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PROJECT INFORMATION:

CONTRACTOR: University of Chicago

PRINCIPAL INVESTIGATOR: Stephen Holmes

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Although presented to the legislators as promised in the middle of June, the latest draft constitution was not considered in Parliament, because it had yet to be reviewed by the Constitutional Commission. The prime minister eventually withdrew it and sent it to the commission, where, during the final months of 1993 and the beginning of 1994, members of the commission’s two working groups dedicated many meetings to harmonizing the January draft with the June draft. The commission has now devoted a number of meetings to considering its principal chapters. Currently under discussion is the last of these, on the judiciary.

According to the latest draft, the political system will continue to be parliamentary, with executive power in the hands of a prime minister. The prime minister not only presides over the executive pyramid but is the sole executive official politically answerable before Parliament. He nominates the other ministers with the consent of the president and can therefore be considered the “buckle” fastening Parliament to the executive branch. All ministers (directors of branches of the state administration) are answerable to him, and he may, after obtaining presidential consent, discharge them.

Although a few small discrepancies between the January and the June drafts remain to be ironed out by Parliament, the thorniest issue has been the future role of the Constitutional Court. All political forces now generally agree that the Court shall exist but without the right of judicial review. One impasse-breaking compromise permits ordinary courts to interpret constitutional provisions with a direct and mandatory appeal to Albania’s highest court. Another important issue that has riled public opinion and even received attention from abroad is the press law, passed by Parliament and promulgated by the president in October. A number of prosecutions have already taken place under this law and related criminal law provisions. Under the bill of rights approved last March, freedom of the press was established as a fundamental human right. Nevertheless, a number of journalists and others were convinced that this constitutional provision alone did not provide sufficient guarantee for journalists and others who publish or express their opinions in the mass media.

The draft law presented last fall, in effect a modified translation of the press law of one of the Germany Länder, failed to meet their hopes and expectations. It contained many restrictions, steep fines and lavish provisions about confiscation and even authorized prosecutors to take temporary security measures without court approval in some cases. It made an editor legally responsible for “punishable” articles, even if he did not directly participate in writing or commissioning them but was merely negligent in permitting them to be published. (A direct translation from the German law, this provision came into play in a case discussed below). Despite a number of criticisms from inside and outside the country, the law was approved and went into effect in November.

The most recent case affecting the press began on January 31. Both a reporter and an editor of Koha Jone, the country’s largest independent newspaper, were arrested for having published, along with a commentary, an order of the minister of defense, classified as secret, restricting the carrying of weapons by military personnel. The editor was initially charged with disseminating state secrets and the reporter with libel. The military officer who leaked a copy of the order and his superior were also arrested. The trials proceeded quickly and on February 28, the military officers were convicted, the first being sentenced to four years in prison and the second to one month. (The latter sentence was considered already served because of pre-trial detention.) The charge against the reporter was increased to collaboration in disseminating a state secret, and he was convicted and sentenced to eighteen months imprisonment. The charge against the editor was changed to fall under Art. 20 of the new press law, requiring an editor to keep his newspaper free of punishable violations, but he was acquitted.

A few weeks later, in the middle of March, the appellate court overturned several parts of the lower court’s finding. It reversed the editor’s acquittal, sentencing him to five months in prison under Art. 20 of the press law, and it confirmed the reporter’s sentence of eighteen months, while changing the crime for which he was convicted back to libel. It also
increased by several months the sentence of the military officer who had been sentenced to only one month. All of these cases are now under appeal to Albania's highest court, the Court of Cassation. On May 4, World Press Freedom Day, while the appeals were pending, President Berisha pardoned the journalist and his editor as well as three other journalists who had been punished under the press law.

Albania can also boast the first postcommunist show trial, involving Fatos Nano, chairman of the Socialist Party and prime minister for several months in the spring of 1991. On the basis of events alleged to have occurred during his tenure in office, Nano was arrested last July and charged with abuse of power. Held in jail continuously since his arrest, Nano was brought to trial on March 5, after the charge had been changed to theft of state property, with a related falsification charge. As the trial concluded, the prosecutor asked that Nano be sentenced to fourteen years in prison. After sentencing him to ten years under the first count and two years under the second, the judge consolidated the charges to twelve years in prison. He was also ordered to pay S720,000 to the state. Nano appealed his conviction to a three-judge appellate court and the case is now under review.

On May 21, began the trial of Ramiz Alia (first secretary of the Albanian Communist Party, 1985-1991) and nine other top officials of the former regime. Accused of abuse of power and misappropriation of state funds, Alia was placed under house arrest in October 1992, and has been in jail since September 1993. On the first day of the trial, he requested that the proceedings be televised.

Belarus

A constitution was finally adopted by the Belarusian Parliament on March 15, by a margin of four votes. It was put into effect on March 30, after being published in all the major newspapers. Voters were expecting at least formal excuses from the constitution makers. Having illegally banned a referendum on early elections in October 1992, Parliament instead pledged to accelerate the constitutional process, that is, to adopt a new constitution by the end of 1993 and to hold general elections in March 1994, a year before the assembly's term will expire.

Neither excuses nor early elections were forthcoming in March 1994. Instead, Parliament expelled the person associated with such extravagant promises, former Speaker Stanislau Shushkevich. According to public opinion polls, Shushkevich was and is the most popular politician in Belarus and at the same time the loneliest one. He had long irritated the communist majority in Parliament, not so much because of his deeds but because of his mastery of the Belarusian language, his past as a university professor and so forth. At the same time, Shushkevich managed to alienate the opposition (which supported him in the early stages of his political career), by collaborating on most crucial issues with the communist majority. After voting Shushkevich out of office, deputies also removed the heads of the Ministry of Internal Affairs and the KGB. (For details see EECR, Double Issue, Vol. 2, No. 4, Fall 1993/ Vol. 3, No. 1, Winter 1994.)

Myacheslau Hryb, a police general, chaired Parliament at the end of January and heroically accelerated the hitherto cumbersome constitutional process. A long-term advocate of authoritarianism and therefore of a strong presidency, Hryb overcame the biggest stumbling block of the draft (the presidency), with a traffic warden’s resoluteness, forcing deputies to vote by secret ballot and waiting three days until all the absentees showed up.

The new constitution proclaims Belarus to be a unitary and democratic social state ruled by law. It guarantees basic human rights as well as a number of “socialist gains” such as the right to work and to rest, to free education and to free medical care. The constitution guarantees equal rights to all forms of property but at the same time provides for confiscation of property “in the public interest.”

The new constitution also introduces a hitherto unknown tribunal into the Belarusian judiciary—the Constitutional Court. Eleven members of the Court are to be elected by Parliament for a term of eleven years. They must have completed law school, be highly qualified and ethical and be no older than 60 years of age. The Court assesses the constitutionality of legal acts either on its own initiative or on the proposal of the president, the speaker, a group of seventy deputies, the Supreme Court, the Highest Economic Court or the attorney general.

Judicial elections took place during the fourteenth session of the Belarusian Supreme Soviet. Nine of the 11 judges were elected. The Constitutional Court may start working in July. The chairman of the Court must be proposed by the president and confirmed by Parliament. Until such time, Valeri Tshinhia (a former minister of justice and a Communist Party secretary), the ranking senior judge, will sit as chairman.

The constitution introduces a strong presidency; the president is deemed head of state and head of the executive. He or she can establish and dissolve ministries and other governing bodies, propose to Parliament candidates for premier, ministers of foreign affairs, finance, defense, internal affairs and the KGB as well as, appoint and dismiss other ministers. It is the president who proposes to Parliament candidates for heads of the Constitutional Court, the Supreme Court, the Highest Economic Court and the National Bank. Among the multiple presidential powers, only one right is missing, the right to dissolve Parliament. If the president violates the constitution or commits a crime, a group of seventy deputies can initiate impeachment proceedings against him. This requires a resolution of the Constitutional Court and a two-thirds majority vote.

Given the unprofessional Parliament (in fact, members of Parliament will continue to be able to occupy positions in the
executive) and the rudimentary traditions of the judiciary, the balance of powers as provided for by the new constitution has clearly shifted to the president.

Critics maintain that the Belarusian presidency is made-to-order. The law on the presidency gives the right to nominate a candidate to seventy deputies and to 100,000 voters, provided their signatures are collected within 25 days. These provisions give a significant advantage to the designated candidate of the parliamentary majority, Prime Minister Vyacheslav Kebich. Elections are scheduled for June 23, leaving almost no time for the campaign of other contestants. Apart from Kebich, the most serious competitors are former Speaker Shushkevich, Zyanon Paznyak, leader of the parliamentary opposition, and the notorious parliamentary muckraker, Alyaksandr Lukashenka. By early May, Kebich and Vasil Novikau, head of the Party of Communists of Belarus, had already gathered the necessary signatures.

The law guarantees equal financing to all candidates from the state budget; all other sources are illegal. The law does not regulate the performance of the mass media during the campaign. In the case of Belarus, where 80 percent of the press is monopolized by the state and national radio and television are run by the government, this "oversight" evidently favors the prime minister.

On April 12, Prime Minister Kebich achieved his main political and economic goal before the presidential campaign: Belarus and Russia concluded a monetary union treaty which will reintroduce the Russian rouble to Belarus within a few months. Thus Belarus became the first former Soviet republic to abandon the attempt to have its own national currency.

The agreement, which leads to a substantial loss of Belarus's sovereignty, is supposed to be carried out in stages. In a first stage the two countries will abolish customs barriers. Then Belarus, at Russia's insistence, will hold a referendum on its people's willingness to limit the republic's sovereignty and liquidate its central bank, with its functions to be taken over by Russia's central bank. Because the referendum will probably be held at the same time as the presidential elections, the referendum may be replaced by a parliamentary vote. In a third stage the two sides are to set the exchange rate at which rubles will be substituted for Belarus' currency, nicknamed "zaichik" (hare or bunny). The final question, Belarus's demand for subsidized energy prices from Russia, has been postponed till the end of the year when, as many agree, Russian prices will reach world market prices.

The agreement has been strongly attacked by the parliamentary opposition and a number of Belarusian political parties. Russian reformers such as Yegor Gaidar and Boris Fyodorov say the monetary union will mean too heavy an economic burden for Russia; Premier Chernomyrdin and Russian nationalists evidently believe that the loyal submission of Belarus is worth paying for.

**Bulgaria**

Recent months have been marked by mounting signs of instability. Throughout December and January, public attention was captured by an unprecedented series of shootings in different parts of Sofia. The first major incident involved police and some lesbian drug dealers. On December 6, in an apartment inhabited by Iranians, two policemen were killed during a "routine police check," as it was later described. The police reacted strongly, killing four suspected foreigners in three separate actions. None was arrested, though in at least one case arrest had been possible. These killings heightened suspicions about alleged connections between police and drug dealers. Meanwhile, on January 11, the so-called "gangster war" broke out in a densely populated neighborhood of Sofia, two men were shot dead in an exchange of gunfire between rival gangs that had been legalized as protection agencies. The shootings were then repeated in the very center of the city, in front of a casino on January 12. As part of an attempt to prevent the escalation of this bloody conflict, senior police officers met in the private home of the casino owner, Ivan Ivanov, who happens to be their former high-ranking colleague. The next shootings occurred in front of an apartment building between two subdivisions of the police. Two officers were killed and one wounded (January 14). This incident was explained as a misunderstanding and the result of a confusion of orders. While Minister of Interior Viktor Michaïlov submitted his resignation to the Council of Ministers, the cabinet did not accept it. He explained the "gangster war" as a by-product of the embargo on Yugoslavia, due mostly to an intense rivalry between illegal smugglers of fuel. Official inquiries into both cases have yet to be concluded. The first incident led to the accelerated passage of a long-awaited and much-discussed "Bill on Police," while the second provoked a no-confidence vote (submitted on January 28, unsuccessful on February 9). The utter helplessness of the government and the police in the face of illegal fuel smuggling into the former Yugoslavia can be further illustrated by a spectacular "hijacking" of a Bulgarian tanker (filled with 5000 tons of gasoline) across the Danube border into Yugoslavia.

In the course of budgetary discussions, another major weakness of the cabinet and the governing parliamentary majority became visible. Because the financial stability of the country is determined by external factors, including the agreement with the IMF on new credits and negotiations on the foreign debt, the survival of the cabinet heavily depends on the successful conclusion of these agreements and negotiations. In order to meet the requirements of such international financial institutions, the cabinet submitted a budget that strictly followed the negotiated macro-economic frame. In addition, the budget deficit was kept under rigid time constraints. On January 25, Prime Minister Berov proposed two alternative solutions to Parliament: adoption of the budget by February 10 or resignation of the cabinet. It was obvious that a cabinet crisis at that moment would have postponed negotiations with
international financial institutions for another year or at least six months. Budgetary austerity naturally provoked strikes and protest. Public sector workers (miners, university professors, doctors and hospital personnel and even army officers) were enraged, but there was a general understanding among the governing parliamentary majority that macro economic constraints had to be met. Thus the position of the cabinet was both strengthened and weakened.

The development that threw both the feasibility of the budget and the stability of the cabinet into doubt was the collapse of the national currency, the lev. The currency market in Bulgaria has been successfully liberalized and, in fact, is the most deregulated in the region. The gradual slippage of the lev in December and January (the exchange rate rose from 31 to 35 lev per US dollar), perceived as a factor that could “kill” the budget before it was passed, was halted through National Bank intervention. The exchange rate was kept stable pending passage of the budget. This stabilizing intervention, it was later calculated, had cost Bulgaria about $150 million.

On the day after the new budget was passed (February 20), a speculative wave of rapid devaluation started and an exchange rate of 60-65 lev per dollar was reached on March 14. The Central Bank had already spent most of its hard currency reserves and could no longer intervene. The situation was brought under control only after international financial institutions decided to deliver fresh credit and thereby prevent a further devaluation of the lev. This maneuver was backed by a governmental threat to impose controls on the financial markets. The independent agency for development and macro-economic planning publicly determined that the government and the Central Bank, by supporting the national currency in December and January, not only facilitated indirectly but even provoked the wave of currency speculations. The agency’s director, a widely respected economist, was dismissed, though his arguments seemed convincing.

Signs of rifts in the government itself came to public attention in debates concerning privatization delays. The vice premier responsible for economic reform, Valentine Karabashev, supported plans by the privatization agency to sell Sofia’s five top hotels. Branch managers backed by trade unions favored a complicated scheme of property transformation with delayed payment that would permit them to compete with expected foreign investors. On March 8, in an attempt to block the ambitious plans of the privatization agency, the cabinet voted against a hasty hotel deal. From a legal point of view, the government was not authorized to control the process, and Vice Premier Karabashev immediately protested. Several hours later, the prime minister was admitted to the governmental hospital with a heart attack. He underwent by-pass surgery and is still recovering. First Deputy Prime Minister Matinchev, the proponent of delayed privatization, is now acting as temporary premier.

The current situation is quite equivocal because, according to one reading of the constitutional text, only the prime minister himself is accountable to Parliament for the acts of the executive branch. This interpretation was promoted by the prime minister and the governing majority in the case of the resignation of the minister of the interior on January 16, 1994. When Viktor Michailov submitted his resignation to the Council of Ministers, it was turned down by the prime minister and never discussed in Parliament. Since March 9, when the prime minister was hospitalized, parliamentary control has been formally impossible, and, due to disagreements between the two vice premiers, decision making within the cabinet seems questionable. At the same time, the parliamentary majority cannot possibly agree on a new prime minister, though negotiations for reconstructing the cabinet permanently decorate the front pages of all the newspapers.

The beginning of 1994 was marked by a further fracturing of Parliament and particularly of the governing majority. Until December 1993, this majority included the parliamentary groups of the Bulgarian Socialist Party (BSP), the Movement for Rights and Freedoms (MRF) and the New Union of Democracy (NUD, composed of former Union of Democratic Forces [UDF] deputies). In January, some of the MRF deputies declared their disagreements with the leadership of the group and, on February 1, four of them left the group; later another MRF deputy joined the defectors. A similar two-step process occurred within the BSP parliamentary group. In the autumn, several deputies led by Alexander Tomov left the party but remained within the BSP parliamentary group. In March, after Tomov founded a new party called Civic Alliance for the Republic, four deputies left the group. At present, there are five parliamentary groups and a mass of “independent” deputies. Regardless of the proliferation of parliamentary groups, the diffuse support of the majority for the existing cabinet formula has hardly been questioned. On the other hand, the UDF is persistently following its non-cooperative policy, refusing any involvement with the executive and insisting on pre-term elections. This position was reaffirmed at its Sixth National Congress on May 14-15.

There is a single point of consensus between the BSP and the UDF deputies. Since January 5, both have been declaring their intention to pass a constitutional amendment extending the mandate of Parliament allowing it to control any caretaker government appointed by the president. (According to the constitution, the president simultaneously dissolves Parliament, appoints a caretaker government and fixes the pre-term election date.)

The fragmentation of Parliament makes the cabinet not only untouchable by the assembly but also unaccountable to public pressure. This can be illustrated by the four-day newspaper strike that took place in April. Triggering the protest was the imposed value-added tax on the press. All newspapers affiliated with the various parliamentary groups and factions suspended publication for four days.
awaiting amendment of the bill negotiated with the party leaders. The amendment was revoked by a secret vote of the deputies.

An interesting controversy exploded in mid-April, when news broke that UN Secretary General had asked the Bulgarian Government to allow a military convoy to pass through Bulgarian territory on its way to Macedonia. The initial comment of Foreign Minister Daskalov was that the Council of Ministers had decided to give a positive response, but, less than an hour later, First Deputy Prime Minister Matinchev (acting for the hospitalized Berov) contradicted this announcement, asserting that the Council of Ministers had not yet addressed the problem.

Following these confusing signals from the representatives of the executive branch, the question was raised whether the convoy should be considered as "foreign troops," in which case the question falls under the jurisdiction of the National Assembly (Art. 84, sec. 11 of the constitution), or as a group of UN envoys, in which case it would have to be resolved by the Council of Ministers.

Although the convoy carried neither troops, weapons nor ammunition and was not manned by armed personnel, the former view prevailed and parliamentary discussions ensued. The excommunists firmly opposed the plans of the UN, intimating that the passage of several trucks loaded with non-military equipment would have the same disastrous consequences as the passage of Nazi troops in 1941. They also argued that the UN request in effect camouflaged the insidious plans of "American imperialism" to steer Bulgarian foreign policy increasingly towards "further involvement" in the Yugoslav conflict, pitting Bulgaria against Serbia, a country which Bulgarian excommunists regard as their most trusted ally on the international scene. However, none of the other parliamentary factions shared this view, and after a dramatic final vote, with the excommunists voting en bloc "against" and everyone else voting "for," the request for passage was granted. Several days later, the UN convoy reached the Macedonian border without incident.

On January 7, the press alerted the public to presidential preparations for appointing a specialized advisory body, the "military cabinet of the head of state," aimed at informing the president about the activities of the General Staff. This new body was interpreted by some politicians as a bid by Zhelyu Zhelev to enlarge presidential powers and to create an independent channel for controlling the military. The president responded by pointing to the lack of legislative regulations concerning both the National Security Council and his status as commander-in-chief. Consequently, on February 8, the deputies were forced to submit a bill regulating the establishment and functioning of the National Security Council, headed by the president. Recently, the Council has proved to be an effective channel of communication between the three branches of power—Parliament, cabinet and president. The issues discussed via the Council included the collapse of the national currency and budgetary matters.

The fate of Rumen Gechev's nomination as deputy prime minister in charge of economic affairs functions as an indication of the tenuous nature of the domestic political scene. The nomination provoked the UDF to file a motion of no confidence but, garnering only 95 votes (121 were required, according to the constitution), the motion failed. Despite the failure of the no-confidence vote, Parliament still refused to accept the nomination of Gechev, demonstrating the weakness of the governing coalition. At this point, Prime Minister Berov asked Parliament for a vote of confidence, which passed, with 125 in favor and with 95 opposed. As a result of the vote, the old cabinet has been preserved until September, at which point Berov promises to resign, thus clearing the way for new elections.

During the first months of 1994, the Senate has remained at the center of constitutional controversy. Although the 1993 constitution provides for a bicameral system, the Senate still exists only on paper, while the Chamber of Deputies was constituted rather easily. Deputies to the Czech National Council in June 1992 were simply reassigned, but similar attempts to transform the Czech part of the Federal Assembly into a Senate failed because of opposition from the Civic Democratic Alliance (CDA) representatives in the Czech ruling coalition. The CDA argued that such a transfer of mandates would lack legitimacy, because the members of the Federal Assembly were not originally elected to a Czech body. At present, efforts are being made to organize a Senate election in the fall of 1994.

