort of arrangement, Ukraine will at least come away with badly needed funds.

At the same time the Massandra events unfolded, Prime Minister Kuchma's government, not surprisingly, collapsed. In the summer he had repeatedly sought greater powers from Parliament to implement economic reforms. To force the issue, he threatened several times to resign, but Parliament and the president had ignored his resignations and more important, his calls for unified, deepened reforms. In late August, Kuchma again demanded that Parliament endorse his reform agenda, but the body instead voted to table Kuchma's proposal until after parliamentary vacations. Parliament then closed on September 2 and did not reconvene until September 21. As an indication of how fragmented the body had become, it not only left behind economic reform issues, it also tabled discussion on whether to hold either early elections or a referendum, promised earlier to the Donbas miners as a concession for ending their strike.

No sooner had Parliament recessed, than Kuchma resigned. Government sources initially denied that the resignation had occurred but, on September 9, the resignation was made public. Kuchma announced that, since his special powers had not been renewed by Parliament in May, he lacked the authority to carry out economic reform. There had been insufficient support for his proposals during the summer and he had come

under increasing criticism from nationalist forces for supporting a closer economic alliance with Russia, a position Kuchma had insisted was necessary given Ukraine's vulnerable economy. Somehow the president persuaded Kuchma to remain in his position until the return of Parliament.

When Parliament reconvened on September 21, it immediately passed a no-confidence bill against the Kuchma government. The president then announced the appointment of Yefim Zvyagilsky as acting prime minister. But only days later, on September 27, the president announced that he was appointing himself as head of the government. He publicly justified the surprise move as the only way to stop the decay of central executive authority, which he needed to save the collapsing economy. The next day he announced the formation of a committee for "Surmounting the Economic Crisis," followed by cabinet appointments. From Kuchma's government, Kravchuk reappointed the ministers of internal affairs, finance, the state border guard committee and the state security service. The defense minister, Konstantin Morozov, was replaced by Colonel General Vitaly Zaretsky. Morozov chose to resign because of a lack of political support. He had been hounded by pro-Russian elements in Ukraine for insisting that Ukraine continue to maintain its half of the Black Sea fleet, while at the same time facing equally virulent criticism from nationalist elements for favoring a return of the nuclear weapons to Russia. All of Kravchuk's nominations, including his self-appointment as head of government, were accepted by Parliament.

Parliament managed to pass a piece of legislation with constitutional implications, that was left unresolved before the September recess. On October 7 Parliament endorsed a plan to remake the assembly into a unicameral, 450 member body, with deputies serving four-year terms. Parliament will retain its official name, the Verkhovna Rada.

Unity on this issue was short-lived, however. After agreeing to new elections, disagreements on an election law itself left the body again paralyzed. On November 10, Parliament passed on first reading an election scheme based on the majoritarian system with single-mandate electoral districts. The draft law was produced by Anatoliy Tkachuk, deputy chairman of Parliament's Permanent Committee on Legislation and Legality. Rukh and the Party for the Democratic Rebirth of Ukraine (PDRU) were vehemently opposed to this system since there was no place in the scheme for proportional party representa-

tion. They tried unsuccessfully to introduce revisions to the law allowing for political party representation. The system favors Socialists and former Communists whose support is sufficiently large, diffuse and organized vis-a-vis the smaller parties and umbrella groups. When the law came to the Rada for a second reading on November 17, Chairman Ivan Plushch suspended parliamentary rules, in an attempt to get the law ratified, and established a procedure for members to vote on each of the fifty-three articles in the law. With each article open for amendment, the Communist and Socialist deputies managed to force through a measure allowing worker collectives the right to nominate members for election to the Rada. Opposition groups were outraged and claimed that the amendment violated the original intent of the draft law. Nevertheless, Chairman Plushch continued with the voting. The following day, members of Rukh, PDRU and Tkachuk (who had drafted the original bill) boycotted Parliament, denying it the necessary votes to pass the election law, but Chairman Plushch continued the session claiming that standard parliamentary rules had been suspended. When a final vote was taken, the bill was ratified 245 to 8. (Had ordinary parliamentary rules been enforced, 290 votes would have been required to pass the bill.) Elections to the Rada are scheduled for March 27, 1994.

Despite the ratification of an electoral law, the political atmosphere is far from calm. Smaller parties, democrats and nationalists, have vowed to fight the election procedure to the end, and even with the law in place, a fight between the chairman of the Rada and the president appears imminent. Both favor the electoral law because both are allied with Socialists and former Communists, but both now appear eager to rule the country. Kravchuk has taken over full control of the government yet, in so doing, he has found his economic policies highly unpopular in Parliament. In November, he attempted to introduce a state of emergency law to gain more powers for his office but the measure was stopped. And, later, he faced down a call for his impeachment, which managed to gain 240 deputies' votes. The move was believed to have been orchestrated by the chairman of Parliament, Ivan Plushch. Now that elections are set, it is clear that Plushch hopes to preserve soviet-type rule, against Kravchuk's presidential designs. While the two leaders posture for the up-coming elections, the economy appears ever closer to complete collapse. (The karbovanets trades now for more than 30,000 to \$1.)

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## Special Reports

### The Russian-Speaking Nationality in Estonia: Two Quasi-Constitutional Elections

*David D. Laitin*

During the "hot" July of 1993, international journalists hovered over Narva, Estonia, like ravens, positioning themselves to witness the early battles in what was perhaps to be the next Transdneister, Abkhazia or Bosnia. This border town of 86,850 residents, like virtually all the towns in northeastern Estonia, is almost entirely Russian-speaking. Having migrated from Russia, Ukraine and Belorussia, the people of Narva do not form a homogeneous community. In local parlance this population is referred to as the "Russian-speaking nationality." Most of the Russian speakers settled after Stalin gratuitously bombed the town to rid it of supposed Nazi sympathizers and then invited Russian migration to help Estonia rebuild itself after the war.

Russian speakers were not new to this region. The Russian population of Narva had reached nearly fifty percent in the period after the railroad from Petersburg to Tallinn was completed in 1870, but this was reduced considerably during the years of the interwar Estonian republic. Even with a substantial Russian minority, the town maintained its Hanseatic architecture and Estonian population, at least until the 1944 bombings. After the Second World War, few Estonian residents wanted to return to the remnants of their homes, and most were sent into exile, not even given a chance to return. Military and other Soviet-scale factories were constructed and reconstructed to make northeastern Estonia (and its three industrial cities, Narva, Kohtla-Järve and Sillamae) into the industrial powerhouse of the republic.

This Russian population found itself in an "unexpected diaspora" once Estonia achieved independence in 1991. Early attempts by the Russian-speaking communities to get some form of special status as a "free economic zone," while initially supported by the Popular Front government that ruled in Estonia through February 1992, were eventually dismissed. Lead-

ing Estonian politicians accused the local leaders in the northeastern towns of supporting the August 1991 putsch, and, after that, there was consensus among Estonians that Russians would have to integrate into Estonia on terms set by Estonians. The Estonian government punished the incumbent city councils for their alleged support of the coup, and called an election for new councils to be held in October. To the government's chagrin, the new councils in Narva and Sillamae proved even less accommodating to the Estonian state than its predecessor had been.

Inter-nationality tensions on the level of high politics continued to spiral. The popular front government fell, in part because many Estonians resented its early reliance on support from the Russian-speaking nationality. A new citizenship law, passed by the new government, was quite harsh on the Russian speaking population. Migrants and their families who entered Estonia in the Soviet period were not granted citizenship in the new state, based on the principle that Soviet rule was illegal, and, therefore, any migration that occurred due to Soviet inducement should be regarded as "occupation." The citizenship law required Russian-speaking residents to pass an examination in Estonian (a non-Indo-European language, and one very difficult for Slavic speakers to learn) or await ten years of "legal" residence before they could get citizenship. Without citizenship the vast majority of Estonia's Russian-speaking nationality could not participate in the national elections of October 1992. In the words of one Sillamae resident, reported in the Estonian language press, "We have been humiliated and insulted in plain view of the whole of Europe."

With most Russian speakers unable to vote, a vehemently nationalist coalition (called "Isamaa" or "Fatherland") was able to win that national election. And Isamaa continued the trend

toward increasing inter-nationality confrontation at the highest levels of Estonia politics. Its education law, for example, called for the state subsidy of Russian-language secondary schools to be discontinued within a generation. The coup de grace was a law passed by the Riigikogu (Parliament) in the summer of 1993, titled the "Law on Foreigners," which required non-citizens (many of whom were born in Estonia and never crossed its boundaries) to register with the state or face deportation. The city councils of two towns (Narva and Sillamae) rode a wave of public indignation and announced referenda to decide whether these cities should have "national territorial autonomy." The Estonian government declared these referenda to be unconstitutional, since the constitution (a document written with virtually no participation of the Russian-speaking nationality) declared Estonia to be a unitary state. Narva authorities knew they were bordering on an unconstitutional act and referred to the vote as a plebiscite to advise local leaders on the popular position in regard to autonomy. But they would not cancel the referendum, and this was the confrontation the international press had come to see played out in July 1993.

### **The framework of nationalist discourse and action**

Although the specter of the Transdneister and Abkhazia was often alluded to by Russian-speaking leaders in an attempt to induce Estonian politicians into more accommodating policies, almost no one on either side actually expected violence, and inter-nationality relations on a day-to-day level remained cordial and without great tension throughout the July crisis. Confrontation was occurring in the arena of high politics but not on the level of ordinary interpersonal contact.

Inter-nationality peace, despite deep tensions, has indeed prevailed in Estonia. Rein Taagepera, an American Estonian (who ran credibly but unsuccessfully for president) attended a meeting of a radical group in Sillamae which, due to its uranium processing facility, had long been off limits to most Estonians. He was treated courteously and heard almost no ethnically charged accusations. He then went to an "Intermovement" (the organization of Russian protest against Estonianization measures) demonstration in Tallinn and stood face-to-face with a Russian paramilitary guard, again without provoking hostility (*Estonian Independent*, May 9, 1991).

After the August 1991 coup attempt in Moscow, the Estonian government sent an official, Tiit Vahi (who would later become prime minister), to oversee the northeastern towns as a direct representative of the prime minister. His meetings with the local councils were hardly friendly, but the discussion, as reported by *Narva Gazette* (closely allied with local power), went on without any personal attacks or threats to peace. In an interview with the author in October 1993, he recalled that period of service as difficult but not personally threatening.

The lack of a real threat to peace is a recurrent theme among people who have dealt directly with inter-nationality affairs. Artur Kuznetsov, the first minister (without portfolio) for nationality affairs in the Popular Front coalition, confirmed this pattern. Although he was anything but hopeful for the future of his Russian community in Estonia, he emphasized in discussions with the author in 1991, "Our situation is without violence between ethnic groups, without sharp confrontations with victims.... Now Estonia is the only republic in the Soviet Union without one person hurt in ethnic violence; we have had no victims." In my first interview with Mart Rannut, the general director of the State Department of Language, Rannut revealed that he was treated brusquely by Russians in his professional role, but he lives in an apartment complex with mostly Russian families. The only incident he could report that reflected tension was this: His neighbors surreptitiously swiveled the television antennae on top of his building so that they receive Estonian television weakly but pick up Leningrad television sharply (interview, June 20, 1991, Tallinn). And in an interview with the Estonian director of Baltic energy, Anatoly Paal (who is now the chairman of the Narva Town Council, governing a town where only 4.5 percent of the workers are Estonians), I was told that there were no ethnic incidents involving workers or any hostility to him, the only Estonian manager of a large factory in Narva (interview, December 10, 1992, Narva). Even in my interviews with radicals who raised the possibility of a Moldova or Yugoslavia type war (Ahto Siig, Vladimir Khomyakov, interview, March 24, 1993, Narva) in Estonia, almost no one turned up evidence of communal hostility. Siig was able to point to some cracks in a window of the Estonian secondary school in Narva and blamed them on vandalism by Russian hooligans incited by propaganda pamphlets dropped from Soviet aircraft in March 1988. But if that is the extent of incitement to violence, Estonia has been spared the worst. Even Dr. Khomyakov, who said that a "Yugoslavia" was imminent in Estonia, had to admit that there were no weapons caches in either community and that the young generation of Russians is totally apolitical and unmotivated to fight against Estonian oppression.

In a survey conducted through the auspices of the National Science Foundation, Jerry Hough and I found little expectation of violence in northeastern Estonia. Here we look at the answers of the 226 Narva respondents. On a four point scale registering whether respondents thought that there might be civil war in Estonia (one reflecting a strong possibility and four expressing the feeling that there never has been such a possibility), the mean for Narva was 2.74 (close to three, which reflects the position that there may have been a danger earlier, but not when the survey was taken in June 1993). On a question as to the level of inter-nationality tension they feel in their home area, with one reflecting no tension and five a high level,

Narva respondents' mean answer was 1.75, between "no tension" and "a little tension." This is hardly an attitude of one nationality seeking revenge against, or protection from, any other.

"Hot" July turned out to be cool, and journalists left without a big story, although one wonders why a peaceful resolution to a deep conflict doesn't make good news. One reason for the peaceful outcome was international pressure. American support for a "round table" (a rather effective use of a mere \$15,000 of taxpayers' money to get talks started), and wily diplomacy by Max van der Stoep of the European Council of Security and Cooperation helped to work out a compromise in which an election would be held but the outcome would not matter. A stunning move by President Lennart Meri was also of great consequence. He humiliated his own prime minister by refusing to sign the initial legislation until it was reviewed by legal experts in the European Council. These alterations recommended some softening of registration requirements, and the Riigikogu was compelled to accept these changes. These changes helped temper some of the rhetoric of those calling for autonomy. The Supreme Council eventually nullified as unconstitutional the referendum in which voters overwhelmingly supported autonomy. Nonetheless the two cities had made their point, and few leaders actually wanted the autonomy for which they so assiduously campaigned.

### The local elections of 1993

The Estonian Constitution of 1992 stipulated that self-governing localities would hold their own elections for city council and mayor, and that permanent residents who were not citizens would have voting rights. It was assumed at the time that voting rights meant the right to vote and be voted for, and Estonian government officials assured foreign observers who were worried about possible nationality conflicts that this was indeed the case. But at the time when local elections were scheduled to take place (spring 1993), an election law to provide guidelines has not yet been passed. There were subtle hints in the press that even middle-of-the-road Estonians were worried about the possibility of noncitizens gaining positions of local power. Former Prime Minister Tiit Vahi, who lost out to the more nationalist Isamaa coalition, asked in March, "Can someone who isn't a citizen be held responsible for Estonia's state problems?" (*Baltic Observer*, March 26, 1993.) And on May 19, with only fifteen votes opposed, the Riigikogu adopted an election law that denied noncitizens the right to run for seats in elections to be held on October 17. Most delegates in the Riigikogu knew that they were breaking the spirit, if not the letter, of the constitution, but the political goal of undermining the power of the current city councils in the northeastern cities proved of greater importance to them. Mayoral power was also at stake. Mayors of all cities not only had to be citizens but

also had to be fully competent speakers of Estonian. This would eliminate from contention those Russian-speaking politicians who received citizenship based on their service to the state but who themselves could not have passed the citizenship examination. This would be the second quasi-constitutional vote in northeast Estonia in four months.

The electoral formula (a modified d'Hondt system) was one in which each party would have a list for every (multi-member) electoral district within the city. A voter would vote for a single candidate. Candidates from each list would be ranked by the number of votes they received. Independent candidates could run, but they, like a party list, needed five percent of the total vote to be eligible for a seat. For each district, the total number of votes for each party would then be counted. The highest vote-getter on the list would have this total vote divided by one. The second-highest vote-getter would have the total party vote divided by 1.866. The third by 2.687. Independent candidates would have their total vote divided by one. Then the candidates with the highest resulting figures, up to the number of seats assigned to the district, would be the winners.

The political context of the electoral law and the law itself had a strong impact on subsequent politics, as I will try to show by an examination of the election in Narva with supplementary material from the region's two other industrial cities (Sillamae and Kohtla-Järve), the capital city of the region (Johvi), and a small seashore village (Narva-Jõesuu), all with predominantly Russian-speaking populations.

The implications of these local elections for the rest of Estonia will have to be treated elsewhere. Two key outcomes ought to be mentioned to provide at least some context, however. First, in Tallinn, where there is a significant community of Russian-speaking citizens, turnout was very high for Russians and low for Estonians, and the Tallinn City Council now has a strong Russian bloc. Second, the ruling Isamaa party took a terrible beating, even in Tartu, its core area of strength. This defeat can be traced to economic problems suffered especially by pensioners who have a high propensity to vote.

Few Russian speakers in the northeast were eligible for citizenship, and only in rare cases was it granted (based on "service to the state") to those who served on the city councils. Thus, viable candidates known by the voters were in short supply. In my analysis of all 17 parties from the sample of five towns, only three parties had a sufficient number of candidates to contest every seat. Placing eligible candidates on the list turned out to be quite important.

Consider the results for Narva's Central Labor Union party. Based on interviews conducted by the author with 40 voters outside four different polling stations in Narva, this party had the highest recognition among voters. A number of voters said they voted for the Union Party but could not name the

candidate. Only the Union Party enjoyed such recognition. The irony of this was that the Central Labor Union was so well-grounded in Narva that it had trouble finding candidates who were citizens. The party had only 15 candidates for Narva's 31 seats, while the Democratic Workers' Party (a collection of local notables with a program indistinguishable from the Union Party) had a list of 24 candidates. The Central Labor Union received 45 percent of Narva's vote to the Workers' Party's 33 percent, yet both parties earned twelve seats. Party strength was important, but parties needed to produce candidates for each seat to reach their potential.

The lack of eligible candidates had other implications as well. First, it gave the very few Russian speakers who were citizens and had served on previous councils a great advantage. In Narva, 61 percent of the winners were former members of the city council or the Supreme Council in Tallinn, and 79 percent of the former officials who ran were victorious (compared to a 43 percent success rate for all candidates). (For data on former positions of authority, the author is grateful to Sergei Goroxob of the Viru Infocenter, Narva). Second, it gave the Estonian state, by virtue of its ability to grant citizenship to Russian speakers for "service to the state," enormous power to co-opt leaders who would be eligible candidates. Finally, Russian-speaking party leaders were forced by circumstances to recruit Estonians onto their lists. The reverse would have been true if all long-standing residents could have been candidates. So in the analysis of party lists, only four of the seventeen were drawn 100 percent from a single nationality, and those four lists were all all-Estonian.

Because of the short time between the passage of the electoral law and the actual elections, the electoral lists were important only for the results but not in people's minds. (The state-level parties, which are somewhat known locally, played no role in the northeastern elections, because the voters had no electoral role in "national" affairs, and therefore national party organizations fell into disuse in the northeast). In informal interviews outside polling stations, I found that only seven out of 40 voters approached could name both the candidate for whom they voted and identify his/her party, and only twelve could identify the party they voted for. People usually knew the name of one important person and these few known names reaped extremely high percentages of the vote. For example, the 2,546 votes received by Sergei Sovietnikov, who had served on the Supreme Council and was a citizen by virtue of being born in Estonia and speaking Estonian, helped get a candidate into the city council who received only 84 votes. Pavel Grigoryev got 47 percent of the total vote in Narva-Joesuu, helping a list-mate onto the council with only seven votes, while an independent candidate lost with 52.

Meanwhile, the prospects for independent candidates under this electoral system were dim. In the five towns I exam-

ined, with fourteen independent candidates, none earned a seat. While few voters knew much about these party lists, the losing independent candidates and good candidates in weak parties learned a clear lesson. In Narva, for example, two of the former deputies who failed to win a seat ran as independents. Good candidates in the future, if they observe carefully the results of these elections, will associate themselves with strong leaders and will not stand alone. Indeed, this lesson was already learned in Johvi where there were two "lists" of independent candidates, which won seven of the city's 19 seats. Kohtla-Järve also had an electoral "list" of independent candidates, but this list failed to earn a seat. Parties were weak in this election but promise to become stronger in the future.

It needs emphasizing that the incentive for Russians to recruit viable Estonian candidates was great, and, therefore, the Estonian candidates were not "tokens" to show a multinational consciousness. And the same was true for the lists that were predominantly Estonian. To demonstrate this point, I developed a scale of balance. This scale measures the ratio of the percentage of winners of the less successful nationality on a list to the percentage of winners of the more successful nationality on the list. A score of one means that the balance was "serious;" a score of zero means that the balance was only "token." In all five towns, the average list had a balance of greater than 0.5. The electoral lists represented coalitions of Russians and Estonians; that each group had an equally serious (or not serious) chance of winning. In a regression analysis of the 17 parties, both the level of nationality mixing and the degree to which the mixing was well "balanced" had virtually no impact (though the trend was slightly negative) on the electoral success of the list. Whether this phenomenon will continue once the great majority of Russian speakers becomes citizens will be revealed in future elections.

### A stunning outcome

If list-balancing in the campaign was intriguing, the outcome of the voting was stunning. Estonians, who constituted from five percent of eligible voters in Narva to 20 percent in Kohtla-Järve, captured 57 percent of the seats in the five towns in this study. In Narva, Estonians won 47 percent of the seats, and Anatoly Paal, an Estonian engineer and director of the electrical station who had lost his seat in the contentious election of 1991, not only regained his seat, but won a near unanimous vote of the elected representatives to become chairman of the city council. Furthermore, while there were some irregularities reported in regard to registration issues, the results of these elections were not contested by any group in the northeast.

This lack of protest cannot be interpreted as acceptance of the political process as legitimate by the Russian-speaking population. Lack of protest can also be explained by popular apathy, and alienation from the political process as well, especially

among the young. In the two weeks before the election in Narva, I saw notices for only a single rally in the central square, and hardly more than fifty people attended. I regularly visited two of the candidates, one from Narva and the other from Narva-Jõesuu, in this period, and the campaign barely changed their daily routines. In polling station observations, I could not find a voter who looked under 25. The average age of people in the study sample was 54 and the youngest was 31. I approached one young woman walking out of the apartment complex where the voting booths were placed to ask her for an interview. She looked at me as if I were mad to think that she had voted. In interviews of three different families (in which there were no candidates), Narvians said that they never discussed the election either at home or work. The Russian-speaking population accepted the election without protest, but they were not much involved in the electoral process either.

The council's first job, by electoral law, was to choose its chairman from among the elected representatives. Here the weak party structures became quite evident. In Narva, Anatoly Paal, who came from the party with the weakest showing, became chairman. In Narva-Jõesuu, Pavel Grigoriev, whose party won nine out of the 13 seats, won the vote for chairman by a vote of seven to six. Clearly, while it was important to run as a member of a list, there were no incentives to follow party leadership once elected.

Following the electoral law, the council is entrusted with the election of the town's mayor. Because of the language requirement, potential mayors were even more scarce than potential candidates for the council. A semi-itinerant group of Estonians, with an interest in administration and some exposure to the region, have declared themselves candidates for mayor in more than one northeastern city. In Narva, the first ballot for mayor had five Estonians running. Only one was a resident of Narva, and he was so incompetent that he didn't receive a vote. (The leading candidate missed a majority by one vote, and there will be a new race, possibly with new candidates). In Sillamae, the incumbent Russian-speaking mayor who received citizenship for his service to the state was elected, but, since he speaks only rudimentary Estonian, the Estonian Riigikogu needs to review the legitimacy of his election. In any event, one important lesson learned from this process is that it will be easy to grasp local political power in the future for those Russian speakers who become competent speakers of Estonian.

Despite the indignity of these towns being forced to choose their own (in the words of one of my informants) "colonial officers," and the irony that virtually the only Russians who can run for office are those hand-picked by Estonian leaders for their loyalty to the state, all five towns have remained quies-

cent. From the point of view of building an Estonian state in areas that are largely Russian in nationality, the 1993 local elections appear to be an unusual success. Local councils and mayors completely loyal to Estonian state power are virtually all in place.

### Conclusions

The quasi-constitutional July and October elections of 1993 in northeast Estonia were surprising on many levels, and these surprises suggest three related conclusions.

First, the structural situation of the "unexpected diaspora" cannot itself tell us much about how Russians will integrate into the political framework of their new homelands. The July days had many people in Europe fearing another Bosnia; and the European Council of Security and Cooperation set up offices in Estonia in an attempt to help defuse such a time bomb. But the mission quickly learned that people were neither expecting communal war nor protecting themselves from aggression initiated by the other side. And the framework of living together in peace clearly induced high levels of inter-nationality political alliances that would not have occurred if there were an expectation of imminent violence.

Second, local election laws have induced a moderately high level of inter-nationality electoral cooperation, especially with Russian initiatives. Mixed lists did not, in themselves, bring success, but being a member of such a list did not lead to any electoral harm. While these lists have not become institutionalized as parties, they have provided a further framework for inter-nationality cooperation. Ironically, results that have often been heralded as the result of consociational designs were reached here through means that were highly discriminatory against a national minority group.

Third, Russian speakers know that in the formative period of their republic, when foundational laws are being passed, they remain without a vote in national elections and without a chance to run as candidates in local contests. By 2001, virtually all Russians who remain in Estonia will be eligible for citizenship. New political entrepreneurs will have little trouble in exploiting the feelings of humiliation that are now being shaped into memories, and to seek basic changes in the framework of Estonian politics. Fears of becoming a minority in their "own" homeland could lead to a hostile Estonian response to such a challenge. And so, while the 1993 elections were peaceful and successful from the point of view of the Estonian state, darker clouds remain on the horizon.

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## Why the Russian Public Will Support Reform

Inga Mikhailovskaya

Russia is passing through an era without precedent. No surprise that the predictions of political scientists and sociologists relying on past experience have proved uniformly off target. The singularity of this stage of Russian history is characterized by the following features.

### Decay and double standards

The totalitarian regime in our country lasted longer than any comparable regime, and it achieved a greater degree of domination than elsewhere over all aspects of society. By eradicating private property and smashing Russia's emerging civil society, the Soviet state obtained absolute command over the life and death of each of its subjects. Communist ideology was drummed into people's minds as a quasi-religion. Acceptance of this ideology was bolstered by the argument that the system was "the socialist choice of our fathers and grandfathers" and was not "imported with foreign bayonets."

The ideology that camouflaged and reinforced the anti-human nature of the regime, it should be said, possessed a certain attraction. It helped people form psychological defenses to cope with the grueling demands of daily life. Yet the radical divergence between the ideology's myths and objective reality led to double standards and hypocrisy in matters of ethics, not to mention serious deformations in the legal system. In many cases, for instance, the actual practice of law-enforcement agencies, including the courts, did not correspond to statutory law.

By seizing monopoly ownership of property, the state made professional organizations and social groups completely dependent on the authorities and deprived them of any opportunities for effectively asserting their rights. Social and political groups relied on, and competed for, benefits provided by the state, and for the chance to participate—legally or illegally—in the distribution of such benefits.

As society disintegrated and became atomized, and as the economy was progressively deprived of market stimuli, the government resorted to extralegal measures (including such contrivances as the shadow economy) to keep the system functioning. Such expedients made it impossible to safeguard against arbitrary acts. In defending their interests, people preferred to appeal to Communist Party organs, rather than to the courts, rightly regarding the former as the primary locus of authority.

But public recognition of the overriding force of party decisions distorted the understanding of law and law enforcement agencies. Departmental regulations, which often contradicted published statutes and turned them into dead letters, served as an alternative to daily intervention by the party in controlling the work of law-enforcement agencies.

The existence of parallel worlds (the world of written law

and the world of actual rules of conduct) blurred the line between lawful and unlawful behavior, depreciated knowledge of the law, and broke the link between law and morality.

This dichotomy between theory and practice, one might say, gave the regime the flexibility it needed to survive. But as the regime became increasingly decrepit, ecological niches opened up where people could function in relative independence from the state without directly clashing with the law.

The organization of "socialist" society, as is well known, seriously restricted social mobility and the significance of individual merit while maximizing the importance of social status. This dispensation created perverse incentives, deforming the standard for successful adaptation, distorting the value system, and replacing authentic creative initiative with the pretense of hectic activity. It produced widespread psychological discomfort by contradicting the normal person's need to feel that his work is rational and useful. A system of false consciousness helped to relieve this distress and assisted in role-playing. Of course, for some people in certain professions (e.g., specialists in Marxism-Leninism) and social groups (e.g., party apparatchiks), it became an inveterate way of thinking.

For political and ideological reasons and because of the authorities' hostile attitude toward sociology and political science, academic research did not deal with the features of the Soviet regime surveyed above. This intellectual lacuna helps explain the erratic and sometimes bewildered behavior of our "power structures" during the era of *perestroika*. Paradoxically, if objective studies *had* been available in 1985, the reformers might have realized that they were actually destroying the system they wished only to repair, which probably would have led them to abandon their reform program.

### Reflections on the data

The collapse of the established order was swift and unexpected (although historically logical). The overthrow of the official system of values came first. The people, bereft of property and power, nevertheless acquired freedom of expression. *Glasnost* destroyed the regime's ideological underpinning, which had already been shaken by the decanonization of Stalin and the bloodless removal of Khrushchev, whose unprecedented survival in retirement severed the previous link between the political status of the "chosen leader" and his physical existence.

The curtailment of censorship and the extinction of fear of persecution allowed people to express openly their true feelings about the Soviet regime. Meanwhile, media revelations concerning the state of the economy, the environment, and so forth, excited public opinion. The media's approach became just the opposite of what it had been when ideological consider-



ations were paramount. Earlier, the real state of affairs had been distorted beyond all recognition in a favorable direction. Now, the media concentrates its attention almost exclusively on negative aspects of our lives, and the press has become a battleground for opposing political forces, which often deliberately exaggerate our difficulties.

The demise of Communist ideology did not lead to a complete replacement of the system. The absence of private property and of the horizontal structures of civil society inhibited the creation of democratic institutions. Nevertheless, a start was made on government reorganization and, as it progressed, the paradoxes of post-totalitarianism became evident.

Because of still-persisting Communist Party influence on the nomination of deputies not to mention the democratic movement's lack of experience, the parliamentary elections of March 1990 resulted in a Congress of Peoples' Deputies which did not adequately represent the opinions and the population of the Russian Federation. This, together with the peculiarities of the Supreme Soviet as an institution, allowed Russia's highest legislative body to become a rallying point for various reactionary and anti-reform interest groups. All the typical Soviet structures that still existed—in particular, the procuracy—also served as instruments in the hands of anti-reformist forces. Before the October events, the process of drafting new legislation had been turned into a struggle for power and money instead of becoming a means to regulate new economic and political relations.

Changes in people's mindsets accompanied the political struggle and economic reform. More than legal prescriptions, these changes in thinking will in the final analysis determine the behavior of most people. The most significant factors affecting the post-totalitarian Russian citizen's values and his economic and political behavior are: an individual's personal beliefs and their stability; any change in an individual's social status and the benefits he receives; an individual's professional experience and skill level; an individual's ability to adapt to changing circumstances. It will be worthwhile to review these factors separately. (They are interrelated, but they exhibit a significant degree of independence.)

*Personal beliefs.* During the famous events of August 1991, not a single person came out in support of the discarded Communist symbols. Anti-Communist activists were united by their common hostility toward the existing regime, not by a shared system of positive values. The sharp, at times irreconcilable, disagreements that surfaced later among people who had been on the same side of the August barricades demonstrate this lack of cohesion. Nevertheless, a change in mass consciousness did take place. This can be seen in the results of a survey conducted in Russia in July 1993. (The Human Rights Project Group, an independent polling company conducted the survey among a representative sample of 3,000 adults in nine regions

of the Russian Federation.)

The majority of those polled supported in principle the privatization of state factories, the buying and selling of land and guarantees for freedom of speech. Almost half the respondents, however, favored guarantees of equal living standards, indicating the retention of elements of the Soviet outlook.

*Changes in status.* Political and economic changes have, in many instances, directly affected job status and benefits. Changes in the status of a profession or occupation can be the result of intrinsic causes (a lowering in the status of groups that were previously key supporters of the regime) or accidental causes (reduction in subsidies to basic science because of budget constraints). Current status shifts are integrally connected to movement toward a rational labor market and reflect the relation between society's demand for a particular service and the supply of labor qualified to satisfy this demand.

In addition to changes in personal income, status shifts often provoke reappraisal of previously-accepted values in an attempt to make sense of the current situation. The negative psychological consequences of an abrupt drop in social status can be overcome by other factors—the individual's acceptance of new values and/or his success in adapting to changing conditions and in finding new forms of self-realization.

*Professional qualifications.* As jobs in the government sector are reduced—drastic cut-backs are inevitable—the level of an employee's skills will become more significant, although supplementary advantages (personal connections, good relations with management, etc.) will remain important. Because the same amount of work will have to be accomplished by fewer people, those less skilled will face dismissal. Such people, even if they insist that they perform their jobs well, often feel insecure and are terrified of change. This factor can be seen vividly in the political disaffection of people in the creative professions.

*Adaptability.* The brutal regimentation of people's lives under a totalitarian regime, reinforced by a mythologized consciousness, suppressed initiative and fostered irresponsibility and dependence. On the other hand, the continual battle to overcome the difficulties of daily life, the search for ways around one's problems, and so forth, nourished people's natural adaptive capacities, developing them at times to an unbelievable level. The benefit to society of an individual's creative adaptation, of course, depends on the form it takes, which can range from self-realization to criminal behavior.

The significance of the psychological effects of political and social change is that the division between advocates and opponents of reform runs vertically through social groups and not horizontally (the "ruling" class against the "exploited" classes). The proportion of each social group that backs reform varies, however, and the previously-mentioned survey sheds some light on the political preferences of various groups.

Men display interest in politics, while women tend to be

indifferent to political movements. A disproportionate number (49 percent) of those who support parties of a communist orientation are elderly, while democrats receive proportional support from all age groups. On the whole, younger people are less interested in politics than older people—the number of respondents who support no political party falls from 82 percent to 72 percent with advancing age. The democrats are favored by twice as many urban dwellers (12 percent) as rural residents (5.8 percent).

Respondents with higher education give more support (6.4 percent) to Communists than do other groups (the percentage of Communist supporters among groups with lesser educational qualifications ranges from 2.7 percent to 4.8 percent). This seeming anomaly is due to relatively high levels of education among military personnel and pensioners. Among respondents with higher education is also found the highest percentage (12.9 percent) of supporters of the democrats; other percentages range from 4.3 percent among those with elementary or incomplete high school education to 9.7 percent of those who have completed specialized high school education.

Among occupational groups, the Communists have the least support among students (0.9 percent), entrepreneurs (1.5 percent), farmers (0 percent), and blue-collar workers (3 percent). Fourteen percent of pensioners favor the Communists, and this represents 37 percent of the total number of respondents with Communist sympathies. Democrats enjoy their most impressive level of support among entrepreneurs (21.3 percent), farmers (17 percent), and white-collar workers with higher education (13.4 percent). Collective farm workers and pensioners are the least supportive of democrats. Political interest—that is, the percentage of those who support some political party—is greatest among entrepreneurs (31 percent), farmers (28 percent), office workers with higher education (27 percent), and pensioners (25 percent). Political interest is lowest (less than 16 percent of respondents) among students and workers at government enterprises.

As per capita family income rises, support for the Communists falls from 5.3 percent to 2.4 percent, while support for democrats rises from 8.6 percent to 17.6 percent.

Those who do not support any party are spread evenly through the income range. The survey shows, however, that these politically inert respondents are substantially closer in their values to the democrats than to the Communists.

A number of factors previously inaccessible to sociological analysis in our country now appear of prime importance. One surprising finding is the ambiguous relationship between the respondents' politics and their views of rights. Supporters of communism express the most dissatisfaction with the human rights situation. Members of democratic movements and their supporters are the least dissatisfied. The overwhelming majority of respondents (those who support no political party) ex-

pressed a degree of concern about the same as that of the democrats.

Changes in the mentality of "Soviet man" have apparently occurred primarily in the field of politics and not in legal consciousness. People display little interest in the failure of law-enforcement agencies and the courts to improve safeguards for human rights, in the retention of archaic laws, or in the continuing dearth of possibilities for the effective defense of one's rights. Further, those who do take notice often react in an inappropriate fashion. Indeed, there is reason to fear that various stereotypes (crime can be combated only with severe repression; unlawful acts of the police are justified if they lead to apprehension of criminals; and so forth) persist and may even be gaining in popularity.

One question asked by the survey was "Do you believe that the police should be able to use physical force in dealing with a criminal even if such conduct is not permitted by law?" The answers were as follows: yes, 25 percent; yes, but only in exceptional cases, 34 percent; no, 21 percent; difficult to answer, 20 percent. While the notion of "exceptional cases" is vague and can be interpreted in many ways, it seems that less than a quarter of all respondents categorically condemn a policeman's violation of the law. Furthermore, only 37 percent of respondents would, in principle, assist the police; 24 percent would refuse to do so, and the rest found it "difficult to answer."

Earlier, a negative or indifferent attitude toward the law arose primarily because of the dichotomy between the theory and practice of law enforcement. (For example, certain behavior such as petty theft of state property became widespread and virtually the norm even though punishable under the criminal code.) Contempt for the law is fostered not only by the contradictions contained in many statutes, but also by the impossibility of compliance with the laws, the impunity of bureaucrats who break them and a range of other factors.

The prevalence of crime also leads to a skeptical attitude toward law as a safeguard for an individual's interests. Publication of crime statistics, previously classified as state secrets, has drastically changed the tenor of official statements. The notion, drummed into the public for decades, that the country's crime rate was very low was reversed overnight. Alarming reports of a catastrophic growth in crime and waves of violence engulfing society became common. These reports, although incomplete and unsystematic, have inevitably increased people's fears for their physical safety. This anxiety and sense of vulnerability inhibit the development of a democratic legal consciousness, and they provoke calls for an adequate response to the crime problem. Society's continuing alienation from the law and its enforcement reflects the citizenry's dim view of the protection of human and civil rights provided by the government.



According to the survey, only 3 percent of respondents were completely satisfied with the level of human rights protection; 20 percent were somewhat satisfied; 53 percent were dissatisfied; and 23 percent found it "difficult to answer." As already noted, dissatisfaction was most pronounced among Communist supporters (71 percent) and least evident among democrats (48 percent). Those indifferent to political parties registered the highest percentage (27 percent) of uncertainty. Apparently, for this group (the largest in the survey sample) the issue of human rights is of little interest, which says something about the development of their legal consciousness. Such indifference to legal safeguards affecting their own rights can be explained primarily by a lack of faith in the government. Only 11 percent of all respondents believe that there is a real possibility of securing human rights; and 35 percent found it "difficult to answer."

Reform of the justice system is a complex undertaking that requires more than just the passage of new legislation. Legal training has to be reformed, as does the secondary school curriculum. The sore points of the justice system must be identified and priorities assigned for remedial action. The order in which problems are attacked is important because the initial steps must win public support or at least attract public attention.

Unfortunately, the Supreme Soviet's passage two years ago of the quite radical "Conception of Judicial Reform" did not lead to tangible results. Moreover, many subsequent laws have not incorporated its provisions and in some cases have directly contradicted them. Democratic laws which were passed earlier were later amended or repealed by the Russian legislature before it was dissolved. For example the 1992 Law on the Status of the Courts in the Russian Federation was amended in 1993 in a way that undermines the principle of tenure for judges (one of the few successful democratic reforms of the judicial system) and thus retards the formation of a new outlook in the judiciary. Amendments to this law stipulate that the initial term for newly-appointed district and city court judges (the most numerous category of judges) will be five years. Only the second appointment to office (after the initial five-year term) will be for life. Potential negative consequences of this amendment, the future of which is now uncertain, would include:

- The current judicial corps, selected and trained by the former regime, is far from ideal and it will rely on past and now inappropriate criteria to decide on the reappointment of young judges;
- Judges appointed to a five-year term will immediately face a dilemma: either act according to their convictions, risking their chances for reappointment, or accept the existing standards of professional behavior;
- Since the final step in judicial appointment is confirmation

by the appropriate legislative body, the judge's career will depend on the political orientation of the assembly, which may change radically in composition.

The example of the law on judicial tenure shows that reform of legal institutions will be durable only if the legislature is firmly committed to a real, and not merely rhetorical, program to replace the totalitarian model of justice with an authentically democratic one. Absent the necessary political and economic foundations for change, the introduction of democratic institutions, even those well-tested by the experience of other countries, can yield a result directly contrary to the one anticipated. Thus, the creation of a Constitutional Court did not enhance society's respect for the judiciary. On the contrary, instead of becoming a mediator and using the law to resolve conflicts between the legislature and the executive, the Constitutional Court became an active participant in the political battle, aligning itself with the opponents of reform. That might well have been expected since the Court was formed before adoption of a new constitution. It was bound to oppose reform to the extent that the old system was preserved in the provisions of the Russian Constitution then in force.

### Where we go from here

The above considerations suggest the following conclusions regarding political trends in Russia and the means to promote legal reform. *Public sentiment will sustain a program of democratic reforms in Russia.* This thesis is based on the following observations: Support in the neighborhood of 10 percent of the active population is sufficient for the effective functioning of government. The social base (9.7 percent of respondents to the 1993 survey) that actively supports democratic institutions meets this criterion: the majority of the population has become depoliticized, which augurs well for social stability; sociological research shows that the silent majority is more sympathetic to democratic ideas than to reactionary ideas; the opponents of reform are largely the most conservative and backward part of society (pensioners, villagers, etc.), whereas democrats find greater support among the more energetic social groups (entrepreneurs, independent farmers, etc.).

The lack of legal protection for private property and of judicial mechanisms to defend individual rights has inhibited positive changes in people's legal consciousness which, therefore, lags behind their political consciousness. Reform of the legal system is greatly hampered by the last legislature's reactionary make-up and the rudimentary legal culture of society, which regards the law as an instrument of repression rather than a safeguard against abuse.

While the success of economic and political reform will be the most important factor in overcoming the objective and subjective difficulties delaying the reorganization of the legal system, there are some specific actions that can expedite the

planning and realization of this reorganization.

*Information.* There is a lack of information about the social environment and functioning of law-enforcement agencies. Such information is needed to forecast the social consequences of proposed innovations and to evaluate the results achieved. A systematic approach to legal reform is not possible without a proper data base; even if reforms are enacted, they are likely to remain words on paper and won't influence actual court practice without a proper follow-up. Analysis of existing statistical data and sociological research can fill many gaps in our knowledge.

*Education.* Educational work can achieve positive results only if it is conducted with an understanding of the stereotypes currently prevailing in society and the issues that have captured public attention. Education will be effective if it is tailored to particular audiences, and these should include the fence-sitters as well as the most backward groups. The main thing to show is how the rule of law and democratic institutions will promote each group's particular interests.

*Setting Priorities.* The process of reforming justice in a post-totalitarian state is complex, arduous, and protracted. Problems rain down on reformers in a chaotic fashion, and it is

therefore crucial to assign priorities to the various aspects of reform. It is also necessary to pay serious attention to sequencing legislative, organizational, and other measures based on their relative importance, on their realistic prospects for implementation and on the logical order for their implementation. The "Conception of Judicial Reform" can serve as a basis for this task, but additional data and analysis are needed.

*Monitoring.* The effect of every measure adopted should be tracked and its consequences assessed objectively. (This is particularly important in view of the exceptional difficulties and unique conditions that Russia is now facing.) Changes in the legal consciousness of the population in general and of lawmakers in particular should be monitored. Also, the actions of judges and law-enforcement agencies in penal policy and other matters that can affect the course of legal reform must be closely watched. In some instances, the necessary data can be found in existing reports; in other cases, sociological surveys or other forms of information-gathering may be required.

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## Retroactive Justice based on International Law: A Recent Decision by the Hungarian Constitutional Court

*Krisztina Morvai*

A long and passionate debate over "retroactive justice" for especially serious crimes committed during the 1956 revolution is now over. In October the Hungarian Constitutional Court upheld the main part of the Act of Parliament on "Procedures Concerning Certain Crimes Committed During the 1956 Revolution." In this article I compare the recent decision with the well-known previous holding by the same court, in an effort to contribute to an understanding of the policy implications of the case.

Commitment to "retroactive justice" has been identified with backward-looking, conservative thinking by those who have opposed the idea on purportedly "liberal" or "progressive" grounds. They have argued that prosecution after almost forty years cannot be anything other than political revenge. These moral and political arguments have been supported by legal ones, focusing on the new democracy's commitment to the

fundamental principles of the rule of law, including an absolute prohibition of *ex post facto* laws.

"Conservatives" argue that murder and torture have always been serious offenses and that, as a consequence, references to *ex post facto* law-making are wrong. Although homicide as well as most other crimes are, indeed, subject to statutes of limitation (maximum 20 years) under Hungarian law, this rule should not be applied to cases in which state officials first committed crimes and then blocked the machinery of criminal justice. The legal institution of a statute of limitations presumes that the offenders and those in charge of law enforcement do not belong to the very same interest group (namely the government). In communist dictatorships the party wielded full control over the law, policing and prosecution. Therefore, punishing top "comrades" for their sins was out of the question. (Contrary to general beliefs, such control was not exercised in

an entirely informal way. The chief prosecutor issued written "top secret" orders requesting all law enforcement bodies to get approval of the Hungarian Socialist Workers party before the arrest or prosecution of communist officials on any grounds. These "laws" remained in effect until the late 1980s.)

Should there be no principle of law over and above the positive laws, statutes of limitations could always easily be abused by dictatorships.

The existence of such a principle of law was presumed in the case under discussion by the first as well as the last attempt at legislation. (Between the Zetenyi-Takacs Act and the Act on Procedures Concerning Certain Crimes Committed During the 1956 Revolution, Representative Zsolt Zetenyi drafted another law, which the Parliament passed. But it failed constitutional scrutiny. The Zetenyi law is not analyzed in this article.) The Zetenyi-Takacs Act of 1991 (named after its two drafters) intended to change domestic law retroactively, while the later draft, by contrast, was based on international law.

According to the Zetenyi Act, on the day of the first democratic election "... the statute of limitations shall start again for the criminal offenses committed between December 21, 1944, and May 2, 1990 ... provided that the state's failure to prosecute said offenses was due to political reasons." (The expression "political reasons" is an obvious reference to dictatorial party control over law enforcement.) The statute covered three categories of crime: treason, torture resulting in death, and murder.

The act was enacted but never promulgated. The president of the republic exercised his right to send the law to the Constitutional Court for "preventive norm control." The court declared the act unconstitutional on several grounds, including the violation of rule-of-law principles and the vagueness of its language. The decision emphasized that a state under the rule of law cannot be created by undermining the rule of law. The certainty of the law based on formal and objective principles is more important than the necessarily partial and subjective justice. The main conclusion was the unacceptability of re-starting the period of limitation. The court's decision was a triumph for opponents of retroactive justice and a severe disappointment for those who hoped for the triumph of moral justice over the strict interpretation of legality.

Many people thought that the ten justices were in fact imposing their private political beliefs on the democratic majority by their activist interpretation of the rule-of-law or "Reichsstaat" doctrine. In the new democracy the most damaging side-effect of this belief was the widespread questioning of the whole existing establishment, including the rule of law and judicial review of majoritarian decision-making. It took almost two years before the Constitutional Court regained its reputation in the eyes of the "challengers" by its second ruling on retroactive justice.