Three positions on the issue are currently represented in the Czech National Council: (a) the opposition, including the Social Democrats and the Communists, would like to do away with the Senate altogether, arguing that an upper house is an unaffordable luxury in a small state. They suggest altering the new constitution before the ink is dry, deleting any mention of the Senate; (b) Vaclav Klaus' Civic Democratic Party (CDP) demands that Senate elections take place in 81 single-member districts. The CDP claims that this arrangement alone accords with the 1993 constitution which stipulates first-past-the-post elections to the Senate. However, in case its coalition partners are not prepared to accept this, the CDP stated that it is ready to abandon the Senate altogether and change the constitution accordingly; finally, (c) the CDP as well as the two Christian parties (the Christian Democratic Party [ChDP] and the Christian Democratic Union [CDU]) would like to organize 27 electoral districts for the Senate elections, with the top three vote-getters in each district becoming senators.

Because the opposition is in no position to kill the idea of the Senate, the only real alternatives are those proposed by the coali-
tion parties. What are the respective advantages and disadvantages of the CDP proposal (sometimes called "81/1") and of that offered by CDA/ChD/P/CDU (called "27/3")? What arguments have been offered by supporters of the two proposals?

The CDP variant seems truer to the constitutional first-past-the-post principle. Because electoral districts would be smaller, senators would feel closer to the interests of their electorate. The 81/1 Senate would represent an effective constitutional check on the proportionally elected Chamber of Deputies where party influence is dominant. The constitutional check will work only if each Senator is made personally responsible to the electorate of his or her district. Because the constitution specifies that the Senate must consist of 81 senators, the creation of 81 electoral districts seems to be the only logical proposal. Each electoral district would coincide with a present administrative district, and each senator would represent about 130,000 citizens. Small constituencies mean that candidates can present themselves throughout their districts even in the case of short campaigns. Voters would then be able to make up their minds based on personal exposure to the candidates rather than on party affiliation. The obvious startup problem, the decision about which Senators would serve two, four and the full six year terms, is merely a technical question that can be resolved by technical means. Once the Senate is established, the voters in each district will elect their Senator every six years, thereby avoiding the danger of "electoral fatigue."

Under the 27/3 plan, each electoral district would produce three Senators. The candidate garnering the highest number of votes would serve six years, the second four years, and the third only two years. Thereafter, each of the 27 electoral districts would elect one Senator every two years. As the Senate elections would take place all over the territory of the Republic, the results would not reflect possible regional fluctuations in voter preferences. 27/3 supporters claim that such a Senate would stabilize the constitutional system. This electoral arrangement is also designed to prevent the political parties from strategically transferring their candidates from one district to another. If Senate elections take place simultaneously throughout the territory of the state, parties will naturally run their candidates in home constituencies where they are best known and will not shift them opportunistically to districts where a seat can be grabbed. The ties of senators with their districts will thus be enhanced. The supporters of the 27/3 system also claim that it is especially apt at the present time when the political spectrum has not yet become settled.

No party would be able to obtain a very significant majority. Three seats for one district will probably produce three Senators from three different parties. It is highly unlikely that one party would run three candidates for three seats, involving them in a struggle for votes.

The 27/3 proposal offers a relatively fair solution to the startup problem. It met with fierce opposition from the CDP, however, which claims that it would introduce the principle of proportional representation through the back door, defeating the intentions of the constitution's drafters. Moreover, the CDP feels that its coalition partners might demand that each party run only one candidate in each electoral district, thereby limiting the maximum number of CDP senators to one third (27 out of 81).

Of course, the first-past-the-post system puts greater emphasis on personalities. At present, the domain of distinct personalities is where Klaus's party is the weakest, no doubt because of the dominant if not domineering personality of its leader. The only CDP personalities with a broader appeal are Josef Zilelencic, the Czech minister of foreign affairs, and Jan Ruml, the minister of interior. (However, Ruml is quite controversial with some of more nationally minded voters because of his recent decision to grant Czech citizenship, in a strictly legal way, to a nobleman of Franco-German descent, Count de Fours Walderode, making it possible for him to claim his landed property and a chateau in northeastern Bohemia.) On the other hand, the CDA can boast of several very popular personalities, topped by the leader of all opinion polls in the last 15 months, Vladimir Dlouhy, the minister of industry and trade. The 40-year-old Dlouhy has consistently scored astronomical ratings of around 85 percent in public opinion polls, outranking such internationally known figures as Klaus (second in the ratings with 75 percent in the March 1994 poll) or Havel (third with 73 percent). These figures make one wonder why the CDA, which stands a good chance of excellent Senate results, is so hesitant to accept Klaus's 81-district proposal.

In their institutional design, the makers of the 1993 constitution wanted to counterbalance the two legislative chambers by constructing them on two different principles. The first-past-the-post principle produces legislative bodies consisting of members who depend to a much lesser extent on party machines and who are more directly responsible to voters in electoral districts. It also, very importantly, tends to give an advantage to outstanding personalities. Moreover, the idea of renewing one-third of the Senate every two years, borrowed from the U.S. Constitution, would give the political system an additional degree of stability. A constitutional amendment doing away with the Senate would, according to Professor Pavel Peska, chair of the department of constitutional law at Charles University, involve no fewer than 99 changes in the text of the constitution.

One of the questions which must be dealt with in the future Senate electoral law is whether Czechs living abroad shall have the right to vote. At present, no polling is possible outside the territory of the republic and there are no provisions for voting by mail. Klaus believes that Czechs living abroad should not be allowed to vote for members of the Chamber of Deputies (or for local authorities) because the decisions of these bodies do not affect them as they affect residents. On the other hand, he may favor granting the right to participate in Senate elections to non-residents, because the
Senate should become the guardian of democracy and thus its work would be a concern even to extraterritorial Czechs.

The government was able to retain its majority in the Chamber of Deputies throughout the early months of 1994. The CDP-CDA-ChDP-CDU coalition remained stable despite discord concerning not only the Senate but also the restitution of Jewish and church property (see below) and disputes over the quality of work of some ministers (especially Antonín Baudys, minister of defense, whose private Bosnia initiative caused a great stir, as well as Jaroslav Kabat, minister of culture, accused of ineptitude). The latest statements of CDA politicians at their party’s conference on April 9-10 seem to suggest that the coalition is not facing any dramatic developments.

In March, organizations of the Polish minority demanded restitution of their prewar property. They also pointed out that Polish minority organizations were getting ever decreasing state subsidies. The government coolly responded by pointing out that the Czech Republic is not ethnically based and that no ethnic group is entitled to any special privileges.

On January 27, Josef Tomas, publisher of Politika (a low-circulation anti-Semitic periodical which published, among other materials, lists of prominent Czech cultural and political personalities of Jewish descent as well as the Fake Protocols of the Elders of Zion) was sentenced to a one-year suspended prison term. Tomas was also ordered by the court not to undertake any publishing activities for three years.

On March 29, President Havel made use of his prerogative to stop the proceedings against Petr Cibulka, the publisher of a weekly which published an unauthorized list of former communist agents and informers. A signatory of the Charter 77 manifesto, Cibulka filed a suit last year against President Havel. He accused Havel of having damaged his reputation by making critical remarks in public about Cibulka’s decision to publish the lists. During the court proceedings last fall, Cibulka used vulgar language when addressing the president, including, among others, the word “pig.” Preparatory proceedings stumbled over the question of whether Havel was present in Court as president or as a private person. It should be noted here that according to the Czech law it is a criminal offense “to slander the head of state.” Although Havel, after long hesitation, signed the relevant act last fall, he asked the Constitutional Court to examine the head-of-state provision and possibly to overturn it.

In the first quarter of 1994, intense discussions took place on “higher administrative units.” Presently, the Czech Republic has merely two administrative levels: district and national. The intermediate level, regional, was abolished in 1990. It was then argued that regional authorities were strongholds of the supporters of the just-toppled communist regime (but what institutions of state administration were not?) and also that the regions were formed “unnaturally.” The pre-1989 regions were established in 1960 in order to reduce the number of jurisdictional units and save costs.

Interestingly, the only political party to express hesitations about the speedy establishment of the administrative units provided for in the constitution is Klaus’s CDP. For historical and cultural reasons, it is in the eastern half of the Czech Republic, Moravia, where citizens and legislators come out most strongly in favor of “higher administrative units.” The main electoral potential of the Christian Democratic Party is in Moravia. As could be expected, the CDU also supports an early decision establishing these higher administrative units.

The left-wing opposition accuses Klaus of insensitivity to the feelings of citizens, and of using strong-arm tactics, allegedly in accord with his conservative political philosophy. In mid-January, Klaus presented his idea of administrative reform: the present districts would be abolished and 25 to 30 regions would be established. This would leave just two levels of administration, local and regional. Although this proposal obtained a slim majority among the CDP leadership, it stands little chance of success in the Chamber of Deputies. The dispute is likely to continue during the next months, and a postponement of elections to the new units, originally slated for the fall, is now certain.

Parliament continues to address the restitution of Jewish property confiscated on racial grounds between 1938 and 1945. In April, Parliament voted that natural persons and their heirs may receive such property or just compensation for estates that have been privatized. In May, the Chamber of Deputies extended restitution to include Jewish legal entities whose property was confiscated by the state. Legal entities, however, may not recover property currently under the control of local communities.

If the confiscated property in question has already been privatized, compensation will be paid. Critics of the bill are already discussing the possibility of asking for review by the Constitutional Court, on the grounds that restitutions illegally single out Jewish property, ignoring the property of other groups. Technically, the bill does not extend to restitutions to property confiscated before February 25, 1948, the date of the communist seizure of power. (This date must be held as sacred to avoid calling into question the 1946 decree of Czechoslovak President Bene, confiscating the property of Sudeten Germans and the Hungarian minority.) Restoration of Jewish property does not transgress this all-important limit, because, technically, it is simply implementation of restitution laws passed in 1945-1946, but not respected by the communists.

On January 17, the Constitutional Court rejected an appeal of a group of Left Bloc members of the Chamber of Deputies to nullify the “Act on the Illegality of the Communist Regime and on Anti-Communist Resistance.” The act was passed by the Chamber of Deputies on June 9, 1993.

On February 19, a group of ChDP members of the Chamber of Deputies appealed to the Constitutional Court asking the Court to delete from the “Extra-Judicial Rehabilitation Act” (aimed at speedy redress of hardships suffered by the victims of communist oppression) the condition that the restituent must be a permanent resident of the Czech
Republic. The decision is still pending. In case the Constitutional Court rejects the appeal, ChDP representatives said that the party would recommend that emigrants appeal to international courts.

**Estonia**

In January, President Lennart Meri and Prime Minister Mart Laar clashed over a proposed cabinet shake-up, intensifying the debate over the limits of presidential powers. President Meri’s refusal to ratify the prime minister’s suggested cabinet reshuffling was the latest escalation of a power struggle brewing since May between the president and Riigikogu (Parliament). President Meri responded to parliamentary critics, who claimed he had exceeded his constitutional authority, by accusing Prime Minister Laar of incompetence and calling for him to resign.

The crisis began on January 7 when, in contrast to previous cabinet appointments, President Meri ratified only two out of four appointments made by the prime minister. He also gave a televised address in which he questioned the wisdom of the proposed changes. The following day some members of the Riigikogu called for the president's resignation, and Meri eventually acquiesced in the remaining nominations. The reorganization moved Juri Luik from the defense ministry to the foreign ministry, and Trivimi Velliste was transferred from the foreign ministry to become the Estonian Ambassador to the United Nations. Toomas Sildmae, from the economics ministry and Madis Uurike, from the finance ministry, were both sacked and replaced by Toivo Jurgensen and Heiki Kranich, respectively.

This conflict within the dual executive was rooted in differing interpretations of the constitution concerning the role of the president in the confirmation process. Art. 90 states that “Changes to the composition of those appointed to the Government of the Republic shall be made by the President of the Republic, on proposal by the Prime Minister.” Members of the Isamaa (Fatherland) Party, the leading faction of the ruling coalition, rallied behind the prime minister to claim that Estonia was a parliamentary republic and that the president’s role in appointments was largely ceremonial. But the exact role of the president remains vague due to opaque wording in the remaining constitutions. The reorganization moved Juri Luik from the defense ministry to the foreign ministry, and Trivimi Velliste was transferred from the foreign ministry to become the Estonian Ambassador to the United Nations. Toomas Sildmae, from the economics ministry and Madis Uurike, from the finance ministry, were both sacked and replaced by Toivo Jurgensen and Heiki Kranich, respectively.

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The President recently granted Prime Minister Laar's request to dismiss Defense Minister Indrek Kannik and Justice Minister Kaido Kama. While Laar is making peace with President Meri, he is increasingly at odds with his own party, cabinet and coalition partners. Finance Minister and Liberal Democratic Party member Heiki Kranich announced that he will no longer serve in the cabinet but is withholding his resignation until after the Pro Patria Party Congress on June 11. Kranich is not alone in his belief that the Pro Patria Party Congress may not reelect Laar as party chairman.

Meanwhile, the issues of Russian troops and ethnic Russian non-citizens continue to trouble Estonian politics. With the recent treaty between Russia and Latvia (See “Latvia” up-date in this issue), Estonia now stands as the only Baltic State without an agreement with Moscow over the removal of Russian troops, and the likelihood of an expeditious withdrawal has decreased considerably. Negotiations over the remaining 2600 active Russian troops still serving in Estonia were derailed in early March when the Russian delegation reneged on an earlier agreement to remove all troops by August 31, 1994. In addition, the Russians added new conditions for any future agreement with Estonia as a part of their more assertive foreign policy stance. These conditions include an Estonian payment of $23 million to finance the construction in Russia of housing for departing soldiers and a guarantee of social benefits for Russian military pensioners still in Estonia. But Tallinn categorically refuses to pay for the social benefits of retired Russian soldiers, whom it sees as continuing to pose a threat to Estonia's security.

Unforthcoming on retiree social benefits, the government has continued to insist that Russia honor its previous agreement to withdraw by August 31. In addition, the country received moral backing from all major Western countries for an unconditional and complete Russian withdrawal by the August deadline. Prime Minister Laar optimistically stated that he was in contact with United Nations Secretary General Boutros Boutros Gali and that he was promised that the United Nations would likewise move to press Russia to withdraw on schedule.

Also of concern, and intimately linked to the withdrawal of Russian troops, is the status of Russian-speaking non-citizens. Russia has become increasingly vociferous about alleged human rights violations inflicted on ethnic Russians. (Russian Deputy Foreign Minister Vitaly Churkin contended in March before the Public Chamber in Moscow that language, voting and citizenship laws in Estonia have demoted ethnic Russians to “second-class citizens.”) But a human rights mission from the Conference for Security and Cooperation in Europe (CSCE) reported in April that some progress had, in fact, been made in Estonia on human rights. While the vast majority of the ethnic Russian population is flatly barred from voting in national elections and from running for office due to their lack of citizenship, they are allowed to vote in municipal and local elections. (By contrast, a law recently adopted in Latvia denies non-citizens the right to vote in local elections.)

Russian government accusations of apartheid in Estonia were dismissed by the CSCE as “unjustified.” Yet seals of approval by Western observers do little to assuage dissatisfaction among segments of the Russian population in Estonia. On April 21, Russian representatives in the city council of Tallinn
walked out of a council meeting when the chairman refused to draft a resolution extending permanent resident status to all official residents of the city.

This resolution, which violated the national law on permanent residency, was a skimpily veiled attempt to circumvent the controversial aliens law adopted last summer. This law requires the over 400,000 non-citizens in the country to apply for residency permits by July 12, 1994 and to receive them by July 1995 or else be declared illegal aliens subject to expulsion. After being denied automatic citizenship as Soviet-era immigrants to Estonia, the mostly Russian non-citizens grew increasingly apprehensive as the official application deadline for residency neared. The eight-month government delay in even beginning the application process raised further anxieties. Although the government appears ready to extend the filing deadline for another year, the controversy itself continues to rage.

The reimposition of a territorial frontier between Estonia and Russia left the people of southeast Estonia and the neighboring Petchory region of Russia in a state of limbo. According to the 1920 Tartu Peace Treaty signed by Estonia and Soviet Russia, the entire Petchory region was under Estonian control. But in 1944, occupying Soviet authorities in 1944 extended the frontier of the Russian Republic, reverting Petchory to Russian jurisdiction. This February, the Russian Federation began to fortify the current border and set up customs checkpoints, despite the protests of Estonian authorities who claim that the Russians are in violation of the Tartu treaty. The final border remains unclear and potentially subject to further negotiation or bullying.

In April, a stormy debate erupted over press freedom in connection with the effort to privatize Rahva Haal, the nation's second-largest and the last state-owned newspaper. The controversy started last summer with a botched effort to privatize the paper and recently erupted into the headlines when the government fired the paper's editor, Toomas Leito. The government accused Leito, formerly head of the propaganda and agitation department of the Central Committee of the Estonian Communist Party, of trying to privatize the paper and recently erupted into the headlines. (Spontaneous privatization, a term of art, refers to the transfer of state owned capital into private hands without monetary compensation to the state.)

When the government created the office of publisher-in-chief and appointed a close associate of several government officials, the editorial board of Rahva Haal cried foul. Half of the newspaper's staff resigned in protest, denouncing the government for "an unambiguously party-based policy, disguised as protecting the interests of the state." Opposition politicians also lost no time in criticizing the move and were joined by the ministers of culture and education and several international journalism organizations, all of which condemned the government for attempting to use Rahva Haal as its mouthpiece.

Despite gaining electoral support for its position on the Russian-Estonian talks on the status of non-citizens, the center-right government of Prime Minister Laar suffered in March from its fight over Rahva Haal. Public opinion polls showed a new surge of support for the main opposition party, the Coalition Party, led by former Prime Minister Tiit Vaahi. The controversy is expected to influence parliamentary elections next year.

The Rahva Haal incident has also intensified the debate over the draft law on television and radio broadcasting, brought before the Riigikogu on April 6. The draft law would establish a nationally owned Estonian Broadcasting Company, led by a council of nine nominated by the government and confirmed by the Riigikogu. Opponents of this piece of legislation point to the Rahva Haal debacle, accusing the government of unfairly exploiting its present majority in the Riigikogu to create another media sycophant to support government policy. More than 100 amendments have already been proposed to this draft law, and discussions are expected to continue for some time.

**Hungary**

In the second round of parliamentary elections on May 29, the Socialist Party, led by Gyula Horn, won an absolute majority (209 out of 386 seats). The vote-to-seat formula in Hungarian electoral law means that around 33 percent of the electorate can produce a parliamentary majority. But Hungary's parliamentary system is only loosely based on the Westminster model, and it does not dictate that unobstructed executive power will now be handed over to the socialists. Even if Horn chose one-party government over a coalition cabinet including the Free Democrats (negotiations are taking place as we go to press), he would not have Thatcherite powers. Constitutionally, all fundamental legislation in Hungary, especially legislation touching human rights, must be passed by a two-thirds majority of Parliament. To achieve a two-thirds majority, the government will have to reach out beyond the socialists to a broader parliamentary coalition. The vote-to-seat formula makes it mathematically impossible to gain a two-thirds majority in Parliament without having attained at least 50 percent of the popular vote. Hungary seems to have stumbled, therefore, into a happy equilibrium. A minority of the electorate can produce a parliamentary majority, solving the problem of governability, but it cannot make revolutionary institutional changes.

The outgoing Parliament passed the "Act on Controlling Certain Persons in Important Positions" at the very last minute of its term. The first draft bill concerning lustration, submitted by the major opposition party, the Alliance of Free Democrats (AFD), came to the House in 1990, but by that time the parties in the coalition cabinet strongly opposed any lustration law on principle. But the government submitted its own draft law in October 1993. The government's version proposes "lustrating" (or examining) twice as many people (eight to ten thousand) as the earlier draft. In the bill, due to
proposals made during the parliamentary debates, this number was increased to about ten to twelve thousand persons. The scope of the law became wider, now also covering members of the Hungarian Nazi party, as well as officers in the security services, people who had provided information for the security services, and those (such as Communist Party secretaries) who had unrestricted access to security services dossiers. The most ticklish issue is raised by membership in the paramilitary units, called “padded jackets,” which reimposed order roughly in 1956-57. (Horn was a member of one of these units.)

Persons in important positions, as defined by the law, include members of Parliament, members of the government, those who are elected by Parliament to certain positions, ambassadors, prosecutors, judges, police commissioners and superintendents and generals. According to the law, lustration proceedings shall be extended to heads of departments in the ministries. The House did not accept the proposal to scrutinize all representatives of local government. In the electronic media, examinations shall be held from the level of presidents and deputy presidents to editors of the television and radio. As far as the print media goes, editors shall be lustrated in all newspapers, daily and weekly, wherever the number of copies printed exceed 30,000, whether or not the publication is public or privately owned. The former draft law applied only to newspapers where the state had majority ownership and the number of copies printed exceed 50,000. Critics suggest that this change reflected the worsening relationship between government and media under Democratic Forum rule.

Examinations will be conducted by committees, established explicitly for this purpose and each composed of three judges elected by Parliament. The person being lustrated may challenge the committee’s decision before a court but may not sue for damages on grounds of a harmful attack on reputation or dignity. The scope of sanctions to be applied by the committee are not wide. The first option is to call upon the person to resign within 30 days. If he refuses to resign and chooses to challenge the decision before a court, the committee is entitled to publish its decision. Information regarding persons who resign voluntarily or who are cleared by the committee shall be kept secret for 30 years after the decision is made. Critics suggest that this change reflected the worsening relationship between government and media under Democratic Forum rule.

On January 4, the Constitutional Court declared unconstitutional the general right of civil law prosecutors to initiate an appeal in a suit or to initiate the review of a court decision, except when an individual is unable to enforce his rights in court (714/B/1992/6). Under the previous law, the prosecutors could intervene at any stage of a civil case even without the consent of the parties involved, because of important state interests. In the opinion of the Court, the primary task of prosecutors is accusation. The Court did not question, in principle, the legality of participation by prosecutors in civil cases. But according to the Court, their role should be limited to cases where a separate law explicitly requires it. In its reasoning, the Court referred to the following principles: prohibition of discrimination; independence and impartiality of the judiciary; equal position of the parties and the right to self-determination. As the Court said, the right to go to court includes the right not to go to court and also, the individual’s right to enforce his own rights before the court. However, nobody has the right to enforce the rights of someone else before a court, independent of that person’s will, with certain constitutional exceptions.

**Latvia**

Issues concerning citizenship and the withdrawal of Russian soldiers continue to dominate the Latvian political debate. While laws on aliens are in place in neighboring Lithuania and Estonia, the Latvian Saeima (Parliament) recently passed a long-awaited draft law on citizenship but remains embroiled over the status of the considerable non-citizen population dominated by ethnic Russians. Meanwhile, the government of Prime Minister Valdis Birkavs narrowly survived a vote of no-confidence in response to its handling of bilateral troop negotiations with Moscow and must regroup to push the treaty through Parliament. Further turmoil accompanied the Saeima’s decision, subsequently declared unconstitutional by the government, to suspend the mandates of five MPs accused of KGB collaboration.

The citizenship dilemma continues to cloud the political atmosphere. The Saeima is torn between right-wing nationalists, demanding rigid naturalization requirements, and other more pragmatic factions who are mindful of international opinion and wary, on political grounds, about violating the
rights of the Russian diaspora. The Saeima has therefore come under heightened scrutiny—not to mention criticism—because of its inability to promulgate a new law on citizenship and naturalization in the nearly three years since the country declared independence. Recent signs suggest that some progress has been made, particularly when the deliberations involved the United States, Russia and various international organizations. Yet resolution of the citizenship issue, because it involves Latvia’s David-and-Goliath relation with its neighbor to the east, remains highly emotional and will surely be subject to further Saeimas wrangling.

Not surprisingly, discussions in Parliament regarding a draft law on citizenship and naturalization also touched upon the thorny matter of Russian soldiers remaining on Latvian territory. A deal between the two countries, mandating the departure of the majority of Russian troops and providing “social guarantees” for all the remaining and certain retired servicemen, was finally signed after threats from Moscow and a flurry of eleven-hour negotiations. The agreement must still be ratified by both countries’ parliaments, however, and the outcome in both cases remains uncertain. While strategic reasons for the two sides to ratify the agreement are manifold, nationalist forces in both countries have vested interests in undermining the deal and perpetuating the dispute, thereby exacerbating already strained ethnic relations. Marshaling public support and building consensus in the Saeima for the military treaty and for a law on aliens remain the primary challenges confronting President Guntis Ulmanis and Prime Minister Birkavs in the foreseeable future.

The absence of a new law on citizenship and naturalization has damaged Latvia’s international reputation. As Moscow continues to step up its interest in the rights of the approximately 722,000 ethnic Russians in Latvia (out of a total population of 2.4 million), drawing the world’s attention to the alleged mistreatment of Russians throughout the Baltics, the Saeima will find it increasingly difficult to delay passing a law that clearly addresses the issue. While various groups—including the Conference on Security and Cooperation in Europe (CSCE), United Nations (UN) and Council of Europe (CE)—support Latvia’s contention that it does not seriously violate the rights of its minorities, the absence of an adopted law leaves the country vulnerable to denunciations, particularly from Russia, questioning its commitment to democratic reform. Because Latvia is the only postcommunist European state that lacks a law on citizenship and naturalization, the promulgation of such a measure is critical for bolstering its democratic reputation and ensuring its entry into organizations such as the Council of Europe.

In recent months, the 100-seat Saeima took a big step toward solving the citizenship dilemma, finally agreeing to discuss and amend a draft law on aliens. In subsequent deliberations it scrapped what was heretofore one of the most controversial provisions and biggest stumbling blocks to passage, namely, a requirement for quotas calculated to “ensure the development of Latvia as a single community state.” The draft proposal—one of five under consideration—was put forward by the ruling coalition of Latvia’s Way (LW) (36 seats) and Farmer’s Union (FU) (12 seats). It was adopted on its first reading in a secret ballot on November 25 of last year.

The draft law (similar to the one already in place in Estonia) is based on an hereditary system of citizenship, which recognizes persons who were citizens prior to a specific date, in this case, the 1940 Soviet occupation, and their descendants. (By contrast, Lithuania has a zero-option law in which almost all residents are eligible for citizenship, reflecting the reality that its borders were significantly redrawn by Stalin in the wake of World War II.) The draft law specifies rigorous criteria for naturalization, including a ten-year residency requirement, language competency, knowledge of the Latvian constitution (Satversme), a pledge of loyalty to the republic and legal means of support. Exceptions may be made for persons married to Latvian citizens for at least five years, provided they have lived in Latvia for at least three years, and for those who arrived during the German occupation. Persons of Latvian or Liv ethnicity, non-citizens who lived in Latvia prior to 1940, and certain others under special circumstances will also be eligible for citizenship. However, severe restrictions are placed on various other categories of persons, including retired Soviet military personnel.

Reactions to the draft law from opposing factions—left and right—in the Saeima were swift and predictable. Members of the leftist Equal Rights faction (seven seats), which mainly represents Russian speakers, argued against the quotas, maintaining that the law would be overly restrictive, preventing non-Latvians from becoming citizens. By contrast, the nationalist Fatherland and Freedom (six seats) and National Independence Movement (NIM) factions announced plans for their own draft law on citizenship, which would effectively suspend the passing of any new law until all Russian troops withdraw from the country. They also threatened not to participate in the amending of the draft law that was selected. (Under the constitution, alternative laws can be submitted to the Saeima but only after gaining the support of ten percent of the eligible voters, at which time Parliament must either adopt the revised law or call a referendum.)

Bowing to pressure from the CSCE and CE to whom the initial draft law was presented, the ruling coalition dropped quotas from the draft law. This action will buy the Saeima some time by shifting the focus of international attention and assuaging the apprehensions of some left-wing factions. But the removal of quotas may indirectly subvert the process of consensus-building by strengthening the resolve of certain nationalist opposition groups who balk at any further watering down of the naturalization requirements. The rigorous naturalization criteria will also put further strain on relations with Moscow, which advocates dual citizenship for its displaced Russian speakers, an option rejected by Latvia.

The draft law on citizenship will undergo further modifications (and may even be submitted to a referendum) before it is
finally presented to the Saeima for adoption, but a significant breakthrough occurred on April 30, when Riga and Moscow signed an agreement on the withdrawal of Russian troops. Moscow tried to link the departure of its soldiers with cordial treatment for the large Russian minority, while Riga demanded the troops’ unconditional withdrawal. In the months leading up to the signing, conflict over the status of active and retired troops resulted in minor skirmishes and acts of aggression which threatened to derail the negotiations.

At stake was the status of the 7000 to 13,000 (depending on which side counted) active Russian soldiers and the 30,000 retired troops living in Latvia. In particular, discussions centered on the status of the early warning base on the Latvian coast at Skrunda, including the terms and schedule under which the base would be converted to civilian control, and the “social guarantees” Latvia would provide to the remaining soldiers and pensioners still living within its territory. Both issues were bitterly contested and negotiated. Particularly touchy was the question: Would the granting of certain rights and privileges effectively legitimize part of the Soviet occupation? Twenty-two MPs signed a letter to President Ulmanis pressing him to delay agreeing to the accord before a public opinion poll could occur at the time of local elections on May 29. And the Fatherland and Freedom and NIM factions spearheaded a public protest. NIM threatened to call for special parliamentary elections, but this threat lacked constitutional legitimacy, because only the president, whose constitutional powers are otherwise weak, may dismiss Parliament and call for special elections.

On March 15, a deal was struck in the thirteenth round of bilateral negotiations (dating from 1992). The final agreement stipulates that all soldiers, except the 700 remaining to operate Skrunda on a civilian basis, will depart by August 31, 1994. In return, Russia will resume control of the base for four years with additional 18 months to dismantle it, and Latvia will guarantee certain rights for those servicemen who retired prior to the 1991 transfer of control of the army from the USSR to Russia, allowing these persons to become naturalized citizens provided they adhere to the country’s citizenship requirements.

The agreement was nearly scuttled a few weeks later in the wake of Yeltsin’s presidential decree, later rescinded, stating Moscow’s plans to establish military bases throughout the CIS states and Latvia. Moscow was profuse in its apologies, maintaining that this decree was a “technical mistake,” an attempt by insiders to destabilize the situation, and that the terms of the initialed agreement were not compromised. But the statement unleashed protests in Riga, Tallinn and Vilnius. President Ulmanis canceled his trip to Moscow, and the Saeima went into extraordinary session on April 20. Emboldened by the public clamor and heightened Baltic sense of insecurity, various nationalist factions, opposed to the terms from the start, urged that the treaty be taken off the table and that negotiations be started afresh. When the vote seemed to go against them in the early morning of April 21, MPs from the NIM and Fatherland and Freedom factions bolted from the emergency session, denying the Saeima a quorum. What followed later that day was a vote of no confidence, survived by the government with 51 deputies voting against the motion, 21 in favor, and 15 abstaining. How weakened the government was by this crisis and what effect it will play in future deliberations over the treaty and in negotiations over the law on aliens remains subject to speculation.

President Ulmanis and Prime Minister Birkavs managed to get negotiations with Moscow back on track (after Yeltsin formally invalidated the decree), and the accord was signed on April 30. However, the stormy history of this issue and the haste with which the agreement was patched together (less than two weeks from parliamentary crisis to Moscow ceremony) suggest that the accord is not necessarily stable. Both parliaments must approve the treaty before it becomes law and, in the case of Latvia, the treaty seems to have been signed before public support was consolidated. As time passes, chances increase that resurgent imperialist winds in Russia or an altercation involving the retreat of a platoon or a publicized violation of rights of ethnic Russians might imperil ratification. Whether the weight of international opinion and the political muscle of President Ulmanis and Prime Minister Birkavs, both of whom went out on a limb to sign the accord, is sufficient to push the treaty through Parliament is in doubt. On a positive note, if the treaty is not undermined, momentum would doubtless build in the Saeima for passage of a law on citizenship and naturalization.

As the country continues to struggle with its past, five MPs were suspended pending resolution of charges of previous KGB collaboration. Each of the deputies—three from the LW, including the foreign minister and minister for special tasks, one from Fatherland and Freedom, and the leader of the Democratic Party (DP) (five seats)—denied the accusations, which surfaced when their names appeared in KGB dossiers, but a late night session of Parliament on April 27-28 was capped by the decision to suspend the deputies until a law on KGB collaboration is adopted. Although there is precedent for parliamentarian suspensions (Alfred Rubiks of the Equal Rights faction was suspended in July 1993, for his role in the 1991 Latvian coup attempt), the government declared that the Saeima’s ruling was unconstitutional. It claimed that provisions exist for deputies’ mandates to be nullified but not suspended. In coming months, as the Saeima scrambles to adopt a suitable law, the debate will be waged in the milieu of political haggling and accusations, especially because the LW/FU coalition stands to lose two government ministers. What effect the five fewer seats in the Saeima, and the lowering (by three) of the LW/FU majority to 44 will have on the handling of this issue in the assembly is uncertain.

The arrest of the former Latvian KGB boss and a resolution submitted to the UN to recognize the Soviet occupation further reflect continuing public concern to finger culprits for past suffering.

Apart from the major issues of citizenship and Russian troops, the Saeima (which in June will mark its first anniversary) tackled a heavy legislative agenda in the last four
months. On the first day of its winter session, it passed a law on local elections, whereby candidates will be selected by direct and proportional ballots for terms of three years. Elections will take place on May 29, marking the first time that plebiscites in district (rayon), town and country councils have occurred since independence. According to the law, which excludes non-citizens from running for office as well as from voting, voters must be at least 18 years of age and be registered or own property in the local area, while candidates must be 21 or older and have lived in the local region for 12 months or more. A proposal put forward by the DP faction, aimed at preventing Latvia from a permanent move allowing police to detain people suspected of participating in organized crime for up to two months before formal charges are lodged against them. Since July 13, 1993, Lithuanian police have arrested 264 people, 103 of whom were formally charged. The police supported this law as a necessary measure for protecting citizens against violent crimes often linked to mafia groups. The opposition claimed that the law was unconstitutional, fearing that it granted excessive discretion to the police and was therefore a step backwards towards totalitarianism. On December 15, a new law was passed on preventative detention. It maintained the right of authorities to detain suspected mafia members, but also offered concessions to the opposition by requiring that a judge sanction any detention within two days of the initial arrest. The new law complies with Art. 20 of the constitution which stipulates that any person detained must be brought before a court within two days to determine the validity of the detention. The popular success of the preventative detention law was undoubtedly overshadowed by the highly publicized murder of Vytais Lingys, a journalist who investigated organized crime and was an assistant editor at the popular daily newspaper Respublika.

Another law related to the police crackdown on illegal business activities was passed on December 9, requiring Lithuanian citizens to declare all property worth more than 15,000 litas ($3850) purchased since March 1990 and to disclose the sources of the money with which they purchased this property. This law is primarily meant to support efforts at creating a viable tax collection system, but it also has a secondary aim of offering investigators an opportunity to hone in on illegal business practices. If police intervention is recommended, the property in question will be subject to confiscation by the state. President Algirdas Brazauskas objected to this law because certain government posts are exempt. Since undeclared property is subject to confiscation, Brazauskas also argued, the law contradicts constitutional principles of equality and inviolability of property.

On February 28, however, Brazauskas revealed the limits of his commitment to the equality and inviolability of property when, during a press conference, he repudiated efforts to return property confiscated by the Soviet regime to Polish and Jewish organizations. From the beginning of the Soviet occupation, property belonging to religious groups and social organizations as well as to private citizens had been confiscated both to advance socialist goals and to demoralize the opposition. The leaders of the newly independent Lithuanian regime ostensibly made the restoration of churches, schools, monasteries and the restitution of land to Lithuanian citizens a priority in their efforts to create democracy. During the 1992 elections, this initiative came under fire by agricultural workers and other citizens who had occupied or worked confiscated land for the 50 years of Soviet occupation. President Brazauskas pledged to slow down this destabilizing initiative and has now refused to return property to individuals who are not citizens permanently residing in the country, including Poles and Jews.

The Social Democratic Party (SDP) began efforts to call a no-confidence vote against Prime Minister AdolfoS Slezevicius. As a small faction in the Seimas (six deputies), they had little chance to obtain the support of the 22 additional deputies needed to pass such a measure. On March 2, the leader of the Motherland Union Party, Gediminas Vagnorius, issued a statement condemning the Lithuanian Democratic Labor Party (LDLP) majority for not honoring its promises after 16 months in power, arguing that efforts to stabilize the
cconomy are not visible and that productivity has decreased by ten percent each month. These maneuvers continue the pattern of using diffuse public disgust at politics to oust current office holders and gain political power. In March, Lithuanians displayed the lowest level of trust in their president and premier (42 percent and 27 percent respectively) of the three Baltic States, and only 20 percent of Lithuanians were satisfied with the work of the Seimas. This pattern, if repeated, will obviously interfere with the building of democracy and even political stability.

Ever since the tragedy of January 13, 1990, when fifteen people were killed during a peaceful independence demonstration at the television tower in Vilnius, Lithuanians have considered the victims to be the last martyrs of fifty years of occupation. In 1989, now-President Brazauskas led the Communist party's split from Moscow, acting in an alliance for independence with the Sajudis movement. But there were several Communist Party leaders who remained loyal to Moscow, and these individuals are still held responsible by many people for the January tragedy. This past January, authorities arrested the former pro-Moscow Communist Party leaders widely believed to have played a major role in the attack. Jouzas Jermalavičius, former head of the party's ideology department, and Mykolas Burokevičius, former first secretary of the party, were detained in Minsk on January 15. Belarusian communists picketed KGB headquarters in Minsk, arguing that the Lithuanian police had no arrest warrants and had not informed the government in advance about the arrests. On February 25, Lithuanian officials had also hoped to nab Russian Colonel Vitalii Egorov for anti-Lithuanian activities during the August 1991 coup attempt, but were unsuccessful because Egorov had been warned of the attempt ahead of time.

In February, the LDLP's leadership sought to legislate the pinning of the Lit to the U.S. dollar. The firmest opposition to this proposal came from the Christian Democratic Party, whose representatives argued that the move would be unconstitutional, since matters of state finance fall under the jurisdiction of the central bank. Indeed, chapter 11 of the constitution states that the bank board alone directs monetary policy. Obviously, the success of the Estonian Kroon, pegged to the German mark, influenced this initiative. Ultimately, the opposition failed in its attempt to block the LDDP proposal, and, in April, the Lit was pegged to the dollar.

Poland

In January 1994, two draft amendments to the constitutional law on the procedure for preparing and adopting the constitution were submitted for debate in the Sejm (Parliament). One of them was prepared by the deputies from the Confederation for an Independent Poland (CIP), the other by the Union of Labor (UL).

The basic solutions proposed by the UL draft included proclamation of a constitutional referendum "in matters pertaining to the principles of the system of power on which the constitution is to be based." The referendum should precede the debate in the National Assembly on the organization of power (Art. 1, sec. 2) and would, on the condition of 50 percent attendance, have a binding character. It would not rule out a final ratifying referendum. The decision in this matter would belong to the president, who must sign the constitution.

After the debate in the Sejm, on January 20, both draft amendments on the procedure for the preparation and adoption of the constitution were sent to the Extraordinary Committee. A proposal for changing the procedure of preparing and adopting the constitution was also made by the president. The president proposed to extend the right to submit draft constitutions to groups of 100,000 citizens (the so-called citizen groups), who would thereby have the "public initiative." The representatives of citizen groups could participate actively in the work of the Constitutional Committee of the National Assembly on the same basis as representatives of the president, of the council of ministers, and of the Constitutional Tribunal. Most importantly, they would have the right to submit motions. According to the president, a more inclusive definition of those entitled to submit draft constitutions would constitute the best guarantee that the constitution eventually adopted by the National Assembly will be in compliance with the wishes of the nation and be accepted in a final referendum.

The presidential proposals stirred severe criticisms among the deputies. In the opinion of Jerzy Jaskiernia (Union of the Democratic Left [UDL]), the president's initiative came too late, and its adoption could delay preparation of the constitution. He likewise rejected any attempt to connect the results of the referendum with the "fate of the Sejm and the Senate." This proposal, according to Jaskiernia, could turn the ratification process into a campaign on popular approval of Parliament. Such a transformation would reduce the importance of the referendum itself, especially if a campaign flares up against the Sejm, instead of being focused on the constitution.

 Doubt about the presidential initiative were shared by the other parliamentary clubs, except for the CIP and the Non-Party Bloc to Support Reform (NPBSR). Eventually, on the motion of the UL, the Sejm rejected the presidential draft laws on the first reading. Voting against the presidential drafts were 206 deputies (UDL-110, PPM-65, UL-29), while 101 deputies were in favor and 45 abstained.