After the shock caused by the failure of the first attempt the groups favoring "historical justice" began to consider new options for achieving their original aim of prosecuting Communist offenders. The last draft changed the strategy and used international law (as opposed to domestic law) as the means for doing justice. In order to avoid vagueness, the draft also made clear that it had the events of 1956 specifically in mind.

The law was based on these multi-national treaties: the Geneva Conventions Relative to the Treatment of Civilians in the Time of War and Relative to the Treatment of Prisoners of War of 1949 and the New York Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 1968. The documents were humanitarian laws initiated by the International Red Cross and a convention of the United Nations General Assembly.

Although their titles do not indicate it clearly, the Geneva Conventions were meant to be applied in any case of armed conflict and not just in declared wars between states. According to the common articles of the conventions: "violence to life and person" and several other forms of wrongdoing are prohibited also "in the case of armed conflict not of an international character."

The Geneva documents did not include any provisions concerning limitations on the prosecution of these offenses. Nevertheless, several states made laws concerning this point and retroactively declared the absence of limitation on what have been understood as "Nuremberg crimes."

The UN Convention regulated the issue of limitation, declaring that "no statutory limitation shall apply to several categories of war crimes and crimes against humanity irrespective of the date of their commission." This convention was ratified by Socialist and Third World states only. The reluctance of other governments to accept it was probably caused by the lack of consensus over the actual scope of the vaguely described international crimes. The ratifying states on the other hand were obviously identifying crimes against humanity with the oppression of people by "imperialist" states and took the document as a political statement reaffirming their ideological commitment. In 1968 they could hardly imagine that this step would ever backfire on them.

The final act of retroactive justice combined the provisions of the Geneva Conventions and the New York Convention and thereby interpreted the most brutal episodes of the 1956 Revolution as war crimes and/or crimes against humanity. In addition, another crime category was smuggled in under the same umbrella. The criminal responsibility of those who called the Russian troops into the country during the revolution was based on a domestic law of 1945 which defined any form of activity that might jeopardize the peace or the cooperation between peoples after the war or had the potential of causing international conflict as a war crime. The attempt to

prosecute on the basis of this law was the only part of the act which was struck down by the Constitutional Court after President Goncz's motion for preventive norm control before promulgation.

The rest of the law was upheld on the basis of the interpretation of Article 7 of the constitution: "The legal system of Hungary shall respect the universally accepted rules of international law, and shall ensure furthermore, the accord between the obligations assumed under international and domestic law." The decision emphasized that the act in fact ensured the enforcement of "universally accepted rules of international law," part of which are the humanitarian principles expressed in the Geneva Convention. Although those "universally accepted rules" do not include the absence of a statute of limitation covering war crimes and crimes against humanity, Hungary undertook the obligation to prosecute those crimes retroactively by ratifying the New York resolution.

The Constitutional Court did and did not exercise judicial activism in its scrutiny. It did in the sense that its reasoning took a very straightforward position in the long-lasting theoretical debate over the scope of international (criminal) law. It interpreted the authority of the community of civilized nations over state sovereignty in a broad sense. It resisted activism, however, by favoring the will of the legislature. The possibility of taking a narrower position in the interpretation of principles on international law and its relationship to domestic law was obvious. A separation-of-powers argument—declaring that the judiciary should interpret existing norms of criminal law rather

than the legislature doing so—would be easy to defend. Striking down the law on the basis of its vagueness (which is an obvious result of the vagueness of international law itself) was also an option available.

Self-restraint in this context equaled wisdom. By striking down the legislative intent twice but upholding the same political decision (which might or might not be wise itself) when it was put into a different framework, the court conformed to the constitution and thereby proved its political neutrality and genuine commitment to constitutionalism, including the protection of human rights. An important side-effect of the decisions was the clearer understanding of the notions of the rule of law and of judicial review as valuable safeguards in a democratic society.

These days in Eastern Europe such an improved public understanding may eventually provide a valuable means of survival. Contrary to the backward-looking label, the recent decision of the Hungarian Constitutional Court is in fact forward-looking. By recognizing and legalizing the principle that shooting into a crowd of innocent people, torturing political enemies and brutal violence by dictatorial governments can *never* be justified and that punishment for such sins cannot hinge on the will of the dictator, the court has made an important contribution to a developing body of law which may help protect future victims of future potential dictators.

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## Extraconstitutional Developments in the Republic of Croatia

*Branko Smerdel*

On October 15 and 16, 1993, the ruling party—the Croatian Democratic Community (CDC)—held its general convention in Zagreb, the first such gathering since February 1990 when, on the eve of the first free elections, the CDC had presented itself and its program to the Croatian public.

The main priorities of Croatian politics, as publicly announced at the convention, were as follows: (1) the reintegration of all Croatian territories occupied by resurgent Serbs who have support from the rump federation called "Yugoslavia;" (2) economic recovery to lay the foundations for rapid economic development; (3) strengthening of law and order to promote the development of the rule of law.

In the beginning of October, the Croatian government sought to advance toward achievement of its first objective by agreeing to extend the mandate of United Nations protective forces for six months, according to Resolution 871 of the Security

Council. This document confirms once again the sovereignty of Croatia over all its territory but requires that the Croatian government not undertake any further military action to assert its sovereignty. The policy of the Croatian authorities, as expressed in numerous statements by top officials, including the president of the republic, remains that the occupied territories have to be reintegrated by peaceful means with the support of the international community. But, in case such methods prove fruitless, other means, including military action, are not to be excluded. The unanimous acceptance of the resolution by the Security Council, which strengthened the mandate of the peacekeeping forces, has been presented as a great accomplishment of Croatian diplomacy, but its enforcement still depends on voluntary agreement by the insurgent local Serbs.

In furtherance of the second objective, the government of

Prime Minister Nikica Valentic launched at the beginning of October, with the assistance of the National Bank, a package of fiscal measures designed to curb inflation, which has been running at over 30 percent throughout the year. The exchange rate for hard currencies had been fixed after a 20 percent devaluation, and citizens were permitted to buy hard currencies only in authorized banks. The printing of money has been severely checked, and wages in the public sector have been frozen. In order to beat inflationary expectations, the government had reduced the prices of electricity and gasoline by 5 percent after a long period of regular monthly increases of 30 percent or more. Also considerable cuts in the whole public sector, with the exception of defense, have been proclaimed. Valentic has strong support from all opposition parties, trade unions and the general public. During the month of October, the tightened supply of dinars has brought down the exchange rate for the German mark by 20 percent, and inflation is expected to be reduced to less than 15 percent in October, and to less than 10 percent in the following months. But the deputy in charge of the economy Borislav Skegro, deemed a principal author of the program, warned that long-term effects would decisively depend on expected support from the International Monetary Fund, which is hoped for in January 1994. Until now, Croatia has received no financial assistance from abroad to help support over 500 thousand refugees and displaced persons.

Toward the third objective a number of measures aimed at strengthening law and order have been undertaken, including a spectacular police raid against contraband, gun-running, illegal trading, and the brothels which had recently sprouted up in a great number of cities. Action against war profiteers, and those who had taken illegal advantage in the process of wild privatization has been promised again, and a review of all privatization is underway.

The political scene, however, remains turbulent. At the CDC general convention, a clash between two competing factions occurred despite a previous agreement to avoid conflict. Tudjman mediated in the conflict. He demanded that the leaders of both factions (some of them formerly his closest

associates and even founders of his party) withdraw their candidacies for the party presidency. Among those forced to withdraw were deputy Prime Minister Vladimir Seks, who enjoys support from the radicals, and the House of Counties, chairman Josip Manolic, a leader of the moderates. The convention endorsed their demand by electing the people whose main political orientation is loyalty to the president. Dr. Jure Radic has become general secretary of the party while maintaining his position as director of the president's office.

In the secret ballot for party chairman, Tudjman won 1332 out of 1734 votes, running against the education minister, Vesna Girardi-Jurkic, a politician of very modest standing whose candidacy had been advanced purely to give a democratic patina to the election. As some commentators have already pointed out, the 20 percent of votes that went to this candidate indicates significant opposition to Tudjman within party ranks.

Differences within the CDC continue to manifest themselves. Branimir Glavas, a head of the Slavonija and Baranja county, one of the most visible radicals, said in an interview that the destruction of "a managerial faction" has been planned at the convention and that this task would be completed at the next convention. On the other side, Franjo Greguric, a former prime minister and one of the leading moderates, believes that "a coup against Tudjman" was attempted at the convention. But Tudjman has strengthened his position as final arbiter within the party as well as in the government, and even the honorific "Pater patriae" was used to extol him at the convention.

The opposition continues to appear extraordinarily weak and confused. At the October 5 session of the Sabor (Parliament), the Liberals invited the opposition to walk out in protest against an alleged disregard for parliamentary rules by the chairman. But only three members from regional parties accepted this challenge. On October 26, even they declared their intention to return.

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**Powers and political styles of the East European Presidents; Interviews with Walesa, Jaruzelski, and Iliescu.**


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# A Forum on Presidential Powers

## The Postcommunist Presidency

Stephen Holmes

Presidents in Eastern Europe and the ex-USSR run the gamut from bosses to go-betweens, from formidable near-dictators who can rule by decree to negligible near-figure-heads stripped to all but "the handshake powers." When we cast our gaze across the region, then, we are struck by diversity first of all. But certain broader patterns have also come to light. We can begin to make out the general physiognomy of the postcommunist presidency if we ask a number of specific questions from a comparative perspective. What were the causes in 1990 or 1991, and what are the consequences now, of the institutional choices entrenched throughout the region in constitutional law? Why did half of the countries monitored by the *EECR* choose indirect elections for the presidency while the other half chose direct elections? And how has this absolutely crucial choice shaped the style of political contestation in each country? How can we explain, in particular, the relative strength of the presidency in Poland and its relative weakness in Hungary or the Czech Republic? Is the mode of election the main factor? How does an popularly elected head of state affect democratic control of the military, the security services, and the bureaucracy? And what role do presidents, however elected, play in two crucial areas: economic reform and de-communization campaigns?

The articles published in this symposium—including our exclusive interviews with Lech Walesa, Wojciech Jaruzelski, and Ion Iliescu—are meant to address these and related questions. Particularly interesting are the other sources of power of the postcommunist presidents, beyond, that is, their constitutionally enumerated rights. Both Cass Sunstein and Lawrence Lessig, in their contri-

butions to the symposium, use the American example to explain why, and under what conditions, constitutionalism is compatible with *de facto* presidential powers that exceed competencies textually prescribed. One lesson of these two articles for students of postcommunist constitutionalism might be formulated as follows. Traditions of strong uni-personal leadership or the strains of an ongoing crisis can lend a president more power than he would receive from the constitutional text alone. And there is nothing necessarily contrary to the spirit of constitutionalism about that. It is perfectly normal, too, that informal resources help determine the real powers of a sitting president: a well-organized staff, a strategic use of appointment powers to build up a dense network of collaborators, sheer popularity and access to the media, agility at playing off some parties against the others, personal involvement in negotiating cabinet coalitions, and the ability to bully Parliament by threatening convincingly to "appeal to the street." And, of course, the power of the president also depends upon the relative strength or weakness of rival branches of power. Where legislatures are fragmented, coalition cabinets are unstable, and courts are inexperienced, even a modestly powerful president can wield decisive influence.

The relation between Vaclav Havel and Vaclav Klaus in the Czech Republic, touched upon by Vojtech Cepl and Mark Gillis below, recalls Walter Bagehot's classic commentary on the difference between the British monarch and the PM: the former is the object of public affect and reverence, while the latter is a cool technocrat, performing a multitude of operations that few ordinary citizens completely understand. Whether directly or indi-



rectly elected, in fact, all postcommunist presidents seem to play some sort of symbolic role. That Arpad Goncz, like Havel, is a writer and a *nonpolitician* is definitely a political asset, as Andras Mink explains. Significantly, Havel, Goncz and Walesa all spent time in jail under the old regime. Thus, all three symbolize the courage and decency of anticommunist dissidents. Untainted by complicity with the former system, they make visible their countries' break with the past and the founding of a new democracy. (When members of the former apparat have acceded to the presidency—such as Milan Kucan in Slovenia or Leonid Kravchuk in Ukraine—they often represent the break with a hated federation, rather than the break with communism.) Presidents also symbolize the unity of the nation, of course. This is an especially important function when Parliament tends to reproduce seemingly irreconcilable social conflicts. The success of these presidents at representing national unity, rather than a partial constituency, along with their reliance on personal charisma rather than ideological principles, may have at least one negative side-effect, however. It may help explain the widely lamented inability of postcommunist presidents to create political parties of their own (something that directly elected and re-eligible presidents have a large incentive to do).

A separate and historically concrete narrative must be told about the shaping of the presidency in every country of the region. But, as Jon Elster's article below makes clear, bargaining about constitutional design in periods of rapid and uncontrollable change also tends to produce some uniform results. The presidency tailored specifically for one man (Jaruzelski, Poszgay, Mladenov) usually ends up being occupied by another (Walesa, Goncz, Zhelev). To explain why direct or indirect modes of election were originally chosen, we should probably look first to the expectations of the various drafters about what party or coalition would control the assembly after the next election. In this case, direct elections might represent a victory by, or concession to, a faction that everyone then believed had a greater chance to garner a majority among the electorate at large than to patch together a coalition in a postcommunist parliament.

And another broad pattern also strikes the eye. Parliamentarism has made no inroads in the ex-USSR, except for the Baltic states, while full-fledged presidentialism has found no takers in Eastern Europe,

except in the ex-Yugoslavia. (The unclassifiable Belarus case is analyzed by Alexander Lukashuk below.) This regional clustering of rival constitutional models also needs to be explained. It suggests that institutional choices were actually made under some set of larger constraints, perhaps invisible to the constitutional bargainers themselves. What factors may explain regional clustering, besides the influence of West European models in Eastern Europe and the strategic calculations of Gorbachev and Yeltsin in Russia?

Economic, legal, and administrative reform of unprecedented proportions requires a certain concentration of political power. Under conditions where most voters identify with two or three well-disciplined parties, parliamentarism can produce an exceptionally strong executive, such as Thatcher, who might be capable of undertaking such a Herculean series of reforms. Although there are no streamlined party systems anywhere in the region, chances for party consolidation are much higher, say, in Poland and Hungary than in Russia and Ukraine. The former two countries, as a consequence, have a better chance than do the latter two of producing a strong executive via a parliamentary system. Given the crying need for a strong executive to manage reform, therefore, it is no surprise that presidentialism has racked up greater successes as we move eastward where party systems are inchoate at best. Strong presidencies, we might predict, will emerge where society is not well-organized enough to produce through elections a parliament that, in turn, is coherent enough to support a single-minded government capable of taking tough economic and other decisions. This is not to deny that strong presidents, elected by popular suffrage, may well turn into dictators, on the Bonapartist model. It is simply to say that legitimacy and effectiveness cannot be combined by parliamentary systems under conditions of massively fragmented party politics. The situation is even more dire in countries where state borders are contested and the question of who is a member of the community remains unresolved. The turn to presidentialism, reluctant or eager, may be inevitable under such conditions. One lesson here is that provisional constitutions, making it possible to change gears down the road, may have special virtues in postcommunist systems (see my article on constitutional postponement in *EECR*, Winter 1993). At the very least, constitutions should not nail into place strong presidential powers that

may become obsolete once fundamental preconditions of state sovereignty have at last been established and a streamlined party system begins to crystallize (as it is doing, say, in Poland today).

Students of alternative models of democracy, including Fred Riggs, have gathered impressive evidence demonstrating that, among new democracies, the survival rate of presidential regimes is considerably lower than the survival rate of parliamentary regimes. But this evidence, even if it holds up, cannot be used to prove the inherent deficiency of presidentialism. For countries facing acute crises are likely to reach out for a strong leader in the first place, while countries whose problems appear more easily manageable are likely to choose parliamentarism. (Parliamentarism in a multiparty system with coalition cabinets may have the subtle advantage, from the gun-shy politician's viewpoint, of being a form of organized irresponsibility, making it difficult to decide who should be blamed for which mistake.) So the poor record of presidentialism, outside the U.S., may reflect underlying social problems, not the institutional weaknesses of a separation-of-powers presidency in itself.

When presidents are directly elected, their implied powers are notoriously difficult to constitutionalize. Democratic legislatures frequently make broad delegations of foreign-policy powers to the president. The rationale behind such a broad delegation is simple. The steward of the national interest in a dangerous international environment should not be hamstrung by rules that prevent timely responses to emergencies. Enemies do not act according to rules. The official charged with repelling sudden attacks and responding to unscrupulous enemies must have similar discretion. In other words, the irrepressible need for bold and impromptu reactions to foreign threats requires the assignment of an inherently dangerous prerogative power to the executive, to the president therefore in a presidential system. While it is a tool easy and tempting to misuse, secrecy is sometimes essential in dealing with foreign powers; and every constitutional democracy must concentrate into a few hands the hard-to-monitor right to decide when it is justified.

So, presidential powers are inherently dangerous. Our sense of peril is increased when we realize that, as General Jaruzelski remarks in his interview below, "the presidential system is a kind of lottery and to a great extent depends on the personal characteristics of the man

elected." The most articulate and systematic warnings against the dangers of the presidential model of democracy have been formulated by Juan Linz, in his new volume, *The Failure of Presidentialism* (John Hopkins University Press, 1994). Roughly speaking, Linz makes the following six arguments. First, presidentialism is a winner-take-all system, handing executive authority over to a single party, potentially excluding the losers from any influence on crucial public decisions and turning them into spoilers. Second, presidentialism requires fixed-calendar elections, which deprives the system of useful flexibility—a politically or personally weakened PM can be ousted in mid-term, while a president in the same condition must lamely serve out his prescribed tenure. Third, the succession mechanism in presidential systems is poorly designed and likely to drop power into the lap of an unprepared and electorally illegitimate vice president. Fourth, the sense of being elected by the entire electorate, rather than by a partial constituency, may feed the omnipotence fantasies of the president, may fuel his sense that he alone (like de Gaulle) has a right to speak for the nation, and may encourage him to by-pass the assembly in case of conflict. Such an executive, who does not fear being unseated in mid-term, is also more likely to lash out impatiently and perhaps illegally in the face of inevitable frustrations. (A prime minister, by contrast, knows from daily experience that he holds office on the suffrance of his colleagues, learns the art of compromise, and swallows defeat as an ordinary event.) Fifth, presidentialism tempts candidates into making unfulfillable promises and may even produce dangerous delusions that the leader is a savior among the electorate. And sixth, presidentialism makes it likely that two democratically elected bodies (the president and the assembly) will come into conflict without providing any institutional means for resolving such conflicts democratically. According to Linz, such stalemates will tend to discredit the democratic formula itself, and even suggest to the public that elections are not an effective method for creating a government capable of acting in a coherent way.

Taken together, these arguments seem to me quite powerful, although the dangers of presidentialism surely vary according to the intensity and kind of social conflict a political system has to manage. The absence in the United States of class war and communist-affiliated insurgency has undoubtedly made it easier to maintain a

stable but divided government in this country than, for instance, in Latin America. We still have no clear picture of the social conflicts likely to be typical of postcommunist societies. As a result, we remain clueless about how these specific conflicts (whatever they turn out to be) will affect the relative merits of presidentialism and parliamentarism. That is just another reason why every generalization we hazard about postcommunist presidentialism must be exceptionally tentative and open to revision.

In any case, while Linz's arguments are powerful, they are not necessarily decisive. Above all, they do not apply directly to hybrid presidential/parliamentary systems, where the president can exercise at least some important powers without the countersignature, such as we find in Poland. A fairly persuasive argument in favor of semi-presidentialism is not hard to develop. The dual executive—which usually involves some degree of constitutional ambiguity concerning the relation between president and prime minister—looks like an especially flexible instrument for dealing with some of the characteristic problems of early postcommunist society. Notice first that the weakness and disorganization of armies throughout the region make the role of commander in chief (temporarily) less dangerous in Eastern Europe than it might be in Latin America. But what are the positive arguments for semi-presidentialism? For one thing, open competition for the presidency, may provide a much better education in democracy than backstage bargaining about cabinet posts among parliamentary parties. And a charismatic president can also help overcome the apoliticism seemingly endemic to postcommunist societies. Parliaments throughout the region are wracked by absenteeism and partisan squabbles, while governments charged with privatizing massive stocks of state property will continue to siphon off public funds and hand out patronage illegally. The corruption scandals and demoralizing fractiousness are not likely to end any time soon. As a result, total alienation of the electorate from the institutions of democracy, however dangerous, remains possible. A popular president can be very useful for sustaining some public confidence in elected bodies, and combatting the feeling, especially widespread among citizens who feel

harmed and left behind by reform, that they are unrepresented by the political elites. (It is also worth noting that Walesa, Havel, and Goncz have all resisted parliamentary crusades for de-communization and lustration. All of them have publicly deplored the attempt to re-open old wounds. This remarkable convergence suggests another crucial function of the postcommunist presidency. Throughout the region, the public is divided between anticommunists and anti-anticommunists. For good or ill, presidents—who represent the unity of the nation rather than a parliamentary majority—are trying to focus their countrymen on the immense challenges of the future rather than on the unspeakable crimes of the past.)

Finally, where parliaments, courts, and civil society are all relatively weak, there is a danger that parliamentarism itself may produce an over-mighty executive. In this case, even an indirectly elected president, such as Goncz, can usefully check the prime minister in some circumstances. But the president in a dual executive system may *support* the PM as well as check him. Walesa sometimes refers to the series of reform prime ministers in Poland as replaceable “fenders.” They advance the economic reform, but must absorb the electoral resentment this process inevitably creates. While reform cabinets come and go, the reform president—who keeps safely aloof from economic affairs—stays in office, guaranteeing the continuity of the reform process itself. (French constitutionalists speak of the way a clever president can use his prime minister as *un fusible*, from the word for an electrical fuse that can be replaced once it is burnt out.) As the articles by Wiktor Osiatynski and Andrzej Rzeplinski make clear, this arrangement seems to have worked remarkably well so far in Poland. But the jury is still out on the postcommunist presidency, in Poland and elsewhere. The object of comparative constitutionalism, at this point, is not to pronounce a definitive verdict, but simply to follow closely how this crucial institution, in its various manifestations, evolves in practice now that its formal contours are more-or-less fixed on paper. The interviews and articles published here represent a first step in this direction.

# WALESA

## A Profile of President Lech Walesa

*Wiktor Osiatynski*

Lech Walesa has been President of Poland since December 1990. An electrician by profession, Walesa (born 1943) has always been a rebellious worker and was one of the most active participants in the 1970 workers' demonstrations in Gdansk. Ten years later, he became the leader of the strike at the Gdansk shipyard and, subsequently, the first leader of the Solidarity Union. Interned under martial law, he resisted a number of offers to cooperate made by the communists. In 1988, Walesa was the main partner of General Kiszczak in preparing for the Round Table Talks between government and opposition. After the elections in June 1989, which resulted in an overwhelming psychological victory for the opposition, Walesa stayed in Gdansk as the leader of the recreated Solidarity Union. In early 1990, under pressure from members of the Union, Walesa became critical of the cabinet and pressed for an "acceleration" of the process of change. An important point on his agenda was the replacement of General Wojciech Jaruzelski as president of Poland. As a result of Walesa's criticism and actions, the Solidarity Movement split into two groupings (ROAD and Center Alliance) which later formed the nuclei of the major post-Solidarity parties. In the fall of 1990, Walesa and Mazowiecki clashed in a fierce presidential campaign. To the great surprise of all Poles, Mazowiecki was eliminated in the first round by Walesa and Stan Tyminski, an obscure Canadian of Polish origin. In the second round, Walesa won the presidency.

As president, Walesa has used his powers much more willingly than did his predecessor, General Jaruzelski. He appointed as the new prime minister a relatively unknown liberal from Gdansk, Jan Krzysztof Bielecki who, in turn, retained Leszek Balcerowicz as a deputy prime minister and continued bold economic reforms. After the parliamentary elections of 1991, Walesa agreed to the candidacy of Jan Olszewski for the post of prime minister. Olszewski was a politician whom Walesa did

not like but who had won the support of a parliamentary majority. The two ambitious men soon clashed, and conflicts between the prime minister and the president over their respective competencies in military, internal security, and foreign affairs grew to the point of open war. In June 1992, the minister of interior in the Olszewski cabinet released a list of 64 suspected agents of the communist secret police, which included top aides of the president as well as Walesa himself. Walesa reacted with a motion to the Sejm calling for an immediate vote of no confidence in the government. He succeeded.

The president's relations with the next cabinet led by Hanna Suchocka were not so tense. In November 1992, a new "Little Constitution" was adopted. It clarified somewhat the division of powers between president and cabinet. Nevertheless, accusations concerning Walesa's attempts to abuse presidential powers continued to be heard, although now they originated more often from the right-wing opposition than from the governing coalition. In the meantime, Walesa's popular support began to shrink because many workers started to blame the president for unfulfilled promises and unmet expectations. The most paradoxical development was the growing resentment between Walesa and the Solidarity Trade Union. Further evidence of changing societal attitudes toward Walesa was the relative low support for the Non-Party Bloc to Support Reform (NPBSR), a political movement created by the president last summer at the beginning of the electoral campaign. Although the NPBSR got into Parliament, it barely met the five-percent threshold.

President Walesa is too complex a person to permit easy judgments and descriptions. A few things are clear, however. His decisions are pretty erratic and escape easy predictions. It seems to me that he makes major decisions by himself, often to the surprise of his aides. On at least two occasions, pending an important decision, a high official at the Presidential Chancellery regaled me with a

series of arguments favoring the course of action Walesa was apparently about to choose. The president then went on to decide the opposite. He listens to his advisors but, at times, he seems to know better. Moreover, there is no clearly predictable pattern to his decisions: sometimes he supports his apparent foes, while at other times he acts against his supposed friends.

This unpredictability results in at least one visible pattern in Walesa's politics: he does not retain his alliances for long and most of his allies, sooner or later, clash with the president. Three examples are Tadeusz Mazowiecki and his group in 1990, Jaroslaw Kaczynski and the Center Alliance (for which, in fact, the Presidential Chancellery formed an institutional base), and the Solidarity Union.

Another clear pattern in Walesa's presidency is his commitment to economic and social reforms. On a number of occasions he has protected reforms in moments of crisis. First, after the presidential elections in 1990, when he appointed Bielecki prime minister, Walesa not only secured the continuation of market reforms but also created out of nowhere a moderately strong liberal party. In June 1992, he acted swiftly to remove the government of Jan Olszewski who subsequently evolved from a supporter of market reforms in an increasingly populist and nationalist direction. In the fall of 1992, Walesa accepted the "Little Constitution" despite the fact that it frustrated his ambition to import the French model of semi-presidential government: in return, he submitted to Parliament the Bill of Rights which is the most far-reaching statement of liberal, market-oriented values ever proposed in Poland. Next, in May 1993, Walesa decided to defend the pro-reform cabinet of Hanna Suchocka after she failed to win the parliament's vote of confidence: the president decided to dissolve Parliament and call new elections. A few days later, he risked alienating a substantial number of older voters by vetoing the pensions bill which would have caused a dangerous increase in the budget deficit. Finally, at the beginning of the campaign, Walesa predicted the possible victory of the postcommunist and peasant parties, and called on all post-Solidarity parties to form a common pro-reform bloc. When his call went unheeded, he created the NPBSR.

On the other hand, some of Walesa's decisions are frightening to reform-oriented politicians, especially certain of his decisions in personnel matters. Democrats are

afraid of his attempts to strengthen an informal web of clients through which he might then control or improperly influence state security forces and the media. Even more appalling are some public statements of the president, like his recent announcement that he would not hesitate to use the "Yeltsin option" if the reforms in Poland are threatened by the new government. (This announcement was especially distressing because it was repeated on a pro-presidential television program on the very day of the bloodshed in Moscow.) By now, however, most politicians and observers are aware of the huge gap between Walesa's words and his actions: he acts much more reasonably than he speaks.

### Reflections on the interview

My recent three-hour conversation with President Walesa helped me to understand him a bit better than I had based on a mere observation of his actions. Even more revealing were the more than twenty hours spent with his words while transcribing the interview, re-listening to every sentence, trying to discover in his words the thoughts and intentions of Lech Walesa. The following are a handful of extremely subjective, and purely personal impressions developed on the basis of this experience.

I left Walesa impressed by his intelligence and genuine honesty. I had interviewed many top politicians in Poland and in other countries, and I had a feeling that Walesa was more intelligent than many of the better educated people with whom I have talked. Of course, I could think of some Polish politicians who seemed more intelligent than Walesa. But, when I was leaving them, I did not completely trust what they had said. Walesa was absolutely natural and extremely open, and there was nothing artificial or phony about him. I trusted him.

After the first few minutes of uncertainty, Walesa felt at ease talking. Perhaps he found a listener rather than an investigative reporter, felt safe, and went on. It was not always easy for me. He talks fast and it was easier to listen to him than talk with him. He hardly tolerated interruptions, i.e., he either continued talking over my question with a slightly raised (but not aggressive) tone or let me say something but disregarded it and continued with his story. Similarly, he apparently did not listen to my questions. But when he was finished with what he wanted to say or describe, he often came back to it: "Aha,

you also asked me about so and so..."

He tended not to answer my questions directly, especially when they were too abstract. He preferred to give an example, usually from his own life experience or talk about concrete practical steps he took or suggested. He liked to introduce his responses with the words "as a practitioner." He cherishes most in himself his own life experience, practical attitude, quick reflexes, and intuition. There can be no doubt about his intuitive abilities. Often, he interrupted my questions. Strangely, almost always he was right: his answers proved that he had intuitively grasped what I was driving at.

His language is peculiar. The gap between what was said and what can be written is wider than it is normally. I had to re-write many of his thoughts. This is partly a question of grammar, more often of the way Walesa talks: there are a lot of shortcuts, repetitions for the sake of emphasis, slang expressions, or phrases which have a special meaning for him. (Most of those are untranslatable but one example may be his eccentric use of the word "classic" to mean rules of conduct.) However, he seems to be aware of this problem, does not pretend to be a great speaker, and even talks openly about his lack of education.

On the other hand, Walesa did not impress me with his modesty. He talks a lot about himself. He says how he did this or that. He proves how well he predicted various developments. He likes to demonstrate that he was always right. Such immodesty may result partly from the domination of the concrete over the abstract in his thinking. It is easier for him to answer by using himself as an example. In part, it may reflect the fact that his predictions have proven to be right more often than not. In any case, he seemed to me to have difficulties acknowledging—and even noticing—his own mistakes. This incapacity or unwillingness may result from his striking ability to see "the sunny side of the day" (and night). Even when he loses, Walesa tries to learn a lesson. Very often he said that something negative (for example, the "lustration" scandal, the split of Solidarity, the results of the last elections, and so forth) provided a much-needed lesson and stimulus for growth. With this attitude, it is relatively easy for him to perceive and present himself as a strategist who can predict everything and who is always prepared for every turn of events. This, in turn, enhances the perception of Walesa by others as an unhumble, ego-

driven individual who has no ability to admit defeats or mistakes.

At times, moreover, he may think of himself as a providential man. One reason for this enlarged self-image is his real talent to act swiftly in crises, displayed repeatedly since 1980. Another reason may be that other politicians tended to talk about him as if he were the very embodiment of democracy, and to attribute to him the powers of a great social force. When he talks about economics, he sounds as if he were the top manager of his own factory, named "Poland."

Sometimes Walesa makes it seem that the entire process of societal transformation is his personal task. When I listened to him, I had, at times, the impression that the super-engineer of social change was talking. Similarly, he has a slightly paternalistic attitude toward his collaborators. He tends to think that they "owe" him their career and successes. When they fail to acknowledge it—as they usually do—he feels bitter and betrayed, although he does not seem to harbor resentments.

Politics, for him, has always been a mixture of crossword puzzle—at which he is a real master—and very personal struggle. He thinks about politics less in the abstract terms of historical processes and changes (although he presented me with one of the most brilliant interpretations of the evolution of the communist system I have ever heard), than in terms of personal conflicts, alliances, manipulations, and intrigues. His wording reflects this attitude: "to win", "not to be conquered," "not to be beaten," "victorious" are some of his most common expressions.

He likes to repeat that he prefers fishing over politics, and that he does not care about his own power. He may not. Nevertheless, politics and political games are his nature. He likes playing these games, and I doubt if he could stay still for long without some kind of politicking. This does not mean that he plays just for the sake of playing. I came to believe that Walesa has some basic values and convictions which guide him in his activity. He believes in a hierarchy of values and goals, and wants to have something he calls "the main plan"—for Poland and for himself. I think that he believes in justice, understood as fair opportunities for everybody. I was also impressed by his grasp of the necessity of taking individual responsibility for one's own life. Although I may at times have some doubts about his commitment to parliamen-



tary democracy, and although I was not convinced by his arguments in favor of a presidential system for Poland (I left the expert team working on the president's draft constitution precisely over this issue), I am not afraid of him as a potential dictator. I think that Walesa is truly devoted to freedom. Moreover, he seems to be absolutely certain that freedom—freedom of an individual, of a social group, of a state, and of a nation—has to be based on sound economic independence. I think that this forms the basis for Walesa's genuine commitment to market reform.

Finally, I noticed that Walesa made many references to two distinct types of personality, which he labeled the "village type" and the "city type." I sensed that he nurses some doubts about the former's commitment to democracy and freedom, and that he sees the relatively steady transformation from the "village type" to the "city type" as the most important—and most difficult—task of the entire transition.

For me, the three hours I spent with Lech Walesa were delight. I loved every moment of it. At the same time, I understood how frustrating the same meeting could have been for me if I were, say, the minister of finance, and came to the president to talk about specific issues or to settle a concrete matter. I would have been frustrated by the president's vagueness, with his "I" statements, with his "I was always right" attitude, with his paternalism, and with his tendency not to listen. I probably would have left his office at the first available moment and gone elsewhere to look for ways to settle the matter. Then, in a moment of crisis I would have prayed that Walesa would use his intuitive and symbolic powers to rescue me from the unhappy straits in which I found myself.

### **An Interview with President Lech Walesa**

*On October 12, 1993, Lech Walesa, president of the Republic of Poland, received Professor Wiktor Osiatynski, co-director of the University of Chicago Law School's Center for the Study of Constitutionalism in Eastern Europe. During a three-hour talk at the president's residence, Belweder, Walesa set forth his conceptions of both the presidency and constitutionalism for the East European Constitutional Review.*

**Wiktor Osiatynski:** Mr. President, you filed a draft proposal for a constitution with the Constitutional Commission of the last National Assembly. This document

gives the president the role of chief executive and allows him extensive powers. I have the impression, however, that you feel best and act the most effectively as a superarbiter and guardian of reforms.

**President Walesa:** You would be right if there existed a normal situation in our country, if there were a balance among mature political parties and alliances. But no such balance exists, and thus the president cannot be an arbiter. The position of the arbiter makes sense when there are two teams, and not when one team comes from the first division and the other from the third, while the same players keep switching from one team to the other. And, what's more, the arbiter has neither a whistle nor red cards.

**WO:** When will you decide that there exists a "normal situation"?

**LW:** When democracy matures. Our present democracy is limited to a struggle for power, while I am waiting for a democracy in which disputes will be about solutions. There will be programs, and it will be clear who is to the left and who is to the right of center. The way it is now, the right holds more leftist views than the left and vice versa.

**WO:** I take this to mean that you would prefer to postpone the model of president-arbiter to a later time. How do you see the role of the president during the transition?

**LW:** For the period of construction, I believe, the president should have more real executive powers.

**WO:** Which powers do you miss the most?

**LW:** I would like to be able to appoint and dismiss the prime minister myself, depending on the situation.

**WO:** Without the approval of the Sejm?

**LW:** Exactly. But the Sejm would retain the power to pass a vote of no-confidence against "my" prime minister and the government. After all, I shall not be guided by whim, and I shall never go against the majority. I only want to have the freedom to act when I feel that the situation requires immediate action.

**WO:** As in June 1992, when you applied to the Sejm for the immediate removal of Prime Minister Olszewski?

**LW:** Yes. At that time I was not able to remove him myself, either. But later, the Little Constitution deprived me even of the right to initiate the dismissal of the prime minister.

**WO:** Was this [scaling back of presidential powers] an act of revenge on the part of the Center Alliance for your

throwing them out of the presidential chancellery?

**LW:** No, because the Center Alliance was not the sole supporter of that motion. The Democratic Union backed it, too. When things got rough, when they [the Olszewski government] were throwing around secret police files, the leaders of the Democratic Union came and asked me to do something, and they talked of a strong presidency. Later, when things calmed down, they installed the Suchocka government, assumed their offices, and deprived me of everything.

**WO:** I understand that you would like to have the powers of the president of France: to have the right to appoint and dismiss the government but with [the possibility] of a vote of no-confidence from the Sejm. But would you also like to be directly in charge of executive power, responsible for the economy and other concrete policies?

**LW:** No. This is the responsibility of the prime minister and the government. I don't want to be the head of government.

**WO:** And would you like to change something in the relationship between president and Parliament. At present, the president may dissolve Parliament when it is not able to appoint a government or pass the budget. The president also has a rather significant role in the legislative process; he has the right of veto and he can call a referendum subject to the Senate's approval.

**LW:** True enough, but my initiative amounts to the right to submit a draft proposal which the Sejm can re-draft at will. And if I refuse to sign their version of the bill, they vote me down, and I have no choice.

**WO:** But to override a veto the Sejm requires a coalition of two-thirds. So the presidential veto is a major power. Your draft constitution includes a provision allowing the president to dissolve Parliament at will. This prerogative goes beyond even the powers of the president after 1989, before the Little Constitution was adopted.

**LW:** Mind you, my will is not a whim, because I realize that the dissolution of Parliament is a serious matter. Besides, the state cannot afford constantly to have new elections. There are many such arguments. Many journalists say that a whim of mine could do a lot of harm. But I have no whims. I only examine the situation and want to have the freedom to act. I don't want power; I'd rather go fishing. But in extreme situations, I cannot be helpless. I don't want to use this power, but I ought to have it.

**WO:** The problem is that the constitution is not de-

signed only for you. What if all those powers fall into the hands of some irresponsible successor? After all, a young democracy could make a rash decision. What would happen if, say, Stan Tyminski or Jan Parys were elected, or someone of this sort?

**LW:** He will soon fall.

**WO:** How? Will we have to wait five years, till the next election?

**LW:** No. Our people are quick-tempered. You can't go against the majority here. Demonstrations would force such a person to make changes or resign.

**WO:** Before the 1990 election your position was that Parliament should select the president, whereas the Democratic Union wanted a popularly elected president. What is the situation now?

**LW:** Now I believe that the president should be elected by universal suffrage.

**WO:** Usually, a president with extensive powers, elected by universal suffrage, is also the leader of a strong party, which constitutes his parliamentary base. Should it be the same in our country?

**LW:** I believe that, in a mature system, with, say, five well-established parties and a stable balance of power, the president will not have to belong to a party. With no such environment, there is no choice: the president must have a party. I'm getting by thanks to my experience.

**WO:** But you did help to create parties, like the Liberals or the Center Alliance, although at the same time you distanced yourself from them or quickly parted company with them.

**LW:** In 1990, I faced a choice: either we were to have a strong leader or a weak leader combined with the construction of a party system. Poland has frequently failed when it has had great leaders without a wide political base. So, since the defeat of communism, I have had the ambition to build a system. After all, I could have remained in the Democratic Union, in the Center Alliance, or I could have stayed with the Liberals. I chose the other concept. The thing is that, as yet, I haven't built that system, and the parties I helped create are losing out.

**WO:** Will you set up a presidential party now?

**LW:** I will first see what the existing right and center-right parties are doing. Perhaps I will try to create something. But such a bloc or party must not by any means be called presidential, because all its members can't be presidents. I think it will be a party of balance or a party of

reforms.

**WO:** Are you going to base it on the Non-Party Bloc to Support Reform (NPBSR)?

**LW:** The NPBSR could only be one part of such a bloc. The idea is to ensure cooperation among parties which draw support from different groups of voters and which wouldn't have to compete for votes. The last election showed that everyone can't be chasing after everyone. Some groups should address the craftsmen, others should appeal to farmers, wage-earners, and so on.

**WO:** Will such a bloc erase real conflicts of interests between urban and rural communities, as well as between employers and employees?

**LW:** These conflicts won't disappear but they can be settled internally. Particular constituents of the bloc—parties and the professional groups—will have clearly defined bases of support and programs. Their cooperation during an electoral campaign will help them consolidate their programs by setting forth objectives.

**WO:** So it would be some kind of miniature Parliament. Yet what would be its common denominator? Will it just represent the opposition against the coalition of the left?

**LW:** Not only that. After all, the main objective of political parties is to seek and gain power. Within this bloc, the most important common element would be the continuation of market and democratic reforms.

**WO:** How could this bloc ensure an electoral victory?

**LW:** I guess we would have to start with the local elections next year. Until then it will be difficult to build a strong base and ensure cooperation among a number of parties nationwide. Thus, the best idea is to divide the provinces. All groups should jointly support the strongest party of the common bloc in every province.

**WO:** Will the politicians who enjoy the most solid support be willing to share power?

**LW:** They do not have power yet. They simply have hopes, if anything. And those who do not unite will be left high and dry. After all, if there is any lesson to be learned from the last election, it is that no one can beat the postcommunists and the PPM [the Polish Peasant Movement] alone. And not only because they are so well-organized, but also because they are interest-group parties.

**WO:** After the last election, did you regret having signed the electoral law with its percentage threshold?

**LW:** No, I didn't. The electoral law was necessary, mainly because it provided a sense of security as well as an opportunity for the parliamentary representation of national minorities. Besides, we couldn't possibly have gone on with the fragmentation of the former Sejm. It was also a good lesson. Perhaps the post-Solidarity politicians will now learn to strike deals and reach compromises.

**WO:** But we now have a parliamentary majority opposing reforms.

**LW:** That's not true. They are even more pro-capitalist than we are. Sure, they'll make some changes, perhaps they'll print some more paper money, but they will not destroy what has already been achieved.

**WO:** And are you not afraid of the return of undemocratic forms of government?

**LW:** It will be difficult with a free press and free elections, and anyway I will control them.

**WO:** Will you resubmit the Bill of Rights?

**LW:** The proposal has already been submitted, and now its passage depends on the Sejm. The Union of the Democratic Left (UDL) had its own Charter which went further than mine in the question of social rights. My proposal was criticized on the same grounds by the PPM. Now they have an opportunity to fulfill their promises, since they have both the power and the budget. But today they bear responsibility for what they are doing. It's easy to make promises when one knows they cannot be fulfilled. I just wonder how they are going to cope with their own trade unions.

**WO:** You often say that you respect the verdicts of democracy. Is there anything in democracy that you are afraid of?

**LW:** No. One thing perhaps. It is that democracy will turn a deaf ear to somebody. This was the case during the last Solidarity congress when they invited me only at the last minute so that I could not bring forward my arguments and thus influence their resolutions. But when all positions are taken into consideration, democratic decisions must be respected.

**WO:** Even if a democratic decision violates someone's rights? When the majority decides to oppress a minority or when it says, "out with HIV carriers?"

**LW:** No. This can't happen. This we write into the constitution, which is passed by the nation and that is inviolable.

**WO:** So, the constitution sets limits to democracy.

**LW:** Precisely. The basic framework is there to safeguard the rights of minorities and individual citizens, to safeguard their right of ownership and other rights. This is where the foundations of the state are laid down.

**WO:** And what did the constitution mean for you during the shipyard strike in 1980?

**LW:** Just a piece of paper.

**WO:** And during the Round Table Talks in 1989?

**LW:** The same.

**WO:** And now?

**LW:** Now it may be something important, because the forces and institutions to enforce it are already there. But even today the constitution must not be treated as a cure for all problems. In 1981, when the program of Solidarity was adopted, I was asked what I thought of it. I had not even had enough time to read it, so I said: "Life will bring forth a different program." I am not an anarchist. I believe in programs just as I believe in the constitution, but I think they must be formulated in accordance with what life brings.

I remember getting an apartment in a new residential compound in Gdansk. It was a wonderful housing estate, wonderful apartments, gardens, and lawns. But the way they planned those lawns meant that, when I was rushing to catch a tram, I had to run across them. Then they started putting up notices "Only a donkey would walk through here." Whether or not I was a donkey, I was never late for work. And what I and others

trampled became a new path.

It is the same way now. First let us watch the way life goes, and then let us lay down paths, which are in line with logic, custom, and the needs of man. What's the point of adopting an American-style constitution in Poland now, when we don't have two parties?

**WO:** Shall I take it that you would rather not rush ahead with the constitution now?

**LW:** I'd rather wait for life to bring it closer to us. For now I'd rather improve on laws at a lower level: the Little Constitution, the law on the Constitutional Tribunal, the section of the constitution concerning the judiciary; and I would pass the Charter of Rights. After all, to tell the truth, we don't know today what kind of party system will emerge and what kind of presidency we will need.

**WO:** Do you still advocate a nationwide popular referendum on the new constitution?

**LW:** Yes I do. The constitution must be the supreme law and must stand above the government, the president, and Parliament. Thus no one should be able to modify it easily. It is inadmissible to correct things which must not be corrected. The nation itself must be asked to accept the constitution, in order to make it more difficult for politicians to change it carelessly.

**WO:** Mr. President, thank you for this interview.

*This interview was translated by Krzysztof Moscicki.*

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*The full cassettes and transcripts of the interviews with President Walesa, General Jaruzelski and President Iliescu have been deposited in the archives of the Center for the Study of Constitutionalism in Eastern Europe at the University of Chicago Law School in Chicago and at the Central European University in Budapest.*

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# JARUZELSKI

## A Note on General Wojciech Jaruzelski

*Wiktor Osiatynski*

General Wojciech Jaruzelski was President of Poland from July 1989 to December 1990. A professional soldier, Jaruzelski (born 1923) became the minister of defense in 1968. In 1981, during the struggles between the communists and the Solidarity Union, he was appointed prime minister, and later, the first secretary of the Communist Party. In December 1981, Jaruzelski introduced martial law in Poland. Seven years later, still serving as the first secretary of the party and the chairman of the Council of State (which, under communism, was a collective presidency, with rather ceremonial competencies), Jaruzelski overcame the opposition of party and bureaucracy apparatchiks and led the communists to the Round Table Talks with the opposition. After the partially free elections of June 1989, when the opposition won all but one of the seats available to it (i.e., 35 percent in the lower house and 99 percent in the Senate), the new National Assembly elected Jaruzelski as president of Poland. This new post was created by the Round Table contract, and gave the president broad powers in the realms of international relations, defense, and internal security. During his presidency, however, Jaruzelski did not use many of these powers and acted primarily as an arbiter. In 1990, under popular pressures orchestrated mainly by the supporters of Lech Walesa, Jaruzelski resigned and withdrew from politics.

Our interview took place on October 7, three weeks after the parliamentary elections in Poland, in which a postcommunist coalition won a plurality of votes and became the largest party in Parliament. Although his aide warned me that, ever since the elections, Jaruzelski had been extremely busy and had hundreds of people who were seeking his advice, the general was not in a triumphant mood. Nor was he as bitter as he had been during our first interview, in September 1990, shortly before he resigned from the presidency. At that time, he kept saying that he thought he had lived too long. This time, Jaruzelski seemed to be calm, reflective, open-minded, and moderately optimistic about Poland's fu-

ture. When I shared this impression with him, he complained about petty annoyances. He would like to write the Polish version of his memoirs. (The French publication was quite a success in the West.) He has been unable to concentrate on this task because he spends most of his time in law courts because of two or three court cases against him. In one case, he is accused of a procedural violation when introducing martial law in 1981. Another case concerns the destruction of some archival documents of the Politburo in 1989; in addition, he is being called as a witness in a number of court cases against his colleagues.