After the drafts were rejected by the Sejm, the president said in a statement to the Polish Press Agency (PPA) that he would now stop "cooperating with Parliament in the creation of a constitution." Subsequently, he also withdrew his representative, Professor Lech Falandysz, from the Constitutional Committee. He also withdrew his draft constitution, announcing that he would campaign publicly in its favor, adding that "political life will show which draft, Parliament's or the president's, is superior."

On March 1, Walesa removed Marek Markiewicz from the post of the chairman of the Radio and Television Council.
The removal occurred right after the license for a nationwide private television channel was granted to POLSAT television from Gdansk.

When removing Markiewicz, the president accused him of blatantly violating the provisions of the radio and television law (especially Art. 36, sec. 2) concerning threats (however hypothetical) to the national security. This accusation was based on the fact that the Council did not take into account data submitted to it by the State Security Office (SSO). In the opinion of the president as well as of the SSO, these materials contained information on threats to national security and concerned the owner of POLSAT. Furthermore, Walesa accused Markiewicz of allowing a situation to develop in which the same entity, POLSAT, obtained a license for satellite television and, for a nation-wide network while intending to obtain local broadcasting licenses. In addition, the Director General of the POLSAT also heads public television.

The doubts concerning Zygmunt Solorz, practically the sole owner of POLSAT, are serious. They are voiced not only by the president, but by the media as well. It is not fully known who Solorz is. Likewise, it is not known, as the rzeczpospolita reporters say, whether or not he has money and where his money comes from. It is known only that he has gone by four names and been the holder of eight passports. Irrespective of the controversy over the owner of POLSAT, the conflict about the president's right to remove the chairman of the Council continues unabated.

Pursuant to Art. 7, Section 2, of the "Law on Radio and Television" of December 29, 1992, the chairman of the National Radio and Television Council is appointed by the president from amongst its own members. There is no clear indication whether or not the president has the right to remove the chairman and, if so, what procedure should be employed. Hence, according to Council expert, Professor Stanislaw Pitek, the "Law on Radio and Television" mentions only the procedure for appointing the Council's chairman; the president has no legal grounds to remove Markiewicz from his position.

On the other hand, Minister Falandysz, the deputy head of the Presidential Office, justified the president's decision by claiming that, although the law does not mention removal, this is not exceptional in the Polish legal system. A similar omission appears in the constitutional provision on judges. On paper, the president only appoints them, but in reality he removes them as well. Thus, the law sometimes mentions both appointment and removal, sometimes appointment only, but in this case the right to remove is an implied power. Technically, in Falandysz’s opinion, Walesa did not have to justify the removal of the chairman of the Council, any more than he had to justify his appointment.

While Markiewicz is to be removed from chairmanship of the Council, his membership on the Council is not called into question. This clarification is important since pursuant to Art. 7, Section 6 of the aforesaid law, the possibility of removing a Council member by the founding organ is foreseen only in one of four enumerated cases.

This controversy will be settled by the Constitutional Tribunal, since the Ombudsman announced that he will apply to the Tribunal for a valid and binding interpretation of Art. 7, Section 2 of the Law, used by the president as legal basis to remove Markiewicz. The initiative of the Ombudsman was the result of a motion by 61 deputies from Democratic Union (DU), UL, PPM, UDL and independent MPs.

On March 25, the Sejm passed some amendments to the constitutional law on the procedure for preparing and adopting the constitution in the version proposed by the Extraordinary Commission. The new law provides for public initiative by 500,000 citizens. The Sejm also accepted the CIP proposal of resubmitting all seven projects which were prepared in the former Parliament. A new law also gives the right to participate in the Constitutional Commission and submit motions (with no voting rights) to the authors of the projects who are now outside Parliament as well as to the authors of the drafts submitted by popular initiative. A pre-constitutional referendum is not required, but it is a possibility if the Sejm finds it desirable. Finally, the Sejm upheld the mandatory referendum for ratifying the constitution adopted by the National Assembly at the end of constitution-making process. The president's suggestion that Parliament be dissolved if the nation rejects its draft constitution by referendum was not discussed. This changed mode of constitution-making was accepted by the Senate in early April and now awaits the president's signature or veto.

The conflict between Walesa and the parliamentary majority grew ever more intense throughout March, April and May. The president continued to oppose the attempts of the UDL/PPM coalition to impose deputy ministers from their parties on the ministries of defense, internal affairs and foreign affairs controlled by the president.

In mid-March, Walesa refused to accept Mariusz Rosati, the coalition's candidate for deputy prime minister and minister of finance. According to Art. 68 of the Little Constitution, the president may make changes in the cabinet at the prime minister's request. Walesa had already exercised discretion in this regard during Hanna Suchocka's government when he refused to appoint a minister of culture suggested by Suchocka. Walesa justified his refusal this time by pointing out that Rosati had spent the previous four years abroad while working in international organizations and that he was on the board of the Fund for Restructuring Foreign Debt, the directors of which are in court for embezzling public monies. Walesa's main aim, however, was to humiliate the leadership of the UDL, which had declared war on the president over the constitution. UDL continued to talk about resubmitting Rosati for the post, while Walesa repeatedly ruled out any reconsideration of his candidacy.

On March 31, Walesa refused to sign into law a liberalized version of the tax on excess wages, set to take effect on April 1.
He justified his refusal by referring to a controversial clause that, he said, would have allowed the government to extend the tax to private firms, in case the “financial equilibrium” of the state was thrown into jeopardy. If signed by the president, this provision, which gave the cabinet—and not Parliament—the right to impose new taxes, would most probably have been challenged before the Constitutional Tribunal. On April 7, despite the call of Prime Minister Waldemar Pawlak to uphold the law, the Sejm failed by 23 votes to muster the two-thirds majority needed to override Walesa’s veto.

On April 12, Walesa signed the 1994 budget despite his earlier threats to veto the bill. Two days later he refused to sign the amended electoral law for local government bodies and suggested postponing local elections for a year. The amended law, which emphasized party lists and proportional voting, was believed to favor the parties of the ruling postcommunist coalition. Walesa’s arguments for vetoing the bill were that it would politicize local elections and that it contained a stipulation forbidding campaigning in churches. The last provision, discussed many times since 1990, turns out to be insignificant, because there is no way to enforce a ban on electioneering in church. By invoking this argument, Walesa, whose popularity is waning, may have hoped to secure the church’s support. His primary purpose, however, was to prevent an overwhelming victory by the postcommunists in the local elections. (Local governments are the only remaining stronghold of the Solidarity activists, besides the presidency.)

National politics have visited the local arena in recent weeks. In April, Pawlak announced that local elections will take place on June 19, according to the old majoritarian electoral law. On May 16, Michal Kulesza resigned as the official responsible for local government reform. Kulesza was one of the few members of Solidarity to retain his post after the 1993 elections. At the “Local Government Congress” in Poznan, Kulesza accused the government of blocking the decentralizing reforms embarked on in 1989 and of attempting to re-establish the nomenklatura. Pawlak, meanwhile, attended an “alternative” local government congress held in Warsaw by his own Polish Peasant Party.

In mid-April, the existing constitution itself became a bone of contention between the president and the ruling coalition. A group of 16 deputies from UDL and PPM submitted a proposal for changing the Little Constitution which would deprive the president of a right to veto cabinet reshufflings proposed by the prime minister. This proposal was widely criticized as an attempt to tamper with the constitution for political purposes. The president responded by threatening to dissolve parliament even though such a move would have clearly been against the law. These threats were the peak of a conflict which suddenly ended on April 20, after a meeting between Walesa and the parliamentary club of UDL.

Kwasniewski acknowledged that the rejection of the president’s bill in February was a mistake, and Walesa promised to send his representative back to the Constitutional Committee and to re-submit his draft constitution. He also agreed to accept one deputy minister from each of the two parties of the ruling coalition in “his” departments.

Walesa and Prime Minister Pawlak will no doubt continue to struggle through the summer as Poland revises its military command structure. Two options for supervision of the military are on the table: the commander could report directly either to the president or to the defense minister. Not surprisingly, Walesa supports the former option.

The “political tango,” as the Romanian press calls it, between the opposition and the Party of Social Democracy in Romania (PSDR) minority government of Premier Nicolae V"{a}c"{a}roiu continued during the first quarter of 1994. Invoking Art. 112, paragraphs 1-3 of the Romanian constitution, the opposition lodged on December 7, 1993 a “censorship motion” against the cabinet. The slow pace of reform and the government’s inflationary fiscal policies were the principal grievances cited. Debated in a joint session of the bicameral Parliament, the motion was rejected in a secret ballot by a margin of 236 to 223. The V"{a}c"{a}roiu government thereby survived the second no-confidence vote in the 14 months of its existence.

The new year began with an appeal to the Constitutional Court by the main opposition alliance, the DCR (Democratic Convention of Romania), challenging the constitutionality of a bill allowing the government to rule by decree during the January parliamentary recess. The cabinet had argued that it needed this law in order to prepare the signing of a memorandum between the IMF and Romania. At the request of 118 opposition members, however, the permanent bureau of the Chamber of Deputies announced that a special session of the chamber was to convene on January 3. During this session, the majority supporting the government blocked debate on the issue until the Constitutional Court had an opportunity to rule on the matter on January 11. After the Court held the bill unconstitutional, the same parliamentary majority declared a debate unnecessary, and President Ion Iliescu signed the bill into law on January 12.

These two developments increased awareness among political elites of the need for a coalition government. The governing party set out to conduct a series of talks, first with the nationalistic Party of Romanian National Unity (PRNU), then with the former communists of the Romanian Socialist Labor Party (RSLP) and even with the extremist Greater Romania Party (GRP). Proposals were even made by the DCR to form a coalition government, but President Iliescu, in a meeting with DCR Chairman Emil Constantinescu, rejected the idea because it would “disrupt the work of the government.”

When a cabinet reshuffle was finally announced on March 6, the changes proved to be “cosmetic,” as the vice-chairman of the National Peasant Christian Democratic Party
(NPCDCR) termed them. President Iliescu appointed two civilians to head the defense and interior ministries, a first for post-war Romania. Gheorghe Tinca, a career diplomat and expert on disarmament replaced Lieutenant-General Nicolae Sprioiu as defense minister, and Doru-Ioan Taracila replaced George-Ioan Danescu as interior minister. The other newly appointed ministers are Iosif Gavril Chiezeaian, a magistrate, replacing Petre Ninosu at the Justice Ministry, and Aurel Novac replacing Paul Teodoru as minister of transportation.

These changes are unlikely to help solve the serious economic and social problems facing the country in the near future. Foreshadowings of difficulties on the horizon were increasingly visible during the first three months of the year. Large-scale labor unrest manifested itself in work stoppages and increased hostility towards the government. One by one, the major labor organizations walked out on strike demanding, among other things, a new government, speedier economic reforms, and a more reliable and comprehensive social safety net. Even the miners and railway workers, formerly close allies of the ruling party and President Iliescu, announced that they would travel to Bucharest to press the government for more generous and reliable social guarantees.

In the meantime, Romania became the first country to join the "Partnership for Peace" program. Foreign Minister Teodor Meleşcanu signed the document at the NATO headquarters in Brussels on January 26. The government had already endorsed the plan, optimistically describing it as a preliminary step towards Romania's eventual admission as a full member to NATO. The government insisted that this formula would avoid the "drawing of new boundaries" on the grounds that Romania, by constitutional stipulation, is and will remain a republic. Two further amendments proposed by PSDR deputies deal with the composition of the administrative councils of state radio and television. Because they remove parliamentary control of these institutions, these two amendments are viewed by the opposition as the government's attempt to introduce its own political control. After 16 out of the 22 articles were passed, debate was interrupted. The Senate passed a similar bill last year, minus the controversial article requiring strict constitutional propriety from the broadcast media.

On March 1 and 3, the Chamber of Deputies partially passed the radio and television law, which would make broadcasting independent of political parties, the president and the government and make it subordinate to Parliament alone. One narrowly approved article of the new law created a controversy by stipulating that radio and television must observe the provisions of the constitution. The opposition fears that this article is intended to ban any broadcasting of sympathetic references to the exiled King Michael on the grounds that Romania, by constitutional stipulation, is and will remain a republic. Two further amendments proposed by PSDR deputies deal with the composition of the administrative councils of state radio and television. Because they remove parliamentary control of these institutions, these two amendments are viewed by the opposition as the government's attempt to introduce its own political control. After 16 out of the 22 articles were passed, debate was interrupted. The Senate passed a similar bill last year, minus the controversial article requiring strict constitutional propriety from the broadcast media.

On March 22, the Senate approved a veterans' pension bill stipulating the rights of war veterans and widows. An amendment introduced by the nationalist PRNU would exclude citizens who fought against the Romanian army, thus making many ethnic Hungarians ineligible for benefits. During the war, many Hungarians in northern Transylvania, a region ceded to Hungary by the Vienna Award, were subjected to mandatory conscription into the Hungarian army. Senators of the Hungarian Democratic Federation of Romania (HDFR) walked out of the proceedings when denied the right to read a statement alleging that the bill contradicts the constitution and violates international laws.

On March 31, the two rapporteurs for the Council of Europe left Romania declaring that the government had only partially fulfilled the obligations it assumed when admitted. They said that recent legislation, restitution of properties seized by the communists and especially minority rights are the main areas where more progress is needed. They expressed a certain degree of understanding for the country's situation and the need for more time, but added that "this cannot be an excuse for doing nothing."
Despite national elections and the adoption of a new constitution, the political situation has not been clarified in the past quarter. On the contrary, events in Moscow give the impression that nothing has been resolved by the ratification of a constitution and the convocation of a new parliament. Among the general public, Parliament is still seen as a body of endless chatter and factious intrigue. Although Russia needs new legislation in almost all areas, the new Parliament has passed no laws. Instead of legislating, the newly elected parties—as well as the independent members making up more than 50 percent of the State Duma—have reorganized themselves into small factions, maintaining consistently inconsistent positions on a range of political issues. Paralysis and intermittent jabs at the government and the president are the principal pastimes of the Duma.

Meanwhile, President Boris Yeltsin has shown little inclination to use his new constitutional powers. Apparently cowed by the public’s embrace of the far right and left Yeltsin withdrew from public visibility as soon as he was in a position to assert his authority, his office claiming either flu or previously scheduled vacations as reasons for his absence. When he did appear it was either to insist that economic reform would continue, though evidence was scant and support nil, or to counter Vladimir Zhirinovsky with foreign policy bravado in a game of “more Russian than thou.” His attempts to reassert himself over Parliament were desperate, and they failed. Moreover the treaty struck with Tatarstan (see below) does not bespeak a newly invigorated center or a unified federation. Political weakness is the order of the day in Moscow.

Prime Minister Viktor Chernomyrdin showed far less reserve in governing than his constitutional superior and eventually managed to put together a coalition cabinet of industrialists and agricultural interests (the liberals are gone) some of whom harbor grand designs for Russia’s relation with the former republics (the CIS). Along with the budget, these neo-annexationist designs have occupied the better portion of Chernomyrdin’s agenda. To restore the old trade links, which the government considers indispensable for reviving the country, support from the head of the Russian Central Bank, Viktor Gerashchenko, was indispensable. The result is likely to be further economic decline, suggesting that the current government is set on managing decay. Still, there is a decided shift of power. The president and Duma have lost ground to the prime minister and perhaps to the Federation Council.

While the government follows its own unsupervised course, the fortunes of the president have been on a precipitous downward spiral. Having apparently won the battle for a new basic law (which may not have been legally ratified, see below), he seems to have lost the political war. Though Yeltsin tried to situate himself above politics during the fall election campaign, he clearly favored the young liberal reformers who served with him in 1992 and again after Parliament had been violently disbanded. As the elections neared and public opinion polls were suspended, as the law requires, it was widely assumed that the liberal reform forces would win some kind of majority in the Duma. The shocking results of December 12 showed that the reformers were woefully uninformed about the mood of the Russian public. Yegor Gaidar’s Russia’s Choice won more Duma seats than any other party. But anti-reform parties and candidates won the largest share of the seats in the 450-member chamber. Zhirinovsky’s Liberal Democratic Party (LDP) took 70 seats, followed by the Communist Party of the Russian Federation (CP-RF) with 65 seats and the Agrarian Party with 47 seats. Russia’s Choice won 96 seats. The Yavlinsky-Boklyrev-Lukin bloc (often referred to as Yabloko) won 33 seats, followed by the Party of Russian Unity and Accord with 27 seats and the Russian Movement for Democratic Reform taking 8 seats. Anti-reformers were left with a stunning 182 seats, while reform forces came away with 164.

Post-election assessments as to why Gaidar and the other reform parties had performed less well than expected ranged from complaints about their overconfidence and outright arrogance, to denunciations of their practical disorganization. Reasons given for Zhirinovsky’s surprise showing included his manipulation of ultranationalistic themes, his continuous presence on television and his availability as a protest vote. His victory panicked Western observers, but the president’s office and the reformers, though surprised, displayed cool acceptance. After all, Yeltsin had won his constitution.

However, the ratification of the constitution itself was not without intrigue. Immediately following the December 12 vote, the president’s office announced that the constitution had been accepted by approximately 60 percent of the voters, an exaggeration which later required qualification. The controversy over ratification centered on the question of the number of eligible voters, a crucial factor since adoption required that at least 50 percent of the eligible voters participate. Prior to the December elections, the number of eligible voters stood at approximately 107 million. But when calculating the quorum necessary for the constitutional plebiscite, the Central Electoral Commission (CEC) used a figure of about two million fewer voters. The only explanation the Commission offered was that the local authorities, acting within the law, had revised the figures used in deciding on the size of the total electorate. Obviously, a lower number of potential voters yielded a smaller number of those who had to participate in ratification. A figure of 106.2 million was finally settled on, without being justified by the CEC or the president’s office. Taking this number as a baseline, the CEC declared that nearly 55 percent of the eligible voters participated and that a simple majority, 31 percent of those voting, had voted in favor of the constitution, which was therefore proclaimed accepted. Shocking news on the ratification process was released in Izvestia on May 3. The paper published a report by Alexander Sobyanin, who had been commissioned by the president to review the adoption of the new charter. According to his
warded to district electoral commissions, which then passed the ballots to regional authorities who then counted the votes. Regional authorities are not under the control of the Central Electoral Commission, which accepted tallies from the regions without question. Sobyanin discovered wide discrepancies between the numbers of voters reported by local electoral commissions and the number of voters eventually reported by the CEC. He also learned that some districts experienced inexplicably high turnouts combined with supernaturally low numbers of invalid ballots and that sudden changes in voting patterns occurred in remote regions, while no such shifts took place in urban areas, where verification is naturally much easier. All clues seem to point to regional authorities, who controlled the vote-counting.

If the report is true, as it appears to be, then the entire governing system, established by the new constitution, is a house built on sand. Amazingly, Sobyanin was fired, while the failed ratification has attracted little attention from either president or Parliament. Both seem content to let matters stand as they are. Still, the fact, if it is a fact, that the constitution did not actually win popular ratification means that political forces with an interest in reorganizing the entire governing structure will not feel overawed by the will of the people supposedly embodied in the basic law.

Despite the poor showing of the reform forces in the Duma elections, Yeltsin seemed to have got what he had coveted—a constitution giving the State Duma only marginal say in the formation of the government and essentially no say in foreign affairs. Moreover, the new and moderate Federation Council (the upper chamber, designed as a club of regional leaders) holds veto power over decisions in the Duma.

Yeltsin entered the new year still wielding considerable leverage. Though he publicly expressed interest in working with the new parliament, he maintained that economic reform would not falter and that the Duma would have to abide by the constitution lest “lessons from the past” (a skimpily veiled reference to the events of October 1993) were not learned. As a symbolic reminder of who was in charge, the government moved into the newly restored White House in early January (Chernomyrdin took Russian Khasbulatov’s old office), leaving the Duma to meet in the Comecon building and the Federation Council in the Soviet Ministry of Construction building.

In an effort to outflank the instantly famous Zhirinovsky, Yeltsin sought to satisfy nationalist yearnings and soothe Russian humiliation at the Union’s collapse with a new foreign policy assertiveness. He and Foreign Minister Andrei Kozyrev pushed an agenda centered on traditional Russian foreign policy interests and on the interests of the stranded diaspora, the 20-25 million Russian-speaking people in the near-abroad. But his economic policy, as announced by his own office, was still squarely focused on lowering inflation, stabilizing the ruble and reviving production. In early January, in an effort to demonstrate seriousness and maintain reform momentum, Yeltsin used his decree powers to pass further privatization voucher legislation, exempting voucher investment funds from dividend taxes and clarifying which firms could be privatized by July 1994.

It was assumed in January that the soon-to-be-formed government would retain the better part of the reformers of late 1993 in the face of the new “conservative” Duma. In his conversations with Yeltsin, Gaidar maintained that the election in no way dictated a change in economic policy. However, following the elections, a seemingly distracted Yeltsin increasingly waffled on the direction of economic reform. Moreover, designs to bring the former Soviet republics back into some kind of economic (and in part political) union gradually prevailed over plans for reform and by the end of January the previous reform team had been effectively driven out by Chernomyrdin. Yeltsin was in part responsible for the departure of the reformers, though he had hoped to keep them in the government. Focusing his attention (which seems to be an increasingly scarce resource) on countering the ultranationalists and reorganizing the former security services, Yeltsin effectively abdicated presidential responsibilities in the economic domain. Chernomyrdin, using the clout that comes with patronage power, shrewdly picked up on the theme of Russia’s natural interests and, under extreme pressure from the industrialists, who craved the restoration of trade links with the former republics, he pushed forward with the idea of bringing the former Soviet republics back into some kind of an economic union. In the late fall, the reformers had managed to curtail open-ended credits to the republics, but with the new year the prime minister, along with Gerashchenko of the Central Bank, had enticed Belarus to consider an economic union in return for credits to the starved republic. By the proposed agreement, Russia would again have control of Belarusian industry while the breakaway republic would be given a one-to-one exchange for its rapidly deteriorating currency.

The terms of the currency swap enraged Gaidar and Finance Minister Boris Fyodorov since both had spent the fall and winter trying to wean the successor republics from easy credits. The one-to-one exchange, given the low value of the Belarusian Hare (casually referred to as the “bunny”), meant Belarus would stand to gain 1600 billion rubles (approximately $1.5 million) from Moscow. Equally disconcerting for the reformers, the deal would give the Belarusian central bank the power to issue ruble credits to ailing industries in the republic, leaving Moscow to pay the
bills with only marginal authority to control spending. The agreement with Belarus was not finalized until April but the entire imbroglio epitomized the drift of the government in the winter and spring.

As Yeltsin’s absence became increasingly palpable, Chernomyrdin pursued a policy which favored drawing the republics back to Moscow, kow-towing to Russian industrialists and agrarian concerns whose principle concern was to secure state credits in order to help increase production at the expense of fiscal and monetary restraint.

The appointment of ministers and the election of a parliamentary speaker for the State Duma proved to be protracted processes. Under the new constitution, Parliament can reject a proposed government only by a two-thirds majority, a figure the combined nationalists and communists could not muster. But neither Yeltsin nor Chernomyrdin was willing or able to take on the newly arrayed parliamentary forces, choosing instead to acquiesce in their selection of a parliamentary leadership. The Duma officially opened on January 11, and Zhirinovsky quixotically attempted to become its speaker. The attempt however had no real chance of success and failed two days later for lack of support. The task of speaker temporarily fell to Georgy Lukava, also a member of the LDP. Ineptitude being his most visible gift, Lukava could not control the newly convened Duma. No sooner was Parliament opened, therefore, than it sunk into a shouting match among its most rambunctious members. On January 14, the Federation Council, a far less divided body, chose the moderate liberal Vladimir Shumeiko, sponsored by Chernomyrdin, as its speaker. The following day the Duma elected to the speakership Ivan Rybkin, a procommunist who joined the Agrarian Party just before the election. In the interim, Anatoly Chubais, a pre-eminent liberal from Gaidar’s team of economic reformers, was reconfirmed as privatization minister.

The other reformers did not choose or were not allowed to follow his lead. On January 17, saying that he could not be “simultaneously in the government and in opposition to it,” Gaidar declined to be considered for a subordinate post in Chernomyrdin’s new government. Gaidar had been marginalized during the decisions to bring Belarus into a monetary union and to finance the construction of a new building for Parliament, both of which he opposed. As the head of Russia’s Choice, moreover, he was under considerable pressure to break cleanly with Chernomyrdin since his party had already entered into opposition to the prime minister on the questions of inflation and appeasement of Parliament. In an increasingly untenable position, Gaidar resigned from the government and returned to the Duma.

Boris Fyodorov’s resignation was a more drawn-out performance. Sensing panic on the part of Yeltsin, Fyodorov postponed his exit from the government but announced conditions for staying on: Gerashchenko would have to leave the Central Bank; Alexander Zaveryukha, a pro-Communist Agrarian Party member, could not sit in the cabinet as a deputy premier; Fyodorov’s own position of finance minister had to be combined with a deputy premiership; and the government would have to commit itself to continued radical economic reform. Chernomyrdin, who had already made it clear that he favored slower reform and “non-monetary” means of fighting inflation, was in no position to grant Fyodorov’s demands. However, he also refused to accept Fyodorov’s resignation. Instead, the president was brought in to persuade Fyodorov to stay on and, with the issue still unresolved, Chernomyrdin announced his new cabinet. The IMF and G-7 both urged the government to keep Fyodorov. Yet because Yeltsin acceded to none of his demands, Fyodorov finally quit the government and returned full-time to the Duma at the end of the month. During the negotiations he also withdrew from Russia’s Choice, forming a new party, the Liberal Democratic Union.

Later, even Chernomyrdin’s chief economist, Andrei Illarionov broke with the prime minister claiming he was not serious about economic reform. Yeltsin’s promises to deepen economic reform, made at the beginning of the year, proved illusory, nationalists and communists strutted their stuff, and the liberal reformers drifted into disunity.

The most significant constitutional event of the first quarter of 1994 was the treaty adopted between Russia and the Republic of Tatarstan. On February 15, after more than three years of negotiations, President Yeltsin and President Mintimer Shamiyev signed the “Treaty on the Division of Spheres of Authority and on the Mutual Delegation of Powers” between the Russian Republic and the Republic of Tatarstan.” In Tatarstan’s 1992 constitution, the tiny republic is referred to as a sovereign state existing in “association” with the Russian Federation. According to the new treaty, Tatarstan is not referred to as a sovereign state and is now “united” with Russia by bilateral treaty, while keeping its own constitution. It will send popularly elected deputies to the national parliament. Tatarstan will retain its constitution, which, in theory, must be altered so as not to contradict the federal constitution. It remains to be seen how quickly Tatarstan will amend its constitution, if at all. In order to gain Tatarstan’s approval, Moscow allows the republic to retain extensive economic rights, which means that it must pay only nominal taxes to the central government. The president’s office declared the treaty a great success, intimating that it could be a model for other recalcitrant republics—Bashkortostan, Tuva and Chechnya, but the majority of parliamentarians were not impressed by the president’s efforts, seeing the treaty as an affront to Russian sovereignty.

In the legal vacuum caused by omission of the Federal Treaty from the new constitution, no procedures are in place for legalizing the treaty. As a result, the treaty was accompanied by 12 intergovernmental documents relating to implementation and enforcement. Most of these accompanying documents were not reviewed by the Duma before the treaty was debated. It remains to be seen whether the treaty is work-
able. Moreover, the decision to treat Tatarstan more liberally than the other republics could embolden rather than mollify rebellious sub-units, which at this time need little encouragement to kick against central authority. Bashkortostan did indeed follow Tatarstan's lead and on May 25 signed an agreement with the Central Authority similar to the Tatarstan deal.

The worst political blow to Yeltsin occurred just before his first, and twice-postponed, state-of-the-nation address to Parliament. In late February, the Duma accepted, with 253 in favor, a resolution drafted by Viktor Ilyukhin freeing the jailed leaders of the October uprising along with the August 1991 coup plotters. The Duma specifically passed a resolution (postanovlenie) and not a law, and it amnestied the imprisoned rather than pardoning them. Because the act was a resolution and not a law, Yeltsin could not constitutionally veto the bill. While pardons are the exclusive domain of the president, amnesties are not (nor do amnesties require Federation Council approval). As a result the president was left in a legal, not to mention political, dilemma. The president's lawyers responded energetically to the affront, arguing that the Duma had granted a pardon cloaked as an amnesty, which it had no legal right to do. Yeltsin's legal team argued that amnesties apply to categories of crime and not to individuals; thus the Duma had actually pardoned the "amnestied" individuals.

Yeltsin further attempted to block the release of the "amnestied" via the Ministry of Interior and the procurator-general's office, but Alexei Kazannik, prosecutor-general, disagreed with Yeltsin's legal grounds and, as a result, he did not stand in the way of their release. Kazannik resigned at the end of the month over the affair. Because legislation on the Constitutional Court had not yet been ratified, there was no judicial body to which the president could appeal. Duma supporters of the resolution depicted it as an act of national reconciliation, but the televised image of Rutskoi and Khasbulatov walking free was immensely embarrassing to Yeltsin, especially on the eve of his first address to Parliament. Days after the incident, the president declared he would not fight Parliament on this issue, but later, in mid-March, the Supreme Court ruled that indeed amnesties can be granted only after a trial has been completed and a guilty verdict handed down. A date for resuming the trial of the August 1991 coup plotters was not announced.

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The past few months have been characterized by massive political turmoil and change. After a vote of no-confidence, Prime Minister Vladimir Meciar's government was ousted from power, and a new government was formed. This reshuffle followed months of tension in Parliament as well as within Meciar's Movement for a Democratic Slovakia (MDS). This growing tension had manifested itself in the MDS's bid for June elections, debates about increased autonomy for the Hungarian minority, a change in the privatization statute and the defection of two top officials from the MDS, who subsequently created their own political party.

Momentum for this crisis began building in December when Meciar delivered a highly controversial speech in a closed meeting before his parliamentary followers and local party chairmen from eastern Slovakia. If there were early elections in June, he claimed, the MDS would win with ease, and he added that the party should concentrate on the elections, ignoring any negative reputation Slovakia might have acquired abroad. Meciar also criticized opposition leaders, as well as MDS's coalition partner, the Slovak National Party (SNP). After a recording of this closed meeting was leaked to the Slovak dailies, tension on the political scene quickly escalated.

Approximately one month later, on January 8, about 4000 local mayors, councilors and regional politicians gathered in the southern town of Komarno to take a controversial decision about the creation of a self-governing province populated by a significant Hungarian minority. The move to create a Hungarian province was condemned by many Slovak politicians, who saw it as a direct challenge to the government's authority. Some parliamentarians even labeled the proposed province as unconstitutional. Ethnic Hungarians, who make up about 10 percent of Slovakia's population of 5 million, insisted that they had been forced to demand their own self-governing region because their ceaseless pleas for dialogue had been ignored, as had their requests for new laws to safeguard minority rights in now-independent Slovakia. They deny that the proposed self-governing province is a slippery slope toward a demand for full autonomy or, ultimately, integration into Hungary. Doubts about the sincerity of this denial have been stimulated, in turn, by statements of the leader of the largest Hungarian minority party (Coexistence), Miklos Duray, and by what is perceived as undue interference from Budapest.

Rights for which the ethnic Hungarians are lobbying include the freedom to use Hungarian names, the re-introduction of bilingual road signs in areas with an ethnic majority and full educational autonomy. Bilingual road signs had been replaced with signs in Slovak upon the order of Meciar's minister of transportation. After protests arose, bilingual signs were put back up. Minority rights are guaranteed by the Council of Europe, to which Slovakia was admitted as a member last year and which has urged Bratislava to move quickly in passing laws to protect ethnic minorities.

The call for a new province was also prompted by the fears of ethnic Hungarians that the government may artfully re-draw the country's internal regional boundaries. The main purpose of such new boundaries would be to splinter the ethnic Hungarians as a voting bloc, effectively eradicating them as a political force. This matter has yet to be resolved, but a decision is expected sometime this fall.

A further crisis occurred in the beginning of February, when the opposition Party of the Democratic Left (PDL) proposed a change in the privatization statute to separate the position of minister of privatization from that of chairman of the Fund of National Property (FNP). The FNP chairman is currently in charge of all national property designated for privatization. Because the minister of privatization had not yet been appointed, Meciar occupied both positions on a temporary basis. The move to separate the two positions, therefore, was considered a challenge to the then prime minister's authority.

The statute was changed only after one MDS deputy joined the opposition and the governing coalition lost its parliamentary majority. All coalition deputies left the parliamentary session in protest, leaving 76 deputies present (out of 150), the bare minimum required for a quorum. Presided over by Vice Speaker Ludovit Cernak, Parliament was able to continue in session. A few moments after the session began, Speaker Ivan Gasparovic (MDS) returned to Parliament, explaining that, according to Art. 83.1 of the constitution, only the speaker is entitled to convene a parliamentary session and that, as a result, continuation of the current session would be unconstitutional. Art. 83.1, however, says nothing about the speaker's power to terminate a session once it has already been convened.

At this point, the coalition decided not to attend Parliament until the Constitutional Court itself ruled on the legitimacy of the session. In an unusual move the chairman of the Constitutional Court, Milan Cic (the last Slovak Minister of Justice under the communist regime, appointed to the Court by the MDS), appeared on television, stating that, in his personal opinion, the session was unconstitutional. Later, in a formal meeting, the Court found that, under Art. 126 of the constitution, it is not entitled to rule on conflicts between groups within a single governmental institution, such as the legislative branch, but only on conflicts between different governmental institutions. Therefore, the session was declared constitutionally proper and the attempt to weaken Meciar by separating the position of privatization minister from that of chairman of the FNP succeeded.

Months of internal political wrangling led to the creation of a faction within the MDS, called the Alternative of Political Realism (APR), backed by then Deputy Prime Minister Roman Kovac and then Foreign Minister Jozef Moravcik in addition to nine other deputies. The primary goal of APR was
to form a coalition government without Meciar. Kovac and Moravcik were eventually dismissed from the MDS and forced to resign from their cabinet positions.

Without these deputies, Meciar was now leading a minority government. To take advantage of conflicts arising among the opposition parties, he began to push for general elections in June, believing that the MDS was still popular enough to win an early election, but Meciar's proposal for a June election was unsuccessful, rejected by Parliament as an impractical idea. The opposition then failed to gain support for its own motion calling for elections in November. Faced with this standoff, the MDS decided to push for a referendum calling for early elections and the dismissal of deputies who had switched party affiliation after the last election. Meciar began gathering the 350,000 signatures required under Art. 95 of the constitution to force a referendum. If the petition had been deemed legitimate, the president would have been obliged to call a referendum within 30 days.

President Michal Kovac decided he could not call a referendum on dismissing deputies who had changed their party affiliation after the last election. Such a move would contradict the constitutional prohibition on imperative mandates, he argued, and would also have to be applied retroactively. The executive secretary of the European Democratic Union (EDU), Adreas Khol, at a meeting with the chairman of the opposition Christian Democratic Movement, Jan Carnogursky, confirmed that the Council of Europe would consider the expulsion of legitimately elected deputies to be undemocratic. The Council of Europe indicated that it would be monitoring Slovakia's adherence to democratic rules and would reevaluate its membership status if the government acted undemocratically. In another blow to Meciar's power, the presidential office announced on March 16 that the petition for a referendum on early elections submitted on March 2 by Meciar supporters was invalid.

The final impetus for removing Meciar from office was supplied by Kovac's address to Parliament on March 9, in which the prime minister was characterized as inefficient and corrupt. Kovac's reservations about Meciar's style and ethics sparked a renewed call for the prime minister's dismissal. In his address, the president stressed that "if we are honestly to seek a serious way out of this unhappy internal situation, we cannot ignore the fact that, for some time, attempts have been made on our political scene to discredit, ridicule and abuse representatives of political parties and movements and incite malicious behavior and hatred towards members and sympathizers of other parties. Culprits to be blamed for the present political crisis are being sought by the prime minister and his closest circle." Kovacs also revealed that the prime minister had appealed to him to approve Ivan Lexa's nomination for the post of the minister of privatization, brazenly arguing that nobody else could effectively channel money to the coffers of the MDS, which was in dire financial straits.

After a turbulent two-day session, Parliament toppled Prime Minister Meciar and his cabinet with a vote of no-confidence on March 11. Although a number of opposition deputies were not present, 78 out of 150 members of Parliament supported the removal. Only two deputies voted against the no-confidence motion, while 56 members of MDS and its coalition partner, the Slovak National Party, abstained from the vote in addition to 18 others. Meciar stomped out of office on March 14, spurning pleas to stay in an interim capacity until a new government was appointed and pre-emptorily dismissing most top officials in the state apparatus.

On March 16, following procedures laid down in the constitution, President Kovac installed the new government of Prime Minister Jozef Moravcik, who had been the last Czechoslovak Foreign Minister and a former ally of Meciar. The new government, representing the five parties of the governing coalition, consists of 17 ministers as well as the two positions of prime minister and deputy premier. Portfolios were distributed among the parties according to their political strength. The Party of the Democratic Left and the so-called Center Bloc (a group consisting of two factions that had split from the MDS, as well as the National Democratic Party that had, for its part, split from the Slovak National Party) have seven cabinet members each, while five ministries went to Christian Democrats. The position of deputy premier was given to Roman Kovac (who had been mentioned frequently as a possible prime minister). Despite the toppling of Meciar's government, recent opinion polls, of undetermined reliability, place the Movement for a Democratic Slovakia as the frontrunner in this September's parliamentary elections.

On March 17, Moravcik outlined his policies in a short speech to Parliament. He said that the new cabinet's overriding goal must be to restore public confidence in the state by introducing order into public affairs and increasing a feeling of security, adding that improvements in the legal system will help to bring about these changes. Moravcik announced that his government will reemphasize the privatization process and place individual responsibility for social welfare above state intervention. One of the top aims of the new cabinet, he added, is to jump-start privatization by distributing shares in state-owned companies via vouchers, copying the program in which Slovaks already participated in the former Czechoslovakia. In a unanimous vote, Parliament decided that elections will take place on September 30 and October 1. All deputies present voted for this proposal, including the (temporarily) fallen Meciar.

**Slovenia**

From January to the end of May, the activities of the National Assembly were mainly devoted to legislation regulating the transformation of local governments. The basis for this process lies in laws, adopted in December 1993, authorizing and organizing future local administrations, local elections, and municipal referenda. Parliament was also occupied with several political issues that threatened to trigger a political crisis. Nevertheless,
the assembly completed some routine work and passed various pieces of legislation.

In March, the Constitutional Court adopted a decision regarding Art. 95 of the "Law on Local Government." This article stipulates that referenda, constitutionally required for the establishment of new municipalities (Art. 139 of the constitution), should be conducted in some municipalities before local elections and in others after local elections. In the second case, elections would take place before the people had determined by referendum the boundaries of the new municipality. In short, Art. 95 establishes two different paths for constituting new local governments.

The Constitutional Court declared Art. 95 of the "Law on Local Government" unconstitutional. The Court additionally surprised Parliament by elaborating some suggestions about how to repair the defects of Art. 95, declaring explicitly which legislative solutions the Court shall in the future consider constitutional and which not. Parliament has basically accepted this decision, although some deputies have protested against the Court's "creative approach" to offering advice. Until now the Court has limited its decisions more or less exclusively to whether or not a law under review is in compliance with the constitution.

During the first three months of 1994, the National Assembly has been overburdened with work. Making matters worse, five parliamentary inquiries have been launched concerning matters of public importance (political scandals, economic corruption of national importance, the investigation of the post-war crimes and so forth). So far, the newly established inquiry committees have proven ineffective. The Slovenian judiciary has been equally unsuccessful in these shady matters. Such cases rarely come before the courts. If they do, the procedures are long, and it is usually very difficult, if not impossible, to provide the necessary evidence. Thus, the country is still bogged down in the process of political and economic transition, which, in the absence of proper legislation and mechanisms for its effective implementation, allows innumerable forms of political and economic abuse.

In last months, Prime Minister Janez Dernovsek has proposed to the National Assembly a dismissal of three state ministers and the appointment of replacements. While Minister of the Environment Jazbinsek decided to resign, Dernovsek's proposal to dismiss Minister of Defense Jansa has revealed a problem in Art. 112 of the constitution, which stipulates that the state ministers shall be appointed and dismissed by Parliament and not directly by the prime minister. The issue of replacing Minister of Labor Puhar is still on the agenda of the National Assembly.

The procedure for replacing the minister of defense has become an issue of national importance. Minister Jansa, leader of the Social Democratic Party of Slovenia (after the elections of December 1992, the weakest parliamentary party), gained the reputation of a national hero during the ten-day war in Slovenia in the spring of 1991, when he contributed greatly to the successful military defense of the republic against the Yugoslav Army. Since then, he has very frequently criticized and opposed President Milan Kucan. According to Jansa, Kucan should bear responsibility for communist policies of the past. Jansa and Kucan (who was directly elected) have undoubtedly been the most popular political figures in recent months. Their confrontation has strongly polarized the population.