During the interview, we discussed the current social and political situation in Poland; some details of the introduction of martial law in 1981 and of the transition in 1989-90; Jaruzelski's own understanding of constitutionalism between 1968 and today; the prospects for reforms in Poland, and other topics. In this issue of the *EECR* we are publishing those excerpts of the interview that touch upon presidential powers.

## An Interview with General Wojciech Jaruzelski

*On Thursday October 7, 1993, Wiktor Osiatynski interviewed General Wojciech Jaruzelski for EECR at Jaruzelski's house in Warsaw.*

**Wiktor Osiatynski:** General, when you were president, did you feel like the chief executive or like an arbiter?

**Wojciech Jaruzelski:** As a matter of fact, I felt rather like a lightning rod. After all, at the Round Table, we were all trying to figure out what the Russians and others would say. Although Gorbachev was in power, nobody knew how the situation would develop. So the presidency was conceived primarily as an external guarantee. And there was the protection of those agreements against internal threats. Hence the specific prerogatives of the president in the area of foreign policy, military and internal affairs.

**WO:** But the Round Table agreements stipulated that the opposition would gradually gain access to power. After June 1989, in fact, Solidarity demanded more: the government and power. At that time you were already president and guarantor of the agreement. Did you think then of utilizing your powers, in order to slow down the speed of change to the pace that had been agreed on at the Round Table?

**WJ:** No. It did not even cross my mind. For me, martial law was a great tragedy, so later it did not even occur to me that I could use force to defend those in power. Anyway, this power later eroded almost entirely, as was confirmed by the June elections. I believed that that was the way it was and that one had to reconcile oneself to it.

**WO:** And after the USSR accepted Mazowiecki's government and the Communist Party fell apart, did you still play the role of the lightning rod?

**WJ:** Yes. All the time I was aware that the inevitable clashes of the old with the new would hit me this way or another and that my duty was to cushion the shock of such collisions. The state administration and security services often reported dismissals and discrimination. I did my best to allay those fears and complaints, to calm them down. I said it was necessary to go through all that. On the other hand, I tried to preserve the values which I considered important. For example, in December 1989, during the changes to the constitution, I made sure that the clause defining Poland as a "democratic state of law" was supplemented with the phrase "based on the principle of social justice." Thus, I tried to mollify the resistance to changes among people of my persuasion, and simultaneously to sustain certain elements of continuity within that which was new.

**WO:** What about foreign policy? When the Berlin Wall came down and Eastern Europe was convulsed by a wave of revolutions, the lightning rod was no longer necessary.

**WJ:** It was. But then it was directed in some other direction, which, incidentally, was for me a great surprise. I always had good relations with Gorbachev, based on mutual trust and respect. But it soon appeared—however strange it might sound—that for the people of the West, I was a factor increasing the credibility of our transformations and their continuation. From the very beginning, politicians, senators, and businessmen swarmed into the Belweder. I wondered and asked: "Why are you coming to me, if you have people more like you in the govern-

ment?" It was explained to me that they wanted to make sure that the changes in Poland would endure. "We know Mazowiecki and Skubiszewski would say that. We respect and admire them, but they stand on one foot, while there is always the other one. And if that line of development is confirmed by Jaruzelski, and with him by the army and security forces he controls, it means that the transformation in Poland has stayed the course." I believe that I did a lot in this regard, and I am confirmed in such a belief when I talk to the Western politicians who meet me whenever I go to the West, like Helmut Schmidt and François Mitterand most recently.

**WO:** What kind of president is Walesa?

**WJ:** I would not like to pass judgment.

**WO:** So how do you see his role? Is he more of a referee or is he rather the head of the executive?

**WJ:** As a matter of fact, he is quite unclassifiable. Some of his actions indicate that he is trying to make certain decisions or give certain impulses in the manner of a chief executive. After all, he has a great, even decisive, influence upon the army, security issues, foreign affairs, as well as on the public radio and television, and these are the main instruments for exercising power. He also tries to put forward suggestions regarding specific economic policies, but these have received mixed receptions and the influence of the president in such matters is much smaller. On the other hand, he sometimes acts as an arbiter. Thus, his presidency is a kind of mixture.

**WO:** What model of the presidency do you consider best for Poland?

**WJ:** I think that, in the future, the best would be the model of a strong government, while the president should be a mediator, an arbiter, and most of all, an authority.

**WO:** And what arguments would you use to support the parliamentary-cabinet system?

**WJ:** Most of all the fact that the presidential system is a kind of lottery and to a great extent depends on the personal characteristics of the man elected president. Whereas a strong government, with parliamentary backing, gives a better guarantee that decisions will be discussed and be more circumspect. Perhaps it will take longer to reach decisions, but they will have a more solid basis. The parliamentary-cabinet system remains under public control. After all, the president, who is head of state, should not be attacked or even criticized frontally, while a government can be.



**WO:** Would a government which is subordinate to Parliament be able to make decisions quickly? Would it be effective?

**WJ:** It is a difficult problem. Actually, attempts have been made to give special powers to the government. These attempts are a signal that many believe that the government's ability to solve problems is too constrained by parliamentary control.

**WO:** There are many such problems in the period of transformations. Would you advocate giving special powers to the government during this period and increasing the distance between government and Parliament?

**WJ:** Yes. I would. And perhaps the president, too, should be equipped with certain rights which he could use to facilitate and accelerate the transformations, to make them more dynamic. I like the pure parliamentary-cabinet model, but, at the same time, it appears to me as something of an academic solution. It works best in a clear situation, in a stabilized democracy. Whereas, in a period of transformations, a larger effectiveness is called for, which undoubtedly results in a strengthening of the office of president.

**WO:** Would you suggest passing a special constitution for the period of transition?

**WJ:** In this regard, I would be wary. The constitution is an extremely important document and writing it with the intention to change it substantially in a few years undermines its significance. I would not rush with the constitution. Perhaps it is a better idea to straighten out the Little Constitution, which one can live with, and put off adopting a final version of the constitution until the situation becomes more stable.

**WO:** And during that time, citizens would be deprived of practical means for safeguarding their rights, because the provisions of 1952, still in force, neither give any guarantees nor provide any enforcement mechanisms.

**WJ:** In this case, the Little Constitution could be supplemented with the Bill of Rights. Anyway, I do not like the idea of beginning by degrading the constitution with the assumption that it is an interim arrangement. While writing the constitution, one could think ahead. It could even overstretch its limits a little, with respect to certain [social] issues, aspirations, and expectations. Of course, I mean intentions and not entitlements which could trigger excessive claims. Anyway, I believe one should not rush to complete the final constitution. It should become crystal-

lized when the reforms are already on a steady course. Then the role of the presidency will also be treated with less nervousness than it now is, when purely personal aspects play such a great role.

**WO:** As a result of the last elections, more than two-thirds of the deputies and senators favor a weak presidency. At the same time more than half of the deputies spoke, in the electoral campaign, for slowing down or even halting the reforms. Does this new situation change the role of the president in any way?

**WJ:** Being for or against reforms, I believe, is more a matter of implementation than of making fundamental decisions, because those have already been made. However strange it may seem, the Parliament that resulted from the Round Table agreements took the decisions which definitively changed the system. As for the implementation of the reforms, the president has relatively little to say, because that falls within the competence of the ministers. Those men are doing something, whether slower or faster, better or worse. And will President Walesa or Minister Wachowski do the rounds inspecting how the ministers work?

**WO:** In two years, we are going to have presidential elections. Do you think the president should have the backing of a strong party, or should he rather refrain from associating himself with any party?

**WJ:** I believe, in this respect, that one should be careful about using the French or American model. In our Polish conditions, with such great discord and strong conflicts, the president in charge of a party would become a factor in those conflicts, and not a mediator. In more stabilized democracies, free from such strong conflicts, the president can have his party support. Here, he should first of all be a man of great personal authority. Of course, he can have stronger support from some political groups, but he should not be a man of one party or its leader.

**WO:** But he must be chosen in one way or another. In direct popular elections with universal suffrage, how can anyone become president who is not put forward or supported by a strong party?

**WJ:** This depends exactly on what kind of model we are going to adopt: whether the presidential system or a parliamentary-cabinet one. If it is the latter, then logically we should return to the election of president by the National Assembly. In that case, the president would be elected as a result of an agreement among the parties. Of course, he

would thus gain the support of the majority, but he would not be the leader of one camp, nor would he declare his political sympathies explicitly in favor of one side.

**WO:** In other words, as you said after you were elected, it would be easier for a president selected by a coalition of parliamentary parties to be "the president of all the Poles." And while in office, what did you think about the changes in the constitution in 1990, just after the presidential election by universal suffrage was introduced?

**WJ:** It is paradoxical that Walesa and the Kaczynski brothers proposed the parliamentary model, which naturally ends up narrowing down the president's prerogatives. The universal ballot was chosen by the group which now forms the core of the Democratic Union. At that time they believed Tadeusz Mazowiecki would be elected, who indeed, at the moment of the change in the constitution, enjoyed great popularity. That was a mistake. Of course, popular elections have their tone and color, but they are in some way a lottery. The president does gain a stronger position, but, on the other hand, a certain elemental force is at work. I cannot imagine Tyminski winning 25 per cent of the votes in the National Assembly. This is the best example of how emotions, even a psychosis, could come into play. Thus, the universal ballot could be more democratic, but, on the other hand, it leads to a great danger, particularly in an unstable situation. And when Parliament itself is democratically elected, the election of the president by the National Assembly cannot be accused of lacking in legitimacy.

**WO:** And how will the president be elected in two years' time? Who will become president?

**WJ:** The election will certainly still be by universal suffrage. Of course, candidate number one is the current president. But some other personages could appear, like our ombudspersons: Professor Letowska or Professor Zielinski, who do not have a party background, but who have a great chance of winning, due to their public popularity.

**WO:** What changes in Poland in the last four years do you think were the best? And, in turn, what upsets you most?

**WJ:** I am most happy to see my country take the democratic path. Although democracy is still in the stage of infancy, there is no doubt that this is a great thing. My other joy comes from the fact that we are becoming a normal country in the sense of everyday life: trade, ser-

vices, urban outlook. In one word, we have made a step towards some rudimentary civilized conditions, which we had painfully lacked for decades. I could enumerate some other changes for the better, but these two I consider the most important.

On the other hand, I am put off by the sharp social and material polarization, and by the pauperization of a large part of the society, and the lack of sufficient protection against poverty, sometimes very extreme. I am not saying that somebody is to blame, in some way it may have been inevitable, but it is sad all the same. My other worry is the political struggle which often assumes outrageous and pathological forms—from all those accusations relating to the examination of the past and de-communization to internal warfare within the Solidarity camp.

Of course, I could also say what a great thing it is that Poland is an independent and sovereign state, but I would not treat this as an achievement, because, if not for Gorbachev and all those transformations, little would have changed. But objectively it is certainly a great thing.

**WO:** As a general and a strategist, how would you assess the current international and military situation?

**WJ:** There's been a significant change in this respect. Before, we had a greater sense of global threat. The world was sharply divided. Two antagonistic camps bristled with nuclear warheads aimed at each other. And although it was difficult even to think that a nuclear war could break out, still the potential threat was there. On the other hand, there was a smaller risk of local conflict; we never felt threatened by our closest neighbors, or by the upheavals in their countries.

Nowadays, an East-West conflict is inconceivable, at least in the foreseeable future, because practically there are no blocs anymore. Disarmament is underway, so in the global sense we can feel secure. On the other hand, the local threat is greater and this is an entirely new element in the international situation.

**WO:** You seem to be more of an optimist than during our previous interview, three years ago.

**WJ:** A moderate optimist, since it will still be a vale of tears, as Professor Ralf Dahrendorf puts it. We surely live in a better world. However, we must not idealize it, because freedom is not the only thing inscribed in its nature. There are also the numerous side-effects which this freedom brings forth.

*This interview was translated by Krzysztof Moscicki.*

# ILIESCU

## A Profile of President Ion Iliescu

*Elena Stefoi*

Born on March 3, 1930, Ion Iliescu studied hydrodynamics in Moscow and Bucharest. Starting in 1956, he climbed the ladder of the communist system, from the students' movement to the top of the hierarchy, winding up as an "in" of the Ceausescu in the 1970's. After a visit to China, the dictator decided that Romania was to follow the Asian model and started to implement a cultural revolution. This was the moment when the schism between Iliescu and the Ceausescu occurred. Gradually, Iliescu's dissent enhanced his relationships with men of culture and the arts who saw that Ceausescu's shift jeopardized the relative liberties and privileges they had enjoyed between 1965 and 1970. While party and state leaders were beginning to see the intellectuals as enemies, Iliescu was strengthening his image as their friend and protector.

Although he had fallen into disgrace between 1971-1989, the ideological opponent of the chief of state nevertheless held important positions within the party apparatus. From these positions Iliescu succeeded in winning the esteem of two distinct groups: his staff, who considered him to be a popular party activist, open and kind; and the intellectual elite, for whom he represented the only antidote to the obtuseness of those in charge of research, art and education. Over the years, it was the writers who—directly or indirectly—maintained the "myth" of Ion Iliescu. For the cultural circles in Bucharest, who, at the time, still had connections with the Western world, Iliescu became a hope, a symbol almost, the longed-for replacement of the general secretary of the party. After 1985, a rumor circulated among intellectuals that Iliescu was Gorbachev's favorite, and that the new leader of the Soviet Union had congratulated the director of the technical publishing house in Bucharest on the occasion of New Year's eve. Iliescu took advantage of this skillfully cultivated legend as well as of the events of 1989. In the long run, disputes within the Securitate and the rivalry between this institution and the army became additional strong arguments in his favor. He was the only one

accepted by all parties in the conflicts. Moreover, all those involved in the control, leadership and shaping of the old structures saw him as a guarantee of continuity and a promise for their own future. The former dissidents, well-known figures all over the country—due to their programs broadcast by Radio Free Europe and the Voice of America—had been on Iliescu's side for at least a decade.

Still, for the large mass of revolutionaries as well as for the inhabitants of hundreds of small towns and villages, Iliescu's name was practically unknown. He had sent no letters of protest, had never gone to jail and had never tried to leave the country. The mere fact that, on December 22, 1989, the anti-Ceausescu group designated Iliescu president of the new ruling power (the National Salvation Front Council, which, under pressure from the opposition, was rechristened the Interim Council for National Union) was enough for most Romanians to consider him the ideal chief of state from the very beginning. During those revolutionary days the whole nation truly believed that he was a man of providence. Little by little, those who had acclaimed him started to oppose him or to lodge accusations against him: first, the dissidents themselves, then the great majority of the artistic world; parts of the army and the old Securitate; eventually, the members of the first postcommunist government and, lately, even certain members of the party on the list of which he ran for office (the National Salvation Front (NSF), that first turned into the Democratic National Salvation Front (DNSF), and then into the Social Democracy Party of Romania (SDPR). Until the elections of May 1990, the opposition described him as an inveterate communist and their favorite slogan expressed this belief: "For us, Iliescu / Is a second Ceausescu!", while his supporters sang: "The sun shines / When Iliescu comes!" In a highly charged atmosphere in the big cities, with near calm prevailing elsewhere, Iliescu handily won the presidential elections on May 20, 1990, the other two candidates garnering

only 15 percent of the vote.

For the new president-elect, the two-year provisional term was as little more than an asset he could exploit or lose in the autumn of 1992, when the elections set by the electoral law were to take place. A troublesome period followed. Its most difficult moments, together with the experience of a former party activist, put their stamp on the style of thinking, deciding and acting of the president. First of all, the hostility of the press took the former first secretary, accustomed in the past to the friendliness of journalists, by surprise. Although he claimed to favor the multiparty system, the president reacted either violently or by making serious political blunders every time he had to face the crossfire of his political opponents or of Romanian and foreign journalists. Also, the open antagonism manifested by many of the writers and artists whom the president once supported seemed to him totally unfair. The more his former friends asked him to withdraw completely from the political arena so that they might replace him, the more he sought to increase his powers vis-a-vis the next legislature. Finally, his spectacular break with Petre Roman, the ex-prime minister and the split of the party that supported him in the 1990 elections, estranged the chief of state from the new political generation, brought into the center of attention only by its participation in the revolution. All these factors justified the turn of the presidency towards the communist-nationalist group, loyal to Ceausescu till the end, that has never stopped proclaiming that the death of the dictator must be avenged. Fearing his new opponents, Iliescu accepted an alliance with those who were not afraid to assert that the revolution was a mistake. Deeply stung by criticism in the press and always inclined to take it for slander, and also vexed by the air of independence of Petre Roman's cabinet, the interim president, at a certain moment, feared being deserted by all those with whom he embarked upon a new road in December 1989. The former nomenclatura, the nationalist Securitate (that for years opposed the cosmopolitan wing of the Securitate), as well as many opportunists took advantage of this delicate psychological moment. The *mineriade* of June 1990, when coal miners stormed into Bucharest, was but a consequence of this lack of confidence. It created a new web of complicities between the president and the former Securitate, now renamed the Romanian Intelligence Service (RIS). It also hastened the removal of Petre Roman's

government. As the prime minister was of Jewish origin, the whole conflict was given an ethnic interpretation, although it was a conflict between two different generations—one trained in Moscow, the other in the West—and a struggle of the old communists to make a comeback in politics. After Roman's government was toppled, an event approved of and looked forward to by the president, extremist parties (anti-Hungarian, anti-semitic) openly took the offensive. Iliescu was forced to organize his electoral campaign of the following year taking into account these new opponents and striving to win their good will. The political game switched over to the relationship between the presidency and these forces which could no longer be overlooked. They took the precaution of keeping Iliescu at arm's length proposing their own candidate for the presidential elections while eventually giving Iliescu their votes, but only on the second ballot. The September 1992 victory was difficult and conditional. Iliescu obtained 61.43 percent of the total votes against 38.57 percent scored by the united opposition candidate. It was not long before the extremists—the socialists and the ultranationalists—became his indispensable allies, offering their support to the government, since Iliescu's party did not gain more than a relative majority this time (28 percent of the seats in the Chamber of Deputies and Senate). The price for their support has been terrible: the obstruction of pro-reform initiatives in Parliament. Moreover, an increasing number of the members of the governing parties are drawn to their side. The president himself has to answer for his cautious attitude towards the Jewish community, for the acceptance of the conditions imposed by the International Monetary Fund, for the concessions made to the Hungarian minority in exchange for Romania's participation in the Council of Europe and, last but not least, for a military opening to the West. Caught between antidemocratic alliances and irreparable conflicts with the reformist opposition (which demands a clear-cut break with the extremists), the president prefers the status quo, dalliance and the slow transformation of former communists into supporters of a market economy.

Although he facilitated and endorsed the reappointment of communists to key positions, the president's image seems to improve and his prestige to increase. Even his most inveterate opponents have come to consider him a subtle politician. More than one year after Iliescu's

election to a four-year term, the opposition admits that his experience as a former party activist is a real advantage. The disunity of the opposition parties, the sabotage and compromising actions against the press, the more or less important movements in the political arena, all these are supposedly the result of the presidency's initiatives or idiosyncrasies. The presidency can boast of Romania's admission to the Council of Europe and the granting of most-favored nation status. Above all, Romania's stability, despite its being wedged between two hotbeds of war, is a feather in the president's cap.

Iliescu reshaped his presidential staff right after he was inaugurated, in October 1990. By law, the presidential staff should consist of 180 members, but because the president adopted an austerity budget, only 115 members are now employed. There are five presidential advisers in charge of the five main fields of activity: the economy, law and order and defense, foreign relations, the reform and relations with political parties and trade unions. The person in charge of the foreign affairs department also covers relations with the press and acts as a spokesman for the presidency. These five advisers are those who select the president's contacts—each in his specific field.

The economic thought of the president has undergone an evolution: in 1990 the advisers in the presidential office regarded Romania's government as being much too reformist. Now the president's advisers support accelerating the pace of reform, and make strenuous efforts to counterbalance both the inertia and the conservatism of the Vacaroiu cabinet. But the evolution of Iliescu's economic thought has not been accompanied by an evolution in his political attitude and behavior: The president still believes that both the press and the opposition are to be blamed for the crisis in the country. In his relations with the press, the opposition, or the public figures who oppose him, Iliescu has remained the same. Although he likes to be considered a man of self-control, a man open to dialog and a supporter of openness, the president has to make strenuous efforts to keep his temper in check. Irritable, suspicious and inclined to look for hidden motives beneath any criticism, he easily passes from rage to smiling diplomacy in the course of a single sentence. Emotive, talkative to the point of garrulousness, eager to be loved and praised by everybody, Ion Iliescu endures criticism but does not consider it necessary.

## An Interview with President Ion Iliescu

*On November 23, 1993 Elena Stefoi interviewed President Ion Iliescu for the East European Constitutional Review. The interview took place at the old Royal Palace in Bucharest, which is now the president's residence.*

**Elena Stefoi:** Your Excellency, you have been President of Romania for almost four years now. If you were to do a self-portrait, what would you describe as the major assets and shortcomings of the "Ion Iliescu Approach"?

**Ion Iliescu:** First of all, I think it is necessary to define certain aspects of the situation more accurately. The first five months after December 1989 were actually a period in which the new state institutions had merely temporary structures. I was president of the National Salvation Front council, which came into being during the night of December 22, 1989. Then, in February 1990, we constituted the Interim Council for National Union, a sort of interim parliament over which I presided. But it was only in May 1990 that I was elected for the first time to a two-year term. It was then that the first Parliament was also elected, which, as a Constitutional Assembly, elaborated the new constitution of Romania and provided the basis for the local and general elections that took place in 1992. Therefore, my mandate as president—according to this new democratic constitution—began not earlier than October 1992.

As to my approach to leadership, my personal features notwithstanding, it derives directly from the provisions of the constitution, which provides an accurate description of the place and role of the presidency as well as of the president himself within the structure of the Romanian constitutional state. It is difficult for me to compose a self-portrait. Of course, I strive to observe constitutional principles, to keep within the limits drawn by the mandate and prerogatives of the president in the power framework, as a mediator among the three branches of power: legislative, executive and judicial branches, on the one hand, and between the state and the political institutions, bodies and civil organizations of Romanian society, on the other hand. I believe I have always been open to dialog and this, I think, may characterize my entire political evolution: a high degree of receptivity and tolerance as well as a constant interest in considering divergent opinions. As a matter of fact, this interest has triggered sharp criticism for, during this difficult period,

even political people seem eager to disapprove of the tolerance of the chief of state.

**ES:** Has entering the political arena right after Nicolae Ceausescu in any way created special problems for you regarding the fashioning of a certain presidential image; or have you succeeded from the very beginning in leaving aside all the elements which many potential candidates might have considered a psychological complex?

**II:** So far as I am concerned, I have never suffered from such a complex and it is quite easy to point out why. I believe that many publications which try to maintain [that I suffer from] such a state of mind, as well as certain political opponents who have always been eager to find similitudes between myself and Ceausescu, themselves suffer from a psychological complex. Those who came to know me and have followed my political evolution are clearly aware that such an association [with Ceausescu] cannot be made. Within the political framework, I have always stood for the opposite in terms both of mentality and conduct. This is also the case regarding the means of tackling problems and approaching people. This attitude of mine was in fact the reason why, in 1971, we [Ceausescu and I] had to part ways so thoroughly.

**ES:** And yet, in Romania the presidency was created by a decree issued by the last general secretary of the Communist Party. In your opinion, could this "original sin" influence the attitude of common citizens towards the presidency and maybe alter its relationships with other branches of power?

**II:** I do not see why you make this connection between the presidency and Ceausescu's constitution, which did nothing more than establish the title of president of state. This function has, in fact, existed before—under different names, it is true. Take Gheorghiu-Dej, for instance. He was no less an authoritative chief of state than Ceausescu, although the title used was general secretary. My opinion is that Romania's first president was Alexandru Cuza, who was elected in 1869 by the law-making bodies of the time. He was not the traditional ruler of royal descent who came to have this right by birth, nor was he brought from abroad and artificially placed within the Romanian power structures. Actually, he was neither ruler nor king but the first historical figure who installed this democratic form of leadership. That is why I do not believe in the influence of what you called "the original sin." Of course, the image of the presidency is hard to build dur-

ing this period of transition. It may easily be distorted through the influence exerted by certain pressure groups and the mass media. And the effort made in this direction is not minor, to say the least. When talking about the existing situation, we have to focus first of all upon the role of the presidential institution, the way it is defined in the constitution, and then thoroughly to analyze the development of our political life. Are there any similarities between today's political, social, intellectual and cultural practices and those of five years ago? Can you imagine conducting an interview with the then president? Or the mass media even thinking about making the slightest insinuation about those in power?

**ES:** In a country so haunted by the memory and consequences of dictatorship, where politicians still bear traces of anti-democratic attitudes, do you believe that the mere existence of a constitution that legitimates the separation of powers will suffice? Is our past adding to the problems of the presidency, or does the office function as any similar institution in the West?

**II:** Of course, we are facing an additional problem. Not only the presidency, but the entire climate is affected. The adoption of a constitution is not enough. Still, it is essential, since the rest is shaped by this fundamental law: the new legislation, the institutions and the relations between them, political and social practices, the social bodies that exercise control over those in power. This possibility of control was non-existent in the past. There were no institutions that stood for social interests against those in power—and this includes the person holding the highest rank within state. We have now created these bodies and they function, although sometimes they tend to overdo it when criticizing. Of course, this tendency is present even in the political life of countries with a more settled history. I am perfectly aware that we have to consolidate the democratic machinery by every means. Bodies for disciplining the abusive tendencies of those in power already exist. I sincerely hope that in the near future we shall be able to consolidate the relations between state institutions, be they governmental or non-governmental, and the institutions of civil society. Rinsing the past out of our system is not a matter that concerns the presidency only, but also the entire body of society. Romanian society as a whole is undergoing a process of ripening. Unfortunately, in politics this process develops against the background of a difficult economic situation,



typical of all the countries that used to be part of a certain system of intercorrelations. The elements severely affecting the economic and social situation also hinder the process of strengthening structures and relationships in the political arena. Nevertheless we have to be optimistic.

**ES:** Romanian society still oscillates between denying or defying authority and needing order or discipline imposed or ensured by state bodies. During this span of time you have often been the target of reproaches for being either too dictatorial or too cautious, too liable to be influenced or too lenient. Have you, in fact, adjusted your own personality to a certain preconceived model of the democratic presidency or, on the contrary, do you consider that the image of the presidency is assuming the main characteristics of Ion Iliescu, the man?

**II:** Certainly, this period is not lacking in psychological complexes that we have to overcome together. On the one hand, there is an attempt to defend oneself against the restoration of certain old practices that are known to have caused Romanian society such a trauma, that, in fact, triggered the mass reaction of December 1989, culminating in the violent abolition of the old state structures. A persistent sensitivity towards any possibility of reinstalling old practices has therefore been felt. On the other hand, the authoritative factors in society have been weakened, which affects the citizen, not only in a positive way, but also in a negative way. A thoroughly organized state cannot exist without state authority and without authorities capable of defending the interests of the social body as well as of the citizens. A French politician used to say that democracy begins when a policeman is shown respect. With us, the previously existing authority has been destroyed and another one, of a new type, is only slowly being built. Even the agencies of power are subject to complexes. The institutions for public order hesitate when they are to employ their specific prerogatives. I am absolutely sure that during this period any president would be facing the same problems, no matter who he might be. I have always paid heed to these intricate equations that any chief of state would encounter.

**ES:** When the constitution was ratified, you were the elected chief of state with a two-year term. As such, you had the right to propose various amendments concerning the activity of one or another branch of power. Have you resorted to this prerogative and, if so, what was your intention politically?

**II:** The president was not given ample possibilities of legislative initiative either before or after the ratification of the constitution. I have not envisaged such a possibility. Far from being a passive factor in our social life, I have always tried to maintain an ongoing dialog with both the legislative and executive powers. Of course, I have followed with great interest the debates over provisions of the constitution and, before this, the debates on the electoral law that provided a basis for constitutional principles. I have met several times with the commission, charged with drawing up the electoral law, which had been set up by the Interim Council for National Union. We had to establish several basic principles of the system of governing, and there were no differences of opinion on the subject. No party expressed any intention to re-establish the monarchy, for instance, although the leaders of the National Peasant Party, which today proclaim themselves to be monarchists, were free to do so. For at the time they, too, were republicans, as we all were. Among other things, we had to choose between a bicameral and a unicameral parliament and, at the same time, to define its functions as a constituent assembly. We also had to decide whether the president should be elected or appointed by Parliament. We all agreed that the president should be elected directly by the people. Moreover, the opposition vehemently pleaded for this, as they were afraid that a parliament dominated by a certain political group would impose a president of the same political stripe. In my opinion, a unicameral parliament would have been more appropriate for this difficult stage, which requires intricate legislative activity. But I did not try to impose my opinion by all possible means. Several reasons were given in support of the bicameral formula—the Romanian tradition, the example of civilized states, etc.—and, of course, it came out the winner. And now the procedures prove to be slow and therefore the legislative process is delayed, while it would have been necessary—at least for a certain period—to be able to pass quickly the legislation needed for economic reform, for social life, and for other sectors of activity.

**ES:** The present parliamentary configuration and the conservatism of a certain part of the governing party favors either an isolation of the presidency and the subordination of its initiatives or the opposite situation, that of the president supervising the will of the parliamentary majority. How would you explain the fact that your

allies, on whose support you should in fact rely, reject some of your initiatives in foreign policy, as well as many of your pro-reform actions?

**II:** I have been opposed only by certain persons belonging to extraminority groups. In fact, the peculiarity of this Parliament is that we do not have a majority group and, as always in such circumstances, the equilibrium is unsteady. There is a great need for parliamentary diplomacy to rally one or another member or political group to the legislative initiatives of the [governing] party, which holds no more than one-third of the total number of seats in the two chambers. Since we live in a world of pluralism, it is only natural to have different opinions, even within the same party, all the more so among different political groups. A man can be supported on certain questions and contradicted on others, and I am no exception to this rule.

**ES:** Inevitably, the political assets of the governing party diminish over time and, inevitably, a gap appears between you and your party. Under these circumstances, would it be better for the presidency to set up a government of today and yesterday, instead of maintaining the present alliances, dangerous as they are, when we think that the parties in the pro-governmental coalition count, not on the success of the reform, but on its failure?

**II:** When traversing hard times, those in power risk discovering their positions gradually erode. I invited the opposition twice to talk over sharing the burden of governing. In 1990, when we held an absolute majority, so we had no need for wider political support, we nevertheless invited the other parties to join us in forming a coalition government. My proposition was amiably or cynically rejected. I was perfectly aware that the economic situation was going to deteriorate and that the opposition was going to score points by criticizing the government. We resumed our talks after the elections of autumn 1992. In the meantime the situation had changed. We no longer had a majority party, so we had to resort to one of the possible formulas. I put forward several alternatives. One of them was a government of national unity. I became the target of ridicule. There are voices still claiming that a government of national unity would mean the suppression of the opposition. But my proposition was not a formal one. I considered then, and I still do, that in the history of a country there are certain moments when the existence of a shared platform is imperative in order to

overcome straitened circumstances. Brutally or gracefully, I was once again turned down. Mr. Corneliu Coposu, the leader of the opposition, was absolutely positive that the government would not last. Also, I put forward the alternative of a political pact to set out the fundamental characteristics of the action required for strengthening the democratic process, for promoting reform and social protection. Once again my proposal was turned down. And now, these very parties of the opposition are annoyed that the government has celebrated its first anniversary, and they are striving to overthrow it. But now, in the existing parliamentary configuration, another formula for rallying political forces is totally unrealistic and unfair, for this would mean tearing the governing party in two. Personally, I do not believe it is a matter of being reformist or antireformist, as the opposition claims: it's only that some people understand better than others the essence of the reform and the ways and means of promoting it. I am absolutely certain that nobody can truly believe that the old system might come back. Romania cannot survive with an autarkic economy. Such a system might suit Russia, China, or the U.S., but even these countries would not take the risk. With us there is nothing to go back to, for we cannot afford to return to a controlled structure that, up to 1989, was part of a system of controlled economies. Redistribution was carried out, not according to economic principles, but on a political basis which no longer exists. Only people without any political culture may still believe that a comeback is possible. Going forward can be achieved only by implementing reform. Yet, between this truth and actually setting up the framework there is a wide range of options and opportunities. It is a matter of approach: certain groups are for swiftly excluding state interference in the economy, a move that is totally unrealistic and practically impossible; other groups, on the contrary, favor the idea of the state getting involved even where its interference is not acceptable. We may have different opinions, but in fact we are pulling at the same yoke, whether we like it or not. Personally, I regard these matters in a more detached way, and I don't have the feeling that I am moving away fatally from the governing party. Actually, nobody can claim to have the right solutions. This would be impossible. We all learn as we progress, so I am not impressed by the declared openness to reform of certain members of the opposition. Either

they have never assumed any responsibility or they have proved incapable of doing their job in a cabinet. Big words solve nothing. I prefer those who do something, even if they might occasionally make a mistake.

**ES:** Mr. President, sir, while your position grows stronger and Western governments get over their prejudices or dissatisfaction regarding Romania, the situation within the country is worsening, and Romanians experience parliamentarism more as a futile show than as a guarantee of democracy. Is the presidency concerned about the social effects if, during this stage of transition, the idea of a multiparty system is discredited? If the answer is positive, what means can the president employ in order to influence the evolution of political action and to steer it into an irreversibly democratic groove?

**II:** The deterioration of living conditions is a reality; it is inevitably so, since our industrial output is half what it was in 1989, and that was a year of crisis. I strongly believe that it is imperative to leave aside disputes and to pool our efforts in an attempt to repair this situation. There is proof that this year a great deal has been done to promote reform and, in spite of all difficulties, the government has taken the most spectacular measures, triggering the most severe social effects. For the common citizen, the notion of democracy means more than parliamentary disputes and the impertinent remarks of the press about those in power. Democracy must be reflected in living conditions, and this is only natural, after such a long period of deprivation. The presidency has had an unremitting concern for a direct approach to the problems of the economy, i.e., output increases and privatization. Not long ago I created a presidential council which comprises economists from all political parties and is meant to help accelerate the reform pace and to elaborate a long-term strategy. Governments come and go; what we need is to organize our efforts into a long-term perspective. We have to know where we are heading and how to build up this future structure of the Romanian economy and society. When I initiated this advisory council comprising specialists in economics and social analysis, I started from the idea that finding an answer to these problems is a must.

**ES:** Don't you think that the imputations systematically brought against the press and opposition are in fact two-edged swords, and that by compromising these important segments of a free society an underground effect is

created—part of the electorate distrusts the democratic process—and a certain nostalgia for the past is stimulated? And this in a moment when, more than ever, a need for rapid and total adjustment to the market economy is greatly felt, so that mechanisms for controlling abuses of power are accepted?

**II:** We are all in the middle of an ample, complex and consuming process. It's a matter of adjusting oneself to survive this incendiary period. Why should political power, which is the target of disloyal and ill-willed attacks, both from political opponents and from the press, feel obliged to rescue its assailants? So far as I am concerned, I consider myself to be a realistic politician: I have no resentments and I have never responded to these attacks. On the contrary, I have always tried to keep in touch with people on whom I should otherwise have turned my back, for the simple reason that a segment of our society trusts them, and I respect that. I cannot be accused of trying to discredit the actions of the press. On the contrary, I encouraged them. A more conciliating and open attitude is hard to imagine. Not long ago I asked the competent department of the government to forward concrete proposals for solving problems that publications have to face—problems concerning the price of paper, distribution and transportation.

**ES:** The changes in the penal code, recently passed by the Senate, limit to an unacceptable extent the rights to hold and freely express opinions provided in the constitution. In case these restrictions will be passed by the Chamber of Deputies as well, do you think the presidency will promulgate the law?

**II:** I do not yet know how the relevant article in the draft law was formulated in the Senate. On the one hand, I think there is a tendency to exaggerate. On the other hand, I do not understand why certain people identify themselves with delinquents in the press. All over the world, the press is penalized for affronts to personal dignity and for slander. Why this abnormal reaction when it comes to stipulating in the penal code what other countries have stipulated long ago? The text adopted by the Senate might be awkward here and there. Still, the procedure for the Chamber of Deputies to make the necessary corrections exists. I am not in favor of press limitation. I do not believe that, in our socially unbalanced situation, primitive measures will make our press more civilized or give it credibility. The press should adopt

ethical and deontological norms to sanction by its own initiative those who are not worthy of the status of journalist. Unfortunately, this profession is not capable of such an action, either. Speaking about authority, why should the judiciary, for instance, interfere in a matter concerning, in fact, a professional group? My position on this would be as follows: I would not appeal to the penal code, but to the power of the press.

**ES:** Can organizational restructurings within the ministry of defense be perceived as an attempt to subordinate the army to the presidency? In your opinion, do those who say that the defense ministry, the foreign ministry and the Romanian Intelligence Service are key institutions making decisions according to your instructions, thus favoring the transformation of a semipresidential republic into a presidential republic, have any ground for their fears?

**II:** These opinions express complexes that we have already discussed. They are residues of ideological intoxication. Otherwise, they do not have any basis in our political practice. The rules stipulated in our constitution

do not allow abuse and arbitrary power in any institution. Even where the president can take certain initiatives, for example in foreign policy, when treaties are negotiated they are submitted to Parliament for ratification. In our country, the accredited institutions have all the necessary instruments for control.

**ES:** Are you concerned over the possibility of a conflict breaking out between the presidency and Parliament?

**II:** Controversies between state institutions are common in every country in the world: be it between president and Parliament, president and government, or government and Parliament. This is only natural in any democratic structure. Otherwise all structures would be aligned to one single will. The occurrence of divergences does not mean the obstruction of our political evolution. Rather the opposite. Controversy is a stimulus towards development, towards the perfection of our democratic processes.

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## SURVEY OF PRESIDENTIAL POWERS: FORMAL AND INFORMAL

On September 17-19, 1993, the Center for the Study of Constitutionalism in Eastern Europe held a workshop at the Central European University in Budapest. Participants delivered papers that outlined the *de jure* and *de facto* powers of the postcommunist presidents in Eastern Europe. Some of the issues raised at the workshop are explored in the essays that follow.

### Belarus

*Alexander Lukashuk*

Belarus is the only state in Central and Eastern Europe without a president. The idea of introducing a presidency has been debated in Belarus since 1990. Various conceptions of a Belarusian presidency are reflected in four successive constitutional drafts. The debate over whether and how to introduce such an office into the political system of Belarus mirrors the tense social and economic situation in the republic and reflects the continuously shifting balance of its main political forces.

Opponents of a presidency in Belarus point out that presidencies in former Soviet republics have not improved the life of the people. The war between the president and Parliament in Moscow also did little to make the idea of a

presidency in Belarus more popular. The real reason for the absence of a presidency in Belarus is somewhat simpler. Since the beginning of Gorbachev's reforms, Belarus' leadership has earned a reputation for conservatism—its leaders have been none too hasty in implementing new ideas. The formula, If it ain't broke don't fix it, has been invoked repeatedly, even though "it," in this case, has long been "broken."

Belarus' leadership defends its record by pointing out that, until recently, the standard of living in the republic has been slightly higher than that of Russia and the Commonwealth states and continues to fare a little bit better than elsewhere in the former Soviet Union. This may be true, but Belarus was always slightly better off than other republics and the present gap merely reflects the status

quo ante.

The current form of government in Belarus (i.e., a pure parliamentary republic) is inherited from communist times. The problem is that Soviet parliaments had never been anything more than a fig leaf on the body of communist totalitarianism. Real power belonged to the Communist Party and its committees which represented the vertical line of power and functioned, in effect, as a presidential power. This system was more or less working and achieving its goals.

When communist structures began to collapse, the hitherto decorative parliaments in the Soviet republics found themselves the highest legitimate power in their respective countries. The executive organs of the government also faced increased responsibility due, in part, to the inefficiency of the inexperienced legislatures. Besides, the idea of a division of power, antitotalitarian in its essence, was steadily making its way, conquering new adherents and territories. In an attempt to retain their ruling role, communist leaders began to move from their party headquarters to parliamentary and governmental offices.

After the Russian Parliament elected Gorbachev president of Russia, communist leaders in the republics followed Gorbachev's example by seeking similar endorsements from their own Parliaments. New presidents were sprouting up all over the Soviet Union like mushrooms after a warm shower. As usual, Belarus lagged behind.

The first practical attempt to introduce a presidency in Belarus came in the summer of 1991. The commission on the work of the Soviets and local governments of the Supreme Soviet of the BSSR suggested changes to the constitution—among them, a new chapter on a presidency. The draft was first approved by the communist leadership of the republic. At that time, the chairman of the Supreme Soviet was a former secretary of the Central Committee of the Communist Party of Belarus (CPB). The council of ministers was chaired by another CPB leader. In all likelihood, the office of the president was intended to go to the top party apparatchik, Anatol Malafeeu.

That first draft introduced a made-to-order presidency, after a classic communist pattern: to accumulate as much power as possible and, at the same time, to escape responsibility. The president was proclaimed head of state and head of the executive. He was to represent the

republic in international relations, to sign and to veto laws, to protect Belarus' sovereignty from decrees of the government of the USSR, to abolish acts of the executive and to suspend decisions of the local legislature.

The office of chairman of the Council of Ministers was preserved. The president was to name a candidate for chairman, with appointment and dismissal subject to a vote of Parliament. Vice-chairmen and all ministers were to be appointed or dismissed by the president on his own authority. The president was also given the right to ban strikes. (This regulation was obviously prompted by a mass strike in Belarus in the spring of 1991 which intensely alarmed authorities.) It is worth mentioning that the draft did not require the president to relinquish his membership in a political party or any other organization which pursued political ends. (Later renunciation of party affiliations became obligatory in all constitutional drafts of the former Soviet republics.) As there was no Belarusian army yet, the constitution did not discuss the responsibilities of a commander in chief.

In 1991, the ideas of democracy could no longer be completely ignored by the authors of the draft. The president was to be popularly elected by direct secret ballot for a term of five years, and could serve no more than two consecutive terms. Candidates could be no younger than 35 and no older than 65 years of age. The draft did not give the president the right to dismiss or suspend the Parliament. At the same time, the Parliament could impeach the president if he were to violate the constitution or to commit a crime.

This first attempt to introduce a presidency by amending the existing socialist constitution came too late to take effect. Less than two months later, the coup d'état of August 1991 erupted. After it, the Communist Party of Belarus was suspended, and the chairman of the Supreme Soviet, Dzemiantsei, was removed from office. Thus, the first attempt to introduce a presidency in Belarus died out without being put into practice.

Since that time, the debate over the shape of the presidency of the republic has taken place in the framework of new constitutional drafts. The first draft published in December 1991 included a chapter on a presidency which, in fact, copied the previously mentioned proposal of June 1991. Several issues in this draft constitution provoked heated debate. The issue of the presidency was among the most contentious topics. The stron-

gest opponents of a presidency in Parliament were the opposition party, Belarusian Popular Front, and the new chairman of the Supreme Soviet, Stanislau Shushkevich.

Taking into account the growing dominance of the executive in the republic and the embryonic traditions of the Belarusian Parliament, the opposition, anxious to begin reforms in Belarus, feared that a presidency might obstruct their reform agenda. Shushkevich's position was all the more interesting, since, according to polls, he had the best chances of being elected president. His view, echoed by some, was that a presidency should not be introduced for at least three years. During this period, the parliament was to learn its role and strengthen its position to better resist totalitarian encroachments by a president.

Be that as it may, the parliamentary majority voted to introduce a presidency. But the constitutional commission had to take into account the public mood which, after the failed Moscow coup, associated the introduction of a strong leader with totalitarianism. Consequently, the second constitutional draft, published in August 1992, specified the powers of the presidency in a different way. The draft suggested a presidential-parliamentary republic. The president was placed at the head of the state but was granted no executive powers. He was supposed to guarantee the separation of powers. Among other differences from previous versions, one may notice the ban on membership in political parties. The draft provided that only a citizen of the republic who had lived within its boundaries for at least ten years could be elected president. This time no upper age limit for candidates was established.

In general, the powers were better balanced in the second draft than in the first. The president was stripped of certain rights and granted others. Thus, the president was only to propose to Parliament a candidate for the chairman of the government, but Parliament itself appointed him or her as well as all other ministers. This meant that the president would be obliged to announce only the names already proposed by the parliamentary majority. The president's power in filling major state posts was diminished: he or she could propose only candidates for the chairmanship of the Supreme Court and the Supreme Economic Court, as well as the prosecutor general. The final decision was to be taken by Parliament. Parliament, not the president, was to form and dissolve

ministries and other state organs.

But in addition to such ceremonial duties as bestowing awards, appointing ambassadors, and granting citizenship and pardons, the president was equipped with a number of powers that enabled him to play a significant role in the republic. The most important of these was the right to dissolve Parliament. This power, however, was limited to two cases. The president could dissolve the legislature if it should fail to approve the government within six months or if it should pass a vote of no confidence against the government more than twice in a single year.

Critics maintained that the president's functions were ambiguous. There were also several obvious inaccuracies in the draft. It was difficult to understand, for instance, why the president's declaration of a state of emergency had to be approved by Parliament, while his declarations of martial law or his call for a mobilization did not require parliamentary approval.

The next presidential debate took place at the 12th session of the Supreme Soviet in May 1993. In 1992, the deputies failed to reach agreement on several crucial issues. All they managed to do was to set some rather controversial guidelines for the Constitutional Commission. The new chapter on a presidency showed a rather dubious shift toward a presidential republic.

The president was once again deemed head of state and head of the executive. He or she was to form and dissolve ministries, appoint and dismiss ministers and certain judges. The president would have the right to sign and veto laws, and to suspend decisions of local soviets. He or she was to chair the security council of Belarus and was proclaimed commander-in-chief. Many points in the chapter on the presidency dealing with election and duties of the president, as well as his removal from the office, remained unchanged or changed only slightly in comparison with previous drafts.

However, some of the powers attributed to the president by the earlier drafts were removed. Thus, the president had the right only to present Parliament with candidates for a premier and five ministers: defense, foreign and internal affairs, finance and chairman of the KGB. All of these were to be approved by the deputies. Parliament, without any need of consultations with the president, was to appoint all higher members of the judiciary, an attorney general, a chairman and councilors of the



control chamber and of the national bank. The president was not given the right to declare a state of emergency. There was one more important change which limited the president's power and enhanced that of Parliament. The draft deprived the president of the right, previously given him, to dissolve Parliament. In fact, the draft envisioned no early elections at all—the constitutional commission excluded from the text all mention of this possibility.

The draft was debated by Parliament in May 1993. By that time, the Parliament-president war in Moscow had attained new heights of rancor. Evidently frightened by the crisis in Moscow, the deputies even failed to adopt a name for the chapter (e.g., "The president"). The bewildered vice chairman of the Constitutional Commission, Vasil Shaladonau, then proposed to cancel the chapter altogether and to return to a parliamentary republic—but to do so by a two-thirds majority vote. The discussion which followed reflected three points of view on the problem. One group of deputies spoke in favor of a parliamentary republic and proposed to remove the chapter on the president. The second group suggested that the issue be put to a referendum. The third group insisted on introducing a strong presidency.

The second vote to name the chapter increased the number of votes in favor from 97 to 132, which was almost one hundred votes short. Parliament decided to postpone the issue until its fall session. The reason for the deadlock was not only disagreement among different political forces but also inconsistent voting on the part of many deputies. When asked to set general guidelines for the Constitutional Commission, 147 deputies voted in favor of a strong president or head of administration, 101 votes were cast for a weak president or head of state, and 130 votes were cast against introducing this office at all. At that time there were 288 deputies present, which means that up to 90 deputies voted for two and perhaps even three mutually incompatible concepts at the same time. "We live in the world of Franz Kafka," commented one deputy in despair.

The Belarusian Parliament, elected under the Communist regime in 1990, is widely criticized for its inefficacy. Parliament is now preoccupied with promoting its own survival even if this requires breaking its own laws. In October 1992 the majority illegally ignored the drive for a referendum on early elections that had been sup-

ported by nearly half a million voters. Members of Parliament were frightened by Moscow's power crisis and they wanted to protect themselves from possible encroachments of a hypothetical president.

A year ago, the deputies declared that a new constitution would be adopted by the end of 1993 and that new elections would be held in March 1994. These two pledges are unlikely to be kept. The parliamentary opposition declared that the present Supreme Soviet had absolutely no right to adopt a constitution and proposed postponing it for the next Parliament. According to the opposition, the first thing to do was to adopt a new electoral law, then hold early elections to Parliament, then adopt a constitution, and finally to hold presidential elections.

In the view of the majority, however, this sequence is unacceptable. Partly as an excuse to avoid early elections to Parliament, the majority favors earlier presidential elections. In spite of contradictory voting, it seems to be generally agreed that the worsening economic situation and tense social atmosphere in the republic require authoritarian rule capable of effective and quick decisions. Last but not least, a presidency may offer the communist majority in Parliament a chance to protect its future. Their candidate is chairman of the council of ministers Vyachaslau Kebich. About 70 percent of the deputies work in executive agencies. More and more, the chairman of the council of ministers acts as the only leader of the state, issuing orders bordering on laws and signing international treaties without consulting Parliament.

Taking all this into account, one can reasonably expect that in the Kafkaesque world of Belarusian postcommunism, the present Supreme Soviet will introduce a presidency and the presidential elections may be held in the spring of 1994. However, it is also probable that the controversial separation of powers between Parliament and the president will lead to more Kafkaesque situations and crises in the future

## **Bulgaria I** *Georgi Poshtov*

There was no presidency in Bulgaria during the years of communist rule. The idea for a single-person head of state emerged during the Round Table Talks after November 10, 1989, when Todor Zhivkov was relieved of his duties as secretary general of the central committee of the Bulgarian Communist Party.



The former communists insisted on extensive presidential powers at the Round Table Talks, assuming that the president was to be elected by the National Assembly where the communists formed an absolute majority. By contrast, the Union of Democratic Forces (UDF) wished to limit the powers of a supposedly Socialist president. The 1990 amendment of the 1971 constitution was a result of these miscalculations. The Socialists used their majority to create a president who could control the cabinet to a certain extent even if future legislative elections should be won by the opposition.

History, however, proved to be a succession of paradoxes. In early July 1990, President Mladenov of the Bulgarian Socialist Party (BSP) resigned after being accused of planning to use tanks against a crowd of demonstrators in December 1989. The Socialists dominated the newly elected Constituent Assembly. After several unsuccessful attempts to elect a pro-Socialist president, a compromise was reached, and President Zhelyu Zhelev (UDF) was elected and a Socialist cabinet (with just a few UDF members included in its ranks) was formed. The new 1991 constitution vested even more limited powers in the president. For instance, he does not have the power to initiate legislation. True, the president may, within 15 days of the passage of a bill, return it, together with his objections, for further mandatory debate. But, the final passage of such a bill requires the approval of just a simple majority of all members of the National Assembly. The president must then promulgate the bill within seven days of its passage.

The president has the power to appoint the prime minister-designate only after consultations with all parliamentary groups. He must appoint the candidate nominated by the group holding the largest number of seats in the National Assembly. Should the prime minister-designate fail to form a government within seven days, the president is constitutionally obliged to entrust this task to a prime minister-designate nominated by the second largest parliamentary group. If the new prime minister-designate also fails to form a government, the president must consign the responsibility to a prime minister-designate nominated by one of the minor parliamentary groups. (Not necessarily the third largest one.) If the consultations prove successful, the president asks the Assembly to elect the prime minister-designate. If this multi-staged process proves abortive and an agreement on the forma-

tion of a cabinet is not reached, the president appoints a caretaker government, dissolves the National Assembly, and schedules new parliamentary elections, that must be held within 2 months of the dissolution of Parliament. The president may not dissolve the Assembly within the last 3 months of his term of office. Should Parliament within that period fail to form a cabinet, the president must appoint a caretaker government.

President Zhelev's past as a dissident, his political experience and personal charisma, however, give him the opportunity to play a significant role in the political life of the country beyond that narrowly defined in the constitution. The following paper describes how the presidency is evolving in practice.

## Bulgaria II *Venelin Ganev*

The latest twists and turns of Bulgarian political life warrant the conclusion that the *de facto* powers of the Bulgarian President transcend his somewhat narrowly designed constitutional prerogatives. While less powerful than some of his critics charge, he is by no means as weak as he seems on paper. This is not to say that each and every expansion of presidential powers beyond those clearly described in the constitutional text should be considered illegitimate; the problem is to understand how that expansion actually affects the separation of powers and the workings of basic political institutions.

In the sphere of domestic affairs, Zhelyu Zhelev conducts a self-assertive policy vis-a-vis the council of ministers, inspired by his determination to see the cabinet dominated by politicians with views congenial to his own and his desire to preempt certain fields of decision-making, most notably counter-intelligence, national security and defense. As pointed out by Georgi Poshtov above, the president has no constitutional authority to dismiss the prime minister, who is designated by the majority coalition in Parliament. But the events surrounding the resignation of the UDF government headed by Philip Dimitrov and the subsequent appointment of Liuben Berov strongly suggest that, when it comes to the fate of governments, the president is much more than a nonparticipating observer. In the beginning of September 1992, Zhelev sharply criticized the policies of the UDF government. Several weeks later came the sensational "discover-

ies" disclosed by General Brigo Asparukhov (one of Zhelev's close associates and head of the National Intelligence Service, subordinated directly to the president) which purported to establish a link between some UDF members of the council of ministers and an attempted illegal shipment of weapons to neighboring Macedonia in defiance of UN-imposed sanctions against former Yugoslavia. (As of November 1993, these accusations have remained largely unsubstantiated; although a special parliamentary investigative committee has been set up, no action has been taken against any of the ex-officials involved.) Perceiving these allegations as a direct challenge to the legitimacy of his government, Prime Minister Dimitrov asked Parliament for a vote of confidence. That vote was reportedly preceded by extensive "consultations" between Zhelev and Ahmed Dogan, chairman of the Movement for Rights and Freedoms (MRF), the Turkish minority party, which controlled the swing votes and had supported the UDF up to that moment. The result of the vote is well-known: MRF "switched sides" and joined the ex-communists in toppling the UDF government. The subsequent phase in of the MRF-Zhelev relationship was marked by the nomination by the MRF, and subsequent election by Parliament, of prime minister Liuben Berov, a personal advisor to the president who has no previous experience as a politician and whose only political asset seems to be his loyalty to Zhelev.

These developments lend some plausibility to the common belief that the president, while constitutionally weak, exercises in fact considerable leverage over appointments and dismissals in the council of ministers.

In the aftermath of the governmental crisis, the powers of the president as supreme commander of the Armed Forces also expanded. The requirement of a ministerial motion concerning appointments and dismissals of generals has effectively been reduced to an insignificant formality; and Zhelev now apparently has a free hand in selecting senior military personnel.

The president has been at least partially successful in circumventing another constitutional obstacle as well: the provision which excludes him from the list of persons empowered to introduce draft-legislation to Parliament (Art. 87, Para. 1). Numerous "working groups" preparing draft legislation have spawned under the auspices of the presidency; and Berov seems to have been entrusted with the task of coordinating their work with the activi-

ties of his ministers. While it is difficult to measure the extent to which Zhelev can initiate legislation and otherwise affect the agenda-setting mechanism in Parliament, it is likely that he can exercise at least some influence in these matters on a regular basis.

The reluctance of the ex-communists to support Zhelev's projects is one of the major obstacles with which he has had to reckon. In this connection, the president can enhance his bargaining power by making use of two seemingly innocuous and unimportant prerogatives: the power to "designate landmarks of national importance" and the right to pardon. It should be remembered that, after 1944, a significant number of villages and towns in Bulgaria were "renamed" so as to perpetuate a "pantheon of heroes" and to emphasize various aspects of communist ideology. Now the problem of whether or not all these names should be changed once again has unleashed a heated political debate in which the president, in all likelihood, will be the umpire. Because the communists are very sensitive to this issue, they might be willing to make at least some back-room concessions in order to preserve the status quo.

The right to grant pardons bounced to the forefront of political discussions in the wake of the first criminal trials against ex-communist leaders, most notably during proceedings against Georgi Atanasov, who was prime minister at the time Todor Zhivkov was ousted in November 1989. The sentences have been carried out, and therefore the only pathway out of prison leads through the office of the president. The ex-communists clearly recognize the enormous effect which an eventual pardon might have on their electorate, and they are pressing the president to exercise his power in their favor. Given the situation, it would not be surprising if Zhelev agreed to pardon some of the convicted ex-communists who are still quite popular among party loyalists in exchange for an accelerated legislative handling of some of the laws that are of the highest priority to him (especially those related to the national police, the armed forces, and the security and intelligence services).

Arguably, the president's prerogatives in foreign policy have also steadily expanded over the past two years. During the first six months of Berov's administration, no minister of foreign affairs was appointed. The portfolio was taken over by the prime minister, but he himself made it clear that he possessed neither the expertise nor

the will to manage the nation's foreign relations. Not surprisingly, policy-makers associated with the president threw themselves into the vacuum. Although the president is supposed to appoint heads of diplomatic missions only upon a motion of the Council of Ministers, in numerous cases such a motion has not been submitted at all, and the president seems to enjoy considerable domain complete so far as personnel decisions are concerned. (One recent example is the appointment of Marko Ganchev, a writer and public supporter of the president, as ambassador to Belarus.)

The president and his staff have effectively preempted yet another sphere of decision making, the importance of which should not be underestimated: the negotiations with the United Nations concerning Bulgaria's demands for compensation for the losses which its immature market economy has suffered as a result of the UN-imposed trade embargo on former Yugoslavia. In addition, the president and some of the experts who work closely with him (for example, Ventsislav Antonov) are actively involved in the process of re-negotiating the Bulgarian foreign debt. Although formally subordinated to the Council of Ministers, Marianna Todorova, the head of the Foreign Debt Committee, is a former advisor of Zhelev's and maintains a very good working relationship with the group of financial experts who currently advise the president.

These examples suggest the following general conclusion. The *de facto* as opposed to *de jure* powers of East European presidents depend largely on informal networks of political allies and associates. Such networks can be created by a skillful employment of seemingly innocuous, constitutionally prescribed appointment powers. If President Zhelev wields powers beyond those he is formally assigned, it is because after using his right to make appointments well, he now has friends in high places.

## Czech Republic

Vojtech Cegl

Mark Gillis

A line-by-line analysis of the formal powers of the president inscribed in a written constitution is not sufficient. An

alternative approach can be described as constitutional realism. No constitution has ever been painted on a blank canvas. To understand how constitutions really function, therefore, we must take into account other factors

which influence, say, a president's powers at least as much as does the written text. Some examples are: the prevailing public opinion, political circumstances and political culture, personalities of the main political actors, traditions surrounding the institution, esteem in which the president is held. All of these are critically important to a president's real powers. It is difficult to analyze such factors because they are elusive. Nonetheless they exist and influence events, so we must take them into account.

## De jure powers

Before proceeding to a discussion of the Czech presidency in its social context, we begin with an analysis of the presidency as it is actually laid down in the 1993 constitution. Because the presidency in its current form is modeled to a very significant extent on that of the First Republic (1918-1938), it makes sense to compare the offices of president under these two constitutions and to try to account for the major differences that exist between them.

The First Republic was the only viable democracy in Central Europe during the inter-war period. In its constitutional system, the president played a dominant role in determining the basic outlines of the rest of the government. Able to appoint and dismiss ministers at will and to decide which portfolio each received, he was able to bring great pressure to bear upon the conduct of government. In addition, he had plenary power to dissolve Parliament, which potentially gave him great influence over its legislative program. Though he had little power to make decisions on individual or detailed matters, in a sense he wielded macro-control over the workings of government. Consider now, the powers of the current president, especially his leverage over other state bodies.

The portion of the 1993 Constitution devoted to the presidency is quite short and consists primarily of provisions concerning his election, replacement in case the office is vacated, his lack of political responsibility and absolute immunity from prosecution. The actual powers of the president are contained in Articles 62 and 63. At first glance they are a somewhat impressive looking list of competencies. A more thorough reading of the complete text of the constitution, however, shows that these competencies are for the most part pretensions of power.

The competencies of the president are listed in two articles, because the president may exercise Article 62 powers independently, while he must obtain the counter-

signature of a governmental minister to take action under Article 63 powers. Because Article 63 contains the only truly significant powers, this arrangement ensures that the president can take no serious initiative. The president of the First Republic was also required to obtain the countersignature of a minister, but he had a great deal more leverage over ministers because he had the power to dismiss any minister at will, a power which the current president lacks.

Article 62 lists several powers which are normally associated with a strong president, but in the Czech constitution they have either been turned into mere formalities or are gutted by other provisions of the constitution.

Article 62(b) gives the president the power to convene sessions of the Assembly of Deputies. With such a power, as well as the power to dissolve the body (discussed further below), a president can exert significant influence over the conduct of Parliament. The First Republic president, for example, though he could not prevent the National Assembly from meeting, could postpone their biannual sessions for several weeks. This could prove to be a useful method for delaying undesired legislation. The current president may delay the opening session of the Assembly of Deputies only by thirty days. Thus, his power to convene the Assembly is merely ceremonial.

Equally formal is the president's power to dissolve the Assembly. This is normally a powerful tool in the hands of a president, and the First Republic president had absolute authority to dissolve Parliament. While Article 62(c) of the current constitution gives the president the power to dissolve the Assembly, Article 35(1) ensures that he enjoys very little discretion in exercising that power. He may dissolve the Assembly only in a few strictly defined circumstances, such as when the legislature refuses to meet or fails to take action on a bill requesting a vote of confidence in the government.

In a parliamentary system, the presidential power to veto legislation is usually mild, and this was true as well of the president of the First Republic. Generally, a vetoed bill must be reapproved by a supermajority, but in the current constitution a superquorum rather than a supermajority is required. In the initial vote, a bill may be adopted by a simple majority of deputies present, and there is a very small quorum requirement—a mere one-third of all deputies. A bill returned to the Assembly by

the president must be readopted by an absolute majority of all deputies. This might seem to make a big difference, because the president can require approval by 101 deputies rather than just thirty-four. However, almost all of the deputies would certainly be present for the initial vote on any bill that is the least bit important or controversial.

The president's veto is thus useful only as a corrective measure if somehow a small group of deputies pushed through a bad bill while most deputies were not present. Barring this unlikely scenario, the presidential veto is merely suspensive, so that deputies who lose a closely contested vote will have another chance to change minds. (We expect that party discipline will usually be too strong to permit defections.) The president's disapproval of a bill could only influence the outcome if the president is very popular with the public and can make use of this popularity to pressure the deputies.

A related power is the power to sign acts of Parliament before they are promulgated. This power is found in Article 64(i) and could be interpreted to mean that the president may effectively block legislation at the final stage, simply by refusing to affix his signature to an act of which he did not approve. However, Article 51 makes clear that the president enjoys no discretion in this respect. Acts finally adopted by the Assembly (after all procedures have been followed, including the re-vote after a presidential veto) shall be signed by the president. This function is wholly formal, not involving any consent or approval on his part.

The president's role in relation to the government is also very limited. Article 62(a) gives him the power to appoint and recall the prime minister and other ministers, but the elaboration of this power in the section of the constitution devoted to the government shows it to be insignificant. The president appoints the prime minister and the other ministers, but the ministers he appoints must first be nominated by the prime minister he has selected (Art. 68[2]). The president's power to appoint replacement ministers and to recall ministers must follow the initiatives of the prime minister (Art. 68[5]).

The president is evidently free to appoint whomever he wishes as prime minister, but such discretion is limited by the Assembly's right to vote no confidence, making his power to choose the prime minister essentially a confirmation of the results of legislative elections. (This is per-

fectly normal, since the government in a parliamentary democracy should be more influenced by electoral results than by the president.) Should the president dislike the leader of the party winning the elections, he must ultimately accommodate him, because the power to nominate the prime minister falls to the chairman of the Assembly if the Assembly votes no confidence in two successive governments proposed by the president. Rather than suffer a political bloody nose in a futile battle, the president would appoint as prime minister only the person leading the coalition in the Assembly. In strict terms, the president appears to have unfettered discretion in recalling the prime minister. This apparent gap is probably due more to political realism (what president would dismiss a prime minister in whom the Parliament has confidence?) than to sloppy drafting by the framers.

The First Republic president was empowered by Article 78(1) to decide who would direct a caretaker government until a new government could be formed. This gave the president the opportunity to run the government simply by installing his stooges. He could also precipitate the fall of a government, either by recalling it himself or by appointing a weak government that Parliament was sure to topple. He could prolong the situation by proposing unworthy candidates to fill the government while he continued to run things through his minions. The current president has none of this latitude. For one thing, he has no authority to appoint a caretaker government; the fallen government sits until a new one can be formed (Art. 68(d)).

The rest of Article 62 does grant the president some real powers which, while they are not illusory, are of less importance than the rather formal and empty ones already discussed. In the judicial area, he has the power to pardon convicted criminals as well as a power similar to prosecutorial discretion, permitting him to order that a case not be initiated or that it be halted. The power to grant an amnesty is enumerated separately under Article 63. (Perhaps the fact that ministerial approval is required stems from bad memories of President Havel's hasty decision to empty the prisons soon after the Velvet Revolution.) He appoints all the judges of the Constitutional Court, as well as the chairman and vice-chairmen of that body, though the Senate must consent to the selection of these judges. He also appoints the chairman and the vice-chairmen of the Supreme Court without the require-

ment of consent by any other body. He appoints judges to that court, as well as all other judges of the Republic, but those appointments come under Article 63, requiring ministerial approval. Article 62 concludes with the president's power to appoint members of the Supreme Auditing Office and Czech national bank.

Article 63 also includes several powers that are of lesser importance, such as the right to grant an amnesty mentioned above and the right to award state honors. In Article 63(f) the power to call elections to the Assembly of Deputies is established. Elections to the Assembly are to take place once every four years, barring the dissolution of the Assembly which, as discussed above, is unlikely to occur. The door to presidential discretion is here opened just a crack, with the president being entitled to call the election at any time during the last thirty days of the previous electoral term. However, it is hard to imagine how that minuscule range of choice could be of any strategic importance. This power would seem to fit better under Article 62: the safeguard of ministerial approval is superfluous because this is a wholly formal power.

The remainder of the president's powers under Article 63 relate to foreign affairs. The fact that the president should be an important factor in foreign affairs is also asserted in Article 54 which declares him to be "the head of state." Despite this, Article 67 declares the government the "highest organ of executive power," raising the possibility of conflict between the president and the prime minister over the conduct of foreign affairs. It is sensible for them to share this responsibility, because it would not be in keeping with the modern practice of a parliamentary democracy for the president to play the dominant role in foreign affairs. But, the constitution does not clearly allocate responsibility for foreign affairs. This textual unclarity creates the potential for constitutional friction, although informal arrangements have already been developed to help define the respective roles of president and prime minister in this domain.

With regard to the conduct of war powers, power sharing is somewhat ludicrous. The president is declared "supreme commander of the armed forces" in Article 63(c), but it is conceptually impossible for a person to be "supreme" when he must seek approval for his actions. For the constitution to fail to state clearly who will have the final say in questions of the conduct of a war is to court disaster, because this is one area of governmental

power where dispersion and checks and balances are inappropriate. It is to be hoped that the power to direct the military in combat will not need to be exercised in the near future or ever, but such a possibility can never be ruled out, and it is irresponsible not to make proper provision for it. This power should have been placed in Article 62, leaving it fully to the president's discretion. This holds as well for the related power under Article 63(g) to commission and promote generals.

The core foreign relations powers stated in Article 63 are the power to represent the state externally (the treaty-making power), and the power to appoint and recall the nation's diplomatic personnel and to receive other nations' diplomats. Though enumerated separately, they fit neatly together as the normal non-military foreign relations powers. They are significant powers, so it is in this area that the president is most likely to exercise influence in shaping the affairs of the Czech Republic. This is in accordance with Czech history, as the prime minister has traditionally played only a small role in foreign affairs. It was the foreign minister (traditionally a political ally of the president) together with the president who took the lead.

Although the current Czech constitution was loosely modeled on the constitution of the First Republic, the powers of the presidency are clearly much weaker than under the earlier system. This development can partly be attributed to the relative positions of the prime minister and the president during the constitution-making process. During the drafting of the constitution, the office of president of the Czech Republic did not formally exist. Furthermore, the federal presidency was left vacant following Havel's resignation in July 1992. Although Havel tried to influence the constitutional drafters, he could do so only as a private citizen.

### **De facto powers**

In spite of the weakness of the presidency under the current constitution, it is still possible for Havel to breathe life into his office, mainly by making effective use of the esteem that attaches to the post as well as his personal prestige and powers of persuasion.

One factor working in Havel's favor is the role that the president has played in the country's history. The current president is without question a national hero for his key role as a liberator and renewer of the nation. In

this regard he has a great deal in common with an earlier president, the founder of the nation, Tomas Masaryk. The people feel a strong sense of gratitude to Havel and trust him greatly. Rather than seeking a strong hand, the Czech nation responds on an emotional level to leaders who represent their values and are thus worthy of respect and emulation. Havel is clearly a person who embodies the values of the nation, and the people look up to him for it. He continues the line of national leaders whose lives were devoted to the ideal "truth shall prevail," a leitmotif that echoes throughout Czech history. Lastly, the nation's leader should ideally be non-partisan because such a disengaged stance will allow him to be a touchstone, the known factor around whom the people remain united when political controversies threaten to split them. Havel, of course, has doggedly maintained his aloofness from party affiliation.

Havel also derives strength from historical precedent in another way. He has consciously drawn upon certain traditions of the presidency as established by Masaryk. Masaryk infused the office with several monarchical elements that helped him to exert influence. For example, the presidency has its seat in the Castle and the Archbishop of Prague marks his inauguration by celebrating mass at St. Vitus' Cathedral. By cultivating these monarchical traditions Havel has infused the office with an aura of power which he ably uses to influence others.

Havel has consciously continued other traditions founded by Masaryk, as well. Every Wednesday the prime minister went to the Castle to have dinner with the president and to inform him of the government's activities. Every Friday, Masaryk gathered together influential individuals, dubbed *Patecnici* or Friday people, from across the political spectrum for informal meetings. Havel has continued some of these traditions. His talks on Sunday are transmitted via radio from Lany. On Wednesdays, the prime minister comes to the castle after the cabinet meeting and on Fridays Havel holds informal meetings. These traditions are not written in the constitution but have become important quasi-constitutional institutions that enhance the role and position of the president.

Havel has proved very adept at manipulating the symbols and traditions of the presidency to his advantage. His past career seems to have served him well in this regard, he was, after all, a dramatist before he was a phi-



losopher or a politician. Even after what could in political terms be described as a somewhat lackluster performance as the federal president, he still enjoys the approval of approximately 70 percent of the people. Unless he commits major blunders, it would be very difficult for him to lose the extraordinary respect and gratitude of the nation.

## Conclusion

On paper, the Czech president is not particularly powerful. Masaryk enjoyed vastly greater constitutional latitude than does Havel. With the advent of the First Republic as with the modern Czech Republic, an extremely popular figure was elevated again to the presidency. In the First Republic, such was the enthusiasm for Masaryk that the framers of that constitution granted excessive power to the presidency. Like Masaryk, Havel could be trusted with such power, but what about future presidents? It is now widely believed that a balance of power is essential for any enduring political system, and this is what the current constitution aims to achieve.

With his considerable powers of persuasion and compelling force of personality, Havel has what it will take to establish the place of the newly designed presidency in Czech politics.

## Hungary *Andras Mink*

According to historical traditions, the Hungarian president is elected by Parliament.

Nonetheless the method of electing the president was the subject of sharp political debates during the transition process in 1989. Although opponents in the debate made theoretical claims, everyone was perfectly aware of the concrete political stakes.

Those favoring direct presidential elections, argued that, during the transitional political and economic crisis, the country needs a widely respected leader, who enjoys popular trust, obtains legitimacy directly from the people, represents the national interest as a whole, and is above partisan quarreling over factional interests. Only such a figure will be able to maintain political stability and continuity while rival political parties battle raucously among themselves. To overcome the national crisis, coordinated efforts are required. These efforts can be symbolized and represented only by a directly elected president. Advocates of direct elections added that the citizenry must not

be deprived of the democratic experience of electing the leading man in the country. Such an election would reinforce the peoples' confidence in the new regime and in democratic institutions in general.

Opponents of direct elections offered a different interpretation of the democratic process. They argued that we must rely, not on persons, but upon impersonal procedures and institutions. The electorate should experience the operation of a multiparty parliamentary system and the techniques of democratic decision-making, including the conflicts and sharp debates that occur within that framework. Moreover, the people at large should accept responsibility for choosing among political alternatives. Popular confidence vested in a trustworthy father-figure would only strengthen patriarchal expectations and feelings of dependency on the state. A directly elected presidency might eventually reproduce the very sort of autocratic political culture from which the country is now struggling to escape.

While participants in this debate outlined their contrasting theoretical arguments, the political background was clear for everyone. Some less radical opposition forces believed that a peaceful transition could occur only with the active support of the reformed communist camp. According to the bargain they proposed, direct presidential elections would be held before the parliamentary elections. They fielded their own candidate as a salute to the idea of electoral competition. But everyone knew that the only figure who could possibly win the election was the popular and well-known reform communist leader, Imre Pozsgay, who had close connections to the "founding fathers" of the largest opposition party, the Hungarian Democratic Forum (HDF). A slightly left-wing, reform communist-populist coalition began to take shape on the basis of a common "commitment to national values."

The liberal parties and other political forces immediately recognized the dangers of such a "grand-national" coalition. If a reform communist politician became president by direct elections, he would have crucially influenced the outcome of the parliamentary elections. Overshadowed by the emerging national alliance, the smaller parties would have lost their significance. The informal power structures of economic and political life could have remained in place, unbalanced by any effective opposition in the new Parliament. The great attempt to revolu-



tionize the system would have turned out to be nothing more than the recruitment of a few new elites into a basically unchanged regime.

To prevent such a disappointing outcome, the liberal parties initiated a referendum. They proposed that the presidential election should take place after parliamentary elections. Their unspoken calculation was that no one would give the former Communist Party (bound to lose heavily in the legislature) an opportunity to recapture power through the back door of the presidency. The new Parliament, as a consequence, would probably decide to elect the president indirectly. The liberal parties also hoped that a successful campaign would strengthen their own position on the political landscape, and that the new Parliament would contain a strong opposition. The liberals won their referendum, and, although disappointed socialist/communist supporters avenged themselves in the second round of the general elections (most of them voted for the HDF), the outcome fulfilled liberal expectations. The referendum convinced the HDF that it was not necessary to strike a deal with the former rulers. The new Parliament consisted of a strong non-communist ruling coalition and a relatively strong opposition. It also decided to elect the president indirectly, just as expected.

### **A president from the opposition**

But a further compromise was required to start governing. The Hungarian constitution contained special qualified-majority requirements, of little significance during one-party rule, but which put intolerable constraints on majority government in a balanced, multiparty Parliament. Even the state budget had to be passed by a qualified majority. The largest governmental party (HDF) and the largest opposition party, the Alliance of Free Democrats or AFD, started negotiations on how to alter the constitution. The HDF needed the consent of the latter, because all constitutional changes required a qualified majority. The AFD was willing to relinquish some of its veto powers, but, in return, demanded concessions. The final agreement, which was called, not without malice, a "pact" by the press and other parties, contained a single provision: the president was to be elected from among the opposition. The candidate agreed upon was Arpad Goncz from AFD.

Goncz's personality and political background contributed importantly to this partisan swap. He was one of

the few politicians acceptable to both sides. He was the "doyen" of the '56 generation and had spent six years in prison after the revolution. As a young politician, he was close to the old Smallholder's Party as well as the Peasant Party, and hence had good relations with national-populist writers and intellectuals. That is what made him acceptable to the government. In the late 1970s, he joined the "democratic opposition," the forerunner of AFD, which openly advocated human rights and civil liberties under the old regime. As a result, Goncz personally united and represented almost all of the progressive traditions on the Hungarian political landscape in a synthetic and reconciling way, drawing attention to the overlapping elements and downplaying the divisions. Despite the many politicians who bitterly opposed the "pact" itself, nobody objected to Goncz personally as the most suitable candidate for president. His reputation, authenticity, and personal credibility seem not to have been doubted by any side.

### **The president of the people**

Goncz was elected to the presidency in May 1990 by an almost unanimous Parliament and immediately became the most popular political figure in the country. No politician from either side enjoys comparable respect among the public at large. While fellow presidents in Eastern Europe, whether elected directly or indirectly, have helplessly watched their popularity waste away, Goncz retains public esteem and trust.

His continuing popularity probably stems from a variety of factors. First of all, his political background plays a significant role. Right after the elections, a large popular majority would have favored basing the new government on a coalition of the two major parties. This idea was soon dropped. But the president continued to represent, in his own person, the image of that unchosen grand national coalition. As relations between the two sides became increasingly bitter during the next few months, the president was able to maintain something of that original popular image. In the eyes of the public, his figure and behavior represented the cooperative way government ought to be run.

The other crucial element explaining Goncz's popularity lies in his personal habits and style, unprecedented in a country which always had mighty kings, milords, and comrades. In his public appearances, Goncz presents

politics as something no longer remote or beyond the grasp of ordinary people. As a commentator (who is not among the president's adherents) stated in an interview: he is simply not a real president; he is unable to show authority. After he was inaugurated, Goncz said that he perceived his role as an advocate or a mediator for those who were losers in the crisis and who felt excluded from the political community and the nation. He had a chance to play this role quite early. After the infamous taxi-drivers' blockade in October 1990, he proposed a parliamentary resolution to the crisis, which provided amnesty for those who took part in the demonstration. The basic motivation behind the blockade—besides the thrill of masses suddenly discovering that "we are free to protest" against government—was that the people felt deceived and manipulated by politicians. The initiative of the president proved to many people that there was at least someone in political life who took their views seriously. And the more the public felt alienated from other political institutions, the more they trusted Goncz, who remained untainted by the disillusioning and fruitless conflicts of everyday politics. As we will see, the president could not avoid all involvement in political conflicts. But repeated attacks by the government side which aimed to discredit him served only to brighten his reputation. Indeed, the public seemed to believe that the government slighted the president just as it neglected the views of the average citizen. The government excluded the president from politics just as it excluded the people. In short, the public "identified" with the president, seeming to discern in him the same subordinate, oppressed figure which they felt themselves to be.

The third factor in Goncz's popularity is closely related to the second. Those who dislike the government are not ready to identify themselves automatically with any opposition party, for to be a member of *any* party is really out of fashion nowadays. But to identify with the president causes much less normative dissonance, even though he originally came from the opposition party. Indeed, as president, Goncz never claimed to be an opposition figure, trying instead to escape this role.

Perhaps one could say that the president re-occupied the vacant position of the good, powerless king surrounded by bickering and vicious power-seekers. Some commentators spy relics of patriarchal feelings in his popularity. In my opinion, such feelings are of marginal importance.

Goncz's popularity, it seems to me, reflects the peoples' elementary democratic desire to be equal in the political process. That is the style that the president continuously displays, a style he possibly could not maintain if he were directly elected. The paradox here is worth stressing. Goncz has the popular respect usually reserved for a directly elected leader, but he can preserve his reputation only because he is elected indirectly.

### **The president at the center of conflict**

The policy of compromises, the spirit of the "pact," was soon replaced by a policy of confrontation. The basic conflict arose when the new coalition proved unable to fulfill its promises. The credibility and popularity of the government radically decreased a few months after the elections. The taxi-drivers' blockade and the failure of the coalition in municipal elections clearly signaled that the public had withdrawn support from the winners of the legislative elections. The ruling parties might have justifiably complained that they did not deserve this rapid and shocking abandonment. They believed that the opposition reneged on an agreement among the parties to make common efforts to overcome the crisis. On the first days of the blockade, the AFD announced that the government was unsuited to manage the crisis. Later on, even within the party, many considered this announcement a serious mistake. The ruling parties also thought that they were not receiving the necessary support, or even well-balanced criticisms, from the media. A new strategy was then adopted by government: that of taking over as many positions as possible in politics, the economy and the media. The argument used to justify this amassing of power was a majoritarian one. Those who won the elections represent the majority will, and neither the political minority nor any other institution should hamper their getting their way. Some governmental politicians declared the mere existence of qualified-majority laws to be the "scandal" of Hungarian democracy. For similar reasons, these same politicians have never reconciled themselves to a president, elected with their own votes, who objects to their wishes.

In a young democracy, neither the limits of the majority's will nor legitimate claims of the minority are clearly delineated. Thus extraparlimentary institutions, such as the presidency or the Constitutional Court, get drawn disconcertingly into everyday political conflicts.

The Hungarian president soon found himself in a contradictory situation. His constitutional duty to represent national unity implies a responsibility to remain neutral in political battles. At the same time, he has an equally important constitutional duty to preserve and ensure the democratic functioning of the state. These duties would be in harmony, if all important political actors agreed about the meaning of "democratic functioning." But they fall into contradiction when such a consensus does not exist. Ordinarily, the president must not impede the majority's will. But he must do so when he realizes that the majority has overstepped its bounds. But who decides when a government with an impeccably democratic pedigree injures the rules of democracy? The president cannot stand by as a neutral observer in such a case. And, in fact, one side has accused Goncz of being "antidemocratic," the "saboteur" of the democratic decisions, while the other side has urged him to take firmer action against abuses of power.

The current governing coalition perceives the president as an obstacle. They have tried to overcome this obstacle in two ways. First of all, they have tried to minimize his influence in the governing process and to render his power merely symbolic. During the taxi-driver's blockade, the president, as commander in chief of the army, prohibited the use of the army against the demonstration. He made any violent action against the demonstrators impossible by withholding instruments of violence from the police. Soon after the blockade the government questioned his authority to command the army and initiated a review of the issue in the Constitutional Court. The media-war provided the next occasion for the government's attempt to shrink presidential power. This conflict began, as is well known, when the president did not appoint the candidates Prime Minister Jozsef Antall had proposed for the chairmanships of national radio and television. The question, again submitted to the Constitutional Court, was whether the president has the authority to make independent judgments about the PM's proposals, or whether he must sign the latter's appointments automatically. In both cases the government claimed that the president may not interfere in the affairs of the executive, because he is not responsible for governing the country. He is accountable neither to Parliament nor directly to the people. (Only Parliament can replace the president, and only in extreme cases, such as a grave

criminal offense.) The opposition, by contrast, emphasized that the president's duty to preserve democracy requires that he exercise a more-than-symbolic role in such matters, especially when the appointment in question presupposes independence from the government as in the case of the national media. The rulings of the Constitutional Court have been quite ambiguous on this issue. Both sides interpreted them as verifying their own point of view. Nonetheless, Goncz continued to refuse Antall's appointments. Although the president has been repeatedly accused of violating the constitution, the game shows no signs of coming to an end.

## Poland

*Andrzej Rzeplinski*

Formal constitutional design has conspired with less finely calibrated political and social forces to make the presidency in Poland relatively strong. In the region, the powers of the Polish president are comparable to those exercised by the presidents of Bulgaria and Romania. Walesa, through force of personality and prestige, has put his stamp on an institution originally designed for General Wojciech Jaruzelski. Although the parties of the new ruling coalition are on record as favoring the adoption of a purely parliamentary-cabinet system they are unlikely to want to take on Walesa directly in any attempt to limit his constitutional powers.

The constitutional amendments of April 7, 1989, a result of the round-table agreement struck between Solidarity and the Communist Party, clearly tailored the presidency for General Jaruzelski whom both parties saw as the perfect guarantor of the interests of the nomenklatura and the Soviet empire during the period of transition.

In the spring of 1990, the Solidarity Union and two political parties, formed several months earlier, led a movement to replace General Jaruzelski with Lech Walesa as president. These parties, the Center Alliance (CA), led by the Kaczynski brothers, and the Liberal Democratic Congress (LDC), vigorously demanded that Jaruzelski resign so that Walesa could be appointed president by the National Assembly. The idea of a constitutional amendment introducing direct presidential elections, which was adopted, was submitted by the followers of the then prime minister, Tadeusz Mazowiecki, who felt they stood no chance of out polling Walesa in the National Assembly.

In the first round of the elections, however, Mazowiecki finished a dismal third behind both Walesa, who garnered over 40 percent of the vote and the dark horse, expatriate millionaire Stanislaw Tyminski. Walesa easily bested Tyminski in the runoff, receiving almost 80 percent of the vote.

Several months after the elections (February/March 1991), Walesa and the CA gradually parted company. The CA demanded accelerated parliamentary elections (to be held in May 1991, at the latest) and a purge of the public administration. The president postponed the elections hoping for an improvement in the economic situation under the coalition cabinet he had formed with Jan Krzysztof Bielecki at its head. Walesa also proved resistant to the lustration rhetoric of the Kaczynski brothers. It was necessary to use the bureaucracy inherited from the communists, he realized, as no other was available. Bielecki's continued support for the radical reforms launched under the Mazowiecki government by Vice-Premier Leszek Balcerowicz (who remained in the new cabinet at Walesa's request) quickly eroded Walesa's relations with the Solidarity trade union. In 1991/1992, Walesa became as alienated as Balcerowicz from Solidarity, which had a clearly socialist economic program despite its anti-communist orientation. The final breach occurred in the summer of 1993 when Walesa rejected the humiliating conditions attached to his invitation to the 4th Solidarity Congress and stated in revenge that he shared nothing in common with that kind of trade union. After the 1991 parliamentary elections, the LDC freed itself from the president's control and moved closer to the views of the centrist Democratic Union (DU) which was founded by Mazowiecki and was thus less well-disposed towards Walesa.

The future of presidential powers was one of the main questions debated during the making of the Little Constitution in 1992. The debate reflected the changing balance of power within the Sejm. As long as the CA and its allies, fresh from their break with Walesa, stayed in power (until June 1992), they hampered the progress of work on the Little Constitution and, in particular, prevented any extension of the president's prerogatives; they clearly had Lech Walesa in mind. The actions of the DU worked at cross purposes to those of the CA: so long as the DU stayed in opposition, they did not object to additional powers for the president. The final result was a

compromise that pleased no one and maintained the existence of a dual executive, that is, a hybrid parliamentary-presidential system. As I see it, however, the presidency shaped in this document is quite likely to outlive Walesa, and by luck rather than through mature and careful work, a system of checks and balances between the president and the other institutions of government may well be achieved.

The constitutional provisions of the 1992 interim constitution concerning the prerogatives of the presidency include the following. The president shares executive power with the Council of Ministers (Art. 1). He is elected in general elections (Art. 29.2). He is responsible for the general direction of the external and internal security of the state (Art. 34). He appoints key persons in the army, may declare martial law (Art. 36.1) or a state of emergency (Art. 37.1), and may summon sittings of the cabinet and preside over it in discussions of matters of special importance to the state (Art. 38.2). He nominates, subject to Sejm approval, the president of the central bank and dismisses him (Art. 40). He appoints judges (Art. 42), and appoints and recalls presidents of the Chief Administrative Court and the Supreme Court (Art. 47.12). According to Article 61, when appointing any minister of foreign affairs, national defense or internal affairs, the prime minister must consult the president. (These ministries are even sometimes colloquially referred to as the "presidential ministries.") The president ratifies and renounces international treaties; those, however, relating to the borders of the nation, leading to financial liabilities or which imply changes in legislation require formal adoption by statute (Art. 33). Many of the president's acts require the countersignature of the prime minister or an appropriate minister (Art. 47). The most important of the acts exempted from this requirement include the nomination of the prime minister and appointment (on the PM's motion) of the whole council of ministers, legislative initiative, signing or refusing to sign a statute already adopted by the two chambers, and filing a case with the constitutional tribunal for adjudication of the conformity of a statute with the constitution.

President Walesa's personal history and his election to the presidency directly by the nation (for the first time in Polish history) strengthen his position as president. (See Wiktor Osiatynski's profile of Walesa in this issue.) The political fragmentation of the Sejm (and thus the

political weakness of successive governments) that plagued Polish political life prior to the recent parliamentary elections further enhanced Walesa's position. Somewhat paradoxically, the results of the September 19 elections, namely the reduction in the number of political parties, the decided triumph of parties with a communist heritage, the relative weakness of the center and the elimination of the right wing, have all enabled Walesa to preserve his strong position. He can expect backing from the losing parties in addition to support from the episcopate of the Catholic Church. The president has repeatedly stressed that 35 percent of the voters are not represented in the Sejm, and has openly suggested that he will personally represent these voters to the victorious coalition.

The parties in power, for their part, appear to accept the maintenance of Walesa's political position. By doing so, the ruling leftist coalition can channel toward the president the social unrest prognosticated by rightist parties and the Solidarity labor union. Moreover, because he is still held in high esteem in the West, Walesa brings important legitimacy to the new government, several members of which held high offices in the communist government before 1989. This latter role of Walesa, however, may prove only temporary. It is conceivable that the new government will lose either the need or the desire for such legitimization. This is especially true either if Poland's economic situation perceptibly improves, if Russia becomes more democratic and market-oriented following the December 12 Russian elections, or if the approaching presidential elections in Poland (1995) require the coalition, the Union of the Democratic Left (UDL) in particular, to strain their relations with President Walesa.

Walesa's leadership of the anti-*Realsozialismus* Solidarity movement, for which he was interned for nearly 11 months following the imposition of martial law in December 1981, made him into a national and international hero. Until the autumn of 1989, Walesa was the universally acknowledged charismatic leader of that part of Polish society which had actively or passively opposed the old system (about 65-75 percent of the electorate as shown by the results of the 1989 parliamentary elections). What eventually stripped Walesa of his original charisma and standing in society was his instigation of the "war at the top" in the post-Solidarity camp. Further undermining his authority were the presidential cam-

paign of 1990, his inability to perform functions with dignity in non-crisis situations, and public accusations of having collaborated with the Communist Party's political police (SB) early in the 1970s (concocted, in my opinion, by the SB early in the 1980s).

Walesa lacks the political attributes usually associated with professional politicians who have been elected president in a popular vote. First and foremost, he is not a leader of any political party, and none of the stronger parties has so far declared their intention to support him in the 1995 presidential elections. Nonetheless, Walesa's staff believes that—due precisely to his former role and former charisma—the postcommunists would never dare try to impeach him or remove him prematurely from office. (They could do the latter by adopting a constitutional amendment reintroducing the appointment of the president by the National Assembly.) Nor does his staff believe that the postcommunists would dare to reduce drastically the president's powers in the future constitution which the Parliament will no doubt pass this term.

Walesa jealously husbands the powers of the presidency. Indeed, he is often portrayed as power hungry, as always on the lookout for ways to expand his powers. This, however, is a simplification. At the end of April this year, along with two other co-authors, I acquainted him with a draft constitution he was to submit to the Sejm as his own. The draft proposed a strengthening of some prerogatives of the head of state. Walesa expressed alarm at the proposal. He understands that strong power means greater responsibility for decisions taken in the course of routine public activity. He feels much more at home managing events from backstage and reveals great political talents during crises (such as during the Round Table Conference in early 1989 or during the struggle with advocates of radical lustration and de-communization in May and June 1992). Walesa does nothing to conceal his helplessness when confronted with bureaucracy or when faced with Warsaw's political elites.

Similarly, many suspect the president of attempting to discredit parliamentarism. The president, obviously, denies this. The results of the recent elections disillusioned him completely (that is, if he still entertained any illusions at all). Parliament, with a strong majority and a prime minister who stands a chance of staying in office for the next four years, is unlikely to furnish Walesa with a constitutional excuse to dissolve it, and overt attempts

at dividing the coalition may have the opposite effect. The president does not try to conceal his disappointment at the absence of rightist parties in the Sejm. On several occasions, though, he has declared his respect for the voters' will and the election regulations that gave priority to the winning parties.

No great danger is likely to result from the sharing of executive power between president and prime minister. The president's actual power is limited and gains importance only during a crisis. The hope that under the Little Constitution the president might act merely as an arbiter, however, seems unlikely to be realized. This is primarily due to the personality of Walesa who prefers to be a party in a dispute rather than simply an arbitrator in crisis situations. He seems to realize perfectly, though, that none of the parties can have everything its own way in a democratic system, and that compromises are necessary and usually lead to optimal results.

The "Weimar syndrome," a political state of affairs where the president becomes the focal point for anti-Parliament sentiment, has not arisen in Poland. For one thing, the Polish Parliament cannot be burdened with the "guilt" which was imputed by the Communists and Nazi radicals to the Reichstag; but it is also true because we Poles are politically aware of this danger. The German experiences of 1920-1933 are very well-known in this part of the world, and the memory has a cautionary effect. An additional factor in explaining the absence of a Weimar syndrome in Polish politics is that the democratic opposition under *Realsozialismus* struggled, not against parliamentarism, because there were no parliaments, but for the parliamentary system.

Another reason that the presidency has not become a rallying point for anti-parliamentary feeling is that, contrary to his opponents' warnings, Walesa has not proved to be a populist. Regarding the economic hardships caused by reform, the president suggests a purely liberal solution: take matters into your own hands and get rich, provided you break no laws. Lacking populism in his program, Walesa has made only modest attempts to mitigate the effects of economic reform on the populace. In any event, the Sejm keeps the president's impulses in check through its power of the purse. One other factor also contributes to the absence of a Weimar syndrome in Poland: If Parliament goes too far in the direction of de-communization or re-communization, the president does

not have to resort to vilifying the legislature. He can use his veto or demand examination by the Constitutional Tribunal.

Walesa likes to stress that it is his job to represent and protect those political forces that feel threatened by the process of building democracy. On several occasions in 1991, he publicly defended the UDL. Today, he has promised to protect the rightist extraparlimentary opposition. Walesa likes to emphasize his role as guarantor of the introduction and consolidation of pluralist democracy, a market economy, and political affiliation with the West. He also likes to support the idea of human rights. One instance is his submission to the Sejm in November 1992 of the draft Bill of Rights and Freedoms prepared by the Helsinki Committee in Poland. For this reason, Walesa has warned the ruling Union of the Democratic Left and Polish Peasant Movement coalition of his intention to use his power and prestige as the directly elected president to defend the political values that elevated him to power. This seems to be a reaction to fears that the new government may seek to roll back reforms by introducing a "leftist" economic program or by seeking to isolate Poland from the West.