In March, a group of military officers attacked a civilian who had purportedly stolen some secret military documents. This event has divided Slovenian politicians and citizens between those who demand Jansa's resignation and those who support the aim of the officers, even though their action was brutal and illegal. In addition to this attack, there were allegations of government officials wire-tapping some phone lines. After great pressure from left-wing and middle-of-the-road political parties (above all, the Associated List and the Liberal Democratic Party) and after waffling by the leaders of the Christian Democrats who were supposed to support Jansa, Prime Minister Dernovsek proposed the dismissal of Minister Jansa to the National Assembly.

At the beginning of April, the National Assembly dismissed Jansa from his office and appointed a new minister of defense, Jelko Kacin. During the session of the assembly, several thousand people demonstrated outside the building in Jansa's support. Some days later, another public demonstration was held in Ljubljana in support of Jansa and against the "corruption of the Government." These events threatened to spill over into a political crisis, but, after a few weeks, the situation has returned to normal. Severe political polarization has continued unabated, however, and will certainly have an effect on the next local and national elections. After Jansa's dismissal, the Social Democratic party withdrew from the governing coalition, which is now composed of the Liberal Democratic Party, the Christian Democratic Party and the Associated List.

In March, some important changes in the structure of political parties occurred. Three parties joined the Liberal Democratic Party, the strongest party in the country. The new political coalition is thus composed of three parliamentary parties (the Liberal Democratic Party, the Democratic Party—although a part of its members refused to join the coalition—and the Greens Ecological Socialist Party) and of one nonparliamentary party, the Socialist Party of Slovenia. The coalition should be centrist and will, at least initially, largely preserve the identity of each individual coalition partner. It is undoubtedly a pre-election coalition, geared to the local elections to be conducted some time this year. After or even before these elections, which shall show whether the political preferences of the citizens have changed in important ways or not, the merging of some right-wing parties can also be expected. Negotiations about a coalition between Christian Democrats and the Peasant Party have already been going on for several months without producing any agreement.

After Jansa's ouster, the leaders of the Christian Democrats came under increasing pressure from their rank and file, since the support that party leaders gave Jansa was
already expressed its determination to remain in the governing coalition. The Christian Democrats even threatened to leave the coalition if the “communists” remain there, but only a broad-church coalition of these three parties enables the Prime Minister to carry out his policy with the necessary parliamentary and public support. The Associated List has already expressed its determination to remain in the government. Thus, the future political development of Slovenia remains highly unpredictable.

Near the end of April, Slovenia signed a free trade agreement with Hungary. This agreement, which phases out duties on imported industrial goods by the year 2001, will go into effect in July. In an effort to promote further cooperation with eastern and western European countries, Slovenia joined the Central European Initiative, the Visegrad group, and the NATO Partnership for Peace.

The political polarization and disorder afflicting Ukraine, previously held in check by the Supreme Soviet, was institutionalized in parliamentary elections in March and April. Prospects for reform have not improved. Worse, a split in the legislature may lead to an unraveling of the delicate fabric of the Ukrainian state. In the first democratic elections to the Rada (Parliament) since independence, the electorate divided on ideological and territorial lines between nationalist democrats in western Ukraine and pro-Russian communists primarily in the east. Add to this mix a large number of unaffiliated deputies, whose allegiances areickle and untested, and political stalemate seems unavoidable. Regional pressures for increased autonomy from Kiev and closer ties to Moscow also diminish chances that the crisis will pass. Calls for secession are not out of the question. Particularly acute is the situation in Crimea, where a pro-Russian local president was elected and the assembly voted to restore the autonomous republic’s 1992 constitution, putting Simferopol on a collision course with Kiev. Of little help is the bandaged Ukrainian constitution, an amended Soviet anachronism which does not measure up to the country’s myriad problems.

The June presidential election promises to be a litmus test for Ukraine’s future links with Russia and may reinforce the country’s east-west tensions. Kravchuk freely brandished the Russian threat in an effort to convince the outgoing Parliament to ratify the START-1 treaty. This move has improved the country’s image with the international community. But the confusing process by which the president ratified the terms of the related trilateral agreement with the U.S. and Russia, and doubts about the agreement’s legitimacy, underscore the shortcomings of the current Ukrainian constitution and the crying need for reform.

Spectacularly declining living standards have led many voters to express dissatisfaction with the glacier-pace of reform as practiced by the ruling “party of power.” To the shock of an observing world, the breadbasket of the former Soviet Union has become a basket case of economic mismanagement and despair. Inflation, falling production and insider establishment skimming have left the country increasingly behind Russia. To Kravchuk’s chagrin, voter turnout was high (around 75 percent) and many incumbents seeking reelection (including Dmytro Pavlychko, chairman of the Parliamentary Foreign Affairs Commission, and Valentyn Lemish, chairman of the Commission on Defense and State Security) were defeated. Pre-election polls revealed that a mere nine percent of the electorate planned to vote for the same candidate they supported in the 1990 elections. Only a relatively small number of incumbents, approximately 56, were reelected in the first round.

While voting for change, the electorate may have created a Parliament even more sclerotic than its predecessor. No faction controls a majority, but some groups boast sufficient numbers to block the legislative initiatives of others. The new assembly is composed of varying parties with conflicting agendas, each vying for the support of the large pool (163) of unaffiliated deputies. The Ukrainian Communist Party and its Peasant Party and Ukrainian Socialist Party partners fared best in the elections, capturing the most seats (118) so far, while the various nationalist and reform movements were dealt severe setbacks. That no party or faction emerged with a workable majority is due in part to the electoral law put in place last November to force early elections. It discourages party formation and compels the majority of candidates to run as individuals. Of the 450-seat Rada, 339 seats have been filled, leaving 111 vacant. These remaining seats will be filled in elections scheduled for July 24.

As in Russia, the election results were a disappointment to the anti-communist reformers. The second biggest vote-getters in the elections after the communists were the moderate nationalists, picking up 35 seats. The most popular moderate nationalist party, Rukh, won 20 seats. Such meager results are disappointing considering that Rukh led the country’s quest for independence. Six centrist parties (including the centrist-liberal Inter-regional Reform Block led by Leonid Kuchma, the Ukrainian Democratic Party and the Labor Party) won an additional 17 seats. Two extreme nationalist parties, the Ukrainian National Assembly and the Ukrainian Conservative Republican Party, secured five more seats, all in the west. Bickering among the “reformers” no doubt contributed to their poor results. As in Russia, it remains an open question if the victory of the communists will persuade reformers to set aside their differences and work together. Perhaps the first test
will occur in the run-up to the upcoming presidential, oblast, and municipal elections slated for June 26.

The fragmentation of Parliament is due in large measure to the bizarre "Law on the Election of People’s Deputies of Ukraine." Given Ukraine’s ethnic composition, this majoritarian run-off system all but assures chaotic results. Burdensome preconditions for persons running as party members have led the majority of candidates to campaign as individuals. To be affiliated with a political party, candidates must gather at least 300 signatures and submit the minutes of their party’s meetings and a list of its members to the Electoral Commission. Not surprisingly, only 11 percent of office-seekers to the Rada were affiliated with one of the parties registered for the election. With 122,000 members, the Communist Party is the country’s largest and most organized party, and it nominated candidates in two-thirds of the electoral districts. “Workers collectives” nominated another 27 percent. The majoritarian system creates 450 single-member districts, in which 50 percent or more of the electorate must vote to validate the results. If no candidate wins at least 50 percent of the votes cast, run-off elections occur in which both 50 percent margins must again be met. Critics of the electoral law, including Vyacheslav Chornovil (chairman of Rukh) and Volodymyr Filenko (chairman of the Party for the Democratic Rebirth of Ukraine), point to the mixed system in place in Russia (combining PR with single-member districts), which, they argue, would better serve Ukrainian interests. The Russian model, they say, would allow local Ukrainian regions to be represented on the national level, but at the same time establish a structure in which common platforms could emerge.

With a parliamentary quorum now in place, Kravchuk continues to posture for a delay of presidential elections in order to avoid political chaos and the possible disintegration of the state. But the presidency has been stripped of many of its powers. Prospects for breaking legislative logjams and dealing boldly with economic and military crises are unpromising. Given the pervasive mood for change, the public is unlikely to buy Kravchuk’s contention that, in order to avoid a power vacuum, he should remain in office until a new constitution is passed defining executive and legislative powers. Convened for the first time on May 11, the new Rada immediately took up this question. Rada Deputy Chairman Vasyl Durdynets heads several working groups that are trying to frame amendments to the constitution. Their goal is to make changes which will take away Kravchuk’s argument that the constitution is inadequate and the design of the presidency unworkable. Prior to the elections, Kravchuk threatened not to run until the constitutional crisis was resolved. In mid-February, he told Demokratichna Ukraina that his “final decision” not to run had been reached. But Kravchuk then announced his intention to enter the race, even while continuing to press for a postponement and wafting on his plans.

Seven presidential candidates gathered the number of signatures required to register for the June plebiscite. In addition to Kravchuk, these include former Prime Minister Kuchma; former Speaker Ivan Plyushch, Minister of Education Petro Talanchuk; Socialist Party leader Moroz; head of the market reform center, Volodymyr Lanovy; and head of the Ukrainian financial group, Valerii Babych. Kravchuk’s primary challenges will come from Kuchma, who remains one of Ukraine’s most popular politicians, and from Plyushch, who is positioning himself as the chief advocate of reform. The incumbent’s best chance to postpone the June plebiscite lies in Crimea where a deteriorating situation may allow him to declare a state of emergency.

Three years after independence, state building in Ukraine remains an incomplete and obstacle-strewn process. Nationalist western Ukraine pushes for independence and integration with Europe while Crimea and regions along the Russian border strive to strengthen ties with Moscow. The pace of economic reform and the activities of the new Parliament will determine if these problems will dissipate or lead to increased local autonomy, federalized statehood or even secession. To date, Kiev has been patient (or paralyzed) in dealing with these situations. However, regionalization puts the rights of ethnic minorities increasingly at risk, and nationalist factions doubtless will press central authorities to come to their aid. In any case, local governments have become much more assertive in pursuing their own agendas which are often at odds with Kiev’s plans.

On May 20, the 96-seat Crimean Parliament voted by a margin of 69 to 2 to restore its 1992 constitution, frozen in September of that year after a compromise with Kiev granted the region increased autonomy. Contravening the Ukrainian constitution, the Crimean constitution provides the local Parliament with sweeping new powers, including the ability to grant dual citizenship and to establish its own armed forces. It also stipulates that Crimea’s relationship with Kiev will be established by bilateral treaties. Officials in Kiev reasonably view this move as an attack on the integrity of Ukrainian state and as a possible precursor to Crimea’s reunification with Russia. In a closed session, also held on May 20, the Ukrainian Parliament issued an ultimatum declaring that authorities in Simferopol had ten days to cancel the act. At a meeting of the local assembly the next day, this threat was ignored, setting the stage for trilateral Moscow-Kiev-Simferopol discussions. On May 24, Crimean and Unkrainian officials met and agreed not to implement earlier decisions without further talks. The following day, the speaker of the Crimean Parliament, Serhii Tsekov, announced the possibility of an arrangement similar to the Russia-Tartarstan power-sharing deal. Failure to resolve the conflict may encourage other Ukrainian regions to distance themselves from Kiev.

The restoration of the Crimean constitution was only the latest in a series of confrontations between Kiev and Simferopol. In late January, Crimean voters elected their first president, Yuri Meshkov, who advocates a special brand of autonomy and possible reunification with Russia. In his first
few months in office, Meshkov engaged in a war of words and nerves with authorities in Kiev, approving various measures that directly contravene the Ukrainian constitution. Meshkov’s landslide victory aroused local ethnic tensions and was marred by campaign violence and murders, including the assassination of a well known Tatar representative, Iskender Memetov. From a pool of six, dominated by pro-Russian candidates, Meshkov (a former senior investigator in the Crimean oblast prosecutor’s office and private attorney) emerged along with parliamentary speaker Mykola Bahrov (the only candidate pushing a pro-Kiev stance) in a first round of balloting on January 17. In their January 30 face-off, Meshkov captured 73 percent of the vote. Both before and after the election, he muted his calls for outright secession, instead advocating a certain brand of autonomy similar to other republics in the CIS, but without severing links to Ukraine. In a February 13 interview on Ostakino TV, Meshkov said the Crimea should be “united with the economic zone of Russia, the other CIS states, and Ukraine, but on a fundamentally new basis.”

In a symbolic and inflammatory gesture, Meshkov put Crimea on the same time as Moscow. He declared Russian an official language and appointed Russian economist Evgenii Saburov, who lacks Ukrainian citizenship, to the position of prime minister, thereby violating Ukrainian law. Meshkov also urged his constituents to boycott Ukrainian parliamentary elections. These actions enraged Kiev. Following the first round of balloting in the Crimean presidential elections, the Rada hastily amended the constitution to give Kravchuk the power to void actions in the Crimea which contravene national laws and the constitution. In a subsequent statement of February 24, Parliament issued a detailed decree in response to “numerous normative acts [and] statements that may lead to an exacerbation of the situation both in Crimea and Ukraine as a whole.” The text reiterates that Crimea, while an autonomous constituent, is not sovereign and therefore cannot enter into agreements with foreign states, must bend to the national constitution, and cannot change its borders, have its own laws on citizenship, or form its own army or financial system. It concludes with the demand to “bring the constitution and other legislative acts of the Crimean Republic into conformity with Ukraine’s constitution and legislation” within one month. On March 27, in a direct challenge to President Kravchuk, Meshkov went ahead with a non-binding “opinion poll,” in which 80 percent of the respondents confirmed their desire for greater autonomy, dual citizenship. Russian as an official language and increased (Crimean) presidential powers. It should be noted, however, that this “opinion poll” lacked the legislative legitimacy of the promised referendum—nullified by Kiev—demonstrating again Meshkov’s willingness to push to the edge, and then back down, for the time being.

Two additional non-binding plebiscites were held in regions similarly at odds with Kiev. In the Donetsk and Luhansk oblasts, voters overwhelmingly affirmed their desire for greater autonomy and a closer relationship with Russia. In the Donetsk plebiscite, voters were asked the following four questions: (1) Do you agree that the constitution of Ukraine should establish Ukraine’s federal territorial structure? (2) Do you agree that the constitution should establish Russian as another state language in Ukraine alongside the Ukrainian state language? (3) Do you agree that on the territory of Donetsk Oblast the Russian language should be a language of official correspondence and documentation, as well as education and science, on an equal footing with Ukrainian? (4) Are you in favor of signing the CIS Charter and of Ukraine’s participating in the CIS economic union and interparliamentary assembly, enjoying full rights? To each question, by as much as ten to one, voters answered in the affirmative. For its part, Kiev declared the plebiscites unconstitutional.

These reports have been written by the CSCE’s affiliates and the staff of the EECR: Yuri Baturin, Ania Budziak, Milos Calda, Vojtech Cepl, Miro Cerar, Venelin Ganev, Nida Gelazis, Andrea Gibson, Kathleen Imholz, David Jones, Andrew Kavesh, Rumyana Kolarova, Andrei Kortunov, Peter Kresak, Egidijus Kuris, Krenar Loloci, Daniel Lipsic, Christian Lucky, George Lungu, Alexander Lukashuk, Vlasta Maric, Lucian Mihai, Elzbeita Morawska, Agnes Munkasci, Zaza Namoradze, Vello Petti, Georgi Poshitov, Andrzej Rzeplinski, Dwight Semler, Zsolt Zodi.
Avoidable and unavoidable detours on the path to reform

Special Report

Poland’s Constitutional Ordeal

Wiktor Osiatynski

Poland is the only postcommunist country of Central Europe that has failed, so far, to adopt a new constitution. Hungary has not introduced a new constitution, but the Hungarians did not even attempt to do so, as they are relatively satisfied with the amendments made to the old constitution in 1989. The cases of both Hungary and Poland seem significant, however, for in these two countries the process of transition was evolutionary rather than revolutionary. Their experiences suggest that a negotiated and evolutionary transition may make constitutional reform more difficult than when the change is radical and abrupt.

In Poland, a number of factors interfered with the adoption of a new constitution. To understand them it will be helpful to look at the rules and procedures which shaped the constitution-making process. According to the Constitutional Statute of April 23, 1992, “On the Mode of Preparation and Adoption of the Constitution of the Republic of Poland,” the constitution is to be prepared by a Constitutional Commission of the National Assembly, that is, of the Sejm and the Senate assembled in one chamber. The Commission consists of 56 members (ten percent of the membership of each house, or 46 deputies and ten senators). In addition to deputies and senators, representatives of the president, the cabinet and the Constitutional Tribunal participate in the proceedings of the Commission, with a right to make motions but without the right to vote. The right to submit drafts was given to the Constitutional Commission itself, to the president and to any group of 56 deputies and senators. After the drafts are submitted, debate on the principal constitutional issues suggested by the Constitutional Commission takes place in the Sejm. The Commission must then incorporate contributions and prepare a final draft constitution to be adopted by a two-thirds majority in the presence of half of the members of the National Assembly. The president can exercise a suspensive veto. Finally, the constitution adopted by the National Assembly must be ratified by a majority of the Polish people voting in a national referendum.

This constitution-making procedure was the result of a heated debate and compromise between Parliament and the president. (See EECR Vol. 1, No. 1, Spring 1992, EECR Vol. 1, No. 2, Summer 1992.) The procedure’s purpose was to prevent solutions from being imposed by a temporary majority and then over-turned when a new majority emerged. The constitutional status of the 1992 law (it can be changed only by a two-thirds majority in both houses of Parliament) was meant to guarantee the durability of rules governing the constitution-making process. Unfortunately, these rules did not prove adequate to overcoming the formidable obstacles to the creation of a new constitution.

The procedures were challenged, moreover, as soon as the majority in Parliament changed. Constitution making in Poland has been impaired by the weak legitimacy of the drafters and the difficulty of building the consensus necessary for rat-
ifying the constitution by a two-thirds vote of Parliament, approval by the president and a national referendum.

In 1989-91, Parliament could have adopted a new constitution had it had a workable draft in hand. The Communist majority in the lower house, agreed upon at the Round Table, was fairly demoralized; General Wojciech Jaruzelski, elected president in August 1989, was willing to accept some radical changes in the system, and the communists in Parliament would have acquiesced in his decisions; the Solidarity movement was still united; and, finally, the general social euphoria of the time made it likely that the public would have accepted a good liberal constitution.

Unfortunately, there was no serviceable draft ready, and a parliamentary commission had only just begun to work on one. This was the moment when the issue of legitimacy was first raised.

According to the Round Table agreement of April 1989, 65 percent of the seats in the lower house (the Sejm) were to be elected from among candidates designated by the communists and their allies, while the remaining 35 percent of the seats in the Sejm and all 100 seats in the Senate were subject to an open electoral contest. This meant that the legitimacy of Parliament for preparing a new constitution was doubtful for its majority was not freely elected. The solution to this problem was to have Parliament prepare the constitution and then submit to a national referendum. But political ambitions and institutional rivalries surfaced at this point and have remained central to the entire constitution-making process in postcommunist Poland. The freely elected Senate formed its own constitutional commission claiming that its superior legitimacy gave it the right to draft a constitution. Initially, the Senate commission was willing to cooperate with the freely elected 35 percent of the lower house's commission, but as the relationship between two houses gradually deteriorated, cooperation between the two commissions ceased.

The Sejm and the Senate eventually produced two different drafts, the Sejm opting for parliamentary government and the Senate for a presidential system. The two drafts were basically irreconcilable and no arbiter existed who could decide which draft should be submitted to a referendum. Constitutional momentum was thus dissipated even before the first transitory Parliament dissolved itself in the summer of 1991.

Elected in September 1991, the new Parliament was too fragmented to permit the formation of a stable constitutional majority. The largest of the 29 parties had merely 15 percent of the seats. By the end of 1991, it was plain that the creation of a new constitution would be a long and drawn out process. Because the lack of clear division of competencies between president and government had precipitated a number of crises, Lech Walesa proposed an interim act that would clarify the distribution of powers. He withdrew this project when the Sejm's special committee turned it upside down, reducing the president's power vis-à-vis the prime minister. A group of deputies then submitted its own draft "Little Constitution." After six months of arguing and bargaining, a compromise between the president and a parliamentary coalition was struck, introducing a separation of powers or parliamentary government with more extensive powers reserved for the president than is usually the case in parliamentary systems.