President Walesa has in the past threatened to appeal directly to the people over the heads of Parliament and the cabinet. Recently, though, he has made no mention of this idea, first, because he realizes that Polish society is unlikely to respond to such appeals and, second, because he keeps stressing the respect he has for democracy. He even likes to call himself the "greatest democrat."

In June 1993, Walesa acted upon an oft-mentioned threat by initiating, however abortively, the creation of a presidential party, called the Non-Party Bloc to Support Reform (NPBSR). Its initials were chosen to match those of the party formed to support the authoritarian rule of Marshal Jozef Pilsudski, Poland's interwar leader. At first, the bloc's high scores in public opinion surveys offered hope for the emergence of a presidential party capable of contributing to the formation of the cabinet after the elections. As the bloc's standing in the polls continued to nose dive, however, Walesa distanced himself from it, thereby ensuring its poor election result. In the end, the bloc received 5.4 percent of the vote in the September elections, gaining 16 of the 460 seats in the Sejm. Apart from two politicians, both Ministers in Jan Olszewski's cabinet (Andrzej Olechowski and Jerzy Eysymont), the



bloc was formed by unknown or third-rate politicians who stood no chance of success.

On several occasions, the president has said that he would form a genuine political party if he received insufficient support in the Sejm (which, in the current Parliament, is certain). Another attempt, along these lines, seems doubtful however. To score a success in the already crowded political marketplace would require big money, an attractive and consistent program, at least 20 people with considerable political potential, and greater presidential popularity. This is a tall order.

Based upon the showing of the NPBSR, Walesa can count on only five to six percent of the votes in the presidential elections scheduled for 1995. Such an assessment, however, would greatly underestimate his real support. The parties that seem to back him include the Christian National Union (CNU) and some smaller Christian democratic groups (and even a part of the CA). It is also possible that Walesa will be supported by the Catholic Episcopate. These groups may add up to 20 percent of the electorate, a considerable share these days. The followers of Walesa are dispersed in society; none of the big social groups back him explicitly. In the 1990 election, those who voted for him were mainly farmers and workers from the big factories. Their continued support, however, is uncertain. The latter feel themselves especially harmed by the economic reforms they partially identify with Walesa.

President Walesa has played a greater role in constitutional politics than any other constitutional actor including the Constitutional Commission of the former Parliament. For instance, he has participated in the preparation of the following constitutional documents: (a) draft constitutional provisions regulating the division of powers (Little Constitution) of December 1991; (b) draft Bill of Rights and Freedoms of November 1992; (c) a draft constitutional amendment of March 1993 which would have prevented the Sejm from overturning decisions of the Constitutional Tribunal concerning the unconstitutionality of statutes; and (d) a draft constitution of April 1993. None of these, however, has been adopted. The president's primary constitutional goals are the consolidation of his powers in constructing the cabinet; the consolidation of both the independence of the judiciary and the role of common and Constitutional Courts; and the introduction of a catalog of individual rights and freedoms

as well as instruments for their protection.

President Walesa has established good relations with the military. His contacts within the army sparked conflict with Jan Parys, the defense minister in the Olszewski government, who in early 1992 accused Walesa of trying to lay the foundations for a future coup. These charges were found to be unwarranted and resulted from conflicting interpretations of the proper role of the president within defense policy. Despite the military's relative technological backwardness it possesses considerable prestige within Polish society. For three years now the army has been the most popular institution in Polish society, receiving a 70 percent level of support in public opinion polls. Walesa has been able to establish the practice of having the defense minister as well as the foreign minister report directly to the president and not only to the prime minister. He was also able to persuade the new ruling coalition to appoint his people to head the ministries of foreign affairs, internal affairs and national defense, a precedent he wishes to see honored in the future.

President Walesa is a very complex, unpredictable politician who defies description and predictions. His force of personality and prestige, although diminished within Poland, have enabled him to expand and maintain the role of the president within Polish society. The interim constitution and Walesa himself have shaped the Polish presidency. But the institution may outlive both President Walesa and the Little Constitution to become a permanent institution of the Third Republic.

### ex-Yugoslavia

*Tibor Varady*

*Nenad Dimitrijevic*

Almost nothing has survived of the second (socialist) Yugoslavia. Divided into five new countries (one of them, which claims to be the federation's rightful heir, is still not recognized by the international community), ex-Yugoslavia is today a mere geographical expression that denotes the area in which former citizens of a former state are waging a bloody war of annexation. Perhaps today we stand on the threshold of peace of some kind. But every analysis of the social, political, constitutional, and cultural present and future of the new Balkan states must take account of the destruction and suffering of this tragic war. Hundreds of thousands have lost their lives; millions have been deprived of their homes and their human dignity.



The most beautiful cities and the oldest towns have been ravaged, and those parts of ex-Yugoslavia that "have never been in war," to borrow a common phrase from Serbian propaganda, have also faced economic, social and moral devastation. As a rule, the main targets were the settlements which, by their very existence, had demonstrated the possibility of peaceful and even harmonious internal relations in an ethnically, culturally and religiously diverse society.

After so much destruction, very little is left of the Yugoslavia one knew five or ten years ago. What remains are the six presidents of the six republics. In light of the misery these six men have presided over, this may seem rather strange. Why have the presidents become the only fixed points in a sea of social turbulence? How—after all that has been said, done or not done—can these statesmen still remain in office? In order to solve this puzzle, it may be useful to make a short preliminary excursion and recall the political situation in Yugoslavia which preceded the war.

### Tito's legacy

In a way, the path to the present Yugoslav tragedy was prepared during Tito's reign. Yugoslav socialism began as dogmatic bolshevism, continued as a utopia of working society, and ended up as an irrational blend of communist ideology and nationalism. A detailed analysis of Yugoslav "self-management socialism" would take us well beyond the parameters of this article (see the works of Zavko Puhovski), but it is important to note that one key difference between self-management and the "real-socialist" model was the *decentralization* of state and party authority in Yugoslavia. Self-management originally consisted of partial measures granting limited autonomy to enterprises and local governments, accompanied by a certain—compared to other socialist countries, a considerable—extension of individual liberties. But the position of the Communist Party remained unchanged: it continued to act as the sole possessor of historical wisdom. This is understandable if we recall that socialism was defined as a plan for building the future, a future already known and inscribed in the party's own program. The power of the party must be proportional to the quality of its privileged awareness. Hence, the party could not have been reasonably limited by constitutional norms and procedures.

During the late sixties and early seventies, the legitimacy of communist rule was seriously threatened by radical leftist criticism formulated by the student movement of 1968, by the sudden appearance of nationalism in different parts of Yugoslavia (Slovenia, Croatia, Kosovo), and by so-called Serbian liberalism. Tito and his supporters managed to maintain their rule by gradually changing the principle of legitimacy underlying the party's power. While the concept of socialist self-management was preserved and even extended ideologically, the communists simultaneously accepted a national principle as the basic justification of their rule. This became clear with the adoption of the 1974 constitution, which was passed in order to legalize this ideological change. Article 1 of this constitution announced a new phase in the development of the Yugoslav party-state: "Yugoslavia is a federal state having the form of a state community of voluntarily united nations and their socialist republics . . . based on the power of, and self-management by, the working class and all working people; it is at the same time a socialist self-managing democratic community of working people and citizens and of nations and nationalities having equal rights."

This provision was not simply a constitutional expression of the fact that Yugoslavia was a multinational community organized as a federal state. The constitution legalized the party's turn to the right, by proclaiming that Yugoslavia was based on two fundamentally different, even mutually exclusive, value systems: the utopia of a worker's society versus national homogeneity as the principle for the construction of a multi-national state (Z. Djindjic, *Jugoslavija kao nedovršena država (Yugoslavia as an Unfinished State)*, Novi Sad, 1988, p. 60). In such a "constitutional" context, self-management decentralization took the form of the feudalization of the state. According to the constitution, the "sovereignty of the working class," though officially the central ideological principle, ended at national borders. While at the level of local government and in the republic there were special "chambers of associated labor," the federal Parliament consisted of two chambers representing the republics as nation-states. As a consequence, Yugoslavia was left with almost no effective central authority, except for its charismatic president of the republic and the army (See S.K. Pavlowitch, "Everything is Possible in Yugoslavia," *Dialogue* (January 1992, p. 7). Admittedly, the party contin-

ued to fight against nationalism. The leaders of the Communist parties of the separate republics may even have been sincere in their efforts. But it was essentially a ritual fight, since within the framework of the constitution they were bound to act as representatives of their own federated national party-states. This arrangement turned Yugoslavia into a *mixtum compositum* of national socialism.

The fascinating combination of socialist self-management and national exclusivity lasted for several years, thanks both to the charisma of the president of the republic and to financial help from abroad. But immediately after Tito's death, disintegration processes set in. Left without a *pater familias*, confused nationalist-communists exhausted themselves in quarrels and mutual blockades. Ritual invocations of communist ideology became increasingly rare. Masks started to drop, showing the ugly faces of petty nationalist Balkan dictators. The state, meanwhile, was falling apart with the same speed with which the Communist Party was losing its legitimacy.

### Rise of the tribal chiefs

In short, the stage for the current Yugoslav tragedy was set during the 1980s. Then the most important of the future presidents, Slobodan Milosevic, arrived on the scene. The importance of this ruler lies, not only in the fact that he was the first who realized that communism was dead, but also in the fact that he was the first who more or less openly embarked on nationalism. Exploiting the "Serbian national question" as his gold mine, Milosevic promoted a typical totalitarian policy, centered around a myth of national unity and supported by a constant fabrication of enemies against whom "we must unite." Very soon the crisis took on the dimension of a frontal clash, especially when both Slovenia and Croatia succeeded in consolidating their own nationalist positions. Such ethnic turmoil is, of course, not unique in history; neither is it a monopoly of the Balkans. What made the Yugoslav situation so severe, was the fact that events took place amid the sudden vanishing of moral precepts and standards that was prompted by the collapse of a whole architecture of socialist-communist structures. The only system of beliefs available to fill the emerging ideological void in Yugoslavia was nationalism.

In 1990, Communist parties in the republics, under heavy pressure at home and influenced by the Eastern European revolutions of 1989, one by one opened their

doors to political pluralism. By the end of 1990, multiparty elections had been held in all the Yugoslav republics. Nationalists won everywhere: anti-communist nationalist movements in Slovenia and Croatia, national parties in ethnically mixed Bosnia-Herzegovina, nationalist-communists in new clothes in Serbia and Montenegro. At the same time, all present-day leaders of the ex-Yugoslav republics had already consolidated their positions as heads of state. Most importantly, new political authorities (presidents included) gained democratic legitimacy, which the federal state of Yugoslavia had lacked. Attempts made by the federal prime minister, Ante Markovic, and his government to organize federal elections were blocked by both the "separatist" republic of Slovenia and the "unitarian" Serbia.

The promoters of this country's dissolution might be called "the associated nationalists of Yugoslavia" (Milosevic, Tudjman and Kucan being the most important among them). These new leaders and their followers strongly opposed the democratic reconstruction of Yugoslavia itself, because they knew such a reconstruction would have undermined the very basis of their rule. Although (relatively) democratically elected, the presidents (except for the Macedonian president Gligorov and until the beginning of war in Bosnia, his Bosnian colleague Izetbegovic) based their power on the manipulation of irrational nationalist prejudices. Democratic electoral procedures, as applied under Yugoslav conditions, did not prove strong enough to break up the collective pre-political identity that had constituted the hard core of Yugoslav socialism. Socialist monism was simply eclipsed by a kind of nationalist quasi-pluralism. Raw collectivism, dressed in a new quasi-democratic suit, replaced the old collectivism and its worn-out communist suit. In the first elections voters did not choose political programs. The vast majority simply voted against Yugoslavia and for the new communities based on the primacy of the nation. Throughout Yugoslavia national unity became a sacred notion, defining both the state and the individual. The political unit had become, despite ritual invocations of democracy, an organic union of "blood and soil." Consequently, the status of individuals is now determined by birth and virtually every aspect of their lives is defined by national affiliation.

In short, what we have in most parts of the former Yugoslavia is a "social construction of reality," based on

tribal consciousness. Every tribe needs a chief, a strong person capable of speaking and acting for the sake of the tribe. In order to show our faithfulness to democracy, we will build a constitutional facade and will name our leader the president of the republic. Secretly, however, we will put all our trust in him, and he will know that he is absolutely free in representing "our holy cause." Only two agents are active on the political scene: the leader and his body of tribesmen (individuals reduced to a single mass) who are expected to follow the leader with no questions asked. This totalitarian nationalist framework is of the utmost importance for understanding the position and the role of the presidency in the ex-Yugoslav post-socialist states.

True, the ideological backgrounds of these presidents were different: communists who preserved their posts by turning to nationalism (Milosevic, Kucan, Bulacovic); an ex-communist with the prestigious pedigree of having suffered under Tito's regime (Tudjman); a reformist communist who was sent into retirement in the mid-seventies because he had advocated the turn to a market economy (Gligorov). Finally, there is only one who is a genuine non-communist and who never participated in the old power apparatus (Izetbegovic). Politically and ideologically, these different personal histories have not mattered very much, a fact which distinguishes ex-Yugoslavia from most of the other post-socialist systems. For instance, during the elections, only Tudjman emphasized his (recent) anti-communist past. What really counted was the ability of new leaders to use nationalist emotions in order to mobilize mass support. From the very beginning of their rule, they did not act as statesmen with goals beyond their own political success. They have never appeared to be looking for national solutions and, because their rule is based on rising nationalist euphoria, the leaders have spent little time articulating practical political programs or solving real problems.

### **Seducing the mob**

Such a "proverbial appeal to the mob," as Hannah Arendt pointed out, requires prepared ground; it needs people who are somehow ready to be manipulated. It should be recalled here that a collectivist political culture had already existed in Yugoslavia for almost half a century. For decades we had been taught to live collectively. We were accustomed to believing that someone else would think

for us and shepherd us. For a typical post-socialist individual, liberty is not only the fulfillment of an old dream, it also means the loss of an old security. It is risky and even frightening. To become free after decades of collectivism means to step into an empty space: one must make decisions on one's own and assume responsibility for the results. The Yugoslav people, at any rate, did not pass this test. After the collapse of communism, torn between the possibility of a new society based on human freedom and the security of a nationalist umbrella, they opted cruelly for the latter. The new creed preserved the mental coordinates of one-party consciousness. Minorities have reoccupied the role of one-time political dissidents. But this move did not bring the security that members of majority groups had expected. There is only one way of pursuing nationality-based security in a multi-national state: war against "the other" based on a practical application of Carl Schmitt's "friend-foe" opposition. Or, to mention another great political philosopher: with the introduction of ethnocracy in its republics, the second Yugoslavia started to live in the anarchic state described in Hobbes's *Leviathan*. In the state of nature, with its continual fear and danger of violent death, "the life of man is solitary, poor, nasty, brutish and short." In order to escape this unbearably chaotic state, the Yugoslav nations entrusted their destinies to chosen leaders or perhaps saviors. As we have already pointed out, these men were elected precisely because they were considered to be the best representatives of a nationalist paranoia (paranoia being re-christened as the "sacred national interest"). This primary basis of their political legitimacy framed not only their personal futures, but also the political future of the whole state, opening, at the same time, the way to war. Leaders—supported by a mass media devoted to the manufacture of hatred, and featuring various quasi-academic re-interpretations of history volunteered by unprincipled intellectuals—provoked fears drawn from the selective reading of the past. In this situation, they were only too ready to point a finger of blame for the country's plight at each other, endlessly quarreling about false dilemmas, with federation versus confederation being the most popular.

Were there any ways to save Yugoslavia and avoid the inexpressible tragedy of civil war? Yes and no. When the threat of war became apparent even to politicians, our national chiefs—the six politicians who were and have

remained presidents—started touring Tito's villas, negotiating "the political future of the country." They were expected to reach a minimal consensus on the new political shape of Yugoslavia. Unfortunately, each leader arrived at the negotiation table as the representative of an already established national consensus. In other words, they all came to the talks with a bag full of predetermined, unchallengeable, unarguable positions, which had been declared to be in the general interest of each separate national group. These pre-established forms of national consensus completely blocked any possibility for genuine communicative efforts and therefore hindered the political art of the possible, an art which presupposes compromise, a willingness to respect the demands of the "other side" as legitimate and to relinquish one's own most extreme demands. Yet, in another sense, Yugoslavia's leaders had no real choice. Because they were supposed to be "strong men" acting on behalf of the "holy goals," any demonstration of a willingness to compromise would have immediately signaled betrayal to their followers.

Observable willingness to engage in real negotiations would have cost these leaders their aura of holiness and thus their popular support. The presidents were expected only to raise high their national flags and to hold them steady (G. Machesich, "Yugoslavia: Shaping Up or Breaking Down?", *Tallahassee Democrat*, Sept. 15, 1991, p.4.) By way of example, their task was to invoke the past of the "heavenly Serbian nation" whose members "have to live in one state" or to convince all Croats that the time has finally come to revive "a one thousand-year-long tradition of Croatian statehood" and to get rid of "Serbian domination." This romantic glorification of the past was accompanied by a morbid cult of the dead. Old mass graves from the Second World War were excavated and bones were counted. It was necessary to unearth in advance not only the political, but also the ethical, justification of the war against "the other," by insisting that some time ago a great injustice had been committed against "us" and that now we have the right to restore justice.

War came as the logical, almost inevitable, consequence of such a course of events. The (anti)political manner in which the presidents ruled their nation-states proved important for gaining popular acquiescence in the war. Here we are approaching a solution to the mystery formulated at the beginning of this article: How

have the presidents managed to survive politically after being implicated in such a tragedy? The answer we propose is that war was not only the consequence of their primary nationalist legitimacy. For them, war was, and remains, the source of their legitimacy. Once they justified war; now war justifies them. For leaders who had always insisted that their nations were besieged by enemies, war came simply as a proof that they were right, thus strengthening their positions.

### The irrelevance of written constitutions

Concerning the constitutional aspects of the position and the role of presidencies in ex-Yugoslav republics, one hardly needs to say that, in a civil war, conflicts are rarely resolved in a constitutional way. Furthermore, conflicts among new neighboring states decisively influence processes of political stabilization within each country. Although all the new political communities of the former Yugoslavia hurried to gain democratic legitimacy based on newly adopted constitutions, they are still very far from constitutional democracies (with the possible exception of Slovenia and Macedonia). Human rights, though solemnly proclaimed in the new constitutions, have been violated in the most brutal way in almost all of these countries. The rule of law has been reduced to an expression that political authorities often employ when they feel the need to justify repression. The most important political processes take place beyond the constitutional frameworks, which means that political power is in practice neither divided nor limited. Heads of state are the main political actors on both the domestic and international scene (Where they play their role in the "process of solving of the Yugoslav crisis"), very often regardless of their formal constitutional powers. Yet to say, in the light of all of these anti-constitutional practices, that constitutional arrangements are of no importance at all, would probably be an exaggeration. If we temporarily leave aside the complicated question of democracy, there are two basic types of political systems among ex-Yugoslav republics: parliamentary and presidential regime. The latter has been established in Serbia (the constitution of 1990) and in Croatia (the constitution of 1991), enabling the "fathers of their nations" (Milosevic and Tudjman, respectively) to claim their faithfulness to the constitution while at the same time concentrating enormous powers in their own hands. The main difference between the

constitutional systems of Serbia and Croatia, on the one hand, and the constitutional systems of the other republics, on the other, lies in the fact that the founding fathers of the constitutions of Serbia and Croatia openly framed regimes which built upon previously existing nationalist-totalitarian trends. Both constitutions introduced basically the same presidential system apparently derived from the same source, the French Constitution of 1958, as amended in 1962. By giving great powers to the president of the Republic (and which was criticized in the French legal and political literature as a "suit tailored according to fit one man"), writers of these constitutions have enthroned their Serbian/Croatian de Gaulles. Under Balkan conditions of tribal war and the almost complete lack of democratic political culture such a political system has proved to be less useful for consolidating democracies than for building dictatorships. Both the Serbian and the Croatian presidents are directly elected, which further strengthens the populist basis of presidential rule (since the president is now responsible "only to his people"), and reduces possibilities for an efficient system of checks and balances, thus weakening democratic control of presidential power. Like Latin American dictatorships, which often (mis)use the U.S. model of a presidential system, the Serbian and Croatian constitutions today are mere façades which hide the real nature of these regimes. (Similarities between Serbia and Croatia do not end at the constitutional level. Further comparative analysis of economic and political processes and ideological matrixes of both regimes would show an extremely high degree of similarity—one of the roots of the Yugoslav tragedy is a sick symbiosis of the Serbian and Croatian totalitarianism.)

Similar conclusions may hold true for the so-called "Third" (Federal Republic of) Yugoslavia and its constitutional system. The decision to found the Federal Republic of Yugoslavia was officially proclaimed by a rump parliament of a non-existent state. In other words, remaining communists (consisting of Serbs and Montenegrins) in the Parliament of an already non-existent SFR of Yugoslavia decided to create a new state under the old name, to announce the end of communism and to introduce democracy, all by a decree that they summarily adopted and called a constitution. This "constitution" was prepared secretly on the Zabljak mountain in Montenegro, and from these heights came down a

new state with new rules of the game.

The rules are simple. First, because we have a presidential system in Serbia, the federal state will be organized according to the principle of parliamentarianism. Purists might say that presidential rule in one of the federal units could easily threaten the stability of the union. But the country is too small to accommodate two kings, and a parliamentary system is convenient because the head of the federation has only representative functions. Second, a federal government provides some center of authority, but in order to prevent this government and its prime minister from becoming too powerful, all protective mechanisms usually considered essential elements of a parliamentary system have been removed. For example, a simple vote of no confidence ejects officeholders who might dare to think independently.

Milosevic's feudal understanding of politics undergirds the foundations of the third Yugoslavia. For him, political power is inseparable from the violent seizure of new territories. Because further territorial expansion in Croatia and Bosnia-Herzegovina under the slogan of the protection of Serbia's national interest had to be postponed, Serbia continued its expansion by annexing the name of Yugoslavia and allying itself with Montenegro. It is no surprise, in this context, that the political and legal system of Serbia is openly opposed to the federal constitutional system.

### Winners and losers

Some would say that in the tragic Yugoslav war there are no winners. They are wrong. The winners are the presidents followed by their camarilla. They and they alone have won. All the others—the dead, the dislocated and those who still risk action in the name of liberation—are desperate losers. It is a sad fact that the many people in ex-Yugoslavia who continue to suffer from social, economic, or moral poverty are still not ready to open their eyes and face the consequences of the "holy war" into which they were thrust. Although their leaders have failed, not only to solve real problems, but also to fulfill any of their solemn promises (except that of glorious death) many people remain ready to believe them and to follow their orders. The amnesia-prone collective memory of the populace enables the rulers to govern by means of blatant lies. The threat of physical repression is reserved for those who have perceived the real nature of the regime. (This refers

primarily to the present Serbian regime, whose characteristics are well-known to the authors.) In such conditions there are many people who think that the only important thing to do is to survive, regardless of the price. In the depths of apathy and despair, they see no other solution than to hide in their homes, hoping that the horsemen of the Apocalypse will not come crashing through the door.

Civilization has been rejected for love of barbarity. The consequences of this war will be felt by the many generations condemned to a life of misery by the present nationalist leaders and their loyal followers. The world

community will scorn us or feel sorry for us. Those citizens who are not infected by nationalist blindness and who are convinced that silence today is profoundly amoral will no doubt continue to fight for democracy, although there is no hope that we will have anything like democracy tomorrow, in two months or in two years. In thinking about the present situation in Serbia, however, one thing is certain: The instruments that are now being used by the Serbian regime cannot be successfully controlled in the long run. This is not an optimistic conclusion. The crash of the regime will be frightful, and many innocent people will be buried in its ruins.

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## Table of Presidential Powers in Eastern Europe

*Christian Lucky*

The following table diagrams the constitutionally prescribed powers of twelve East European presidents. Thirty-eight questions are asked of the constitutions in the region in order to generate the analytic categories that comprise the matrix of the chart. Summaries of a given power allocated to each president appear in the appropriate cell followed by citations to the relevant constitutional provisions.

Certain categories are starred (\*). If the constitution allocates this starred power to the president alone, the entry appears in the same format as a non-starred category (description of power with relevant provision following). If, however, the power is shared by the presi-

dent with another institution or is allocated to another institution but not to the president, the institution to which the power is allocated is placed in brackets, e.g. [Parliament].

Other categories are double-starred (\*\*). The intention here is to provide a more-or-less comprehensive summary of how the various constitutions describe the sharing of different powers. Rather than simply indicating that an institution, e.g. [Government], shares a power or right with a president, the detailed organization of joint power is succinctly described. Finally, a blank cell in any of the categories indicates that the charter in question did not address that power or right.

	ALBANIA	BULGARIA	THE CZECH REPUBLIC
Candidacy Requirements	Citizen, At Least Thirty-Five Years Old, Who Has Resided In Albania At Least Ten Years §65	Citizen By Birth, At Least Forty Years Old, Who Is Qualified To Be Elected To Assembly And Who Has Lived In Country For The Five Years Preceding The Election §93(2)	Citizen, At Least Forty Years Old, With Right To Vote §57(1)
Compatibility Requirements	Office Incompatible With Any Other Public, Party Or Private Function §68	Shall Not Serve As Member Of National Assembly Or Engage In Any Other State, Public Or Economic Activity, Nor Participate In The Leadership Of Any Political Party §95(2)	Office Incompatible With The Offices Of Deputy, Senator Or Judge §22(1)
Nomination Requirements			At Least Ten Deputies Or Ten Senators §58(1)
Electoral Body	Parliament And A Designated Electoral Body §66	Citizensry §93(1)	Deputies And Senators §58(2)
Required Mandate For Election	First Round: Majority, Second Round: Plurality §66	First Round: Majority Of Electorate With At Least Half Of Eligible Voters Casting §93(3); Run-Off Of Top Two: Majority Vote Cast §93(4)	First Through Third Rounds: Majority §58(2); No Candidate Elected In Third Round, New Elections Held §58(8)
Length Of Term	Five Years; Term May Be Extended Due To War Or Natural Disaster §67	Five Years §93(1)	Five Years §55
Term Limits	Two Terms §67	Two Terms §95(1)	Two Terms §57(2)
Vice-President?		Yes, §92(2), §104	
Call Elections To Assembly?		Schedules Elections For The National Assembly §98(1), §102(3)(6); Must Call Within Two Months After Electoral Term §64(3); Schedules Elections To The Grand National Assembly §160(3); Schedules Elections To National Assembly Following Expiry Of Grand National Assembly §162(3)	Must Call Within Thirty Days After Electoral Term §17(1), §63(1)(f); If Assembly Of Deputies Is Dissolved, Must Call Elections Within Sixty Days After Dissolution §17(2), §63(1)(c)
Appoint Government?	Nominates PM For Parliamentary Approval §77; Appoints And Removes Ministers Based Upon Proposal Of PM §78; If No Confidence, May Nominate New PM (Or Dissolve Parliament) §81	Entrusts Formation Of Government To PM-Designate Nominated By Party Holding Highest Number Of Seats; If Consultations Are Unsuccessful, Entrusts PM-Designate From Party With Second Highest Number Of Seats; Should Consultations Prove Unsuccessful Entrusts PM-Designate From A Minority Party; Should These Consultations Prove Unsuccessful, Asks Assembly To Elect PM-Designate §99	Two Opportunities To Appoint PM And Government That Can Win Confidence Of Deputies §68(2), §68(4), §62(a); Shall Appoint Members Of Government Based On Nomination Of PM §68(5)
Recall Government?			Recalls Ministers On Proposal Of PM §74, §62(a), §6(5); Recalls Government That Is Obligated To Resign Due To Lack Of Confidence §72, §75
Relationship With Cabinet			President Has Right To Meet With Government And To Request Reports From Government §64(2)
Appointments Made Unilaterally (Not Including Government, Foreign Service And Judiciary)		Appoints Staff Of The Office Of The Presidency §102(3)(7)	Appoints Members Of Council Of Czech National Bank §62(k)
Appointments Requiring Approval Of Other Office Or Institution (Not Including Government, Foreign Service And Judiciary)	General Prosecutor Appointed Upon Proposal By PM §85	President Shall Appoint And Dismiss From Office State Officials As Established By A Law §98(7)	Appoints President And Vice-President Of Supreme Auditing Office On Nomination Of Deputies §62(j), §97(2)
Control Over State Agencies*	[Government §80, §84]	President Appoints/Dismisses State Officials As Established By A Law §98(7); [Council Of Ministers §105(2), §115, National Assembly §116(2); Judiciary §120(1)]	[Parliament §79(3), §80]



	ALBANIA	BULGARIA	THE CZECH REPUBLIC
Referendum Powers *		Schedules Referenda §98(1)	A Constitutional Act May State Situations When The People May Exercise State Authority Directly §2(2)
Convene Assembly *	May Call Extraordinary Session §50	May Convene National Assembly At Will §78(3); Must Convene Within One Month Following Assembly Elections §75	Must Convene Within Thirty Days After Elections §34(1), §62(b); May Call Extraordinary Sessions §33(3)
Dismiss Assembly *	May Dissolve Parliament On Proposal Of Prime Minister §71; May Dissolve In Case Of No Confidence (Or Propose New PM) §81; Shall Dissolve If Proposed PM Is Rejected Twice §77	Dismisses When No Confidence Can Be Gained In A Newly Appointed Government-Designates §99(5)	May Dissolve Assembly Of Deputies If The Assembly Does Not Give Confidence Vote To Newly Appointed Government §35(1)(a), §62(1); May Dissolve Deputies If Government Fails To Reach A Decision Within Three Months On A Government Bill §35(b); May Dissolve Deputies If Assembly Is Adjourned For A Longer Period Than Permissible §35(c); May Dissolve Deputies If Quorum Has Not Been Formed Within Three Months §35(1)(d)
Right To Address Assembly	Yes §76	Yes §98(2), §98(14)	Yes §64(1)
Right To Propose Legislation			Yes §41(2)
Right To Delay Promulgation Of A Law	Law Is Automatically Enacted If President Has Not Exercised Veto Within Fifteen Days §60	Seven Days §101(3)	Promulgation Procedure To Be Established By Act Of Parliament §52
Veto Power (Override Requirements)	Yes, Override: 2/3 Majority §61	Yes §101(1), Override: More Than Half Of All Members §101(2)	Yes, With The Exception Of Constitutional Acts §50(1), Override: Absolute Majority Of All Deputies §50(2), §62(h)
Appoint Constitutional Court **		President Appoints One-Third Of Justices With Countersignature §147(1), §102(2)	With Senate Consent, Appoints Justices, Chairman And Vice-Chairman §62(c), §84(2) [Senate §84(2)]
Appoint Highest Appellate Court **	President Nominates Chief Justice §89; Parliament §89	Justice Appointed By Supreme Judicial Council §129(1); Chairman Of Court Of Cassation, Chairman Of Supreme Administrative Court Appointed By President On Motion From Supreme Judicial Council §129(2)	Appoints Chairman And Vice-Chairman From Among Judges §62(f)
Appoint Professional Judges **	President Nominates Judges §90; [Parliament §90]	[Supreme Judicial Council §129(1)]	Appoints Judges With Countersignature §63(1)(d), §93(1)
Judicial Standing			Act Of Parliament Shall Determine Who May Initiate Proceedings Before Constitutional Court And Other Courts §88(1), §90
Powers Over Foreign Policy **	Sign Treaties And International Agreements With Countersignature §72; Agreements/Treaties That Require Changes In Legislation, Grant Amnesty, Declare A State Of War Or Emergency Or Call For A Referendum Must Be Ratified By Parliament §64; Appoints And Receives Diplomatic Representatives With Countersignature §72	Represents The State In Its International Relations §92(1); Council Of Ministers Heads The Implementation Of The State's Foreign Policy §105(1); President Concludes International Treaties In The Circumstances Established By The Law With Countersignature §98(3), 102(2); National Assembly Ratifies Or Denounces By Law All International Instruments Which Are Political, Military, Contain Financial Obligations, Envisage Participation In International Organizations, Concern Fundamental Human Rights, Require The Action Of A New Law, Change Borders §85; On Motion From Council Of Ministers, Appoints And Dismisses Diplomatic Missions And Receives The Credentials Of Foreign Representatives §98(6)	Represents State With Countersignature §63(1)(a); Negotiates And Ratifies Treaties With Countersignature §63(1)(b); Parliament Must Consent To Treaties Concerning Human Rights And Fundamental Freedoms, Political Treaties, Economic Treaties And All Other Treaties Requiring The Implementing Of A Law §49(2); Appoints/Summons Heads Of Missions With Countersignature §63(1)(e); Receives Heads Of Missions With Countersignature §63(1)(d); Constitutional Court Decides Upon The Constitutionality Of A Treaty That Is Binding §87(1)

	ALBANIA	BULGARIA	THE CZECH REPUBLIC
Emergency Powers**	Must Consent To State Of Emergency With Countersignature §60; May Extend Term Of Parliament In State Of Emergency With Countersignature §49	Assembly Declares State Of Emergency On Motion From President Or Council Of Ministers §84(12); When Assembly Not In Session, Declares State Of Emergency With Countersignature And Requiring Subsequent Assembly Approval §100(5), §102(3)	
Martial Powers**	Commander-In-Chief §74; Promotes Officers To General With Countersignature §73; Gives Decorations And Titles With Countersignature §73	Supreme Commander-In-Chief Of The Armed Forces §100(1); Presides Over National Security Council §100(3); Proclaims Mobilization On A Motion From Council Of Ministers §100(4); Proclaims War When National Assembly Not In Session With Countersignature With Subsequent Assembly Approval §100(5); Appoints And Dismisses High Command With Countersignature §100(2), §102(2); Council Of Ministers Exercises Guidance Over The Armed Forces §105(1)	Supreme Commander Of Armed Forces With Countersignature §63(1)(c), §63(3); Commissions And Promotes Generals With Countersignature §63(1)(g); Confers Decorations With Countersignature §63(1)(h); Parliament May Declare War In Case Of Attack Or If Required By Treaty §43(1); Armed Forces May Be Sent Out Of Territory Only By Consent Of Both Chambers §43(2)
Police Powers**	Appoints General Prosecutor Upon Nomination By PM §85; Criminal Prosecution Is Exercised Under The Authority Of The Minister Of Justice §85	When Assembly Not Convened, Declares Martial Law With Countersignature And Requiring Subsequent Assembly Approval §100(5), §102(3); Investigating Bodies Under Judicial Branch §128; Chief Prosecutor Appointed By President On Motion From Supreme Judicial Council §129(2), §133	
Control Over Citizenship*	May Grant Citizenship Or Permit Its Renunciation According To Law With Countersignature §73 [Parliament §73]	Grants, Restores, Relieves From And Withdraws Bulgarian Citizenship §98(9); Assembly §25(6)	[Parliament §12(1)]
Power To Pardon*	Yes, With Countersignature §73	Yes, With Countersignature §98(11), §102(2)	Yes §62(g); Amnesty Powers With Countersignature §63(1)(j), §63(3)
Interim Powers	When Parliament Is Not In Session And Cannot Convene, The President Must Give Consent To All Decree Laws Issued By The Government §83	When No Confidence Is Gained In A Newly Appointed Government-Designates, May Appoint Caretaker Government Until New Elections §99(5), §99(7)	
Requirements For Forced Removal From Office	Grounds: Violations Of The Constitution Procedure: Motion By 1/4 Of Deputies Decision By 2/3 Deputies §69	Grounds: Lasting Incapacitation Caused By Grave Illness §97(1)(2); High Treason, Violation Of The Constitution §103(1); Procedure: Motion On One-Fourth Of All Members Of Assembly, Carried By Two-Thirds Of The Members; Constitutional Court Tries Case §103(2), §103(3)	Grounds: High Treason, Procedure: Senate Brings Charge, Constitutional Court Adjudicates §65(2); Representative Assembly And Senate May Determine That President Is Unfit To Perform Duties, With Constitutional Court Consent §66, §87(1)(h)
Amending Powers		May Introduce Amendment Bill §154(1), §150(1)	
Local Powers	Upon Proposal Of PM, May Dissolve Local Government Bodies §88; May Fix Date Of Elections Of Organs Of Local Government With Countersignature §73	Schedules Elections For Bodies Of Local Self-Government §98(1); The Central Bodies Of State Shall Exercise Control Over The Legality Of The Acts Of The Bodies Of Local Self-Government Only When Authorized To Do So By Law §144; On Motion From Council Of Ministers, Determines The Borders Of Administrative Territorial Units And Their Centers §98(5)	The State May Intervene Only In The Manner Provided By An Act Of Parliament §101(4)
Sweeping Clause(s)	No Act Of The President Is Valid Without The Countersignature Of The Prime Minister, Except Dissolution Due Failure To Form Coalition (§77) And No Confidence (§81) §75	The President's Decrees Shall Be Countersigned By The Prime Minister Or The Minister Concerned §102(2)	Possess All Powers That Acts Of Parliament So Provide With Countersignature §63(2)
Description	Head Of State §65	Head Of State Who Embodies The Nation §92(1)	Head Of State §54(1); Government Is Highest Organ Of Executive Power §67(1)

	ESTONIA	HUNGARY	LATVIA
Candidacy Requirements	Citizen By Birth. At Least Forty Years Old §79	Enfranchised Citizen, At Least Thirty-Five Years Old §29/A(2)	Must Be Forty Years Old §37
Compatibility Requirements	On Assuming Office, The Authority And Duties Of The President In All Elected And Appointed Capacity Cease And He Or She Must Suspend Membership In Political Parties §84	Office Incompatible With Any Other State, Social, Or Political Office §30(1); May Not Pursue Any Other Remunerative Occupation And Must Not Accept Any Other Fees §30(1); No Member Of Parliament May Become President §20(5)	Office Incompatible With All Other Offices §38
Nomination Requirements	One-Fifth Of The Riigikogu §79	Fifty Members Of Parliament §29/B(1)	
Electoral Body	Rounds One Through Three: Riigikogu §65(3); Round Four: Electoral Body §79; Fifth Round: Electoral Body §79	Parliament §19(3)(k)	Saeima §35
Required Mandate For Election	Rounds One Through Three: Two-Thirds Majority Of The Complement Of The Riigikogu §79; Round Four: Majority §79; Round Five: Plurality §79	First And Second Rounds: Two-Thirds Vote Of The Members Of Parliament §29/B(2), §29/B(3); Third Round: Majority Of Ballots Cast §29/B(4)	Majority Of Not Less Than Fifty-One Votes §36
Length Of Term	Five Years §80	Five Years §29/A(1)	Three Years §35
Term Limits	Two Terms §80	Two Terms §29/A(3)	Cannot Hold Office For Longer Than Six Consecutive Years §39
Vice-President?			
Call Elections To Assembly?	Following No-Confidence, May Declare Early Elections On Proposal Of Government §97, §78(3); Should A Draft Law Not Receive Majority On Referendum, Shall Declare Early Elections §105, §78(3); Declares Early Elections If The Draft Budget Has Not Been Adopted Within Two Months Of The Beginning Of The Budget Year §119, §78(3); Early Elections If New Government Cannot Be Formed §89	Must Call Within Three Months After Electoral Term Or Dismissal Of Parliament §30/A(d), §28(6)	
Role In Appointing Government	Has Three Attempts To Nominate A PM Who Can Form A Government §89, §78(14); Changes Composition Of Government On Proposal Of PM §90	Parliament Elects PM §19(3)(k); Ministers Proposed By PM And Appointed By President §33(4)	Government Formed By A Person Entrusted By The President §56
Recall Government?	Changes Composition On Proposal Of PM §90, §78(14); Discharges Government When New Government Assumes Office §92	Minister Proposed By PM And Relieved By President With Countersignature §33(4), §30/A(2)	
Relationship With Cabinet			May Call Cabinet Meeting And Preside Over Session §46 (§53)
Appointments Made Unilaterally (Not Including Government, Foreign Service And Judiciary)			
Appoints Requiring Approval Of Other Office Or Institution (Not Including Government, Foreign Service And Judiciary)	President Nominates Chairman Of The Bank Of Estonia, Auditor General And Legal Chancellor §65(7)	All Following With Countersignature: According To Separate Law, Appoints State Secretaries And Ombudsmen §30/A(1)(h); According To Separate Law, Appoints President/Vice Of Hungarian National Bank §30/A(1)(i), §32/D(2); Professors And Rectors Of Universities §30/A(1)(i); Confirms President Of Hungarian Academy Of Sciences §30/A(1)(i); President Proposes Chief Prosecutor To Parliament §52(1)	
Control Over State Agencies*	[Government §87]	[Government §35(1)(b), §35(1)(c), §37(2), §35(4)]	[Government §58]

	ESTONIA	HUNGARY	LATVIA
Referendum Powers *	[Legislative]	May Make Motion For Referendum § 30/A(1)(e) [Parliament § 19(5)]	May Call Referendum On Issue Of Dissolution Of Saeima §48; If Referendum Fails, President Must Resign §50 [Saeima §72]
Convene Assembly *	President Must Convene Riigikogu Within Ten Days Following Elections §66, §78(4). President May Demand Extraordinary Sessions Of The Riigikogu §68, §78(5)	Parliament Must Be Convened Within Thirty Days Following Election §22(2). President May Call Extraordinary Sessions §22(3); May Convene Parliament During State Of War Or Emergency §29/A(2)	May Call Extraordinary Sessions §20 [With Countersignature / §53]
Dismiss Assembly *	Shall Dissolve After Four Attempts To Form A New Government Have Been Made §60, §89, §78(3); In the Case Of No Confidence, May On Proposal Of Government Declare Early Elections §97. Shall Declare Early Elections If Referendum On Draft Law Fails §105; If Riigikogu Has Not Adopted Budget Within Two Months Of The Beginning Of Budget Year, Shall Declare Early Elections §119	President May Dismiss Parliament Once Each Session For No More Than Thirty Days §22(4); May Dissolve Parliament If Confidence Is Revoked From Government On Four Occasions Within 12 Months §28(3)(a); May Dissolve Parliament If PM Candidate Appointed To Serve During An Interim Does Not Receive Confidence Vote Within 40 Days	May Propose Dissolution Of Saeima. Proposal Put To Referendum. If Referendum Passes By Vote Of One-Half, Saeima Dissolved. If Referendum Fails, President Must Resign §48, §50
Right To Address Assembly		Yes §30/A(1)(c)	
Right To Propose Legislation		Yes §25(1), §30/A(1)(d)	Yes §47, §53, §65
Right To Delay Promulgation Of Law	Fourteen Days §107		Between Seven And Twenty-One Days §69; May Delay Promulgation Of Act For Two Months With Countersignature §72, §53
Veto Power (Override Requirements)	Yes, Override: Simple Majority §107		
Appoint Constitutional Court **		[Parliament § 19(3)(k), §32(a)(4)]	[Saeima §84]
Appoint Highest Appellate Court **	President Nominates Chairman Of National Court §65(7) [Legislative, Judicial §65(7)]	Parliament Elects, President Appoints President Of Supreme Court With Countersignature §48, §30/A(2)	[Saeima §84]
Appoint Professional Judges **	Appoints Judges On Proposal Of National Court 78(13) [Legislative, Judicial §65(8)]	Appoints As Prescribed By Law With Countersignature §48(2), §30/A(2)	[Saeima §84]
Judicial Standing	President May Recommend Law To Constitutional Court §107; Everyone Has The Right To Appeal To A Court Of Law If His Or Her Rights Have Been Violated §15	At Constitutional Court §32/A(3)	
Powers Over Foreign Policy **	President Represents Estonia §78(1); Government Implements Policy And Organizes Relations With Foreign States §87(1); Procedures For Foreign Policy With Other States Shall Be Established By Law §121; Riigikogu Shall Ratify And Denounce Treaties Which Amend State Borders, Require The Adoption Of Laws, Involve Joining An International Organization, Oblige Estonia Militarily Or Financially §121, §65(4); Appoints/Recalls Diplomatic Representative On Government Motion §78(2); Confers Diplomatic Ranks §78(15); Riigikogu Presents Statements To Foreign Nations And International Organizations §65(11)	Represents State §30/A(1)(a); Concludes International Treaties With Countersignature §30/A(1)(b), §30/A(2); Parliament Ratifies Treaties That Are Of Outstanding Significance §19(2)(f); President Must Gain Prior Approval Of Parliament Before Concluding Treaties Which Require Parliamentary Ratification §30(1)(b); Treaties Concerning National Defense Must Be Confirmed By Law §40/C(2); Accredits Foreign Diplomats With Countersignature §30/A(1)(c); Government Participates In The Determination Of Foreign Policy And Concludes International Agreements §35(1)(a)	Represents State §41; Saeima Must Ratify Treaties Dealing With Questions To Be Settled By Legislation §68; Carries Out Decision Of The Saeima Regarding The Ratification Of International Treaties With Countersignature §41, §53; Accredits Representative Abroad With Countersignature §41, §53; Receives Accredited Foreign Representatives With Countersignature §41, §53