During this period, the Constitutional Commission of the National Assembly spent most of its time debating its own bylaws. Seven draft constitutions were eventually submitted by the major parties represented in Parliament. The Commission had no opportunity to discuss these drafts, however, or to begin working on its own project before Walesa dissolved Parliament in May 1993. Some substantive progress on constitutional issues was achieved by the extraordinary committee of the Sejm which processed the draft Bill of Rights and Freedoms submitted by the president in November 1992 when Walesa became convinced that the internally divided Parliament was wholly unable to adopt a new constitution. Because of heated controversies among the proponents of liberal, socialist and
Catholic concepts of rights, the extraordinary commission agreed upon only 12 articles before the Sejm was dissolved.

Parliamentary elections in September 1993 resulted in a constitutional majority for a coalition of the postcommunist Social Democratic Party (SDP) and the Polish Peasant Alliance (PPA), which has its roots in a peasant organization allied with the former Communist regime. Although SDP and PPA, received only slightly over one-third of the popular vote, they won over two-thirds of the seats in the bicameral National Assembly. At the same time, a high electoral threshold (five percent for parties and eight percent for coalitions) eliminated from Parliament virtually all right-of-center parties even though these parties received close to one-third of the total vote. During the campaign, SDP and PPA supported parliamentary government, expressed a strong commitment to popular democracy (including active participation of citizens in the constitution-making process) and voiced an equally strong commitment to social and economic rights while accepting international standards for civil and political rights, including mechanisms for their protection. Given the overwhelming parliamentary majority, hopes were raised that a new constitution could be adopted by mid-1995.

Soon after the election, a new Constitutional Commission of the National Assembly was formed. It again consisted of 46 deputies and ten senators. Only a handful of lawyers are among its members, and the deputies and senators who served on the former Constitutional Commission are in a minority on the new commission. A majority of the Commission's members, especially those representing the ruling coalition, have just entered Parliament for the first time. (In 1991-93, SDP and PPA had less than half of the seats they now have.) In practical terms, this radical turnover of membership means that a majority of the new Commission has very shallow ideas about constitutions and constitutionalism, and the trials and errors which took place between 1989 and 1993 seem to have been in vain.

At its first meeting, the Constitutional Commission elected as chairman Aleksander Kwasniewski, the leader of the winning postcommunist SDP. Kwasniewski was one of the Communist Party's negotiators during the Round Table talks in February-April 1989, where he masterminded a number of constitutional compromises, including the creation of the Senate in return for Solidarity's acceptance of strong presidential powers granted to Jaruzelski. After 1989, the shrewd Kwasniewski became the uncontested leader of the postcommunist SDP.

At the beginning of his term as chairman of the Constitutional Commission, Kwasniewski seemed confident of his party's unflinching support for any compromises he might broker. His idea was to gather a small informal group of top party leaders, representatives of the president and a few experts to elaborate a draft constitution, which he would then instruct his followers in Parliament to adopt. One thing was a bit tricky, though. The SDP had consistently backed the parliamentary system and had stiffly opposed Walesa's bid for semi-presidentialism. Kwasniewski's views on presidential powers changed after the SDP's electoral victory in 1993, however. This is understandable, for he now has a reasonable chance to win the presidency himself. A stronger presidency would not only satisfy his personal ambitions, therefore, but would also serve his party's interests in case the postcommunists lose their parliamentary majority in the next election when the right will be united.

Open endorsement of the presidential system by the SDL leadership might seem like a fickle betrayal of their electoral program, but immediately after he was elected to chair the Constitutional Commission, Kwasniewski began to emphasize the need to avoid another debilitating war with the president and the utility of striking a compromise with Walesa on the presidency. In short, the SDL leader quickly perceived how Walesa's demands for stronger presidential powers could serve his own plans and ambitions and, in the developments that followed, he may even have succeeded in making such a "competitive alliance" seem plausible to the public.

Soon after the new Constitutional Commission began its work, the problem of popular legitimacy
Reemerged. Right-wing leaders claimed that the current Parliament lacked the legitimacy necessary to frame a constitution because one-third of the voters were not represented. SDP and PAA dismissed such arguments as contradicting the very essence of democracy: citizens cast their votes knowing the threshold and bonus rules of proportional representation. Thus, even if the Constitutional Commission is not fully representative, it still reflects a democratic decision.

This claim might be persuasive if not for the thresholds and bonuses. At stake here is the all-important difference between a "normal" parliament and a constituent assembly whose main purpose is the creation of a new constitution. Electoral thresholds are introduced for the purpose of forming a stable cabinet supported by a clear parliamentary majority. Smaller parties are eliminated to strengthen the government. A constitutional assembly, by contrast, should be as representative as possible, for its purpose is not to support a cabinet, but to craft machinery of government which will be acceptable to all parties in and out of power. Thresholds and bonuses for the winners are thus antithetical to the elementary purpose of a constituent assembly, and as a rule they play no role in elections to such bodies. (A recent exception to this rule can be seen in Bulgaria, where the results were not good.) The faltering of institutional reform in Poland suggests that rules which work well for governing may nevertheless impede constitution making.

Complaints about Parliament's lack of constitutional legitimacy were followed by the creation, in January 1994, of an extraparliamentary Constitutional Commission of the Right. This Commission was headed by Walery Piotrowski, a former Senator from the Christian National Alliance and chairman of the Constitutional Commission of the National Assembly in 1991-93. (Interestingly enough, among the members of this new commission are some current senators now members of the official Constitutional Commission of the National Assembly, including Senator Anna Grzeskowiak, past chair of the Constitutional Committee of the Senate in 1989-1991.)

Related to the issue of the assembly's legitimacy was a proposal to enlarge the number of participants on the Constitutional Commission submitted by the Union of Labor (UL), a small post-Solidarity party, emphasizing the primacy of such 1980-81 Solidarity values as social equality, strong social intervention by the state and the participation of workers in factory management. Since these values inhibit the transition toward markets and capitalism, a majority of post-Solidarity leaders discarded them for the sake of economic reforms. This relinquishing of old values ensured the growing support of disillusioned workers and the poor for the Union of Labor, which continues to evolve toward radically leftist and populist positions. Its leader, Ryszard Bugaj, proposed that the Constitutional Commission invite delegates of parties not represented in Parliament, as well as of churches, labor unions and social and professional organizations.

This proposal once again raised the issue of representativeness. Arguments were made—primarily by constitutional scholars and journalists, but also by a number of politicians—that the Constitutional Commission should comprise deputies elected directly by the population and that the UL's proposal amounted to recruiting people without electoral legitimacy to the constitution-making body. This argument targeted not only the parties of the right but also the Solidarity Union, which ran in the elections but fell short of the threshold. Another question concerned discrimination. There are hundreds of parties, associations, churches and organized religions in Poland. Should the Commission invite all of them to participate? Or should it include some and exclude others? What criteria should be used for making such a selection? The exact role of the new participants was also unclear. Should they have the right to make motions and participate actively in the discussions, or must they simply sit quietly at the meetings? The latter option had already been accepted when the Commission decided, at the very beginning of its proceedings, to
open its doors to the public. A provision about special guests, therefore, implies that the role of such invitees is not merely passive. Fears were also expressed that leaders of miniscule and insignificant parties might want to use such invitations to gain the kind of access to a public forum that they would otherwise be unable to secure. Finally, one expert asked if such a provision in the Commission’s internal rules did not violate the constitutional law of 1992 which regulated the membership of the Constitutional Commission and did not provide for additional categories of participant.

These doubts were shared, in private, by some leaders of the ruling coalition. In public, however, they felt obliged to give lip service to democracy and popular participation in constitution making, which they had exuberantly endorsed during the electoral campaign. In January, the Commission decided by a slim margin to invite representatives of political parties, churches, unions and other organizations “in order for them to express their opinions” and asked the chairman to propose the organizations to be invited. The selection process lasted the entire February session of the Commission. The major parties of the right, however, announced that they were not interested in attending the Commission on these unfavorable terms and legitimizing a constitutional process in which they could not fully participate.

One proposal made when the current Constitutional Commission was first formed definitely exceeded the competence of the Commission. On December 17, 1993, the Union of Labor submitted an initiative calling for an additional referendum to be held at the very beginning of the constitution-making process. Citizens would express their preferences about underlying principles of the new constitution. The results would be binding on the drafters if 50 percent of the population took part. In such a case, a ratifying referendum would not be necessary. Popular ratification could still take place, however, if doubts were raised about the consistency of the final constitution with the results of the initial referendum. Any decision about the need for a second referendum at the end of the process was to be left to the president. The main rationale for this proposal was to assure the legitimacy of the new constitution and to make citizen participation more significant than a mere “yes” or “no” at the tail end of the process. To lower the costs of the proposed preconstitutional referendum, the UL suggested that it could be held at the same time as local elections in the spring of 1994. The initiators of this proposal did not formulate the precise questions to be posed in the referendum and suggested that the Sejm specify such questions by statute.

The preconstitutional referendum scheme was debated in the Sejm on January 20, 1994. Although a majority of speakers criticized the idea, only one deputy, Jan Rokita, from the opposition Democratic Union, rejected the whole proposal as lacking internal logic and as off-loading responsibility for the constitution from the freely elected parliament onto society at large. Jerzy Jaskiernia, a leading constitutionalist for the SLD (the largest party in the ruling coalition) raised a number of issues concerning the questions to be posed in the referendum. Jaskiernia warned that these questions could not concern the details of the constitution, because citizens have insufficient expertise to answer such questions. Overly general questions would also be of limited value, for answers to such questions are notoriously ambiguous and nonconclusive. Other deputies wondered who should formulate the referendum questions. Jaskiernia also challenged the sequence suggested by the UP, that is, a referendum followed by a debate. “If there is to be a referendum, and a binding one at that, what will the debate be about?” queried Jaskernia. And a number of deputies opposed scheduling the referendum together with local elections out of concern that this might subordinate the interests of local communities to the aims of national political parties, primarily interested in the outcome of the referendum.

Almost all deputies opposed abandoning the ratifying referendum or making it optional. According to Rokita, the UP’s proposal amounted to the following choice, either the National Assembly would strike a deal with the president, in which case they
would jointly exclude the nation at large from the ratification of the constitution, or there would be a conflict between the Assembly and the president, and the nation would be called upon to decide between them. "But what happens when the conflict is decided?" asked Rokita. "If the constitution is rejected in the referendum, will the National Assembly dissolve itself? Or will the president resign if the people ratify a new constitution he has opposed?"

The leaders of the Union of the Democratic Left (SDL) admitted, in private, that the UP's proposal made scant sense. In public, however, they felt bound by their own majoritarian proclamations, uttered during the electoral campaign, when they suggested a similar referendum. They now feared being accused of elitism and a betrayal of democracy if they openly rejected the idea of a preconstitutional referendum. They also believed that the Union of Labor wanted to use the preconstitutional referendum to win votes in local elections. Therefore, the SDL was primarily interested in postponing the referendum till the fall, if not dropping it altogether. They voted to remand the proposal to a special parliamentary commission with the aim of diluting it during the proceedings so that the whole idea might simply fade away.

The most serious doubts raised about this whole issue concerns the failure to specify, in the proposal submitted by the Union of Labor, the particular questions to be posed in the referendum. Janina Zakrzewska, a judge of the Constitutional Tribunal, also warned that the referendum might have inconsistent results. A constitution cannot be a stack of separate rules, she argued, but has to be a carefully adjusted legal and intellectual construction, in which all the elements fit coherently together. One cannot chop it up, vote separately "yes" or "no" for each bit, and then stick the answers back together.

Early in February, in response to this criticism, the leader of the Union of Labor, Ryszard Bugaj, unveiled six questions that his party wanted asked in the referendum. Three of these questions concerned the distribution of powers: should the competencies of the president be kept as they are, decreased, or increased; should the Senate be abolished, kept intact, or replaced with an upper house representing local governments; should local government exist on one, two, or three levels? Two other questions had a basically ideological flavor: "Do you think that the state and the functioning of its bodies should be based (a) on the principle of religious and ideological neutrality, or (b) on religious values?" and "Do you want the state to (a) secure equal rights to all sectors of the economy, (b) support affirmatively the growth of a private sector, or (c) support affirmatively the growth of the public sector?" A final question was related to the extent of social and economic rights: "Which of the following solutions should be incorporated into the constitution: (a) the state's duty to adopt policies leading to full employment, (b) free education in public schools, (c) accessibility to treatment in public health institutions?"

The publication of these questions confirmed the suspicion that the primary purpose of the entire UL proposal was to delineate the main issues at stake in the local elections. The second and third questions had never been raised in public debate nor had they ever produced any tension in society. But the question about the Senate was extremely important for the Union of Labor and other parties favoring a unicameral legislature. In fact, a preconstitutional referendum offered the only conceivable hope of eliminating the Senate, for it was very unlikely that Senators themselves would ever willingly accept a draft which did away with their house. The question about religious versus neutral foundations for the state was a thinly veiled attempt to reintroduce a referendum on abortion, already ruled out by Parliament. State support for one kind of property was related solely to privatization. The final question was simply a wish list, especially since no mention was made of real constitutional protection for the implied social rights.

In any case, Bugaj's questions erected a framework for the electoral program of the Union of Labor: a majoritarian democracy with a weak presidency and a unicameral legislature, a strong com-
mitment to social policies supporting the growth of the public sector, with the aim of granting social benefits to everyone, while simultaneously halting the privatization program. The last had been a UL demand ever since the first privatization plan was adopted. The Union of Labor seemed poised to capitalize on the electoral victory of the Left in September 1993. It saw the preconstitutional referendum as a way to create a constitutional basis for socialism in Poland.

Public debate, however, never got to the substance of the questions proposed. Discussion, instead, was dominated by the president's attempt to modify the UL's proposal and by an ensuing procedural conflict. On January 31, 1994, while the proposal for a preconstitutional referendum was still being discussed in the extraordinary commission of the Sejm, Walesa submitted his own proposal for changing the mode of constitution making. He suggested that the right to submit a draft constitution be extended to any group of 100,000 citizens and that the representatives of all such groups sit on the Constitutional Commission with the power to make motions but without voting rights. Although the present constitutional order in Poland does not recognize citizen initiatives, such a right was proposed in a majority of the draft constitutions framed in the wake of 1989. Walesa also suggested that, in the event that the constitution adopted by the National Assembly be rejected in a popular referendum, Parliament should dissolve itself.

Walesa's idea of a citizen initiative in constitutional matters made a good deal more sense than the UL proposal of a preconstitutional referendum. The basic deficiency of the latter scheme was that it would exclude a part of the population from the process of constitution making, for the voice of 49 percent of the electorate could, in principle, be totally disregarded. A winner-take-all preconstitutional referendum contradicted the spirit of compromise which should dominate the entire constitution-making process. The president's idea of a popular initiative, by contrast, would not exclude anyone and, in fact, it would increase the impact of ordinary citizens on the constitution. While a referendum either approves or disapproves, thumbs up or thumbs down, the initiative is constructive. It begins with a group of citizens who prepare a coherent draft and then try to mobilize social support. After involving a sufficiently large number of people, the initiative becomes part of the normal procedure in the National Assembly, where legislators are fully aware of the popular source of the proposal in question.

Walesa submitted his proposal, it seems, in order to broaden the range of choices before the commission working on the preconstitutional referendum. He reasoned that the initiative would give the ruling majority a way of rejecting the project of the Union of Labor even while upholding its public commitment to democratic participation in constitution making. Moreover, Walesa's proposal would help resolve the delicate issue of the constitutional drafts which were submitted to the Constitutional Commission in 1991 by parties that did not succeed by in entering the current Parliament. They could simply collect 100,000 signatures and resubmit their drafts.

Surprisingly, on February 18, the Sejm rejected the president's proposal without even sending it to the Commission. In fact, the rejection of the president's bill on a first reading was unprecedented in Polish parliamentary history. The deputies did not deliberate on the details of the popular initiative idea. Their focus, rather, was the president's proposal that Parliament dissolve itself if the draft constitution were rejected in a referendum. The debate, which took place in Walesa's presence, was extremely critical and demeaning. Some deputies ridiculed the president and even laughed at him. In the final vote, a majority of the ruling parties SDL and PPA, rejected the bill, even though the party leaders voted for sending it to the Commission. When the results were announced, the president left Parliament, insulted and hurt. Later, Walesa decided to withdraw his representative as well as his draft constitution from the Constitutional Commission.

The Sejm retaliated. Parliamentary experts claimed that the president had no right to withdraw his representative from the Constitutional Commission,
for the constitutional law on the adoption of the constitution does not give the president a choice of sending or not sending a delegate to the Commission. It states that the president’s delegate “participates” rather than “may participate” in the proceedings. Walesa then decided to replace Professor Lech Falandysz, a minister in the president’s chancellery, who represented him on the Commission, with a clerk of the lowest rank. Kwasniewski, chairman of the Constitutional Commission, announced that the president’s attack on Parliament should be interpreted as the beginning of Walesa’s presidential campaign (presidential elections are slated for fall 1995) and that the Commission could prepare a new constitution without presidential participation. On the other hand, during the March 8 proceedings of a special commission discussing changes proposed by the Union of Labor, Jerzy Jaskiernia, SLD’s top constitutionalist, surprisingly suggested that a group of 500,000 citizens be given the right of constitutional initiative.

On March 25, 1994, a second reading of the Union of Labor’s proposal took place in the Sejm. The special commission’s recommendations included Jaskiernia’s proposal for a popular initiative, despite the fact that this proposal was challenged by UD deputies as overshooting the Commission’s mandate and bringing in by the back door the president’s proposal, which had already been rejected by the Sejm. The majority of deputies did not share this doubt and endorsed giving the constitutional initiative to 500,000 citizens. The Sejm also decided that the Constitutional Commission should consider all seven projects submitted to the 1989-1991 Parliament, even though three parties that submitted drafts are now outside the assembly. A new law gives the right to participate in the Constitutional Commission and make motions (with no voting rights) to the authors of old projects as well as to the authors of drafts submitted by popular initiative. The Sejm diluted the UL proposal by leaving open the possibility, without making it obligatory, that the Sejm might call a preconstitutional referendum on crucial constitutional issues. Finally, the Sejm upheld a mandatory referendum to ratify the constitution adopted by the National Assembly at the conclusion of the constitution-making process. Not discussed was the president’s suggestion that Parliament be dissolved if its draft constitution is rejected in a national referendum. The changes in the mode of drafting a constitution were accepted by the Senate in early April and were subsequently accepted by the president.

Although Jaskiernia’s proposal as well as the final decision of the Sejm were meant as conciliatory gestures toward Walesa, the president did not accept them as such. Commenting on SDL strategy, Falandysz described it as an attempt to humiliate the president first, and then, to steal his sound proposal of a citizen initiative in order to prove SDL’s commitment to democracy. This conflict grew ever more tense, to the point where a group of SDL deputies made a motion to amend the Little Constitution to limit the president’s veto power over ministerial appointments. In response, the president threatened to dissolve Parliament, “even without legal grounds to do it,” if Parliament limited his power. (See the update on Poland in this issue.)

At the peak of the conflict, on April 20, an unexpected truce was announced after the president met with the SLD parliamentary club. Kwasniewski apologized to Walesa for unwisely rejecting his proposal and then resubmitting it as SLD’s own. Walesa instructed Falandysz to return to the Constitutional Commission and decided to resubmit his draft constitution. Finally, Kwasniewski announced his intention of having the new constitution adopted by the National Assembly and submitted to a referendum by the end of spring 1995, so that presidential elections in the fall can be held under a new basic law.

In May, Walesa signed the new law on constitution making. Falandysz took part in the meeting of the Constitutional Commission. Walesa submitted his draft constitution consisting of the articles on the machinery of government, where he opts for a semi-presidential system, and a Bill of Rights almost identical to the one submitted in 1992.

How do these events affect the prospects for a new constitution? Paradoxically, both Walesa and
Kwasniewski have emerged as winners from the latest conflict, while the Union of Labor and ideologically-minded members of the SDL are the losers. With the resolution of the conflict, the chances that a pure parliamentary system will be created by a new constitution have significantly dwindled, even though SDL resubmitted its purely parliamentary draft. Kwasniewski has apparently decided to stick to the tactic of making the president the main proponent of a presidential system while espousing his own commitment to an ostensibly “more democratic” parliamentary model of government. But Kwasniewski can now argue that, after the miraculous truce with Walesa, the parliamentary majority should not risk another conflict and should settle on a semi-presidential compromise. If such a compromise is reached, nothing can stop the current majority from enacting a new constitution. Most probably, its general principles as well as its provisions on individual rights will represent a trade off between socialist, liberal, and Christian concepts of constitutionalism.