	ESTONIA	HUNGARY	LATVIA
Emergency Powers**	May Propose To Riigikogu That A State-Of-Emergency Be Called §129, 65(14), 78(17); Regulations For A State-Of-Emergency Shall Be Determined By Law §129; Government May Declare Emergency In Case Of Natural Disasters And Infectious Diseases §87(8)	Parliament Declares States Of Emergency §19(3)(h)(i), §19(4); When Parliament Is Unable, President May Call State Of Emergency, With Subsequent Parliament Approval §19/A, §19/A(3), §19/A(4), §19(c)(1); National Defense Council Decides On Deployment Of Forces During A State Of Emergency §19/B(1); National Defense Council, Over Which The President Presides, May Pass Decrees And May Suspend The Force Of Certain Laws During An Emergency §19/B(4); During An Emergency, Measures Defined In A Separate Law Are Introduced By The President §19/C(2); Parliament Or The National Defense Council May Suspend Any Emergency Decrees Issued By The President	Cabinet May Declare State Of Enforced Defense §62
Martial Powers**	President Is The Supreme Commander Of Estonian Defense §78(16); Presents Proposal To Riigikogu On Declarations Of State Of War And On Orders Of Mobilization And Demobilization §78(17); Declares State Of War In Cases Of Armed Attack §78(18); Proposes Commander-In-Chief To Riigikogu §65(7), §78(11); Riigikogu Declares War Or Mobilization On Motion By The President §65(15), 78(17); Composition Of National Defense Council Shall Be Determined By Law §127; Riigikogu May Ask For Explanations From Commander-In-Chief §74; President Appoints And Recalls Officers On Proposal Of Commander Of Defense Forces §78(14); Organization Of Defense Forces To Be Determined By Law §126; Confers Military Honors §65(15)	Commander-In-Chief §29(2); Presides Over National Defense Council §19/B(2), §40/B(3); Parliament Decides On The Declaration Of War And Concluding Of Peace §19(3)(e), §19(4); Parliament Decides On The Deploying Of Forces Outside Or Inside The Country §19(3)(i), §40/B(1), §49/B(2), §40/C; Government Supervises Operation Of Armed Forces §35(1)(h); When Parliament Is Unable, May Call State Of War, With Subsequent Approval §19/A, §19/A(3), §19/A(4); When Parliament Is Unable To Meet, The President Shall Decide Upon The Deployment Of Forces, With Subsequent Approval §19/C(1), §19/B(4); Appoints/Promotes Generals According To Law With Countersignature §30/A(1)(i), §30/A(2); Confers Awards §30/A(1)(i)	Chief Of Armed Forces §42; Declares War On Decision Of Saeima With Countersignature §43, §53; May Take Steps Indispensable To The Defense Of The Country If Under Attack Or When Another Nation Has Declared War With Countersignature And With Subsequent Saeima Approval Required §44, §53; Appoints Commander-In-Chief During Time Of War With Countersignature §42, §53; Saeima Decides On Strength Of Armed Forces During Peace §67; In Cases Of Armed Attack, Cabinet May Claim A State Of Forced Defense §62
Police Powers**	Initiates Criminal Charges Against Legal Chancellor §78(20)	Government Supervises Police §35(1)(h); Parliament Appoints Chief Prosecutor On Recommendation Of President §19(3)(k), §52(1); Government, With The Minister Of Interior Ensure The Control Of The Operation Of The Authorities §35(1)(d)	Saeima Appoints State Controllers §88
Control Over Citizenship*	[Parliament §8]	Decides Citizenship With Countersignature §30/A(1)(i)	
Power To Pardon*	Yes §78(19)	Yes, With Countersignature §30/A(1)(k)	Yes, With Countersignature In Cases Where Another Mode Of Pardon Is Not Available §45, §53
Interim Powers	Should The Riigikogu Be Unable To Convene, President Shall Issue Edicts Countersigned By The PM And Subsequently Approved By The Riigikogu §109		On Dissolution Of The Saeima, The Saeima Shall Remain Sitting Until The New Saeima Is Elected, The President Calls And Sets The Agenda For These Sitzings With Countersignature §49
Requirements For Forced Removal From Office	Grounds: Incapacitation §83; May Be Charged With Legal Offense On Proposal Of Legal Chancellor With The Consent Of The Riigikogu §85; Authority Terminates On Conviction Of Offense §82(2)	Grounds: Incompatibility, Procedure: Two-Thirds Vote By Members Of Parliament §31(1), §31(2); Grounds: Violation Of Constitution Or Other Laws §31(4), Procedure: Motion By One-Fifth Members, Two-Thirds Carries, Constitutional Court Adjudicates §31/A(5)	Grounds: None Stated, Procedure: One-Half Of Saeima Motion, Two-Thirds Carries §51; President May Be Prosecuted With The Sanction Of The Saeima By A Majority Of Not Less Than Two Thirds Of Its Members
Amending Powers	President May Initiate Amendments To The Constitution §78(8), 103(5), §161		Electors Submit Plan To President, President Shall Submit Plan To Saeima §78
Local Powers		President Sets Date Of General Elections Of Local Authorities §30/A(d)	

	ESTONIA	HUNGARY	LATVIA
Sweeping Clauses:	The Riigikogu Shall Resolve All Issues Of Government Which, According To The Constitution Are Not Resolved By The President Of The Republic. The Government Of The Republic, Other State Bodies Or Local Government §65(16)	Parliament Ensures The Constitutional Order Of Society And Determines The Organization, Orientation And Conditions Of Government §19(2); President Decides All Affairs Separate Laws Have Referred To His Competence With Countersignature §30/At 1(m)	
Description Of Office	President Is The Head Of State §77. Executive Power Shall Be Held By The Government §86	Head Of State §29(1)	

	LITHUANIA	POLAND	ROMANIA
Candidate's Requirements	Citizen By Birth, At Least Forty Years Old Who Has Lived In Lithuania For The Three Years Prior To The Election §78	Enfranchised Citizen Who Is At Least Thirty-Five Years In Age §29(5)	
Compatibility Requirements	No Party Activities §83; No Other Remuneration §83; No Other Office §83	Office Incompatible With All Other Offices §31	No Party Membership §84(1); No Other Public Or Private Position §84(2)
Nomination Requirements	Signatures Of Twenty-Thousand Voters §79		
Electoral Body	Citizensry §78	Citizensry §29(1)	Citizensry §81(1)
Required Mandate For Election	First Round: Majority §81; Second Round: Plurality §81	First Round: Majority §29(2); Second Round: Plurality §29(3)	Majority On First Round §81(2); Plurality In Run-off §81(3)
Length Of Term	Five Years §78	Five Years §29	Four Years §83(1); Extended In Case Of War Or Disaster §83(3)
Term Limits	Two Terms §78	Two Terms §29(2)	Two Terms §81(4)
Vice-President?			
Call Elections To Assembly?	President May Call Pre-Term Elections If: The Seimas Fails To Adopt A Decision On The New Program Of The Government Within Thirty Days Of Its Presentation Or If The Seimas Twice Disapproves Of The Government Program Within Sixty Days Of Its Initial Presentation §58(1). On the Proposal Of the Government, If The Seimas Expresses Direct Non-Confidence In The Government §58(2); By 3/5 Majority, Seimas May Oppose Dissolution Under §58(2). Pre-Term Election For President Results §86	Must Call Within One Month After Electoral Term §4(2); Must Call Elections No Sooner Than Three And No Later Than Four Months From Date Of Dissolution §4(6)	
Roll In Appointing Government	Appoints PM With Approval Of Seimas §84(5); Appoints Ministers With Approval Of PM §84(9)	President Makes First Nomination Of Prime Minister And On Motion This Nominee Appoints Council Of Ministers §57(1), §47(7); If Confidence Is Not Gained, Seim Nominates §58; No Confidence Gain, President Makes Other Appointment §59, §47(7)	Designates PM Candidate On Basis Of Parliamentary Composition §102(1); Appoints Government On Basis Of Vote Of Confidence From Parliament §85(1)
Recall Government?	Recalls PM With Approval Of Seimas §84(5)		Dismisses Members Of Government Upon The Recommendation Of The PM §85(2)
Relationship With Cabinet		On Matters Of Importance To The State, May Summon Meetings Of Council Of Ministers And Preside Over Them §38(2), §47(9); PM Shall Inform President About Fundamental Matters §38(1)	May Chair Sessions Of Government At Which Issues Of Foreign Policy, National Defense, Public Order Are Discussed As Well As At The Request Of The Prime Minister §87; President May Consult Government On Urgent And Important Issues §86

	LITHUANIA	POLAND	ROMANIA
Appointments Made Unilaterally (Not Including Government, Foreign Service And Judiciary)		Proposes Appointment/Recall Of President Of National Bank §40; Appoints Members Of The Presidential Chancellery §48	
Appointments Requiring Approval Of Other Office Or Institution (Not Including Government, Foreign Service And Judiciary)	Appoint/Dismiss State Officers As Provided By Law §84(10); Nominates State Controller And Chair Of Bank To Seimas §84(12); Nominates Security Police Chief To Seimas §84(14)		Proposes Candidate For Intelligence Service §62(2)(g)
Control Over State Agencies*	President Appoints And Dismisses State Officers As Provided By Law §84(10). [Government §94(1)]	In Order To Implement Statutes The President Shall Issue Regulations And Executive Orders With Countersignature §45(2), §46; [Council Of Ministers §52(1), §52, §54(1), §55(2)]	[Government §101(1), §115; Assembly §116]
Referendum Powers*		May Order Referendum With Consent Of Absolute Majority Of Senate §19(2); [Sejm, Senate §19(2)]	After Consulting With Parliament May Call Referendum §90 [Legislature §72(3)(c)]
Convene Assembly *	May Call Extraordinary Sessions Under Particular Circumstances §84(19)	Must Convene Sejm Within Thirty Days Of Election §9(2), §47(2)	Must Convene Newly Elected Parliament Within Twenty Days After Election §60(3); May Call Extraordinary Sessions §63(2)
Dismiss Assembly *		May Dissolve It The Budget Has Not Been Passed Within Three Months After Its Introduction §21(4), §47(2); After Four Attempts To Form A New Government Which Can Gain Confidence Vote, May Either Dissolve Sejm Or Make One Additional Attempt §62, §47(2); May Dissolve If Sejm Has Passed No Confidence Vote Without Choosing New PM §66(5), §47(2); Must Consult With The Marshall Of The Sejm And The Marshalls Of The Senate Prior To Dissolving Sejm §44	Absent A Vote Of Confidence On The Formation Of A Government, President May Dissolve Parliament After Consulting With The Presidents Of The Two Chambers §89(1)
Right To Address Assembly	Makes Annual Reports §84(18)	Yes §39, §847(13)	Yes §88
Right To Propose Legislation		Yes §15(1), §47(4); May Amend And Withdraw Proposed Bills §15(3), §15(4)	
Right To Delay Promulgation Of A Law		Thirty Days Of Receiving §18(2)	Twenty Days §77(1)
Veto Power (Override Requirements)	Yes, Override: Half Of Assembly (3/5 Override For Constitutional Laws) §71, §84(24)	Yes §18(3), §23(7) §47(5); Override: Two-Thirds Majority §18(3); President May Refer Statute To Constitutional Court §18(3)	Yes, 77(3); May Refer Law To Constitutional Court §77(3)
Appoint Constitutional Court:**	Nominates Three Justices And The Chief Justice §84(11), §103 [Seimas §84(11)]		1/3 Members Appointed By President §140(2)
Appoint Highest Appellate Court:**	Nominates §84(11) [Seimas §84(11)]	Appoints/Recalls Presidents Of The Supreme Court With Countersignature §61, §46	Higher Council Of Magistrates Proposes Candidates To The President §133(1); Judges Appointed By The President §124
Appoint Professional Judges:**	Nominates §84(11); Seimas §84(11)	Upon Motion Of National Council Of The Judiciary §42, §47(13)	Higher Council Of Magistrates Proposes Candidates To The President §133(1); Judges Appointed By The President §124
Judicial Standing	President May Recommend Acts To Court For Examination §106	May Refer Statutes §18(3), §23(6), §47(6); May Make Preliminary Motion To Bring Person To Constitutional Accountability Before Tribunal Of State §47(10)	May Refer Laws To Constitutional Court §77, §144(a)



	LITHUANIA	POLAND	ROMANIA
Powers Over Foreign Policy**	Settles Policy Issues With Government §84(1); Signs Treaties And Submits Them For Ratification §84(2); Appoints Diplomats With Countersignature §84(3); Seimas Must Ratify Treaties That Involve Realignment Of State Borders, Require Political Cooperation With Foreign Countries, The Renunciation Of Force, The Stationing Of Armed Forces In A Foreign State §138	President Is Supreme Representative Of State In International Relations §28(1); General Supervision Of Foreign Relations With Countersignature §32(1); §46; Council Of Ministers Shall Conduct The Foreign Policy Of The Republic §51(1); Council Of Ministers Concludes Treaties With Foreign Governments And International Organization §52(8); President Ratifies And Denounces Treaties With Countersignature §33(1); §46; PM Makes Motion To Appoint Foreign Minister After Consultation With President §61; Appoints And Recalls Diplomats With Countersignature §32(2); §46; Receives Credentials Of Foreign Diplomats With Countersignature §32(2); §46; Appropriate Minister Shall Maintain Relations With Foreign States And Polish Foreign Service §32(3); Treaties Which Change The borders Of The State, Relate To Defensive Alliances, Involve A Change In Legislation, Or Would Burden The State With Financial Responsibilities §33	Signs International Agreements Which Are Negotiated By Government, With Countersignature Of PM §91(1); Appoints/Recalls Diplomatic Representatives On Parliament Recommendation, With Countersignature Of PM §91(2); §99(2)
Emergency Powers**	Call State-Of-Emergency Under Specified Conditions §84(17)	President May Introduce State Of Emergency For Three Months With Countersignature, Additional Three Months With Seim Consent §37(1); §46; Consequences Of A State Of Emergency Shall Be Established By Law §37(4)	May Introduce State Of Emergency With PM Countersignature, Subsequent Parliamentary Approval Within Five Days §93(1); §99(2); Martial Law And Emergency Regulations Are Regulated By Statute §72(3)(c)
Martial Powers**	Appoints/Dismisses Supreme Commander Of Army, With Seimas Approval §84(14); Confers Highest Military Ranks, With Countersignature §84(15); In The Event State Is Threatened, Makes Decisions Regarding Military Defense, Subsequent Seima Approval §84(16); Main Issues Of Defense Shall Be Considered And Coordinated By The State Defense Council Which Consists Of The President, The PM, The Seimas Chairperson, The Minister Of National Defense And The Chief Commander Of The Army §140; Seimas Imposes Martial Law, Announces Mobilization Or Demobilization §142; President Shall Make Decisions Concerning Defense Against Armed Attack Including Martial Law And Mobilization With Subsequent Seimas Approval §142	Supreme Commander Of Armed Forces §35; Exercises General Supervision With Respect To External Security Of State §34; PM Consults With President Before Making Motion To Appoint Defense Minister §61; President Appoints/Dismisses Chief Of General Staff With Approval Of National §35(2); Seim May Declare War Only In Case Of Attack And When International Agreement Requires §24(1); The Terms And Mode Of Implementation Of State Of War Shall Be Established By Law §24(2); President Appoints Commander-In-Chief During War With Countersignature §35(2); §46; May Declare Mobilization With Countersignature §36(1); §46; Confers Decorations §44	Chairman Of Defense Council §92(1); Mobilization Of Forces Requires Prior Approval Of Parliament Except In Outstanding Cases Where PM Countersignature Is Alone Required With Subsequent Parliament Endorsement §92(2); Makes High Promotions With PM Countersignature §94(b); Assembly Declares General Or Partial Mobilization And Declares A State Of War §82(2)(c) and (d); Awards Decorations And Honorary Titles §94
Police Powers**	President Appoints Head Of Security Service §84(14); Public Prosecutors §118; Seimas §118	President Exercises General Supervision With Respect To The Internal Security Of The State §34; The National Security Council Is The Advisory Organ In connection With Security §34; May Introduce Martial Law With Countersignature §36(1); The Consequences Of Martial Law Shall Be Established By Law §36(2)	Martial Law And Emergency Regulations Are Regulated By Statute §72(3)(c)
Control Over Citizenship*	Grants Citizenship According To The Procedure Established By Law §84(21)	May Grant Or Revoke Citizenship §41; §47(13)	[Assembly §51]
Power To Pardon*	Yes §84(23)	Yes §43; §47(13)	Yes, With PM Countersignature §94(d); §99(2) [Assembly §72(3)(c)]
Interim Powers	If PM Resigns, President May Appoint Member Of Government To Hold Office Until New Government Is Formed §84(7); §97	The Constitutional Grants The President No Additional Powers During An Interregnum §65(2)	

	LITHUANIA	POLAND	ROMANIA
Requirements For Forced Removal From Office	Grounds: Gross Violation Of Constitution, Breach Of The Oath Of Office, Or Conviction Of An Offense; Process: Seimas Shall Resolve On Issues	Grounds: Infringement Of Constitution Or The Laws §50(1); Procedure: Motion By 1/4 Members Of National Assembly, Removal On 2/3 Vote Of National Assembly; President May Also Be Removed From Office For Committing And Offense By Indictment Before Tribunal Of State §50(1); Upon Declaration Of National Assembly, President May Be Removed For Health Reasons §49(1)(3)	Two Procedures: (1) Grounds: High Treason Process: 2/3 Vote Of Deputies And Senators, Judgement By Supreme Court §84(3); (2) Grounds: Violation Of Constitution Procedure: Motion On 1/3 Of Deputies And Senators, Removal Based On National Referendum §95
Amending Powers			President May Initiate Amendment On Proposal Of Government, One-Fourth Of the Deputies Or Senators Or Fifty-Thousand Citizens §146
Local Powers		The Supervision Of Units Of Local Self-Government Shall Be Defined By Law §74	
Sweeping Clause			
Description		Supreme Representative Of Polish State In Internal And International Relations §28(1); Safeguards Sovereignty And Security Of State §28(2)	Represents Romanian State, Guarantor Of National Independence, Unity And Territorial Integrity

	SLOVAKIA	SLOVENIA	UKRAINE
Candidacy Requirements	Enfranchised Citizen, At Least Thirty-Five Years Old §103(1)	Citizen §103	
Compatibility Requirements	Office Incompatible With The Office Of Deputy, Member Of Government, Judge, Prosecutor, Member Of Armed Forces Or Security Corp. Or Member Of the Supreme Oversight Council §103(4); President May Not Hold Any Other Paid Position or Profession Nor Engage In Any Business Activity Nor Be Engaged In The Legal Profession §103(5)	Office Incompatible With Other Public Offices Or Other Employment §105	President May Not Be A Member Of The National Assembly, May Not Hold Any Other State Office, May Not Engage In Paid Employment, Must Suspend Membership In Political Parties §175
Nomination Requirements			
Electoral Body	National Council §101(2), §86(b)	Citizensry §103	Citizensry §118
Required Mandate For Election	Three-Fifths Of All Deputies §101(3)	Majority §103	Plurality Where At Least Half Of All Qualified Voters Participate §122
Length Of Term	Five Years §101(2)	Five Years §103	Five Years §175
Term Limits	Two Terms §103(2)	Two Consecutive Terms §103; In Case Of War Or Emergency, Terms Ends Six Months After Cessation Of Hostilities Or Emergency §103	Two Consecutive Terms §175
Vice-President?			
Call Elections To Assembly?		President Has 45 Days Discretion In Case Of Sitting National Assembly, 60 Days In Case Of Dissolved Assembly §81, §107	
Role In Appointing Government	President Appoints PM And At PM's Proposal Appoints The Other Ministers Of Government §102(f), §110, §111	After Elections, President Nominates PM Based On Negotiations With Political Groups In National Assembly, National Assembly Votes On Nominated Candidate §111	President Nominates The PM For Assembly Approval §138(8)

	SLOVAKIA	SLOVENIA	UKRAINE
Recall Government *	President Dismisses PM And Other Members In The Case Of a No-Confidence Vote By The National Council §115, §116. Dismisses Other Members Of Government At Proposal Of PM §111		President Proposes Dismissal Of PM To Assembly §136(8), §178(12)
Relationship With Cabinet	President Has Right To Be Present And To Chair Sessions Of Government And To Request Reports From The Government And Its Members §102(g)		Carries Out "General Leadership Of The Cabinet Of Ministers And Directs Its Executive Activities" §178(11); May Annul Acts Of Ministers §178(24)
Appointments Made Unilaterally (Not Including Government, Foreign Service And Judiciary)	President Appoints University Rectors §102(g)	President has power to "appoint state officers and functionaries in accordance with statute" §107	
Appointments Requiring Approval Of Other Office Or Institution (Not Including Government, Foreign Service And Judiciary)	Prosecutor-General Is Appointed By President OR Nominate On National Council §150	President has power to "appoint state officers and functionaries in accordance with statute" §107	With Approval Of The Council Of Deputies, The President Appoints The National Security Service §140(4), §178(13)
Control Of State Agencies *	President Appoints And Dismisses The Heads Of Central Bodies And Higher State Officials In Cases Specified By Law §102(g) National Council §86(1), §122	(Government §114, §121)	President Appoints And Dismisses "Other Ministers (Besides Cabinet) And Officials Of The Executive Branch" §178(14). Local Appointments §178(15). Established Managing And Consulting Bodies For Performing His Duties §180; Cabinet Subordinate To President §190, §191, suspension Of President's Authority Results In Dismissal Of Cabinet Of Ministers §192; President May Dismiss Ministers Whose Performance has Been Declared Unsatisfactory By Either House Of The Assembly §193; May Annul Acts Of Heads Of "Central Bodies" §178(24); The Heads Of Central Bodies Are Responsible To The President §193
Referendum Powers *	Called By President Within Thirty Days After Resolution By 350,000 Citizens Or When Resolved By National Council §95, §86(d), §102(m)	(National Assembly §90)	(Citizens §154)
Convene Assembly *	President Convenes Assembly Within 30 Days After Elections §82(2), §101(c)	20 Day Discretion To Convene After Elections §81. On Motion Of President Of National Assembly, President May Approve Extraordinary Session §85	President May Propose Extraordinary Sessions §143
Dismiss Assembly *	President May Dissolve National Council When It Fails To Approve The Program Declaration Of The Government Three Times §102(d)	President Shall Dissolve National Assembly When A No-Confidence Vote Has Failed And Confidence Is Not Expressed In Either The Present Government Or In Any Proposed Government §117	
Right To Address Assemblies	Yes §102(a)	National Council May Require President To Provide Opinion On Specific Matters §107	President Gives Annual Reports To Assembly §178(3), §138(9); Reports On Budget Expenditures §170, §178(6)
Right To Propose Legislation	Yes §102(a)		Yes §156, §178(4); President Proposes Draft Of Budget To Assembly §169, §178(6); Enacts Economic Decrees For Subsequent Assembly Approval §178(5)
Right To Delay Promulgation Of Law		Eight Days §91, §107	Fifteen Days §163
Veto Power (Override Requirement)	Yes, Override: Simple Majority Of Members Present §87(2), §102(m)	(Government §91)	Yes, Override: Majority §163, §178(8); May Recommend Draft Bills To Constitutional Court §163
Appoint Constitutional Court **	President Appoints Court From Among Twenty Candidate Nominated By The National Council §134(2)	President Nominates Justices To The National Assembly §163	(Council Of Deputies, Council Of Delegates §140(5), §141(4)) President Nominates Chairman Of Court §240

	SLOVAKIA	SLOVENIA	UKRAINE
Appoint Highest Appellate Court?*	[Legislative §86(j)]	Right To Nominate Five Members Of Judicial Council For Assembly Approval §131	[Council Of Deputies, Council Of Delegates §140, §141, §209]
Appoint Professional Judges?*	[Legislative And Government §143(2), §145]	Right To Nominate Five Members Of Judicial Council For Assembly Approval §131	[Council Of Deputies, Council Of Delegates §140, §141, §209]
Judicial Standing	President May Initiate Proceeding At The Constitutional Court §130(1)(b)	President May Demand That Constitutional Court Rule On The Conformity Of An International Agreement With The Constitution §160	Yes §243
Powers Over Foreign Policy**	President Represents The Country In External Affairs, And Negotiates And Ratifies International Treaties §102(a); President May Delegate To Government The Negotiation Of Treaties that Do Not Require Approval Of The National Council §102(a); President Receives And Accredits Ambassadors §102(3); Unions/Dis-unions With Other States Shall Be Determined By A Constitutional Act And A National Referendum §7; National Council Approves Political Pacts And Treaties, International Economic Agreements And Agreements Requiring Legislation To Take Effect §86(e)	President Accredits And Revokes The Accreditation Of Ambassadors, Accepts Credentials Of Foreign Representatives §107; National Assembly Must Authorize Adherence To "International Agreements" §86	President Represents The State In International Relations §178(2); Directs Implementation Of Foreign Policy §178(15); An All-Ukrainian Referendum Is Necessary To Authorize The Affiliation Of Ukraine In Military-Political Alliances §117; National Assembly Must Give Consent To The Conclusion "International Treaties" On State Unions, Economic And Military-Political Associations, Agreements Concerning Rights Of Ukrainians And Agreements Requiring Financial Expenditure §136(4); National Assembly Ratifies And Annuls "International Agreements" §136(5), §138(4); President Appoints Diplomats With Council Approval §140(4)
Emergency Powers**	President Declares State Of Emergency On The Basis Of A Constitutional Act §102(i)	In State Of War Or Emergency, Where Assembly Is Unable To Convene, President May Issue Binding Decrees At The Request Of Government §108; President May Call A State Of Emergency Only When National Assembly Is Unable To Convene, Subsequent Assembly Approval Required §92	President Introduces Martial Law And States Of Emergencies With Subsequent Assembly Approval §138(13), §135(27); May Establish Additional Measures Of Administrative Order In Times Of Emergency Created By Natural Disaster, Epidemics And Epizootics
Martial Powers**	President Is The Supreme Commander Of The Armed Forces §102(j); Government Proposes State Of War, National Council Consents To War, President Declares War §102(k), §86(k); National Council Consents To The Dispatch Of armed Forces Outside The Territory §86(l); President Promotes And Appoints Generals §102(g)	President Is Commander-In-Chief §102; President May Declare War And Deploy Forces Only When National Assembly Is Unable To Convene, Subsequent Assembly Approval Is Required §92; President May Confer State Honors §107	President Is Commander-In-Chief §178(18), §234; Minister Of Defense Has Direct Command Of Armed Forces §234; Makes Highest Promotions §178(19); Assembly Determines Structure And Amount Of Armed Forces §138(11), §234; President Defends Country In Case Of Armed Attack With Subsequent Assembly Approval §138(12); Declares War With Subsequent Assembly Approval §138(12); Awards State Decorations §178(31)
Police Powers**	Prosecutor-General Is Appointed By The President On Nomination Of The National Council §150; Details Of Appointments And Dismissal Of Prosecutors are Set Down By Law §151		
Control Over Citizenship*	[Legislative §5]		
Power To Pardon*	Yes §102(i) (Government §119(j))	Yes §107	Yes §178(30)
Interim Powers			

	SLOVAKIA	SLOVENIA	UKRAINE
Requirements For Forced Removal From Office	Grounds: Incapacitation For Over One Year; Procedure: Dismissal By National Council §105(2); Grounds: Activities Directed Against The Sovereignty And Territorial Integrity Of The Slovak Republic; Activities Directed Towards Eliminating The Democratic Constitutional System; Procedure: Proposal By Absolute Majority Of All Deputies; Dismissal By Three-Fifths Of All Deputies §106; Grounds: Treason; Procedure: National Council Submits Indictment; Constitutional Court Renders Verdict §107	Grounds: Act Contrary To Constitution Or Serious Breach Of Law §109; Procedure: Brought Before Court On Complaint Of Assembly (Simple Majority) Dismissed By No Less Than 2/3 Vote Of Constitutional Court §109	Grounds: Violations Of Rules Of Incompatibility; No-Confidence Vote By People Of Ukraine; Criminal Violations Of Constitution Or Laws §183, §188; Procedure: (1) Motion For Referendum By 2,000,000 Voters; Adopted By Assembly; With Subsequent No-confidence Vote Via National Referendum §186, §187 (2) Motion Of Council Of Deputies For Trial; Dismissal By 2/3 Vote Of Council Of Delegates §188
Amending Powers			
Local Powers			President Appoints And Dismisses Chairmen Of The Regional Land And City Councils And The Representative Of The Autonomous Republic Of Crimea §178(15) §197; When Necessary Declares Localities Ecological Disaster Areas With Subsequent Assembly Approval §178(22); If Necessary, Declares emergency Laws In Localities With Subsequent Assembly Approval §178(23); May Annul Acts Of The heads Of Local Bodies §178(24); May Propose To Assembly Dissolution Of Bodies Of Local And Regional Self-Government §178(26)
Sweeping Clauses(s)		President Has Power "To Perform Such Other Duties As Are Determined By (The) Constitution"	President Exercises "Other Powers Authorized By Constitution" §175(33)
Description Of Office	Head Of State §101; Government Is Supreme Body Of Executive Power §108		Head Of State And Executive Power §175

## **Myopic bargains among the framers in Poland, Hungary and Bulgaria.**

### **BARGAINING OVER THE PRESIDENCY**

*Jon Elster*

The powers of the presidency are discussed from a variety of perspectives in this issue of the *East European Constitutional Review*: what they are, and what they ought to be. In this article I ask, from a comparative point of view, how they came to be what they are, focusing on the process of bargaining over the presidency observed in Bulgaria, Hungary and Poland. There are a few recurrent themes. One is that constitutional arguments about the proper role of the presidency in a system of checks and balances played a very minor role. Instead, the presidency was designed to fit a particular candidate for the office. Another finding is that the design of the presidency was part of a larger bargaining process, in which the powers of that office were traded off against other political demands. Finally, we find that the calculations and expectations that went into the bargaining and log-rolling were almost invariably proven wrong by later events. In all three countries, the presidency designed for a communist candidate was eventually occupied by a member of the opposition.

Two historical precedents can be cited to demonstrate the two main senses in which the presidency can be designed to "fit" a particular person. The reason the 1921 Polish constitution had a weak presidency was the general expectation that it would be filled by Marshal Jozef Pilsudski, Poland's strong man at the time. The attempt by the constitution-makers to defang him backfired, however, when Pilsudski refused to stand for the emasculated office. Five years later, he staged a *coup d'état*, which might arguably have been avoided had the presidency been given the powers that would have induced him to pursue his objectives in a lawful way. In this case, the constitution was written *against* the most likely candidate for the presidency. The converse case, of a constitution

written *for* the front-runner, is illustrated by the founding of the Fifth French Republic. In this case, the wartime hero was in control of the constitution-making process, and made sure that he got the powers he wanted. Neither of these examples, however, illustrates the role of *bargaining* over the presidency. Pilsudski's position in the constitution-making assembly was too weak, and that of de Gaulle too strong. In this respect, the ex-Communist countries offer a different picture.

#### **Poland**

Poland introduced the institution of the presidency as part of the deal struck at the Round Table Talks in the spring of 1989. Initially, these talks were undertaken to negotiate the official recognition of Solidarity in exchange for the opposition's support of the economic policies of the government. Soon, however, the sub-table that discussed political reforms became the most important one. Negotiators from the government side offered to hold free elections to some of the seats in the Sejm (lower house). In exchange, they demanded the introduction of the office of president to replace the Council of State, a sort of collective presidency created by the 1952 constitution. It was understood from the beginning that the president would be General Jaruzelski, the dominant figure in the communist apparat. Vested with considerable powers, he would be elected jointly by the Sejm and various other bodies that could be counted on to vote with the communists. In this way, any democratic procedures initiated by the new Sejm could be thwarted, if necessary. When the negotiators from the opposition refused this proposal—Bronislaw Geremek, the chief Solidarity negotiator, said that he could accept seeing democracy raped once, but not twice—deadlock set in. It was broken by a

government negotiator, Aleksander Kwasniewski, who launched a new idea: "How about electing the president by the Sejm and the Senate, which, in turn, would be elected freely." "This is worth thinking about," said Geremek.

In the agreement that was struck, 35 percent of the 460 seats in the Sejm and all 100 seats in the Senate were to be filled by free elections. The remaining 65 percent of the seats in the Sejm were reserved for the communists and their allies. This would ensure the communists of at least 299 votes in the Sejm, a number greater than half of the seats of the joint session of the Sejm and the Senate that was to elect the president by an absolute majority. The Senate obtained the right to veto decisions by the Sejm, which would have to muster a two-thirds majority to override the veto. Nobody at the time seems to have doubted that the communists would obtain the eight additional seats needed to raise their representation from 65 percent to two-thirds. It came as a surprise to all, and as a shock to the communists, when Solidarity swept the elections, winning all contested seats in the Sejm and all but one seat in the Senate. The communists and their allies suffered an instant and total demoralization. Although duly elected to the presidency, Jaruzelski chose not to use the vast powers of his office.

These powers became more important with the election of Walesa to the presidency in December 1990. It then became clear that the powers were not only extensive, but vaguely defined. According to one commentator, they had been "left deliberately vague on the assumption, current early in 1989, that a communist president would use whatever prerogatives he saw fit, since he could rely on the backing of the army, security forces and his Soviet sponsors." According to another, it was the other way around: "Opposition negotiators have since admitted also to having deliberately designed the 'presidential clauses' of the round-table agreement to be as confusing as possible, with an eye to reducing Jaruzelski's room for maneuver." According to a centrally placed participant in the Round Table Talks, however, the powers of the presidency have a different origin. Stanislaw Ciosek (Politburo member and one of the two main party negotiators) is reported to have said that "the Politburo will never accept anything short of a strong presidency, designed for Jaruzelski. But without a president it will not be possible to destroy the party." In other words, the

alternative to a president, viz. a continuation of the old collective leadership, would obstruct the dismantling of communism that the more enlightened party members knew was inevitable.

### Hungary

The Hungarian Round Table Talks in the summer and fall of 1989 also included bargaining over the presidency. In fact, two different bargaining processes centered on this issue: within the opposition and between the opposition and the Communist Party. Formally, three issues were at stake: the mode of election of the president (direct or indirect), the timing of the presidential election (before or after the election of a new Parliament), and the powers of the presidency. In reality, the main issue was whether the opposition would accept Imre Pozsgay, a reform communist leader, as president. Because of the extreme fluidity of the political situation, the questions were never definitely settled, and the eventual outcome differed from what had been expected by most participants.

The communists assessed the alternatives as follows. If the president were elected by the obedient Parliament then in session, their candidate was a certain winner—but his legitimacy might suffer. If he were elected by referendum, before the elections to the new Parliament, Pozsgay's visibility and popularity made it likely that he would win. Although slightly more risky, this option offered the advantage of greater legitimacy. Election by referendum after the parliamentary elections was probably a more attractive idea than having the president elected by the new Parliament. Both options, however, were highly risky. The opposition's main demand was to delay the election of the president until after the election of the new parliament. A secondary demand, based on the assumption that Pozsgay was in fact likely to be elected, was for a strict limitation of the powers of the presidency.

In the course of negotiations, the communists made several concessions aimed at creating a consensus for Pozsgay. In August, they offered, in exchange for the acceptance of his candidacy, to dissolve Workers' Defense, a paramilitary communist organization. In September, they also offered to have the new president elected by referendum. This was presented as a concession, as they could easily have elected the president by the Parliament then in session. Yet, as mentioned, this course also offered the advantage of greater legitimacy. Faced with



these proposals, the opposition was unable to reach internal agreement. At least three opposition groups favored a presidential referendum before the parliamentary elections, thus in effect accepting Pozsgay as president. Others, notably the Free Democrats under the leadership of Janos Kis, insisted that the presidency be offered to the communists, but only after the parliamentary elections, so that it could be used as a bargaining chip. Although the former got their way, the latter kept their options open by refusing to sign the final agreement on September 18.

At that time, the general expectation was that there would be an early election of Pozsgay. The calculations were upset by a major unforeseen event. When the Communist Party dissolved itself and created a new Socialist Party to take its place, a majority of the members failed to join the new party. Not even a majority of members of Parliament—selected for their blind loyalty—joined up. Moreover, the expected election of Pozsgay as president of the new party also failed to materialize. These events created a severe demoralization in the regime. In the ensuing power vacuum, the government was able to play a surprisingly active role, and to push through a number of constitutional amendments with minimal resistance in Parliament. The Free Democrats and their allies called for a referendum on the presidential elections and succeeded, by a narrow margin, in arranging for the president to be elected after the Parliament. When a later referendum (called by the ex-Communists) on the mode of election of the president failed to get the necessary quorum, the final result was the very opposite of the implicit deal struck during the Round Table Talks. Instead of a Communist candidate chosen in direct elections before the election of a new parliament, the presidency went to a politician from the opposition elected by the new Parliament.

### **Bulgaria**

The presidency was a major bargaining issue in the Bulgarian Round Table Talks that took place in the winter of 1990, between the Communist Party and the Union of Democratic Forces (UDF), a "forum organization" of oppositional groups. These talks differed from those in Poland and Hungary in one important respect. The Communist party had started to reform itself before the talks began by expelling its long-time leader Todor Zhivkov from power. Because it changed its ways by preemption

rather than concession, the party enjoyed a much stronger legitimacy than its counterparts elsewhere in Eastern Europe. Also, because Bulgaria did not harbor the virulent anti-Soviet feelings characterizing most of the other countries, the communist leaders were never seen as traitors.

The communists began by demanding a constitutional amendment for the introduction of a president who would be directly elected with a five or six year mandate and enjoy strong powers. Both sides knew that the communist candidate, then head of state Peter Mladenov, would be chosen as president if there were direct elections. He had been the leading figure in the move to oust Zhivkov from power, and public opinion surveys showed that he had overwhelming popular support. UDF insisted on a president elected by the currently acting National Assembly with a one-year mandate and limited functions. This preference, too, was based on an assumption (or agreement) that Mladenov would be the new president. In the end, the UDF solution was chosen, partly because of pressure from the Agrarian Party, which had been allied with the Communists but had now turned against them.

Mladenov was duly elected president by the assembly as part of a package solution that also included an agreement on elections to a Constituent Assembly. When it turned out that, during demonstrations in Sofia on December 14, 1989, Mladenov had said, on camera, "Let the tanks come," he was forced to resign. Meanwhile, mass protest had spread in the form of "towns of truth"—tent camps in the centers of about twenty big towns. Parliament voted for president, therefore, in conditions of expanding mass peaceful protest. Day by day, the National Assembly building was besieged by a crowd demanding the election of a president from the opposition. After four unsuccessful rounds of voting (neither side was able to control 2/3rds of the votes needed for the election of a new president), the leader of the opposition Zhelyu Zhelev was elected to the presidency.

Both sides miscalculated. The opposition demanded a weak presidency because they assumed that the post would be occupied by the communist candidate. Then, more or less by accident, it acceded to a presidency that, on its own insistence, had been shorn of strong powers. The communists had insisted on a strong presidency because they feared they might become a minority in the

new Parliament. As it turned out, they gained a majority in the Constituent Assembly.

### Conclusion

Arendt Lijphart has argued that the emergence of political institutions in Eastern Europe can be explained by extending the "Rokkan hypothesis." Stein Rokkan had argued that countries in the transition to democracy will adopt a system of proportional representation through a convergence of pressures from below and from above. The rising working class wanted to lower the threshold of representation in order to gain access to the legislatures, and the most threatened of the old-established parties demanded publicity and access to the media to protect their position against the new waves of mobilized voters created by universal suffrage. Extending this reasoning, Lijphart suggests that many of the arrangements that emerged from the Round Table Talks in Eastern Europe were intended to guarantee a political presence for the communist nomenklatura as well as for the new opposition. First, there were compromises over the electoral system. Second, the bicameral system can be engineered so that the old regime will do well in elections to one house and the new forces in elections to the other.

Third, because the communists feared that they would be in a minority in Parliament, they demanded and got the presidency for their candidate.

This argument is correct as far as it goes. What it does not include, and does not pretend to include, is the fact that things rarely worked out as intended. Whereas the Hungarian communists thought their future representation hinged on a system with single-district majority voting, they were actually saved by the element of proportional voting in the compromise over the electoral system. Whereas the Polish communists thought their guaranteed seats in the Sejm would enable them to dominate the assembly, the desertion of their former allies spoiled their calculation. And whereas communists in all three countries thought that the deal struck for a communist president would ensure them at least a minimal presence in the new regime, events conspired to demoralize them so thoroughly that they either had to give up the presidency or were unable to use it.

*This survey relies heavily on Working Papers by Wiktor Osiatynski (Poland), Andras Sajo (Hungary) and Rumyana Kolarova and Dimitr Dimitrov (Bulgaria).*

**How presidential powers can legally expand without constitutional amendment.****CHANGING CONSTITUTIONAL POWERS OF THE AMERICAN PRESIDENT***Cass Sunstein*

In the United States, the president is controlled by the Constitution and is in all respects subordinate to it. Insofar as it deals with presidential power, however, the American Constitution has proved to be a highly malleable document. With very few exceptions, the constitutional provisions relating to the president have not been changed at all since they were ratified in 1787, but in 1993 those provisions do not mean what they meant in 1787. The Constitution is a legal document, and it is enforced judicially, but its meaning was not fixed when it was ratified. In particular, the contemporary president has far broader powers than the original Constitution contemplated. It is remarkable but true that large-scale changes in the authority of the president have been brought about without changes in the constitutional text but, nevertheless, without illegality.

This is a paradox. Is it not clear that constitutional changes, if not textual, are illegal? The paradox has considerable relevance to Eastern Europe. The framers of the American Constitution feared legislative power most of all, but from well-known events in the twentieth century it is possible to conclude that it is presidential power that presents the greatest risks for liberty and democracy. The president is the most visible leader in the nation by far; he is often the only person in government with a national constituency; and this visibility can lead to a kind of "cult" that threatens constitutionalism itself. On the other hand, a strong president is in a unique position to accomplish enormous good, and it is possible to think that in Eastern Europe and the ex-USSR, a strong president is a precondition for necessary reforms.

How to produce a strong presidency while limiting the relevant risks is a major task for postcommunist constitutionalism. There are of course significant complexities here. With the exception of the nations of the former Soviet Union, the pattern in Eastern European nations is basically parliamentary, and the president is largely cer-

emonial (at least in comparison to the American president). In the nations of what used to be the USSR, a president—part of a division between the executive and the legislature—has a more important role. But even where the president is largely ceremonial, there will be opportunities for accretions of power over time. Any particular constitutional arrangement is unlikely to be fixed over time.

There is some dispute about whether the task of producing a strong president without endangering liberty has been successfully accomplished in the United States. Some people think that the American president is much too powerful; others think that America has a weak president who is unable to accomplish the tasks for which he is elected. This debate raises complex questions that I cannot discuss here. However those questions may be resolved, it is clear that the original understanding of the presidency called for much less presidential authority than is taken for granted today. Although the prominent American founder, Alexander Hamilton, sought a powerful presidency, and although the new Constitution created an executive where the Articles of Confederation had not, the original American president was exceptionally weak by contemporary standards. Consider the following points, showing the contrast between the eighteenth and twentieth-century American presidencies.

1. In the founding period, the president was supposed to have sharply limited authority in domestic affairs, partly because the federal government as a whole had sharply limited authority in the domestic arena. Basic regulation of the economy was to come from state governments, especially from state courts elaborating the common law of tort, contract, and property. Today, by contrast, the president is a principal national lawmaker—simply because of a shift in power toward the nation. In implementing national law, the executive branch issues an extraordinary range of regulations affecting the na-

tional economy—in large part because of the economic interdependence among various regions, which is now generally acknowledged. It is a simple truth that the national government has far more authority than the framers of the Constitution originally envisaged. It is equally, if less simply, true that as a result of this shift, the president himself has assumed an array of duties and powers not within the original contemplation of the Constitution's authors.

2. In issuing regulations and indeed in all his official acts, the president needs congressional (or constitutional) authorization. He cannot exceed any limits that Congress has laid down. But often Congress offers very vague guidance. The president therefore has a great deal of discretion. Particularly in the latter half of the twentieth century, courts have been reluctant to strike down laws on the basis of the "nondelegation doctrine," which required clear standards from the legislature. The downfall of the nondelegation doctrine has meant that the president can exercise tremendous policy-making discretion in the domestic sphere. This sphere includes regulation of the environment, energy, occupational safety and health, communications, and much else.

3. The framers of the Constitution probably wanted to allow Congress to limit the president's authority over the many high-level officials who implement the laws enacted by Congress. This might seem to be a technical matter, but it has enormous importance. If the Secretary of the Treasury can be controlled by the Congress but not by the president, the allocation of national powers is much changed. It is now generally agreed, however, that the *president has broad power over all high-level officials who implement the law*. The heads of the cabinet, and of most executive agencies, can be discharged by the president whenever the president chooses. Moreover, Congress has no authority to discharge them or to prevent the president from doing so. (Of course both the president and all implementing officials must obey the instructions laid down by Congress.) The result is that most administration of the laws—an extremely large and important category—is subject to the will of the president.

4. It is now generally understood that the president will submit to Congress both (a) a proposed budget and (b) a great deal of proposed legislation. As a result, the president now has a formidable role in the enactment of national legislation. The Constitution contains no ex-

plicit provisions on these points, but it was not originally believed that the president would submit a budget or propose legislation. It was hardly believed that the president would have these powers of initiative, granting him considerable power over the content of national law. The president's current power of initiative, with respect to the budget and lawmaking, is quite fundamental. (Of course much legislation is initiated by people other than the president.)

5. The president's power to *veto* legislation has turned out to allow him a surprisingly large role in determining the content of national legislation. The founders of the Constitution deliberately and explicitly gave the president the veto power. But they did not contemplate its current importance, and they might well have been alarmed if they had been forewarned. Their principal goal was to allow the president to veto laws on constitutional rather than policy grounds, particularly in order to permit him to prevent Congress from intruding on the president's constitutional powers. This goal was narrow indeed; it did not anticipate a situation in which the power to veto would entail a significant role in lawmaking.

It is not entirely clear that the framers sought to allow the president to veto legislation solely on the ground that he disagreed with the policy judgments embodied in it (though probably the best reading of the history is that the founders believed that the president could veto legislation on policy grounds). But they thought that this power would be exercised rarely and only in the most extreme cases. The founders certainly did not anticipate the current situation, in which the veto power is a well-understood part of all lawmaking and implies a large and continuous presidential role in lawmaking itself. In short, the president's authority is greatly augmented by Congress' knowledge that the president can veto legislation of which he disapproves.

6. With the emergence of the United States as a world power, the president's foreign affairs authority has become far more capacious than was originally anticipated. For the most part this is because the powers originally conferred on the president have turned out—in light of the unanticipated place of the United States in the world—to mean much more than anyone would have thought. In addition, however, the president has been permitted to initiate military activity in circumstances in which the original understanding would have required

congressional authorization. On the founding view, *a congressional declaration of war was a precondition for war*; the only exception was that the president could act on his own in order to repel a sudden attack on the United States. But in the twentieth century, a large amount of presidential war-making has been allowed without congressional declaration of war.

From all these points we might conclude that the Constitution, at least in the area of presidential authority, is no mere lawyer's document. The original understanding has not controlled the future. The Constitution's meaning is not fixed. It is in large part a function of historical practices and needs, and of shared understandings over time. Often the power of the president is understood to be quite different from what it was, say, twenty-five years earlier.

Yet it would be a mistake to conclude that the president's constitutional power is simply a matter of what seems to him appropriate or necessary, and not a matter of law at all. Often the president loses in the Supreme Court, and in nearly every important case, he has graciously accepted his defeat. To take just a few examples from the twentieth century: President Nixon was forced to hand over his own tape-recorded conversations during the Watergate controversy; President Truman was prevented from seizing the steel mills during the Korean War; President Eisenhower was banned from stopping communists from traveling abroad. These defeats are important in themselves, but they are even more important for the general tone that they set. Every American president knows that his actions are subject to judicial review, and this is a large deterrent to illegal conduct.

For purposes of judicial review, the president's most important constitutional duty is "to take care that the laws be faithfully executed." This provision subordinates the president to the law. It also requires him to adhere to the law, both constitutional and statutory.

I have suggested that the changing understandings of the president's power have occurred without either textual change or flagrant presidential violations of constitutional requirements. I have also suggested that this presents a genuine paradox. We have a president who is much stronger than the framers of the Constitution anticipated; but at least in general, the current presidency is not thought, and should not be thought, unconstitutional. How, then, have the president's powers changed? There

are several possibilities. I outline them here because of their potential importance to current dilemmas in Eastern Europe. Flexible provisions and silences, allowing flexible (but not open-ended) interpretation

Many of the changes have occurred because the relevant constitutional provisions are ambiguous, and they allow adaptation to changing circumstances. For example, the grant of "executive power" to the president leaves much uncertainty.

The Constitution also contains important silences. For example, the Constitution does not discuss whether the president shall submit a budget. But the document is not a blank slate. It is clear that the president must obey the law; it is equally clear that he cannot make law on his own. It is clear that he cannot (for example) dissolve the legislature or the Supreme Court when (as is often the case) they displease him. We should conclude, then, that constitutional change has occurred in part because of constitutional ambiguities and silences. A constitution that is not rigid will allow for adaptation without amendment or illegality.

### **Emergencies**

Many constitutions, including all of those in Eastern Europe, contain emergency provisions, allowing the government to have special powers under conditions of emergency. The American Constitution contains no emergency provisions (although the president is allowed to suspend the writ of habeas corpus during war). It might seem natural to think that in spite of the absence of explicit emergency powers, many increases in presidential authority have occurred as a result of emergencies. In general, however, the president has not been found to have special authority to act during emergencies. A domestic crisis—widespread unemployment, social unrest—does not give the president any new power. There is no judicial understanding that the president has greater authority if he can point to an emergency situation, or claim that unusual presidential action is crucial.

Of course, Congress might well decide to confer statutory authority on the president in order to enable him to respond to a crisis. And Congress has made this decision in emergencies. In the New Deal period, for example, Congress gave the president a range of new authorities because of the perceived need for special responses to the Great Depression. But the president has not been al-

lowed to act on his own. An emergency does not give the president any unilateral powers. A possible lesson is that constitutionally-granted emergency powers are not necessary and may even be harmful.

### **Development of the Constitution through case-by-case decisions over time**

Some distinguished academic observers (most notably Harry Wellington and David Strauss) believe that interpretation of the U.S. Constitution depends on particular judicial decisions, allowing the meaning of the document to change over time. Indeed, *constitutional law in America (and in many other nations as well) has many features of the common law process.*

In that process, a hallmark of Anglo-American legal systems, no one sets down broad legal rules in advance. Instead the rules emerge narrowly, as judges decide individual cases. Governing principles come from the process of case-by-case adjudication, and sometimes they cannot be known in advance. Much of constitutional law in the United States comes not from the constitutional text itself, but from judge-made constitutional law, interpreting constitutional provisions. For this reason, the meaning of the document is not rigidly fixed when the document is written and ratified.

Something along these lines is certainly true for the powers of the president, and the system of common law constitutionalism helps explain the shifting understanding of presidential power. Consider, for example, the complex question of whether Congress or the president may discharge high-level public officials (the secretary of state, the attorney general, the secretary of the interior). The text of the Constitution does not speak clearly on this issue; instead, the governing constitutional principles have been worked out in the process of case-by-case adjudication.

It might be added that much of the president's authority turns not on judicial decisions at all, but on traditional practices and shared understandings between the president and Congress. The development of these practices and understandings resembles the process of common law development. It is recognized that a certain practice "works." Congress and the president endorse the practice, and the practice therefore operates as a guide for the future. Of course no such practices may violate the Constitution where that document speaks with clarity.

### **Translation**

Some people (most notably Lawrence Lessig) have argued that, when circumstances have changed, the Supreme Court must "translate" the original constitutional text in order to adapt it to the new conditions. Suppose, for example, that the founders of the Constitution originally sought to allow the president to make war on his own only for defensive purposes to repel sudden attacks on the United States. Suppose, too, that in modern conditions, threats to (say) Canada and Mexico are extremely threatening to the United States because of the strategic importance of these nations. Or suppose (as many people believe) that under current conditions, the line between "offensive" and "defensive" use of the military becomes extremely thin.

If this is true, perhaps the original constitutional provision, translated into a new context, gives the president new and broader authority. If we want to adhere to the original constitutional goal (i.e., to allow the president to act unilaterally when this is necessary), perhaps the president may act unilaterally, not simply to repel sudden attacks on the United States, but in any case in which American interests are at serious risk. Perhaps this view accounts for many of the changes I have described. Thus, for example, we might think that the president's authority over the cabinet must expand in an area in which the cabinet is exercising such extraordinary power over the nation. Perhaps the expansion is justified if we are to be faithful to the founding commitment to political accountability. The "translation" argument raises many complexities, but it has appeared in several Supreme Court opinions as a way of making sense of the practice of interpretation in changed circumstances.

### **Several constitutional regimes?**

Some people think America has had more than one constitutional regime, that at crucial moments in our history, the people have inaugurated large-scale changes in the Constitution. The Civil War, for example, is said to have inaugurated a Second American Republic, with new understandings of the allocation of power between the nation and the states and with new understandings of individual rights. Some people think that President Roosevelt's New Deal also produced constitutional change. In his influential book, *We the People: Foundations*, for example, Bruce Ackerman argues that the United

States has had three constitutional regimes, not simply one.

If America has had more than one constitutional regime, we might think about presidential power in a somewhat different way. In the New Deal period, for example, the national government appeared to acquire significant new constitutional authority. The president was a principal beneficiary of this shift, especially insofar as the Supreme Court refused to enforce the nondelegation doctrine, which, as noted above, required any legislative delegations of power to the executive to be narrow and clear. Some people think that the New Deal effectively amended the Constitution, giving the president a range of new powers.

### Conclusion

There are some diverse explanations of the changing nature of constitutional power in the hands of the American president. I think that the most promising explanations stress the flexibility of the original text and the process of common law adjudication. If these are the best explanations, it seems clear that a special advantage of the original constitutional provisions governing the president is that they allow adaptation over time. Moreover, it emerges that one of the virtues of the American constitutional experience is the process of case-by-case adjudication, giving the meaning of constitutional provisions through close encounter with particular cases.

What lessons can be drawn from this experience for Eastern Europe? It is hazardous to think that the experience of one nation has any lessons at all for another; there

are many distinctive features to the American experiment in constitutionalism, and it is reasonable to think that few general lessons can be drawn from what has happened in the United States. But if we are to draw lessons, perhaps two are of special importance. The first involves *the limited effects of constitutional text*, at least over time. Constitutional meaning depends, in large part, on shared understandings and practices, and most of these will not be in the constitution itself. Although the Constitution is a legal document, there will be a great deal of opportunity to adapt constitutional meaning to changes in understanding and practice over time.

A second (and somewhat conflicting) lesson involves *the importance of a culture of constitutionalism*—to which judicial review is an important contributor—to ensure against the most egregious abuses of legal authority. In America, judicial review has been important as a check after the fact and, perhaps even more, as a before-the-fact deterrent to presidential illegality. A culture of constitutionalism and the rule of law, spurred by judicial review, has helped deter presidential lawlessness in cases in which the need for action seemed great to the president, and the legal technicalities seemed like an irrelevance. In some such considerations, lies the solution to a remarkable and insufficiently analyzed paradox of American constitutionalism: a dramatically changed and strengthened presidency brought about without constitutional amendment and nonetheless without significant illegalities.

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**Writing constitutions to allow for evolutionary change.****THE PATH OF THE PRESIDENCY***Lawrence Lessig*

Founders in postcommunist democracies take their constitutional texts very seriously. Slovenia, for example, after enumerating its executive powers, states that these powers "cannot be extended." The same limitation is found in some drafts of the constitution of Belarus. These are founders who want to say now what will be, if not forever, then at least for a very long time: they are drafters who want to assure that the institutions they now establish are respectful of the words they now draft.

All this obsession over text is quite understandable. Coming from a communist past, and trained in a civil law tradition before that, respect for textual limits is an important lesson to relearn. But we might ask nonetheless whether this fetish for code-like constitutions is either useful or realistic. For it has led many to conceive the question of the division of powers quite statically—asking what division of power is best, now and in the future, as if a political system could be fixed in stone like Moses' Ten Commandments. Less focus on text, and more on how the constituted institutions are likely to interact, might lead to a more dynamic question—what division of power is best now, to allow a nation, unique in its history and culture, to evolve into a stable and enduring political system in the future.

The history of the American presidency reveals something of the value in this second question. Ours is the "imperial presidency"—with the chief executive simultaneously the chief administrator, the leading policymaker on the national scene, and the exclusive policymaker on the international scene. Many from postcommunist societies rightly reject this presidency as a model for their own emerging democracies. America, it is said, had a long history of democracy before its constitution was born, and hence a political culture strong enough to resist the dangers of authoritarianism inherent in any strong executive. The same cannot be said of the democracies emerging from (at least) forty years of communism. Having suffered most of the century under totalitarian rule, the region's nascent democracies would be too fragile to

resist the temptations of an authoritarian, even if elected, president.

The contrast is a good one, and the lesson apt. But it is instructive to ask just when America achieved this political maturity, or more importantly, just when America's imperial presidency became possible. Modern pretensions notwithstanding, the modern presidency was not a creation of the founding fathers. Nothing in the text of 1787 suggested a presidency anything like the office now occupied by President Bill Clinton. Instead, in 1787 the President was quite a weak executive officer.

To see this, imagine a report about the newly created office of the president from a Chicago correspondent to the American Constitutional Convention of 1787.

After a summer of secret sessions, the convention of 1787 (called to draft amendments to the failed Articles of Confederation) proposed instead a radical, if unauthorized, new constitution. At the core of this document was a single executive officer, a president, elected by state electors at a special convention, and constitutionally independent from Congress. But as the drafters were quick to assure, this president was not to be America's elected monarch. Rather than possessing strong and broad constitutionally vested executive powers, he was to be a relatively weak executive officer. Indeed the constitution granted him just five powers unconditioned by the shared powers of Congress—the power to pardon, to fill vacancies, to order written opinions from executive officers, to receive ambassadors, and to command the military forces. (Even these, in part, depend on Congress—the commander-in-chief power, for example, depends upon Congress' declaration of war.) Beyond these five, the president's powers were powers conditioned by Congress—he had the power to negotiate treaties, that must be approved by the Senate; the power to appoint officers, that must be confirmed by the Senate; the power to veto legislation, that can be overridden by Congress; the power to recommend legislation, that can be ignored by Congress; the power to convene or adjourn Congress in ex-

traordinary times, that Congress can negate by its own similar vote; and finally, the power to "take Care that the laws be faithfully executed," laws that Congress itself sets. Not unlike the relatively weak presidencies recently established in Hungary and the Czech Republic, most of the American president's important powers, then, were powers significantly conditioned by Congress.

Overall, not a terribly strong executive power, and fundamentally unlike the current American presidency. Unlike his Bulgarian counterpart, he had no power over citizenship; unlike the Polish or Romanian presidents, he was not directly elected; unlike the Hungarian president, he had no constitutional power to "watch over the democratic functions of state."

The practices of the first U.S. presidents confirm this original reading. Unlike the modern policy-making executive, the first presidents were embarrassed to advise Congress on presidential views of legislation. As Washington wrote to a friend, "Motives of delicacy have uniformly restrained the [president] from introducing any topic which relates to legislative matters to members of either house of Congress, lest it should be suspected that he wished to influence the question before it." (Leonard D. White, *The Federalists: A Study in Administrative History* 55 [1948].) Even in 1887, when Cleveland urged Congress to pass liberalized trade regulation, Congress was shocked by the president's invasion of the legislative domain. (Louis Fisher, *The Politics of Shared Power: Congress and the Executive* 26 [1987].) The early presidents understood their role to be relatively passive: they exercised their power to advise Congress in just the way a parent advises a teenage son—carefully, infrequently, and with little expectation of acquiescence.

As originally framed, and originally practiced, then, the original president's power was slight. But what is important for our purposes is not this historical understanding, but rather, what accounts for the current presidency's deviation from that past. How has the presidency grown from this modest beginning to, in some eyes, a monster of centralized power today? What, in Vojtech Cepl's words, breathed the "life into his office"?

First, and most importantly, the transformation came not by any change in the constitutional text. No amendment vested in the president any more power than he possessed in 1789. And second, the change came in full view of Congress: this was not a presidency established in

a constitutional putsch; it was a presidency gained with the knowing acquiescence of many Congresses.

So if neither amendment nor force was used, what accounts for the change? In part the remarkable growth of presidential authority follows from an often overlooked aspect of Congress' power, and in balance, from an often ignored history of slow and mutual presidential and congressional accommodation. This was a presidency the American democracy had to *learn*, and like all learning, it took time.

Consider first the part of this transformation owing to Congress' power. Buried in the constitutional text outlining Congress' authority is a somewhat obscure grant of power, known by the framers as the "sweeping clause" but referred to now as the "necessary and proper clause." Under this clause, Congress is granted the power to make "all laws necessary and proper to carry into execution" not just Congress's power, but also "all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Most contemporary commentators thought this clause simply made explicit what would have been understood in any case—that there were implied powers under the constitution. Therefore many thought the clause was a redundancy. But this has turned out to be a mistake. For even if there would have been implied powers without this clause, what the necessary and proper clause assures is that it is *Congress* and not the President which gets to say what those implied powers are, and more importantly, how they are to be structured. Congress gets to say this about *any* federal power, and thus retains ultimate jurisdiction over any expanding federal power.

The importance in this structural design is easily overlooked, but the history of the American presidency makes it hard to ignore. At first, Congress exercised broad powers of control over those powers that we would now consider executive, by vesting them in people other than the president—including prosecutorial powers vested in relatively independent department heads, or in state officials, and other powers of execution vested in state officials. More importantly, the first Congresses acted to assure a relatively weak federal administration. One example gives the overall flavor: Despite constant pleas by presidents and attorneys general, Congress refused (until 1870) to create a centralized department of justice, allowing the prosecution of federal laws to rest with essentially

independent local prosecutors and in some cases, state prosecutors. For most of the history of the American republic, much of the power of the modern presidency was held in check by a jealous and careful Congress.

Over time, all this has changed. As faith in the presidency grew along with impatience over a factionalized and corrupt Congress, Congress finally granted the president increasing control over an increasingly centralized administration. After a century of democratic practice, and a long tradition of democratic executives, Congress permitted the evolution of a presidency that without doubt the founders would have found terrifying. This was a change long in coming, but critically, it is not a change best understood as a *change* in the constitution itself. For to this day, the full range of the president's power survives solely by the grace of Congress. Under the "sweeping clause" Congress retains broad power to limit and control—to check—an overzealous executive. The president's power is a power by structural delegation, but a careful Congress could at anytime recall the power it has allowed.

No doubt the evolution in the American presidency is unlike the evolution that can be expected of the executive power in postcommunist democracies. For one thing, the countries of Eastern Europe that have established a more-than-ceremonial president are dual-executive democracies. But the constitutional history of the French Fifth Republic, which created a system of this sort, confirms the lesson we have drawn from the American experience: the growth of presidential power cannot be rigidly controlled by a constitutional text. My point about the American experience is not so much about a particular evolution that any constitution will follow. Instead, it is about the nature of a constitution as evolutionary. What is general is not a particular path of presidential growth, but that presidencies have a path of growth, and that at their birth constitutions should understand and accommodate this.

That a practice can be constitutional even if not literally prescribed by a constitutional text is the first general lesson from this history. Three more specific lessons might also be suggested. First, while the American experience is discounted in postcommunist debates, again because of the preconstitutional democratic traditions in America, it is useful to remember that even these early democrats refused constitutionally to entrench a strong executive

power. So fearful were the framers of replicating King George that they established at first a small and impotent executive office, and filled it with a not so small (but importantly) sterile (father of no heirs except the country) President Washington. And except for the extraordinary period surrounding the Civil War, this limited executive power would survive on the American continent for at least a century. Even on the brink of economic and political collapse, the framers did not short-circuit the deliberative—if inefficient, if corruptible, if factionalized—responsibility of Congress.

Second, what the "sweeping clause" suggests is that modern constitutionalists should focus less on carving into stone divided executive and legislative powers, and more on devising a system that will allow an effective executive (and Congress) to evolve over time. What the sweeping clause allowed America was a flexibility that Congress could exercise, over time and across historical contexts, in various political battles. This arrangement helped Congress develop as a democratic institution, while checking the anti-democratic tendencies of a strong executive—allowing, in short, a period of maturation. What this suggests for other constitutional regimes is the need for a similar structural device that would permit a similar space for parliament and the executive (or executives) to develop and, more importantly, to develop together. Such a development will take time and what we might call political space—the third lesson from the American experience. Modern constitutionalists, especially rights-focused constitutionalists, are eager to quash politics in the name of "correct" constitutional principles, eager to avoid political struggles, and move quickly to the "right" constitutional answer, eager to throw law, constitutional law, into battles inherently political. This may have been the impatience of Professor/Justice Valeri Zorkin, who, along with his court of legal academics (9 of the 13 justices were from the academy), like overeager parents, refused to stand aside and allow political institutions to resolve their political conflicts politically—through compromise and agreement. But it is just this skill that a democracy demands. The process of learning this skill, of *learning* democracy, cannot be short circuited—no less in postcommunist democracies today, than in eighteenth-century America.

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# Focus: Crisis In Russia

## The End of the First Russian Republic

*Dwight Semler*

In September, Russia was thrown into the most serious constitutional crisis since the 1991 August coup. The Supreme Soviet (Parliament) and the president, Boris Yeltsin, could agree on practically nothing in July and August, and the political capital gained by Yeltsin in the April referendum was rapidly depreciating. As had happened repeatedly during the preceding two years, president and Parliament were deadlocked over the question of who wielded ultimate authority. Parliament refused Yeltsin's post-April entreaties for early parliamentary elections, stonewalled on a budget agreement and defied all efforts to agree on a new constitution. Meanwhile, the regions continued to press for more fiscal and political autonomy from the center. The president finally took the ultimate political gamble and declared Parliament closed. This action fulfilled his earlier promise that Parliament would see a "September offensive." After a ten-day standoff at the White House, the handful of deputies who refused to recognize the end of Parliament and the soviets as a form of rule were seized by the delusion that they could take Moscow by force. Deciding on what turned out to be a suicide mission, they opted to use their weapons against security forces loyal to Yeltsin. The results left 127 dead (according to the prime minister's office), many more hundreds wounded and the parliamentary leadership under arrest.

After the October tragedy, Yeltsin moved quickly to reassert central control. His staff reeled off several hundred *ukazi* and even more administrative decrees, the most important dealing with deepening economic reform and establishing procedures on the up-coming December elections and referendum on the draft constitution. At

the same time, Yeltsin sacked regional and local soviets throughout Russia as well as administrative leaders who proved disloyal during the October crisis. What was clear both during the crisis and after, however—and this is critical when considering the future of the country—is that the president's office has opted for temporary political solutions, which is precisely what Yeltsin used to accuse the Supreme Soviet of doing. This indicates the December elections may well be followed by continued instability.

### **A review of pre-October events**

In mid-August Yeltsin hinted that he might "go around Parliament" to carry out his own reform design. On August 12, he stated openly that he would force early parliamentary elections even if this meant violating the constitution. Turning up the pressure, only days later he announced that a federation council (representing each of the republics and regions) could be convened as an alternate body to Parliament, and one better suited to carrying out badly needed legislative actions. Of course, rumors of early elections, federation councils and the like had become commonplace by this time, but a clear resolve could be heard in Yeltsin's August pronouncements. For him, the summer had been a complete loss. Nearly all of Yeltsin's legislative work of the summer had been either reversed or watered down by Parliament in July (see *EECR*, Summer 1993), leaving the president's office and the government not only frustrated but turning against itself. Divisions in the government clearly deepened as economic conditions grew worse. And, the anti-corruption campaign, instigated by Vice President

Aleksandr Rutskoi and conducted by the Procurator General Valentin Stepankov, had become a nagging distraction, further pressuring the government.

In response to Stepankov, Yeltsin created his own anti-corruption commission headed by Andrei Makarov, who, with little delay, managed to find sufficient grounds to charge Rutskoi with links to a Swiss bank account and Stepankov with the plotting of his, Makarov's, murder. But pressure from Stepankov's office had taken a toll on Yeltsin's government, pushing it ever closer towards self-destruction. Finally, Yeltsin fired Security Minister Viktor Barannikov, whom he suspected of striking deals with Supreme Soviet Chairman Ruslan Khasbulatov, and suspended both First Deputy Prime Minister Vladimir Shumeiko (who insisted his departure was voluntary) and Vice President Rutskoi. Parliament responded immediately to Rutskoi's suspension with a petition to the Constitutional Court. Their argument was that Yeltsin had no constitutional authority to suspend the vice president and that Rutskoi had been freely elected along with Yeltsin. This argument was legally sound, but Rutskoi had become the *de facto* head of the opposition to the president, and his suspension allowed Yeltsin to demonstrate his increasing disregard for the constitution. With this move, the die was cast for what proved to be the final struggle. Not surprisingly, the final conflict centered on the budget and the government's privatization plan.

The battles over privatization and the budget were crucial since privatization of large-scale firms was gaining public acquiescence and the need to stabilize the ruble was growing more and more desperate. The law on privatization required parliamentary approval at each step of each major privatization. Such a scheme would have permitted no more than a handful of privatizations a year, which was unacceptable to both Yeltsin and the government.

As for the ruble, easy credits from the central bank coupled with undisciplined fiscal policies had brought it to the point of hyperinflation on more than one occasion. But since the April referendum, because of the government's fiscal restraint, the ruble had shown some stability. Buoyed by these results, in the early summer the government set for itself a reasonable and disciplined budget, one that would satisfy international creditors and lenders. Yet when presented to Parliament, this budget was refused. The anti-reform assembly chose instead to

draft a budget, which would have enlarged the national budget deficit to more than 25 percent of GNP. Naturally, when Parliament's proposal was sent to the president, he vetoed it, requiring Parliament to propose either another budget or attempt an override. Yeltsin went so far as to send Finance Minister Boris Fyodorov to Parliament to persuade the deputies to reduce their budget demands. Not surprisingly, they refused and instead, called for Fyodorov's resignation and set out to ratify their own inflationary budget plan over the president's veto. With that accomplished, their draft budget was again sent to the president and again he vetoed the plan. Parliament was enraged, arguing that, constitutionally, the president could not twice veto the same bill. Yeltsin's office responded by pointing out that the second draft bill sent to the president had a different name than the first and thus came before the president as a new piece of legislation. Parliament naturally believed itself tricked since its second draft was only slightly altered. Parliamentary lawyers declared Yeltsin's move a ruse, but Yeltsin had nevertheless, at least momentarily, foiled his opponents.

In the end, legal technicalities concerning the passing of the budget did not matter. Fully aware of the widespread criticism that his government had lost initiative and coherence, Yeltsin announced that he had instructed the government to ignore Parliament's budget. So, when this budget was put before him on September 10, Yeltsin refused to sign it, despite a constitutional requirement that he do so. To drive home his uncompromising position on the budget to the government, Parliament and international creditors—the latter having threatened to cut off aid if fiscal discipline was not promptly established—Yeltsin made public on September 17 that he had invited Yegor Gaidar (the acting prime minister who was sacked by Parliament in December 1992) to rejoin the government as a deputy prime minister. The reappointment of Gaidar was a clear indication to Western creditors that Yeltsin's government sought fiscal responsibility, while, at the same time, it was an act of defiance in the face of the Supreme Soviet. Parliament was stunned by Yeltsin's new bravado and reacted in kind.

Just as the budget battle reached an impasse, so too did Yeltsin's drive to push through a constitution and convene a federation council. By late summer the rival draft constitutions of Yeltsin and Parliament had been

gradually merged by a working group formed from Yeltsin's Constitutional Assembly, appointed earlier. But it was apparent that the constitutional working group had favored Yeltsin's draft. There was therefore no hope that the Supreme Soviet or the Congress of People's Deputies would agree to such a final draft. Moreover, although Yeltsin's office, particularly the head of his administration, Sergei Filatov, had tried several times to convene a federation council, the various republican and regional leaders repeatedly altered their demands. The president's office was embarrassed more than once, announcing the convocation of the council one day, postponing it the next.

When the Presidential Council gathered on September 14, Yeltsin was subject to severe criticisms from his strongest supporters and advisors. The president had lost the initiative, they said. The possibility of early elections was rapidly slipping away and the conflict between Parliament and president had precipitated the slide of the economy into another downward spiral. It was well known that the executive-legislative deadlock in Moscow had led the ministries increasingly to ignore orders from both the president and Parliament. The regions and republics were doing the same. On the weekend of September 18 and 19, the Federation Council finally met, but the body refused to transform itself into a proposed upper chamber of a not-yet-formed, governing structure. To do so would have posed a direct challenge to the Supreme Soviet. Not that the Council feared Parliament. Rather, the Council, which represented the regions and the republics in some vague way, had nothing to gain by supporting Yeltsin. Regional authorities were doing quite well in the absence of any coordinated authority in Moscow. Yeltsin was in a potentially disastrous position. He had used regional support in the past to circumvent Parliament and now this strategy, too, was slipping from his grasp. It is not known whether Yeltsin actually planned in August the September offensive launched on September 21, but on that evening he took action.

### **The September offensive**

At 8:00 PM Moscow time, Yeltsin delivered a national address, announcing Decree No. 1400, "On a Step-by-Step Constitutional Reform of the Russian Federation." The address focused on the Congress's and Parliament's unrelenting obstruction of the government's reform pro-

gram and the need for a coherent legal order. The conflict between political forces, he said, had become "fruitless, senseless and destructive," while Parliament was guilty of reneging on promises made to the president following each successive congress. Following the April referendum, continued refusals to work with the president demonstrated Parliament's "flouting the expressed will of the Russian people." The most "outrageous instance" of Supreme Soviet recklessness concerned economic policy. Its positions were "deliberately aimed at worsening the situation in Russia." Moreover, having failed to adopt a constitution at the Seventh Congress, the legislative branch had effectively stalled the constitutional reform process. Instead, it revised the old constitution on an almost daily basis to suit temporary needs and outmaneuver the democratically elected president. "Law-making work has been turned into a weapon of political struggle." Having lost its ability to speak for the people, Parliament had transformed itself into the "headquarters of an irreconcilable opposition." Because Russia's security was "more precious than formal obedience to contradictory norms created by the legislature," Yeltsin announced that he had signed earlier that day Decree No. 1400, suspending and terminating all functions—legislative, administrative and supervisory—of the Congress of People's Deputies and the Supreme Soviet of the Russian Federation. A new constitution would be forthcoming and new elections to the Federal Assembly, a bicameral legislature, would be held on December 11 and 12. Following legislative elections, early presidential elections would also take place. In closing his address Yeltsin declared his measures necessary for the good of Russia. He pleaded for calm and support from the people, and asked for international support, stressing that Russia, "possessing a huge arsenal of nuclear weapons," could ill afford anarchy.

The decree was met with shock and amazement by Parliament, while the country as a whole accepted it calmly, perhaps paying little attention. It was not at all clear how Yeltsin intended to carry out Decree No. 1400. Since he did not use force to close the White House, the Supreme Soviet continued to meet. Following Yeltsin's address, Parliament held an emergency session, voted to strip Yeltsin of his powers and swore in Rutskoi as president. Rutskoi's first act was to declare all the September 21 decrees of the "former President Yeltsin" to be null

and void. He then swore in a government drawn from Parliament. The Constitutional Court, itself meeting and voting in nebulous circumstances, backed Parliament, stating that Yeltsin's violation of the constitution constituted grounds for impeachment. Ruslan Khasbulatov appealed to the military and security forces to disobey Yeltsin's "criminal orders," and immediately sought support from regional leaders, asking that they denounce the president. He also called on workers to stage a general strike in support of Parliament and the violated constitution. As had been the case during earlier crises, the army declared that it would maintain "strict neutrality." Except for increased security forces in and around Moscow, nothing seemed changed. But Shumeiko, having just been cleared of corruption charges, re-assumed his position as first deputy prime minister and announced that the heads of defense, security and interior were behind the president.

When the dust settled following the first evening of parliamentary assaults on the president, it was apparent that the Supreme Soviet had marginal public support at best. Within a few days it became even clearer that the assembly had essentially no institutional levers with which to counter the president. While the president, too, was short of unconditional support, he clearly had the upper hand. Regional and republic support by and large fell to the president—except for the Republic of Udmurtia, which declared its laws superior to those of the center. Naturally, backing for Yeltsin was greater among regional administrative heads since they had been appointed by the president, while support among regional and local soviets was considerably more muted. The latter, like the members of the Supreme Soviet, had taken their offices following the 1991 elections, prior to the collapse of the Union. As soviets, moreover, they were tied to the soviet governing structure. With the fate of the highest soviet in doubt, their future

too was jeopardized. The majority of politicians outside Moscow were silent on Yeltsin's actions. Save a few minuscule public protests, direct opposition was not forthcoming. In addition, late during the first day of presidential rule Defense Minister Pavel Grachev announced that he and the military were supporting the president and that political activity (discussions, agitation, etc.) within military ranks had been temporarily banned.

**"The October events are certainly related to Ukaz 1400. This ukaz formally contradicted the existing constitution and aggravated the conflict with the Supreme Soviet. At the same time, it was the actions of the Supreme Soviet that led to the bloody events in Moscow. . . . Russia ha[d] a bizarre constitution that was never really adopted. We cannot seriously consider the process of patching up, renaming and amending the constitution to be the same as adopting it. How can we speak about the constitution of a state if its articles are adopted by a body that has only a temporary procedure and when even this procedure is systematically violated? How can we demand that the constitution be respected when the process of creating it has been fraught with infringements of the law?"**

**Interview with President Boris Yeltsin  
*Izvestia*, November 15, 1993**

Western reaction came swiftly, with nearly all Western heads of state declaring their support for Yeltsin. Only Germany was less than direct. Rather than a statement on presidential rule, the government announced it would assist Russia in refinancing its German debts. Later, during the first full week of presidential rule, the Group of Seven pronounced even stronger support for Yeltsin, praising his commitment to market reform.

So emboldened was Yeltsin on the first day of presidential rule that he took a public stroll. Speaking to reporters, he said that, since Parliament did not exist, he could no longer have a dialogue with it. Yeltsin casually and conspicuously maintained his scheduled agenda. In a further remarkable display of self-confidence, on September 24 he gathered representatives of the former republics of the Soviet Union (excluding the Baltic states and Turkmenistan, with Georgia sending an observer) to sign a treaty

of economic union in Moscow.

From September 22 through September 24 further details of Decree No. 1400 and Yeltsin's overall agenda became clear. The central bank and the procurator general's office were brought under the control of the government, regional leaders were informed of their responsibility to implement all orders from the president's office (they were personally responsible and would be held criminally liable), and the Constitutional Court was suspended until after the elections. The government de-



clared that regional and local soviets could do as they pleased so long as they did not block presidential orders or the electoral process. Amnesty was offered to all in the White House with the threat of prosecution if they continued to resist. A flurry of pronouncements came down from Shumeiko on the future constitution, on elections and on the establishment of the State Duma (the lower house of the Federal Assembly). The State Duma would be comprised of 400 seats, with 270 seats elected from single-member constituencies and the remaining 130 elected through party lists. (Later, by decree, the Duma was enlarged to 450 seats with half assigned to single-member constituencies and half to party lists.) Election of nearly one-third of this body by party lists was meant to give parties a role and to offer them some leverage for exerting party discipline. The Federation Council, the upper chamber, would not be filled by elections but rather by the appointment of regional and republic administrators. On the economic front, Gaidar and his team of economists worked on decrees for lifting more price controls, notably on energy and bread, as well as for a liberalization of foreign trade. Later, following the October shoot-out, they would issue the long-awaited ukaz allowing private ownership of land.

One indication of Yeltsin's initial success in asserting authority was that on Friday September 24, the central bank increased its discount rate to 200 percent. At the same time Procurator General Stepankov, who had made a career of anti-corruption campaigns directed against the government, reversed himself, swearing loyalty to the government. The government announced that Parliament's funding had ended, that its buildings were to be seized and that it had forfeited control of its newspapers and television programs.

Despite Yeltsin's bold moves, Parliament still continued to meet. On Friday September 24, it convened an emergency meeting of the Congress of People's Deputies. Only about half of the deputies managed to come to Moscow, because Parliament's funding had been terminated, requiring the deputies to finance their own trip to the capital. Since phone lines to the White House had been cut, the deputies had to rely on a few mobile phones to disseminate information about the Congress. State television and radio, fully under the government's control and largely sympathetic to Yeltsin, did not even cover the Congress' meetings.

The first order of business for the Congress was to confirm the Supreme Soviet's order of impeachment of the president. This was followed by endless calls for rallying behind Parliament and adhering to the "real" constitutional order. Demoralized by the sight of the half empty chamber and its limited support outside on the streets, the Congress nevertheless continued its sessions.

Finally, on September 28, the president ordered the White House sealed and its heat and electricity shut off. Internal security troops surrounded the building and formed an exit cordon for those inside who wished to leave. Departure remained voluntary but no one leaving the building was to be allowed back in. Aware that the 650 plus supporters in the White House had amassed a substantial stash of small arms and weapons, the president ordered them to surrender their weapons by the following day. The president's office disclaimed any violent intentions towards the hold-out parliamentarians, but promised stern measures were there to be resistance.

The September 29 deadline came and went without any reaction from either side. On the following day, Khasbulatov and Rutskoi sought mediation both from regional leaders and from the Russian patriarch, Aleksy II. But Yeltsin's office rebuffed this suggestion of arbitration and another ultimatum to clear the building, this time by Monday October 4, with the threat of "serious consequences," if the order was refused. On Friday October 1, however, Yeltsin reversed himself and accepted arbitration by Aleksy II. The regional leaders (heads of the soviets) had for several days sought to dissuade the president from closing Parliament by force. In the short time since the September 21 declaration, representatives from 62 of the regions (out of 89 regions in all), including 14 regional administrators appointed by Yeltsin himself, had begun the process of breaking from nearly all central authority. Focused on events in Moscow, Yeltsin found that the regions had again exploited the deadlock of central authority to increase their own power. It was patently clear that the regions and republics had enjoyed the two-year struggle between the president and Parliament. Reinstating the hapless Parliament would insure the regions their continued ability to wrest authority from the center. One example was Novosibirsk, which threatened to form a Siberian republic unless the Parliament was reinstated.

Potential for rebellion in the regions far exceeded in

seriousness any threat that Parliament could muster. As a result, Yeltsin dispatched key government and ministry officials to the most important regions to cajole and garner support. Talks with Aleksy II began, and word spread quickly that the president was considering standing for election in December along with the newly proposed State Duma in return for a voluntary self-dissolution of the Supreme Soviet.

On Sunday October 3, with talks mediated by the patriarch still in process, the peaceful standoff came to a shocking end. A crowd of approximately 10,000 supporters of Parliament moved toward the White House, gathering supporters along the way. There had been similar gatherings in support of Parliament nearly every day before Sunday, but the crowds had never numbered more than a few thousand, and confrontations with the police had been minor. The crowds on Sunday were more aggressive and the security forces at the White House proved unprepared to use the force necessary to repel the swelling protest. Soon after 3:00 PM, a crowd of nearly 15,000 broke through the White House cordon and joined the die-hards inside. Hastily and fatally, Rutskoi urged the crowd to storm the Moscow mayor's office as well as Ostankino, the Moscow television tower and station. A tiny contingent from the group, no more than fifty supporters, easily took the nearly empty and badly guarded mayor's office, killing two of its occupants. Emboldened and perhaps intoxicated by this first success, the White House crowd grew even larger and set its sights on Ostankino. The station too was quickly taken, leaving more than twenty dead.

While the parliamentary cadres were freely moving about the city, security forces took practically no action. For his part, Yeltsin was not even in Moscow. Only at 2:00 PM did he return to the city from his dacha. From the time of his return until approximately 5:00 PM, he met with officials at the Ministry of Defense, pleading and no doubt bargaining with them for support. He probably reminded the reluctant officers of their recently granted pay raises. (Yeltsin had spent a good portion of his time in August and September touring key military bases to insure future support, which he now needed.) With their commitment to support him in hand he returned to the Kremlin where he spent the rest of the evening and the night, drafting a declaration of a state of emergency and other contingent measures with his staff.

By mid-evening, military troops, comprised of officers only, with no conscripts, began what they assumed would be a quick sweep of the city. Instead, facing fierce opposition, they did not manage to retake the television station until midnight. Only the White House remained. It was quickly surrounded but was not shelled until 7:00 AM the following day. It proved resistant, requiring nearly ten hours of bombardment before the remaining hold-outs surrendered late in the afternoon of October 4. Rutskoi, Khasbulatov, members of their rump government, and the other occupants of the White House, about 300 in all, were led to waiting security buses and, under heavy guard, were taken to Moscow's internal security prison, Lofortovo. It is rumored that Yeltsin went personally to Lofortovo to "greet" Rutskoi and Khasbulatov because, at the time of their arrest, he was not in the Kremlin, and television footage from the prison at the time inadvertently showed Yeltsin's closest bodyguard who is always at the president's side.

### **Presidential rule**

With the fighting at last over, approximately 130 lay dead (although the numbers are hotly contested in the Moscow rumor mill). Yeltsin's office moved quickly to enforce state-of-emergency measures, which were initially to last a week but were later extended. A curfew in Moscow was announced, television and radio programs hostile to Yeltsin suspended, leading opposition papers barred from publication, while selective censorship was imposed on the others. Fifteen newspapers hostile to Yeltsin, largely fascist or nationalist in content, were "permanently" banned. More immediately unsettling was the behavior of local Moscow authorities. The condition of emergency measures proved a convenient cover for making sweeps through the streets to remove all non-residents from the city. The harsh round-ups, which drew condemnation from the Helsinki Human Rights Committee, were directed notably at people from the Trans-Caucasus and at central Asians and other non-Russians from the south. By mid-October approximately 20,000 were forced to leave the city, with another 10,000 leaving "voluntarily" before being forced.

With the fighting over, Yeltsin's team seemed vulnerable on several fronts. No explanation was given as to why security forces were so badly prepared for small bands of armed rioters and why Yeltsin's own office was

taken equally unawares. Even more important was the damaging question: Was Yeltsin not responsible for the regions' rebellion, since he had courted them with promises of autonomy in exchange for political support? Yeltsin's office sought to focus public attention on the violent behavior of the parliamentary supporters and on future plans to restore order. Wisely, Yeltsin did not gloat about his apparent victory, choosing instead to pronounce the entire event a grim tragedy, an isolated event driven by a small contingent of dangerous nationalist, fascist and communist malcontents.

Whether responsible for the tragedy or not, Yeltsin initially focused less on healing wounds than on settling scores. A flurry of *ukazi* came from the Kremlin, sacking disloyal regional, republic and local administrators, among them the heads of Novosibirsk and Amur. Stepankov, not surprisingly, was also dismissed. His last-minute conversion to presidential rule had come too late. For the Constitutional Court, Yeltsin's *ukaz* of October 7 was particularly damning. He unequivocally laid blame on the court and its chairman, for siding more frequently with Parliament than with the president. He accused the court of taking "hasty actions" twice in 1993, both of which had "brought the country to the brink of a civil war," while being guilty of inactivity "when the threat of a civil war became real." He accused Zorkin of drawing the court into a political struggle by actively participating in political activities, thus violating the Law on the Court. Moreover the court's evaluation of Decree No. 1400, which closed Parliament, was a "unilateral political decision" which had not even considered the "anticonstitutional, extreme and violent" behavior of the Supreme Soviet. The court was ordered closed until the convening of the new government. According to the draft constitution, remarkably enough, the same court members will have seats in the future, enlarged Constitutional Court. (Zorkin has meanwhile been suspended from the Court and thereby stripped of his immunity from prosecution.)

While shutting down the Constitutional Court, Yeltsin also called for the closing of regional and local soviets. In a nation-wide address on October 6, he first called for their voluntary closure, promising that all deputies would be given "social guarantees" in return for giving up their jobs. Naturally few responded to the call, so a further step was taken on October 9, by a decree. "On

Reform of Representative Power and Institutions of Local Self-Government of the Russian Federation." When this again proved insufficient, the regional and local soviets were ordered dissolved, again by decree, on October 26. Authority was passed to the regional administrators (mostly Yeltsin appointees) who are to remain in charge until the local elections scheduled for next summer.

Dissolving the soviets had the effect of complicating the original design of the upper house of the Federal Assembly, the Federation Council. According to Decree No. 1400, only the Duma was to be elected, while the Federation Council was to be comprised of the heads of the administrations and the heads of the soviets of the regions and republics. With the soviets closed, the heads of the soviets were gone too. Thus the future un-elected Federation Council was deprived of half of its proposed members. Solving the problem meant calling for elections to the Federation Council. This was done by decree on October 11. Seats in both the Federation Council as well as the State Duma were filled by the election on December 11 and 12. Once Parliament was disbanded, the president saw no need to seek the favor of the heads of soviets. After all, their demands had continually complicated constitutional drafting and economic reforms, and they had sided with Parliament during the last days of the crisis, prolonging the presidential-parliamentary stand-off. As it was, Yeltsin still had his appointed administrative heads, who quickly fell into line when the first shots in October were fired. By calling elections with so little notice, he probably hoped to outmaneuver the regional power-seekers who had so confidently thought themselves beyond Moscow's reach.

After "retaking" the regions, Yeltsin issued the measures necessary for adopting a constitution on October 15. A vote on the soon-to-be released constitution would be held at the same time as the general election on December 12. The formula for ratifying the constitution was simple. The voters were asked, "Do you accept the draft constitution of the Russian Federation? Yes or no?" The constitution is considered ratified if approved by a simple majority, so long as more than 50 percent of the electorate take part in the referendum. The new constitution will be in force upon publication of the election results. (For an analysis of Yeltsin's constitution see the articles by Edward Walker and Stephen Holmes in this issue.)

Yeltsin approved of his constitutional committee's draft constitution on November 8. The constitution heavily favors the president over the legislature. His appointment powers in the executive (the government and the administration) and judicial branches are vast. He can dissolve the Duma if it repeatedly declines his candidate for prime minister. Moreover, the constitution attempts to level and reduce the powers of the unruly regions and republics. Its human rights provisions are liberal, although perhaps unenforceable, and it reconfirms a decree of late October granting the right to own land. It also contains temporary provisions, which are of the utmost importance. The first Federal Assembly members will hold their seats for two years only and thereafter they will have four-year terms. Yeltsin will apparently serve out his five year term, to June 1995, which may or may not settle the question of a possible early election. Successive presidents will have four-year terms and can hold office no more than twice. The shortened terms of the first assembly may again indicate that Yeltsin fears Russia's first freely elected legislature, however powerless it may appear on paper.

The elections will not resolve as much of the political turmoil as is commonly thought. Indeed, history could very well repeat itself. Yeltsin's formal powers are considerable, but they are just that—formal powers. His office has produced more than 300 decrees since the closing of Parliament. Decrees have been repeatedly announced only to be disclaimed or revised or overruled by subse-

quent decrees. A Parliament of any kind may weaken Yeltsin's resolve or slow his pace. Moreover, it is much easier to write a constitution bringing the regions and republics back into line than to enforce the will of the central government on the rest of the country. With the elections, Yeltsin may now find it harder to use military force. For the first time, he faces parliamentarians who are his democratic equals and who can claim to have more legitimacy than he does given the fresh elections.

In addition, there are still no real parties in Russia capable of articulating constituents' demands. The election was thus a race of personalities. If the past is any indication of the future, it is highly unlikely that the new parliamentarians will get along with each other. There is every possibility that the new Parliament will prove as hungry for authority as the former one, and this time Yeltsin may find it more difficult to resort to extra-constitutional measures. Of course, the constitution will place the president in a powerful position. But this too may backfire. Already there is growing popular displeasure with the way Yeltsin has stiffed his opponents, within as well as outside the print and broadcast media, since the October crisis. Moreover, the regions may have been cut down to size in the constitution, but this does not mean that they do not present, collectively, a formidable obstacle to central control. A great deal of skill and luck will be required to make Yeltsin's constitution work. The events of October and their aftermath speak clearly to the limits of both.

## An Excerpt from Yeltsin's Constitution

*Stephen Holmes*

What follows is a translation of the final section of Yeltsin's constitution, the "Concluding and Transitional Provisions." This is the only part of the document that is wholly new. Especially remarkable is the announcement, in paragraph three, that President Yeltsin will serve out his original, full term, which clearly implies, contrary to an earlier presidential decree, that he will not face the electorate until 1996. (In his November 15 interview with *Izvestia*, Yeltsin re-opened the possibility of pre-term elections, apparently treating his own constitutional draft

as an off-the-cuff opinion, setting only loose limits on presidential whim.) Equally interesting is paragraph five, which confirms the continuation in office of all sitting judges, including, presumably, non-supporters of Yeltsin on the Constitutional Court. Paragraph seven fixes December 1995 as the date of the next legislative elections. (By establishing a "short parliament," on an exceptional basis, Yeltsin may hope to give potential opponents no time to regroup. But his drafters may also have reasoned in a less cynical way. Because Russian society continues

to change in unpredictable directions, arguably, an assembly can mirror the current distribution of social forces only if legislative terms are kept relatively brief.) Finally, paragraph nine is noteworthy for two reasons. First, it affirms the "compatibility" of ministerial and legislative functions, so that aspirants to the cabinet may freely run for the State Duma; but it also makes it useless for corrupt ministers to seek a deputy's seat simply to gain immunity from prosecution. (See the article by Stephen Holmes and Christian Lucky in this section.) And second, paragraph nine concludes with the one concession that Yeltsin's drafters, whoever they were, saw fit to offer to regional elites. Representatives of the republics and regions can serve on the Federation Council without having to abandon their power bases back home, because the upper chamber will not sit in permanent session, but will convene only on an occasional basis.

### Concluding and transitional provisions

1. The Constitution of the Russian Federation enters into force on the day of its official promulgation, in accord with the results of a nation-wide vote.

The day of this nation-wide vote, 12 December 1993, will be considered the day of the adoption of the Russian Federation Constitution.

At the same time, the validity of the Constitution (Basic Law) of the Russian Federation/Russia, adopted on 12 April 1978, with its amendments and additions, will be suspended.

In case of any disparity between the provisions of the Constitution of the Russian Federation and the provisions of the Federal Treaty—the treaty on the division of authority and competencies between the federal organs of state power in the Russian Federation and the organs of state power in the sovereign republics within the Russian Federation; the treaty on the division of authority and competencies between the federal organs of state power in the Russian Federation and the organs of state power in the krai and the oblasts of the Russian Federation and in the cities of Moscow and Saint-Petersburg; the treaty on the division of authority and competencies between the federal organs of state power in the Russian Federation and the organs of state power in the autonomous oblasts and autonomous districts within the Russian Federation; and also other treaties between the federal organs of state power in the Russian Federation and

the organs of state power in the subjects [constituent territorial units] of the Russian Federation, as well as treaties among the organs of state power in the subjects of the Russian Federation—the provisions of the Russian Federation Constitution are operative.

2. Laws and other legal acts valid on the territory of the Russian Federation prior to the present constitution's coming into force are to be applied in those parts that do not contradict the Russian Federation Constitution.

3. From the day that the present constitution comes into force, the president of the Russian Federation, elected according the [amended 1978] Constitution (Basic Law) of the Russian Federation/Russia, will fulfill his prescribed functions until the expiration of the term for which he was elected.

4. From the day that the present constitution comes into force, the Council of Ministers—the [cabinet or] government of the Russian Federation—acquires the rights, obligations, and responsibility of the government of the Russian Federation, as established by the Constitution of the Russian Federation, and will henceforth be designated the government of the Russian Federation.

5. Judges in the Russian Federation administer justice and apply the law in accordance with their competencies, as established in the present constitution.

After this constitution enters into force, all judges of the Russian Federation will continue to exercise their functions until the end of the terms for which they were elected. Vacancies shall be filled according rules established by the present constitution.

6. Until a federal law comes into effect, establishing procedures for the consideration of cases by courts with participation of a jury, the previous procedures for the consideration of cases will be preserved.

Until the laws on criminal procedure in the Russian Federation are brought into line with the provisions of the present constitution, previous rules governing the arrest, custody, and detainment of persons suspected of committing a crime remain in force.

7. For the first term, the Federation Council and the State Duma are elected for two years.

8. The Federation Council gathers for its first meeting on the thirtieth day following the elections. The president of the Russian Federation opens the first meeting of the Federation Council.

9. During the first term, a deputy to the State Duma

may simultaneously serve as a member of the government of the Russian Federation. Provisions concerning the immunity of deputies in the present constitution, in the section about responsibility for activity (or inactivity) related to the carrying out of official functions, do not apply to those deputies to the State Duma [who are simul-

taneously] members of the government of the Russian Federation.

Deputies to the Federation Council, during the first term, will exercise their functions on a periodic basis.

*Translated by Zaza Namoradze and Stephen Holmes*

## Politics of Blame and Presidential Powers in Russia's New Constitution

*Edward W. Walker*

Under the best of circumstances, Russian society will be under extreme stress in the coming decade. Stabilizing and restructuring the economy will be deeply painful, relations with Russia's immediate neighbors will be fraught with difficulties and Russia's internal center-periphery tensions will persist. As a result, Russian democracy, if it survives at all, will almost certainly be more precarious, and take longer to consolidate, than has been the case with the new democracies of Eastern Europe.

Given these inevitable strains, it would be enormously helpful if President Yeltsin had presented the Russian people with a well-crafted constitution that contributed to, rather than undermined, democratic consolidation. Unfortunately, this did not occur. On December 12, the Russian electorate approved Yeltsin's draft. The constitution provides for an extremely strong presidential system that will have all the brittleness of the U.S. Constitution but lack its balanced division of powers.

Yeltsin's constitution will serve Russia particularly poorly during the stressful years ahead. Rather than creating an institutional order in which power, and hence responsibility and blame, are well-distributed, it will concentrate power in the hands of a president. This president will come to embody "democracy," and all that it brings with it, in the minds of the people. When the inevitable occurs, and the popularity of that president declines, the popularity of democracy will decline with it. No other party or individual will take up the baton of governmental responsibility, and hence no other party or individual will have the misfortune of discovering the difficulties of governing a country under extreme stress. Only the president will have the opportunity to discredit

himself. Russia's latest tragedy may be that the man who has done the most to contribute to democratic consolidation in Russia may be unwittingly creating an institutional order that undermines what has already been achieved.

### **Legislative-executive relations in the Yeltsin constitution**

The Yeltsin constitution formally establishes four branches of power for the federal state—the presidency (Section 4), the legislature (Section 5), the government (Section 6), and the judiciary (Section 7). The president is elected directly for a four-year term (Art. 81, 1) and is head of state (Art. 80, 1) and commander-in-chief (Art. 87, 1). There will be no vice president (Yeltsin's experience with his first vice president, Aleksandr Rutskoi, was not a great success). The president is very difficult to impeach (again, Yeltsin was almost impeached by the former Parliament on several occasions). Impeachable offenses are limited to treason and high (*tyazhkiye*) crimes (Art. 93, 1). Removal of the president from office requires the filing of a charge of treason or high crime by the State Duma, and that charge must in turn be confirmed as an impeachable offense by the Supreme Court. The Constitutional Court must then rule that the proper procedures have been followed in bringing the charge (Art. 93, 1). To file the charge, a two-thirds vote is required in the State Duma (Art. 93, 2), while actual removal requires a two-thirds vote in the Federation Council (Art. 92, 2) within three months of the filing of the charge by the Duma (Art. 93, 3). There is also a vague provision that a ruling of unspecified character must be



right to adopt the federal budget each year after presentation by the government (Art. 114, 1, a; Art. 104, 3; and Art. 106, a); and the right to adopt "constitutional laws" through a three-quarters vote in the Federation Council and a two-thirds vote in the State Duma (Art. 108, 2).

These amendments also require approval by two-thirds of the legislatures of the federation and are limited to sections 3-8 of the constitution (Art. 136). Amendments to sections 1, 2, and 9 (entitled "the Foundations of the Constitutional System," "Human and Civil Rights and Freedoms," and "Constitutional Amendments and Revision of the Constitution," respectively) require the convening of a Constitutional Assembly (Art. 135). Such a wholly unspecified method for changing the constitution may turn out to make amendments much less difficult than it looks. Finally, there are a number of rather curious provisions on parliamentary votes of no confidence in the government (Art. 117, 3). Although the Duma has the right to express no confidence in the government through a majority vote, the president may ignore that vote. If within three months the Duma issues a second vote of no confidence, the president must either dismiss the government or dissolve the Duma. It seems that the Duma will therefore have no more power to bring down the government than the U.S. Congress has to force the president to change the cabinet, which leads one to wonder why there is a device to issue a vote of no confidence at all.

### The pitfalls of presidential government

Yeltsin's constitution provides for a very strong presidential system indeed. The Russian president will wield considerably greater powers than does the U.S. president. In particular, he is able to force the legislature to approve an unpopular nominee for chairman of the government; he can choose other federal ministers without need for confirmation by Parliament; he has the right to issue *ukazi* and *raspyazheniya* that are binding on the general public as long as they do not violate federal laws; and his government (in effect, really a cabinet) can issue *postanovleniya* and *raspyazheniya*.

Unfortunately, the politics of transitions from Soviet-style regimes are, to a large extent, the politics of blame. For economic performance to improve in the long run, deep sacrifices are required in the short run. In many cases, arguably in most, the distribution of those

sacrifices is either a matter of luck or the exploitation of advantages accumulated under the old regime. In any case, the distribution effects of transition violate norms of fairness. Regardless of how well-designed and well-implemented its reform program, any government presiding over this painful and unfair but necessary process is almost certain to lose popularity over time.

As a result, it is extremely important for the success of democracy that the electorate not conclude that democracy itself is responsible for its sufferings and that only non-democrats can alleviate economic problems. Initially, of course, democrats can blame the old regime for much of what transpires. This opportunity fades, however, as the economy contracts. In most cases, fledgling democracies making the transition from communism retain some ability to blame outsiders. In Eastern Europe and most of the former Soviet Union, for instance, there is always Russia to point to as a scapegoat. Unfortunately, Russian democrats do not have this luxury, and they are therefore even more likely to be blamed for the country's deepening economic and social crisis.

It is also important that economic reform not be blamed for the legacy of central planning. There are, of course, different ways to approach economic reform, and some are more effective than others. Different tempos for privatizing or for bringing inflation under control also exist. But there are no economic panaceas. Glib critics of "shock therapy" need only look at Ukraine to be reminded that the alternative of "centrism" is no cure-all. For democracy's sake, however, it is crucial that no single economic program, particularly shock therapy, dominate for too long. "Centrists," too, should have ample opportunity to discredit themselves.

In fact, the economic options are quite limited for centrists. The government can either make inflation better or worse, increase or reduce the budget deficit, attract or repel foreign investment. Even centrists recognize, however, that accelerating inflation, increasing the budget deficit, or alienating foreign investors and creditors are not achievements of which to be proud. No less than economic liberals, centrists will therefore face very difficult decisions about how to manage the economy. Giving them the opportunity to confront these difficult choices, so long as they are willing to play according to the rules of democracy, will make it clear to the electorate



that there are no easy answers. It will also make the electorate recognize its own input in choosing among the painful paths to economic reform.

The case of Poland is instructive in this regard. Poland had four different governments during the term of its first postcommunist Parliament. In these governments all four prime ministers were chosen by majority coalitions in the Sejm. While they adopted somewhat different economic programs, each government attempted to stabilize the economy and press ahead with reforms. As a result, economic performance has improved markedly, while Polish democracy seems surprisingly stable.

Ironically, Poland's initial failure to set a threshold for representation in the Sejm may have contributed to this result. The fact that 29 parties were represented in the first Sejm made the government less viable. Indeed, governments came and went, but the result was not so much policy incoherence as a healthy sharing of blame. Moreover, governmental instability, which is usually seen by political scientists as something to be avoided, set four precedents for peaceful transfers of power.

The September election victory of the Union of the Democratic Left and the Polish Peasant Movement—both, in effect, successor parties to the Polish Communist Party—did not sabotage democratic consolidation. Neither will it reverse economic reform. Already, the new government has made it clear that it will proceed with the main outlines of the preceding government's economic program, although at a slower pace. But even if it wished to make a radical departure in economic policy, it would quickly find that its options are rather limited. Inflation would accelerate rapidly, loans from the IMF would dry up, capital accumulation would stagnate, and footloose foreign capital would stay away. Regardless of its economic policy, however, the new government will soon discover that assuming the reins of power during stressful times is not an unmitigated blessing.

Poland is instructive in another way as well. Even as successive governments came into office, Poland's first postcommunist president and the hero of the anti-communist revolution, Lech Walesa, suffered a dramatic decline in popularity. Critically, however, Walesa's political problems did not translate into declining popular support for democracy. The reason is that Walesa, the government, governmental policies and democracy were not seen as one and the same by the Polish electorate. Had

Walesa had as much control over the political system as he had initially wanted, or as Yeltsin apparently wants in Russia, Polish democracy would be in a far more precarious condition.

Unfortunately, the emerging institutional order in Russia will be particularly ill-suited for blame sharing. The president will have to govern virtually alone for four years. Reproaching the chairman of the government for economic difficulties and replacing him will only undermine the president's credibility. After all, the president chose the chairman in the first place. A directly-elected president in control of the government will also enfeeble Russia's emerging parties and delay the structuring of its party system. Parties will be weak because they will not have to enforce party discipline to maintain the government. The current mixed electoral system will also mean that multiple parties will be represented in Parliament. Thus deputies, particularly those whose seats are not drawn from party lists, will be able to switch party allegiances and form and reform parliamentary factions and alliances with little cost. This was the case in the recently dissolved Supreme Soviet. As a result, the constituencies of the parliamentary deputies will continue to have a very difficult time holding their representatives accountable for campaign promises. All this will make for a weak and fractious legislature that may find it very difficult to cooperate with the president or the government.

Indeed, if Yeltsin serves out the last two years of his current term (as now seems likely) or, even worse, if he is re-elected to a four-year term in June, he may look back fondly to the days when he had an obstructionist Parliament to blame for the country's problems. Likewise, the extensive powers of the president will mean that whoever has the misfortune to succeed Yeltsin will almost certainly be blamed for the ills that afflict Russia in the coming years. Unfortunately, the power concentrated in the presidency will also mean that the declining popularity of the president will probably be accompanied by declining support for democracy. Russia appears destined to acquire a new institutional order that makes the already precarious process of democratic consolidation even more problematic.

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## Storm over Compatibility

*Stephen Holmes and Christian Lucky*

In the run-up to the December 12 referendum, the seemingly dry and technical issue of "compatibility" loosed an unexpected avalanche of public protest. Yeltsin's enemies denounced the constitution's compatibility provision (allowing an individual to serve simultaneously as deputy and minister, at least during the legislature's first term) as an almost inescapable pathway to despotism. And the drafters' apparently last-minute decision to lift parliamentary immunity from any representative who also joins the cabinet shows that Yeltsin's own team was acutely aware of the controversy swirling round the issue. Our primary aim in this article is to place this current debate about compatibility in a wider theoretical context. Our secondary aim is to argue that, under contemporary Russian conditions, the compatibility rule may have some important, but not wholly obvious, advantages.

### No fixed rule

The choice between compatibility and incompatibility touches directly on a rudimentary question of constitutional design: how to organize the relations between the executive and the legislative branches? One commonplace often repeated in Moscow's moderate opposition press is that "parliamentary regimes" naturally assume that ministerial and representative functions may be combined (to assure collaboration between the branches), while "presidential regimes" assume that they may not be (to reinforce the separation of powers). But this correlation is simplistic, and not only because of the well-known impossibility of neatly classifying all constitutional systems as either parliamentary or presidential.

There are basically three constitutional rules that can govern the compatibility of ministerial and representative posts. The first and the third are rigid, while the second is flexible. A minister either must be a deputy, may be a deputy, or may not be a deputy. Contrary to the assumptions of most Russian commentators, there is no necessary correlation between these three rules and alternative models of democracy. For instance, parliamentary regimes *without* a directly elected president sometimes mandate compatibility (Great Britain), sometimes

allow it (Germany, Italy), and sometimes forbid it (Norway, Holland), while parliamentary regimes *with* a directly elected president do the same, sometimes mandating compatibility (Ireland), sometimes allowing it (Austria), and sometimes forbidding it (Portugal). The incompatibility provision in Article 23 of the constitution of the French Fifth Republic, like the constitution as a whole, is unique and neither represents constitutional orthodoxy nor justifies any large generalization, such as: whenever a directly elected president has an important role in shaping the cabinet, incompatibility is logically required. In Eastern Europe, it should be noted, some parliamentary regimes with popularly elected presidents (Poland and Romania) allow ministers to keep their seats, while others (Bulgaria and Lithuania) forbid it. The degree of presidential influence on cabinet formation, incidentally, does not appear to be a decisive factor in these cases.

The upshot of this brief survey is that constitutional theory provides no universally valid recipe for settling the question. Institutional rules can be packaged in a wide variety of ways, and the effectiveness or ineffectiveness of any particular bundle depends on complex and changing historical circumstances. To deepen our understanding of what is at stake in the Moscow controversy about compatibility, then, we must abandon the futile quest for a doctrinal consensus among constitutionalists. Instead, we should simply rehearse some of the more persuasive arguments that have been advanced for and against compatibility. And then we should ask how each of these arguments plays out in the Russian context today.

### Arguments against compatibility

Opponents of compatibility, first of all, assert that rules permitting or mandating ministers to retain their seats in the assembly not only violate the separation of powers (usually conceived in an imprecise way), but also fuel cabinet instability, encouraging ambitious representatives to see the fall of the current government as an opportunity for personal advancement. Compatibility is also said by its enemies to distract busy ministers from their pri-

mary function, to drag them down needlessly into the feuding world of party politics, to assume unrealistically that agents of partial constituencies can act freely for the national interest, and to confound the distinct roles of controller and controlled. Those hostile to compatibility also warn that the media coverage of cabinet incumbents will inevitably be exploited to insure legislative re-election and that parliamentary immunity will be invoked to protect ministers who are simultaneously deputies from charges of bribery and defalcation. (It was this latter fear that Yeltsin's drafters sought to allay.) The simplest way to avoid these palpable evils, in any case, is to stipulate incompatibility. In Russia, the most prominent argument along these lines has probably been that, if compatibility stands, Yeltsin will use his ministers to stage-manage parliamentary proceedings. Legislative independence will become almost impossibly difficult, apparently, if the personnel of the two branches even minimally overlaps.

The arguments being tossed around in Moscow against compatibility, it should be said, are far from new. Indeed, they were first formulated in a famous constitutional debate that took place on September 29, 1789 in the French National Assembly. The assembly's eventual decision to outlaw simultaneous occupancy of ministerial and representative positions was not just a declaration of high principle, however, but also a concrete maneuver to topple the much-envied Mirabeau, who was both advisor to the king and head of the legislature. Mirabeau's foes in 1789 argued exactly like Yeltsin's in 1993: if compatibility is allowed, the king or president will seduce parliamentary leaders, dangling ministerial posts before their eyes and then using them to mislead and manipulate ordinary deputies. What this historical detail reveals is that incompatibility provisions may symbolize or embody the legislature's distrust of, and hostility toward, the executive branch. We can call this the Mirabeau syndrome. Its relevance to the situation in Moscow needs no commentary.

### Arguments for compatibility

Proponents of compatibility may acknowledge the power of some or all of these arguments. But they also believe that, on balance, the advantages of compatibility outweigh its disadvantages. First of all, compatibility has the virtue of assigning the daily task of governing, at least some of

the time, not to technical experts but to individuals who have won the confidence of (at least some) voters. When the pool of political talent is excruciatingly small, moreover, compatibility will allow exceptional individuals to contribute to the development of both the legislative and executive branches. More precisely, the rule permitting ministers to retain their seats as deputies will help recruit into the cabinet able individuals who might otherwise refuse to relinquish a predictable four-year term for an insecure tenure.

By giving deputies easy access to the ministers, moreover, and by allowing the ministers, in turn, to be involved in everyday parliamentary affairs, compatibility encourages cooperative governance, providing "the buckle," as Walter Bagehot might have said, uniting the executive with the legislature. Incompatibility, by contrast, will exacerbate the estrangement between the branches that, in any case, seems natural to strong-presidency regimes. Such a mutually exclusive arrangement will not necessarily promote legislative power in the long run. As Mirabeau argued against his enemies in 1789, compatibility can increase the quality and usefulness of the work done in the assembly: "the leading agents of the executive power are necessary in any legislative assembly, they compose a part of its intelligence." The experience of governing is concentrated in the executive, which is why the representatives of the nations should want to have the ministers sitting among themselves, for ceaseless consultation (*Archive parlementaire*, vol. IX, pp. 705-712). Incompatibility, from this plausible perspective, will weaken the assembly itself.

### An argument for compatibility in Russia today

Even or especially in this telegraphic form, the abstract arguments on the two sides of the question sound equally impressive. But in Russia today, the case for compatibility is stronger than the case against. Incompatibility is the more rigid alternative, first of all, unsuitable for a period in which adaptability is vital; and it also gives a kind of official respectability to the refusal of president and parliament to work together. This argument is worth making or remaking now because pressure to amend the new constitution has already begun to build.

Like old generals, constitutional drafters are always fighting the last war. Constitutions are usually retrospective documents, not prospective ones. They are designed

to solve the most pressing problems of the past, not of the future. Yeltsin's constitution is no exception, as the conspicuous but easily explainable absence of the office of vice president makes clear. The greatest problem of Russia's political system during the past two years has been legislative-executive deadlock. No surprise, then, that Yeltsin's main constitutional aim was to prevent a recurrence of the standoff between president and parliament. He did this, primarily, by constitutionalizing the president's right to legislate by decree and making the cabinet depend on presidential, not parliamentary, good will. There will be no standoff, because Parliament has been forced to its knees. But this will be a Pyrrhic victory if Yeltsin's fury at the old Supreme Soviet prevents him from laying the foundations for a democratically accountable and politically responsible representative assembly in the future.

The compatibility rule, found in the "Concluding and Transitional Provisions," was also written with the past in mind. But it cuts in the other direction, softening the otherwise unremitting antiparliamentarism of the new constitution as a whole. This is why compatibility should be supported by democrats. It is a bold and public disavowal of the Mirabeau syndrome. It rebuffs the insidious suggestion that president and assembly can never work together. Indeed, compatibility is one of the few rules in the constitution which promises to shore up Parliament's role as a player in the political game and, in the long run, even to strengthen Parliament's hand. Those fearful of authoritarianism in Russia should not be so quick to demand incompatibility because a constitutionally entrenched gulf between the branches, in a crisis situation, will merely guarantee the total irrelevance of the assembly to momentous political outcomes.

One of the main reasons why the rupture between president and Parliament came to such a bloody end is that, over the last two years, Yeltsin's ablest supporters in the Supreme Soviet—such as Sergei Shakrai and Sergei Filatov—left the legislature to join the president's team. As a result, Parliament was slowly but effectively abandoned to anti-reform forces. *Compatibility is designed to prevent a replay of this evacuation scenario.* That is its main purpose and rationale. Aware that free elections will bring many Communists back to the assembly, Yeltsin's drafters saw compatibility as a necessary tool for preventing the rise of another wholly anti-presidential body.

Compatibility will not prevent all misunderstandings between the branches, but it means that individual politicians will not have to make an either/or choice, swearing loyalty either to the executive or to the legislature. And it will somewhat inhibit the perhaps inherent tendency of the two branches to develop interests, and even ways of seeing the world, that are mutually exclusive.

Given the enormous challenges facing him and his almost unlimited powers for unilateral action, Yeltsin will be certainly tempted to by-pass the assembly. Under the best of conditions, Russia is in for a period of parliamentary weakness and presidential rule. The practical question is how to *moderate* this tendency and preserve at least some elements of parliamentarism that might prove a valuable legacy, say, ten years from now. Compatibility is one way to do just this. By giving Yeltsin some means to influence Parliament, short of blowing it up, the compatibility provision provides an incentive for Yeltsin to work through the assembly, rather than behind its back or over its head. At least some of the parties in the new legislature, for instance, will be less perversely obstructionist if they know that some of their members may be raised to the cabinet. By holding out the plum of a ministerial portfolio, Yeltsin can manage Parliament to achieve his own ends. This may be worse than treating Parliament as an equal partner, but it is better for the future of Russian democracy than ignoring Parliament altogether.

During the past two years, the new Russia has been governed (the term is relative) mostly by experts protected by Yeltsin's electoral legitimacy. However competent in their respective fields, such experts have little appeal among the voters, as their poor showing in the December election proves. By education and temperament, moreover, technocratic ministers cannot resist commenting scornfully and publicly on the obtuseness of elected representatives, thereby reinforcing popular disenchantment with electoral politics itself. In the long run, of course, a democratic Russia needs not a cabinet of experts, but a cabinet of politicians, who know how to speak sensibly and understandably to ordinary citizens. By changing the incentives facing all parties, compatibility will contribute to this outcome. Technocratic ministers, working side by side with elected colleagues from the chambers, will be less likely to fuel popular distaste for "partisan politics." Deputies will be better informed about

the traumatic difficulties of governing the country, and perhaps less inclined to retreat into irresponsible screeds accompanied by no alternative plan. And, who knows, ministers who retain their seat in Parliament may feel a bit freer to let their boss hear useful criticism and painful advice. Finally, the president himself will be encouraged to involve in governance not merely a highly educated elite, unable to gain the confidence of voters, but also

politicians with constituencies throughout the federation. To strengthen Moscow's hand in relation to the rest of the country, Yeltsin will be well-advised to bring into the cabinet politicians with regional power bases. Compatibility allows and encourages him to do just this. That is just another reason why it is a good rule, not in general, but for Russia today.

## Superpresidentialism and its Problems

Stephen Holmes

Cynical commentators frequently dismiss the very subject of Russian constitutionalism, noting the parchment barriers cannot possibly contain or even channel the continuing turbulence unleashed by the Soviet system's dramatic collapse. In the ongoing Moscow debate about Yeltsin's constitution, however, almost all parties continue to assume that institutional design matters for the viability of whatever kind of Russian democracy may eventually emerge. Is their assumption obviously false?

Institutions can make a difference even if they do not make all of the difference. Fine-sounding rights and liberties, for instance, can be inscribed piously into a national charter. But Yeltsin's newly ratified constitution will actually protect individual rights better than Brezhnev's constitution only if it organizes the government in a self-limiting way. So without exaggerating the importance of institutional design, we have good reason to examine closely the sort of political system established by the new Russian Constitution.

First of all, it is not a separation-of-powers system on the American model. Law-making and law-executing powers are fused, since the president can legislate by *ukaz*. Moreover, checks and balances work solely for the president. He may veto legislation and dissolve an obstructionist assembly, but the legislature cannot block his decrees. (The greatest technical deficiency of the new constitution lies in the lack of any procedure for resolving conflicts between parliamentary laws and presidential decrees, because the constitution does not clearly delineate mutually exclusive spheres of competence. Admittedly, as Edward Walker explains above, Article 90 says that presidential decrees cannot contradict federal laws.

But there is no practical way for even two-thirds of the deputies to overrule the president in case his *ukazi* contradict their laws. Article 125 allows the legislature to appeal to the Constitutional Court on such questions, but the court is unlikely to have the political strength or independence to exercise this "ultimate" power to decide what is the law especially if no constitutional question is raised.)

Yeltsin's constitution is no more French than it is American. It is certainly not modeled on the semi-presidentialism of the Fifth Republic, despite a flurry of commentaries to this effect. The French president, for instance, has no serious veto power and certainly cannot sack the prime minister unilaterally. There can be no cohabitation under the Russian system. Even if Yeltsin's enemies controlled a parliamentary majority, he (unlike Mitterand) could simply rule without paying them any mind.

The system established by Yeltsin's constitution, in fact, can most succinctly be described as superpresidentialism. Paradoxically, swollen presidential powers are tailored to fit a man who has repeatedly said that he does not want to run for office again. While Yeltsin's supporters claim that such a system will enhance political stability, plebiscitary caesarism, as is well known, can produce incalculable results if there occurs a sudden mid-term death or incapacitation of the leader. Yeltsin's superpresidentialism ignores such elementary problems (although the possibility that Vladimir Zhirinovskiy might eventually occupy the post created for a pro-reform candidate has by now dawned upon the president's drafters). The new constitution creates a single-function system, designed expressly to solve the most

irritating political problem of the last two years: legislative-executive deadlock. To this extent, the Russian people have ratified a retrospectively crafted constitution. Its framers decided to punish the new Parliament (elected under presumably democratic conditions in the new Russia) for the sins of the old Parliament (a holdover from an entirely different country).

The flip side of superpresidentialism, therefore, is fig-leaf parliamentarianism. (There is an eerie parallel between the burnt-out White House and the gutted powers assigned to the two-chamber Federal Assembly in the new constitution.) This will not be the first rubber-stamp legislature to sit in Moscow, of course, so tradition speaks perversely for this arrangement. But the election results show that it would be a mistake to dismiss this marginalization of the assembly as a mere power grab by Yeltsin's entourage, fed up with obstructionist parliamentarians. The problem here is much deeper and more serious. Given the feebleness or nonexistence of a party system in Russia, there is no chance that parliamentary elections will give rise to a well-disciplined body capable, in turn, of producing a strong government able to make difficult decisions while retaining public confidence and remaining democratically accountable. The new parliament promises to be simultaneously fractious and ideologically polarized. Until something like a streamlined party system comes into being, where all sides accept the rules of the game, only some form of presidentialism will be able to combine legitimacy and effectiveness, as any democratic or semi-democratic government must do. In my opinion, Yeltsin's supporters are probably correct to argue in this way.

The tasks confronting the Russian government are mind-boggling. To achieve only its most pressing objectives, the postcommunist Russian state probably needs to be the most effective and well-disciplined state in the history of the world. The regime is being asked to manage the transition from socialism to capitalism, and to transform almost every aspect of Russian society, in what Kenneth Jowitt calls an "emergency environment" and without any of the outside help received by the post-fascist states of Western Europe after 1945. To plunge ahead with economic reform, the government must be somewhat insulated from the resentments understandably triggered in the electorate as unemployment soars. It seems obvious that Yegor Gaidar would never have

been raised to the premiership by a parliamentary system in today's Russia; and he could never have gotten as far as he has, had he not been able to hide behind Yeltsin's democratic charisma. Economic reform and stabilization is Russia's most pressing challenge. And Yeltsin's allies are correct to see this as a managerial task, requiring ad hoc decision-making and the negotiation of strategic social bargains. Such activities can best be performed by a compact executive, they rightly argue, not by a disputatious assembly, with reformist liberals squeezed between unruly fascist and communist factions. A parliament designed to make laws, even if it were more coherent and less polarized than any Russian legislature is likely to be anytime soon, is not useless, but it cannot play a central role in managing and monitoring reform. Indeed, the latter is not something *any* assembly could do well. Hence, some form of superpresidentialism seems inevitable for Russia, however dangerous it obviously is, and however great a threat it poses to the protection of basic rights.

But the discussion cannot end here. Fig-leaf parliamentarianism is far from ideal even from Yeltsin-the-reformer's own point of view. Parliaments may have important democratic functions even if they cannot check or control the executive. (After all, the British Parliament has virtually no chance to topple the cabinet.) For instance, the legislative branch, in a multiparty system, can help bind various constituencies to the polity, making them feel represented within the institutions of the state, even if their party doesn't wield power. Assemblies can also provide a highly visible forum for training future leaders in the pluralistic politics of compromise and bargaining. It can be a recruiting ground where Yeltsin can find pro-reform politicians who have won the confidence of Russian voters and add them to his team of experts. And parliaments can keep the government usefully aware of simmering social problems, not to mention of the errant behavior of its own agents.

The potentially positive functions of the legislative branch, even when it is unable to produce an effective government, or hold ministers accountable, is especially relevant in Russia today, where a reform-minded regime is imposing unprecedented burdens on the population. Not only are Russians being forced to swallow great deprivations in standards of living, safety in the streets, status in the world, and ideological certainty. They are also being compelled to conform their behavior to new and

complicated rules of capitalist behavior, hard for ordinary people to understand, much less to follow. As a result, a reformist government—unlike the czars and their communist successors—needs more than popular acquiescence. It needs popular cooperation. To help secure this cooperation is a vital social function to which a more-than-fig-leaf parliament could certainly contribute in the new democratizing Russia. Even if it cannot check the government, it can still help “mobilize consent,” to use the phrase coined by Samuel Beer. Yeltsin cannot rely on periodic elections alone to legitimate his reform program. In order to implement his policies, he must explain, interpret, and justify them to the country. To do this, he must reduce the level of secrecy hitherto typical of decision-making in Moscow. One way to pursue this objective is to promote open debate in the assembly (even a fractious one) among deputies who represent a variety of constituencies around the country. Even though Parliament will be divided between pro-reform and anti-reform forces, an open debate on the major issues of reform will help the government focus public attention on its major initiatives, and give it a better chance to get the cooperation it needs from local elites and ordinary citizens.

Written rules do not determine how the game will be played. Now that the constitution has been ratified, Yeltsin's supporters should certainly exploit whatever room for maneuver it gives them to organize the political game in Moscow in such a way as to include Parliament as an important forum for debate of problems stemming from reform. In an open debate, Yeltsin's team should do fairly well, since the fascist and communist groupings have no plausible alternative economic policy. Something similar can be said about the upper chamber, the Federation Council. The new constitution, as is well known, withdraws from Russia's constituent republics and regions many of the concessions Yeltsin granted to them when he was searching for allies in his battle against the now-disbanded Supreme Soviet. The federation, for one thing, is referred to

as a “unitary” state, in which only one citizenship is to be legally acknowledged. The Federal Treaty, moreover, has been dropped from the new constitution. Republics, regions, and so forth, are declared to be “legally equal” subjects. Article 72 even restricts their control over their own natural resources. But what will happen to Yeltsin's constitution if local potentates rebuff Moscow's claims to a hefty share of the country's decentralized wealth? Whatever the answer, we can be sure that the new regime will achieve greater stability if regional elites feel that *they* have something to gain from the reassertion of Moscow's control over the country. One way to encourage them to

see Moscow in this light is to grant the upper chamber something more than rubber-stamp powers, and to include it, indirectly at least, in the process of explaining and implementing reform.

A final word about the way in which the new constitution was ratified. On December 11 and 12, Russia's voters elected deputies to a legislature the powers of which were defined by a constitution that they might or might not have approved. This was a wholly unprecedented, or at least highly bizarre, procedure. Would it not have been more “rational” to ratify the constitution first, and elect Parliament

**"I will not deny that the powers of the president outlined in the draft are considerable. What do you expect? How can we rely on Parliament and Parliament alone in a country that is used to czars or 'leaders,' in a country that does not have well defined interests groups, where normal parties are only now being formed, in a country with very low executive discipline and with wide-spread legal nihilism? In half a year or earlier, people will demand a dictator. I assure you that such a dictator will be found quickly, and very possibly in Parliament."**

**Interview with President Boris Yeltsin  
*Izvestia*, November 15, 1993**

afterward? Yeltsin rejected such a staggered process, apparently, because he feared a below-quorum turnout for a purely constitutional vote. The strategy he chose was risky, however, because of the political confusion that would have ensued had the constitution been defeated or the quorum (50 percent of registered voters) not been reached. If this had occurred, as Dwight Semler explains above, the the new crazy-quilt legislature (which could have been elected with a lesser quorum of 25 percent of the electorate) might have declared itself a constituent assembly and promulgated a new constitution without popular participation. Given the proportion of anti-reform forces elected, it is by no means certain that Yeltsin could have dictated the outcome of such a process. This is



especially true since, unlike the holdover Supreme Soviet pummeled out of existence on October 4, the new Parliament's democratic legitimacy is fresher than the president's own.

Throughout November, Yeltsin was criticized for his take-it-or-leave-it approach to ratification. No assembly, federal or regional, had a chance to discuss his constitution, which was composed in secret and submitted to a yes/no vote. This procedure was inadequate, critics reasonably charged, for democracy includes discussion as well as voting. An outsider might have added that popular ratification should occur only *after* a careful process of bargaining among pivotal social actors. It is usually considered a mistake to give a patina of democratic legitimacy to a constitutional text that has not yet gained the approval and support of key forces in society. For if such forces decide to scrap the constitution as an unattractive

bargain, they will contribute to a general discrediting of the democratic formula itself. Far from being a technique for lifting the constitution above the political struggle, then, premature popular ratification can erode the legitimating power of popular plebiscites themselves. So why did Yeltsin insist upon democratic ratification? Retrospective constitutional thinking was again at work. If superpresidentialism was designed to overcome the problem of legislative-executive deadlock, popular ratification was chosen to overcome the problem of an assembly that continuously changes the ground-rules in order to outmaneuver the president. To keep the treacherous amending power out of the hands of the new Parliament it was necessary to give the constitution exceptional legal status by means of a popular vote. Whether a document that has "provisional" written all over it can be made relatively permanent in this way remains to be seen.

# CONSTITUTIONAL REVIEW

## Reforming Prince Potemkin

Andras Sajó

Sergio Bartole, *Riforme costituzionali nell'Europa Centro-Orientale*. (Bologna: Il Mulino, 1993), 226 pp.

East-Central European constitutions play like songs of the liturgy on a very old gramophone. You hear the expected music performed in the service of constitutionalism, but you hear it with a crackle in the background. The performance is old-fashioned in order to receive the *nulla obstat* of the Council of Europe and sometimes (when territorial integrity comes up) the soprano's voice suffers from hysteria.

In *Constitutional Reforms in Central-Eastern Europe*, Sergio Bartole of the University of Trieste undertakes the arduous task of comparing six East-Central European constitutions (those of Albania, Bulgaria, Czechoslovakia, Hungary, Poland and Romania) as they stood in the summer of 1992.

This pioneering and useful comparative handbook has a promising subtitle: *From Communist Satellites to Sover-*

*eign Democracies*. One cannot deny that these countries are, in some sense, democracies, and one hopes that they will remain sovereign. Bartole's analysis of constitutional texts certainly corroborates his diagnostic subtitle. What is discussed to a lesser extent is whether the constitutional blueprints will actually make the political systems of East-Central Europe operate according to the principles of constitutionalism, given the socio-political realities of these countries, especially the somewhat harsh form taken by "capitalist" development there.

Bartole devotes an extensive first chapter to a review of the transition process shaping the constitutions. Early on, constitutional amendments were used to entrench political bargains in Poland and Hungary, and, in many respects, the amended constitutions preserved Communist solutions (social justice in Poland, the prosecutor general in Hungary, etc.). Textual analysis may be misleading, however, if in utilizing it one assumes that the ostensibly "permanent" and systematically rewritten Bulgar-

ian or Romanian constitutions provide greater guarantees for the rule of law than the transitory Hungarian constitution, amended in a piecemeal fashion. Bartole knows all too well that the future of these systems depends largely on a successful institutionalizing of reliable checks and balances and not on the comprehensiveness of the constitutions. Given the extent of elite participation in the *ancien regime* and the still-prevailing interests in maintaining some autocratic governmental powers, the chances of establishing constitutionally regulated political institutions are not particularly high, notwithstanding the genuine belief of political actors across the region that constitutions instituting the rule of law are necessary for their countries.

Constitutional faith in East-Central Europe is of a particular nature: the wish to become "normal" countries is authentic and widespread. Normal countries (where there is a McDonald's at every corner and where ordinary citizens are not at the complete mercy of janitors with alleged secret police connections) have constitutions based on the separation of powers. On the other hand, the chief agents of the change from communism have been nations suddenly released from Moscow's control. While nations may wish to possess a constitution in order to consolidate their existence as sovereign states, they may not necessarily favor constitutionalism for its own sake. Bartole critically quotes Di Palma, who wrote about a return "to distinctively old-fashioned ideas and principles from which communism separated" these societies. Such a return would entail a revolution of citizenship—a concept seriously challenged by Bartole who would like to test it by analyzing the constitutions themselves. Ironically, the constitutional texts may confirm that there was an attempt to redefine citizenship. If one looks at the omissions in the constitutions and in the practices surrounding constitutions, however, one may develop a more skeptical position about the import of any citizenship revolution.

Certain political forces, which are unleashed by constitutional developments and which have their own dynamics, decisively shape citizenship and the political games around the constitution. I am referring, of course, to political parties. Bartole is therefore correct to begin his description of forms of government by discussing political party regulation and electoral law. This starting-point is also justified in an historical perspective. The

first amendment to every constitution in the region and the legal emblem of the change to democracy was the abolition of the Communist Party's monopoly on politics. To some extent, by repealing that single provision, Communist constitutions started to breathe. (In fact, as the Polish example shows, the rule of law and the protection of human rights can begin to be established within Communist constitutional texts.) Despite these measures, the survival of Communist traditions may be disturbing. All East-Central European countries (in clear contrast with post-Soviet states) have opted for parliamentary systems. This is due, not only to the political strength of parties, but also to doctrines of parliamentary sovereignty (in the distorted version taught in Communist Party schools) which survived and obscured the meaning of the separation of powers. The parliamentary system helps to disguise the importance of dominant-party interpenetration in the executive which, in turn, controls Parliament. East-Central Europe thus combined the virtues of elected and multi-party dictatorship. Frequent elections due to the instability of government coalitions may limit dictatorial tendencies while at, the same time, offering fresh opportunities to new and hungry parties.

In this continental system, executive powers are vested primarily in the Council of Ministers (cabinet). The composition of the executive depends on the legislative branch. None of the presidents has independent appointment powers. On the other hand, the executive is strong while he remains in office. In this respect, the presence or absence of enumerated lists of competencies and jurisdiction makes little difference. The structure of the council of ministers varies significantly across the region. In Poland and Hungary, the cabinet is a collegiate body, but the prime minister occupies a very strong position within that body, with ministers personally dependent on him. In Bulgaria and Albania, on the other hand, ministers are independently responsible for their departments, and the prime minister has no power to initiate their dismissal at the hand of the president. The relation between public administration and the executive branch is everywhere regulated in the vaguest terms, so that "the distinction between politics and administration is diminished to a perhaps worrisome degree" (p. 128).

The real powers of the executive lie in areas which are scarcely constitutionalized: in the governance of the economy and in emergency powers. The constitutions of

the region declare the equality of state and private property and the predominance of a market economy without setting any constitutional restrictions on the state or public sector of the economy. Indeed this carelessness "authorized" the Councils of Ministers to dispose of public assets in an unprincipled way, serving short-term political interests. According to the Hungarian Constitutional Court, the cabinet may dispose of public assets in the same manner as any other owner so long as its decisions are not discriminatory.

In the case of emergencies, however, a different picture emerges. Here, the constitutional texts have established very strong parliamentary control. Whenever possible, the decision to declare a state of emergency is made by parliament (The exception is Poland, where the regime is closer to 'rationalized parliamentarism' than to a semi-presidential system.) Finally, the rules governing parliamentary dissolution (with the exception of Hungary) mean that the executives are less stable than Georges Burdeau, for example, would have recommended or would have thought necessary following democratic principles.

Bartole correctly concludes that East-Central European constitutions give more importance to elected assemblies than to direct participation even at the expense of a less-than-perfect design of executive-legislative relations (a feature that strongly influences governability). Of course, such arrangements remain satisfactory wherever the parliamentary majority or coalition is sufficiently compact, as is the case in Hungary. As the Polish case demonstrates, one cannot compensate for lack of compactness with stronger presidential powers combined with rules to facilitate resolution of conflicts. Bartole's disillusioned question is worth quoting in this respect, "Did Western democracies have any practical suggestions to offer which would have made sense outside a homogeneous and compact party system?" (p. 142).

The ambiguous strength of the executive is noticeable in matters of local self-government too. As Peter Haeberle has remarked, "The self-government provisions of the new constitutions are easily diluted." The traditional centralistic trend, which goes back to pre-Communist days, continues to increase the powers of the Council of Ministers. To be sure, the differences among countries are considerable, depending on the specific laws of local self-government.

For countries emerging from Soviet occupation and facing problems of national identity, the importance of national sovereignty is quite obvious. This is the proper context in which to examine the constitutional relation of international and domestic law. Bulgarian and probably Romanian constitutional provisions require the primacy of ratified international treaty law over domestic acts of Parliament. (Given the predominant role of the executive in treaty formation and ratification, these provisions clearly involve the danger of undermining the supremacy of the legislative branch.) Most of these constitutions, however, recognize the supremacy of international human rights conventions. This recognition results from the transition process whereby countries exiting from communism seek admission into "Europe."

Bartole states that the East-Central European democracies, being aware of the dangers of the tyranny of majorities, included substantive protection of fundamental rights and liberties in their new or amended constitutions. In some of the cases (Hungary, especially) there is indeed a tendency to counter the common European and international tradition which allows restrictions on basic rights by simple legislation. The Hungarian Constitution requires supermajorities in most cases of fundamental rights legislation. However, the generally accepted idea that legislation is intended to promote fundamental rights and liberties may have a counterintuitive result; it may end up constitutionalizing restrictions on liberties. Bartole believes that most of the rights provisions of the EC constitutions are directly applicable, or self-executory. In many respects, however, he may veer closer to reality when he relies on the "European acceptance" theory. He quotes the examples of the Czechoslovak Charter and the Bulgarian Constitution which meticulously follow certain international documents. The Romanian Constitution requires that human rights provisions be interpreted in the light of international conventions, and the Hungarian Constitutional Court relied on Strasbourg practice even before Hungary promulgated the European Convention.

With the exception of Poland where, to a great extent, the rights section of the constitution survived and social justice remains a fundamental constitutional objective, first-generation rights are generally conceived as negative rights not requiring state intervention. But, the separation between positive and negative rights is not neat,

and there are governmental obligations, for instance, actively to promote free expression in the media. Certain third-generation rights (e.g., privacy, information) are treated as first-generation rights. One would expect similarities in the catalogue and formulation of classic freedoms. Bartole finds considerable differences in terms of restrictions (e.g., in the case of speech and religious freedoms) and, in particular, in terms of guarantees of personal liberties. The latter is particularly surprising and is aggravated by inconsistencies in the workings of judicial review which should be playing a major role in developing imperfect constitutional protections into effective legal practices.

Bartole observes considerable differences in the catalogue and conception of social rights. In Poland, employment rights and vacation rights survive while, on the other hand, in Hungary vacation rights are no longer conceived as constitutionally guaranteed public services. In the Czechoslovak Charter even medical-care rights are discussed in terms of an individual's free choice of treatment. State welfare activities are increasingly limited to protective legislation and not to material services. Of course, internal debates in the various countries impose different interpretations on actual legislation with subsequent impact on entrepreneurial freedom and the constitutional order of the economy (*Wirtschaftsverfassung*). In this area the constitutions are full of interventionist ambiguities and omissions including the omission of the principle of no taxation without representation from the Hungarian Constitution. In fact, in 1988 a majority of the codification committee expressed the belief that business and the rule of law are unrelated. Consequently, even budget provisions are missing from the Hungarian constitution. However, Bartole is perfectly right when he says, "It is impossible to have a free market without observing the principles of the rule of law" (p. 177). Of course, a number of economists and sociologists believe that a phase of unrestrained "original accumulation" is needed in the transition period. Yet accumulation is nearly impossible without legal guarantees of economic initiative. Further, without constitutional guarantees, private entrepreneurs cannot expect the freedom of unrestrained exploitation from the state, which is their main competitor and which, therefore, has no interest in granting them the same privileges it enjoys. One cannot expect the abolition of state monopolies without the legal

imposition of rules on the state and its economic assets. An ambiguous Manchesterism can be observed in provisions which refrain from imposing regulatory duties on the state but place constraints on owners based on the social functions of ownership. Reluctance to interfere in an economy that remains monopolistic and mostly state-owned perpetuates the distortions inherited from the defunct socialist economy. This problem is aggravated by a general contempt for the public good that results in simple and plain tax evasion on the one hand and fiscal dictatorship (efforts to accumulate resources to be used for government subsidies) on the other. The Czechoslovak Charter seems to be exceptional with its state ownership restrictions and functional ownership obligations.

The judicial system, and constitutional courts in particular, play a crucial role in the protection of the development of constitutional rights and constitutional order. There is some form of constitutional review in all the countries discussed here, but the systems vary significantly. In Bartole's view, abstract review casts a shadow on individual rights protection. Abstract review is of course more vulnerable to political manipulation, as it is generally reserved to key political players. Bartole is very cautious in his evaluation of the constitutional courts as these stand at the mere beginning of their careers, but it is perhaps misleading to discuss these courts in the context of the protection of rights. Constitutional courts raise fundamental questions of legislative sovereignty, but Bartole is ready to accept without further comment the superannuation of the doctrine of traditional parliamentary sovereignty (p. 208). He finds the influence of political parties on judicial selection troubling and criticizes the Hungarian law on the Constitutional Court for this abuse. Unfortunately, the experience of other approaches (namely, a division of appointment powers between the houses of Parliament and the executive in Romania or appointment by the judiciary in Bulgaria) did not result in a more independent court. In fact, Bartole does not consider the emerging jurisprudence of the courts and relies on secondary literature (basically one article per country studied). This explains how he could fall victim to ambiguities in translation, as becomes especially clear in his evaluation of the Hungarian court (p. 208).

One has to accept Bartole's position that, at this early stage of constitutional development, it is difficult to go beyond the level of analytical studies. The existing differ-

ences are mostly due to constitution formation, in particular whether the constitution is an early formulation as in Poland and Hungary or the result of a longer process. Some common features are remarkable, especially the uniform reliance on models of parliamentarism. Bartole explains that this choice is related to the speed of party formation. As parties became well-organized and important political actors, they develop a preference for a parliamentary system. Nevertheless, a fixation on popularly elected presidents can be observed. The popularly elected president will express the unity of the nation and be the "carrier of new values supported by a large civic consensus." (p. 215) The Little Constitution of Poland is discussed as an attempt to establish an equilibrium between consensual unitarism, represented by the president, and multi-party parliamentarism. Bartole did correctly foresee the possibility of less reliance on propor-

tional party representation in parliament in order to promote greater stability and consensus formation.

A review of constitutional texts is always misleading, because it describes a facade instead of the structure itself. There is a tradition in Eastern Europe of using law, and constitutions in particular, as Potemkin villages. Nevertheless, painted facades do reveal, to some extent, internal structures, particularly if there are walls behind the facade. In many cases, both the language and the silences of these constitutions give a telling indication of the two great problems of the region: national identity based on exclusion and the predominance of a bureaucratic state.

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## From the Center

### Russian-Language Review

*Konstitutsionnoe Pravo: Vostochnoevropieskoe Obozrenie*. A Russian language edition of the *EECR*, with some original articles not included in the English version, has already published four issues. Copies of the *Review* can be obtained from its editor, Olga Sidorovich, at the Russian Science Foundation, 103928 Moscow, room 9, porch 3, Luchnikov Per. No. 4; fax: 7095-2068573; (e-mail: olga@glas.apc.org).

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# CENTRAL AND EASTERN EUROPE 1992



International boundaries

Recently recognized  
international boundaries

Borders of regions seeking  
sovereignty and/or separation