This analysis of the stop-and-go process of constitution making in Poland suggests a number of tentative conclusions. First, the Polish constitution-making process was not dominated by a conflict between rival theories of constitutionalism and constitutional rights. Nor did it reflect significant conflicts among real social or economic interests. The driving factors were instead the ambitions and emotions of the political leaders and the vested interests of institutionalized elements in the power structure, primarily Parliament (including the “internal” conflict between Sejm and Senate), the cabinet (especially during the 1992 debate on the Little Constitution), and the president.

Second, and paradoxically, a contradiction has emerged in Poland after 1992 between the constitution-making process and the institutionalization of democracy. In fact, the constitution-making process has been stymied at times by the peculiar trajectory of democratic consolidation. Democracy requires the formation of a party system. Parties did not exist before 1989, and their formation took place only as a result of the fragmentation of the Solidarity movement. Each of Solidarity’s successor parties began with a single leader or small nucleus of leaders who only later looked for supporters and followers. This process was rife with disputatiousness and conflict. It was impossible to create new parties, define their identities, and attract followers without emphasizing differences between one party and another. In short, party formation encouraged disunity, while constitution making presupposed a high degree of unity. Unfortunately, both processes took place in Parliament, the most visible platform from which party leaders could attract followers. Thus, the needs of party formation crowded out the needs of constitution making. This disappointing pattern was particularly notable in the second postcommunist parliament of 1991-93.

Third, the emergence of relatively well-established parties and even their clear-cut victory in the 1993 elections turned out to be insufficient for the making of a new constitution. The principal task of a party is to defend the interests of its members and voters. During a transition period, conflicts between such interests are more acute than in stable democracies, especially when it comes to shaping long-term rules for the political game. In new democracies, party leaders are more sensitive to the risk of losing supporters than in mature democracies. Leaders of established parties need not constantly prove their loyalty and dedication to members. They can make compromises with less risk of losing followers or being accused of betrayal. Parties with shaky popular support are in a much more precarious position. This difficulty became obvious in Poland after both the 1991 and 1993 elections.

Fourth, the needs of constitution making conflict with the needs of governance. The need for effective government led to the introduction of an electoral threshold which, in turn, undermined the pretensions of the 1993 Parliament to act as a constituent assembly. Overrepresentation of majority parties, produced by the threshold, threatened to exclude a wide-range of voices from the constitution-making process. Finally, certain decisions of the ruling coalition provoked the opposition into using the constitutional debates as an opportunity to challenge the governing parties. Once again, long-term constitutional concerns were subordinated to short-term political needs of the moment.

We can now see how unfortunate it was that Poland was unable to elect a special constituent assembly at any point after 1989. Initially, no one expected that the transition from communism would begin so quick-
ly after the June 1989 elections. This myopia produced, a “contract parliament” which lacked the legitimacy necessary to enact a new constitution. Probably the best moment for establishing a constituent assembly was in 1991, but political leaders at the time were too absorbed with bolstering their parties to focus single-mindedly on the constitution. Nor did they perceive the latent contradiction between constitution making and “normal” politics mentioned above.

Current prospects for a new constitution seem almost as good as they were during the short period of “constitutional momentum” in 1989-90. What remains uncertain is the willingness of the ruling post-communist coalition to acknowledge the constitutional demands of the weak parliamentary opposition and of the parties outside Parliament. If the SDL/PPA coalition uses its ephemeral parliamentary majority to impose a partisan constitution, hopes for establishing a durable constitutional culture will be dashed. For then nothing will prevent whatever new coalition is swept into power by the next elections from initiating its own shortsighted constitutional reform.

*Wiktor Osiatynski is visiting Professor of Law at the University of Chicago Law School.*
DESIGNING ELECTORAL REGIMES

Introduction
Stephen Holmes

While seldom part of formal constitutions, the intricate rules governing electoral competition must be counted among the most important institutions of any democratic state. Separation of powers guarantees limited government, as James Madison wrote, only in conjunction with periodic popular elections. The task of organizing such elections is especially urgent in societies where neither citizens nor officials have any experience with democratic accountability.

The choice of electoral regime has been one of the most ticklish assignments facing postcommunist societies over the past four years. Voting rights have attracted international attention in societies, such as Estonia, where highly visible groups have been partly disenfranchised. Techniques for inhibiting electoral fraud and disclosing campaign contributions, for obvious reasons, have also been widely discussed. But electoral law in general is crucial because it shapes the party landscape, thereby determining the clarity or obscurity of alternatives facing voters on election day. The following symposium represents a preliminary attempt to sharpen our understanding of the main issues involved in designing postcommunist electoral regimes.

The drafters of East European electoral laws have been (and still are) faced with a paradoxical task. They must simultaneously solve the problems of legitimacy and governability. Under conditions that prevail throughout the region, as many commentators have noted, the solution to one problem tends to make the other harder to solve. The legitimacy of parliaments, governments, laws and policies depends upon inclusion, that is, real access to power for important social groups and a chance to voice grievances publicly in national forums for broad swaths of the population. Governability, by contrast, assumes that a stable cabinet, supported by a clear parliamentary majority, can resolve conflicts, introduce consistent legislation and coherent policies, and administratively implement its decisions and laws. In a topsy-turvy society, convulsed by unpredictable social mobility and rent by multiple economic and ethnic cleavages, to increase inclu-
sion is to decrease governability, and vice versa. Governmental effectiveness and stability, for instance, can be purchased only at the cost of exclusion, that is, a dilution of representativeness. But the latter is an especially unattractive option in Eastern Europe, where antiparliamentary and antipolitical attitudes are pervasive and threaten to derail the entire process of democratic consolidation.

Many Eastern European states have now adopted mixed electoral systems (for instance, Albania, Hungary and Lithuania: See the chart beginning on p. 65.), combining PR with “majoritarianism” through a variety of techniques. A perhaps imperfect understanding of German electoral law may have played a role in this choice. But equally important has been the widespread perception that each system has important advantages over its rival. Proportional representation is usually considered the system that best solves the problem of legitimacy, while the plurality system (first-past-the-post) or majoritarian run-offs in single-member districts are associated with enhanced governability. The framers of postcommunist electoral laws who have chosen to stitch two rival systems together apparently hoped to combine representativeness with effectiveness. But success in this formidable endeavor has been rather elusive so far.

Although the United States and Britain have radically different political systems, both utilize first-past-the-post. As a result, their stable two-party systems are remarkably similar. But a party system cannot be streamlined by electoral law alone. In turbulent postcommunist societies, where civil society is in flux and class relations have not yet gelled, rules which eliminate small parties can rationalize Parliament only by exacerbating voter alienation. Every gain in coherence increases the assembly’s isolation from society.

The most successful example of “constitutional learning” in Eastern Europe has probably been electoral law reform in Poland. The 1991 Polish electoral law resulted in a spectacularly fragmented Parliament with 29 parties and a series of flimsy and easily toppled cabinets. The assembly spent more time governing itself than governing the nation. In 1993, frustrated with the political chaos and paralysis, not to mention the total incomprehensibility to ordinary citizens of the legislative process, the Sejm introduced a five percent threshold for parties and an eight percent threshold for coalitions for most seats in the lower house. As is well known, a high threshold in a PR system has some of the same effects as first-past-the-post, especially a tendency to winnow out fringe parties. The Sejm elected on the basis of the 1993 law, therefore, had only a handful of parties and Pawlak’s government can now bank on fairly firm parliamentary support. But such a “rationalized” Parliament does not necessarily reflect the real distribution of forces and viewpoints in society.

Immediately after the 1993 election, President Walesa announced that he represented the 30 percent of citizens whose votes were “thrown away” because of the thresholds. Such a statement, however harmless in this case, suggests the danger of the single-minded pursuit of governability. By reducing the inclusiveness and representativeness of the system, high-threshold PR or first-past-the-post in single-member districts may inadvertently increase the prestige of extraparliamentary leaders and movements. Low-threshold PR eliminates this threat, “integrating” more voices of protest into the system, but only at the cost of turning Parliament into something of a political circus. (That the postcommunist parties also won a clear majority in the Polish Senate, on the basis of plurality rules, shows how a high threshold in a PR system replicates the effects of first-past-the-post.)

So which electoral system is preferable, under East European conditions, one that favors large or one that favors small parties? Another important difference between these two arrangements, as Max Weber argued, concerns the level at which votes are aggregated. Under PR with a low threshold, aggregations occur after the election, small parties striking bargains and making coalitions in Parliament, behind closed doors. The voter may have complete confidence that his representative genuinely represents him, but this relationship is muddied when decisions emerge, in a way that is
never fully explained, from processes of bargaining hidden from public view. Paradoxically, therefore, PR may increase representativeness while decreasing accountability.

Under first-past-the-post or PR with a high threshold, aggregation of voter preferences occurs before the election and in public, where voters can inspect bargains being made. Such systems give minuscule parties a strong incentive to make pre-electoral coalitions in order to attain a high enough percentage of votes to be elected. Under such rules, it seems, voters know exactly what bargains are being made, and can hold deputies accountable for breaking campaign promises. This argument is interesting and plausible to some degree, but not entirely convincing.

For one thing, broad umbrella parties decrease party identification and increase voter alienation. Because members of a catch-all electoral coalition disagree on many important issues, they tend to brandish vague slogans, confusing the public by papering over real controversies. Sloganeering is just another way of decreasing democratic accountability, for parties that run without clear platforms cannot be effectively held to their promises. Because citizens in postcommunist societies must still learn the amazing lesson that voting behavior can actually affect policy, there is a good case to be made here for PR systems in which parties with clear and specific platforms stand some chance of entering Parliament. Once again, unfortunately, every gain in the clarity and specificity of party platforms is purchased by a loss in parliamentary coherence.

In liberal-democratic theory, it should be said, legitimacy and governability are not usually treated as opposites. On the contrary, a popular government has an easier time governing than an unpopular one, and a technically efficient government gains a degree of acceptance by virtue of effectiveness alone. Under favorable conditions, moreover, the inclusion of a wider array of social groups in the decision making process actually enhances the intelligence, and therefore effectiveness, of public policy. A government that does not listen to discordant voices is liable to make myopic choices and let solvable problems degenerate into insolvable ones. We might even say that liberal democracy is a stable and appealing system in societies where inclusion enhances effectiveness and representativeness fosters governability by improving the quality of political decisions. As the articles in this symposium reveal, bets are still off on how the various post-communist states, each in its own way, will stand up to this demanding test.
Electoral Law in Eastern Europe

Albania

Krenar Loloci

Up to 1990, Albania’s sham elections were held according to an electoral law which contemplated a one-party state. The voting system resembled majoritarianism, although the electoral regime had little or no importance, because only one candidate ran in each district. The communist constitution of 1976 prohibited political pluralism and laid down the domination of the Party of Labor (the name of the Communist Party after 1957) as the country’s only party.

The 1990 Electoral Law

The winds of change in Central and Eastern Europe finally gave rise to changes even in Albania. Immediately after the events in Romania at the end of 1989 and the beginning of 1990, the leaders of Albania’s Party of Labor (PL) undertook several measures to liberalize life in the country. The establishment of a working group to prepare a new electoral law was one. A new electoral law, Law. No. 7423, was passed by Parliament on November 13, 1990. In general, it followed the previous electoral law, although it deviated in some respects, for example by allowing other organizations besides the Party of Labor to take part in the elections. The other organizations existing at that time were satellites of the Party of Labor and therefore did not constitute a real opposition.

The 1990 electoral law instituted an absolute majority (or first-past-the-post) system. In the 1976 constitution, Parliament had 250 deputies. The territory of the country was therefore divided into 250 electoral districts. Elections in a given district were valid if more than half of the people entitled to vote in the district participated in the elections. (The 1992 electoral law did not retain this requirement, for reasons discussed below). A candidate would be declared the winner in the district if he received more than half of the votes cast. As a result, in some of the districts a run-off election (“second round”) would take place.

Immediately after the new electoral law was approved in November 1990, the Presidium of the People’s Assembly (the head of state under the 1976 constitution) fixed March 10, 1991 as the date of the next elections.

A real opposition first emerged in Albania when the Democratic Party (DP) was established on December 11, 1990, following strikes and sit-ins by University students in Tirana. Among the first objectives of the opposition was to change the electoral law. Their requests for amending the electoral law were as follows:

Not to allow other organizations, except political parties, to participate in the elections. The aim of the opposition (by this time consisting not only of the Democratic Party but also of the Republican Party, Agrarian Party and Ecological Party) was to disqualify from the elections organizations such as professional trade unions, the Democratic Front, and the like, because they were satellites of the Party of Labor. The Party of Labor had established them and appointed their leaders. Permitting them to present candidates would have given the PL a huge electoral advantage.

To change the election regime from a majority system to proportional representation. Although they lacked experience, the new leaders of the opposition, were able to understand that the majority system favored the party in power. At that time, the opposition also lacked the necessary means, such as cars and petrol, to travel across the country to organize their electoral campaign and disseminate information about candidates. And they had little access to Albanian
state television or radio to inform voters of their political programs and their candidates. Some regions the opposition could not reach at all. In rural areas or small cities, where most of the electoral districts are located (60 to 65 percent of the population live in rural areas), the opposition was at a keen disadvantage. Any votes it might receive in these areas would be wasted because of the majority system.

To postpone the date of the elections slated for March 10, 1991. Obviously, the period of time from the middle of December, when the DP was established, to early March, when the elections were scheduled, was brief. The DP not only had to conduct the operations of the electoral campaign, but also to deal with its own organization. For this reason alone, postponing the elections was even more urgent than the first two demands.

The Party of Labor agreed only to the third request under pressure from both inside and outside the country. The elections were postponed until March 31, 1991.

After the results of the 1991 elections were tabulated, the PL had 169 seats in Parliament, the Democratic Party 75 seats, the “Harmony” organization (“Omania,” the organization of Albania’s Greek minority) five seats, and the “Democratic Front” organization (one of the PL’s “satellites”) had one seat. Thus, the Party of Labor obtained more than two-thirds of the seats in Parliament, on the basis of only 56-58 percent of votes cast. The Democratic Party won approximately 37-39 percent of the votes nationwide. Thus, the majority system produced a distortion of between nine and eleven percent of the actual popular will. Moreover, if proportional representation had been applied in these elections, the Republican Party too would have been represented by several members in Parliament.

The 1992 Electoral Law
Immediately after the elections, when the new Parliament was convened, the opposition asked that a new commission be set up to prepare yet another electoral law. This request was met. In the new commission set up by Parliament, representatives of parliamentary parties took part alongside of representatives of parties outside the assembly, such as the Republican Party. Generally speaking the influence of the opposition (especially the DP) was much stronger in 1991 than its number of deputies in Parliament would indicate. This can be seen at several points in the course of the development of a new electoral law. As explained below, the opposition’s strength was particularly noteworthy during the final months of preparing the new law.

At the beginning, the commission debated the underlying principles of the electoral system to be chosen. The representatives of the small, recently-established parties proposed a draft electoral law in which pure proportional representation would be established. This proposal was not supported by the DP, which instead came forward with a proposal for a mixed electoral system. The DP’s proposal was not completely understood by most people because it came only a few months after the DP, jointly with other parties, had strongly advocated proportional representation for Albania. Was it a political strategy of the DP leaders not to share power with other opposition parties in the case of new elections? Or was it, as representatives of the DP in the commission suggested, a decision made after reflection on the damaging consequences of pure proportional representation in other Eastern European countries?

Regardless of their hidden motivations, some members of the commission argued that the mixed system mitigates the distortions of majoritarian rules, while preventing the severe fractionalization of Parliament, usually associated with governmental instability and paralysis.

The second issue discussed in the commission involved the number of seats in the future Parliament. All parties were of the same opinion: the existing number of parliamentary seats (250) was too large and had to be reduced. Members of the commission were in agreement that the number of seats need not be specified in the constitution or in a constitutional law, but that it should be somewhere between 120 and 150. These numbers were
based on the example of countries with a population more or less equal to Albania's. Consequently, a constitutional amendment was introduced in Parliament, proposing the repeal of Art. 17 of the April 1991 Law "On the Major Constitutional Provisions" which fixed the number of parliamentary seats at 250. This amendment was adopted as Constitutional Law No. 7555, dated February 4, 1992, by the required parliamentary supermajority. This law replaced Art. 17 with a paragraph reading as follows: "The number of deputies of the People's Assembly as well as the electoral system shall be established by law."

Discussions of principle were completed swiftly, contrary to the wishes of small political parties. Both the Socialist Party (SP, formerly the PL), and the DP, as the major parties represented in parliament and the main political forces in the country, thought that a mixed system, mainly a majority system but improved or corrected with a form of proportional representation, met their objectives much better than pure proportional representation.

The Socialist Party had supported the mixed system from the beginning, because it did not want to lose the votes cast for its candidates in electoral districts where the candidates failed to win. The SP leaders no longer defend the majority system, for their support in the different regions of the country, especially in the cities, had diminished considerably.

On the other hand, support for the DP had measurably increased, not only in the large cities but also in smaller towns and rural areas. Aware of this change in relative political influence, some DP members advanced the idea of keeping the pure majority system in the commission's draft law on elections. But the SP, for its part, refused to consider such a proposal.

Taking into account the polarization of the population between the SP and the DP, the small parties decided that a proportional representation system was the best both for themselves and for the country. Not only would it give them access to one or more seats in Parliament, but it would also mitigate somewhat SP/DP rivalry and create a more favorable climate for a coalition government.

The existing law "On Elections" (No. 7556) was approved by Parliament on February 4, 1992 (the same day that Parliament passed the constitutional law setting the number of its own members). For approval of the law "On Elections," a simple majority in Parliament was required, as is the case for both ordinary and organic laws.

It may be noted in passing that constitutional amendments, unlike ordinary laws, require approval by two-thirds of all members of Parliament. Albanian law requires no referendum at this time, although Art. 3(2) of Constitutional Law No. 7491 on the major constitutional provisions adopted in April 1991 (the "transitional constitution") provides that "the people exercise their power through their representative organs and, also by referendum." No other statute has laid down detailed procedures about this plebiscitary mechanism, and there has been no popular referendum since the transitional constitution was adopted three years ago.

The transitional constitution also states, in Art. 5(2), that the president shall be elected by Parliament (the People's Assembly), and in Art. 25 that he shall serve for five years, after being elected by secret ballot and by a two-thirds majority of all deputies. At least two candidates must run. If the required majority is not attained, a second round of voting is held (between the top two candidates if more than two contested the first round), and the person receiving an absolute majority of the votes of all deputies is elected.

The main authors of the 1992 parliamentary electoral law were Aleksander Meksi (the current prime minister) and Arben Imami (until the summer of 1992, a parliamentary member of the DP, and now a parliamentary deputy and one of the main leaders of the Party of the Democratic Alliance [PDA]). They worked together well and succeeded in having their draft law "On Elections" adopted.

Most of the work for the preparation of the 1992 electoral law was done during December 1991 and January 1992. On December 4, 1991, the Democratic Party had withdrew its members from the coalition government. From that time until the March 1992 elections, the political influence and
popular support of the DP was on the rise, while the Socialist Party, despite its large majority in Parliament, was unable to form a stable government. This explains why the DP impact on major problems that came up during the preparation of this electoral law was so great.

A few days after the February 4 adoption of the electoral law, the president Ramiz Alia dissolved Parliament and set March 22, 1992 as the date of the elections.

Under existing law, a parliamentary term lasts four years and starts from the day the elections are held. Thus, the full term of the existing Parliament extends to March 21, 1996. President Berisha was elected by this Parliament when Alia resigned shortly after the 1992 elections.

The only other officials elected by direct popular vote sit in the councils of local government. Their term is three years. In the cases of both Parliament and the local councils, constitutional laws give the president not only the power of dissolution, but also the power to schedule new elections.

The 1992 law “On Elections” states that “the People’s Assembly shall consist of not less than 140 deputies, of whom one hundred shall be elected directly in single-member areas [i.e., according to the two-round majority system], while the remaining seats shall go to candidates on the national list, according to the proportion of votes gained in the first round [i.e., forty seats are selected on the basis of PR rules] (Art. 6).

Each party taking part in the elections must therefore compile two lists: one for the candidates who will compete directly in the 100 electoral areas, and the other for candidates who will be elected as a result of the votes that each party collects as a whole in the first round. In this way, for example, the Social Democrats won only one seat by the majority system, while on a national scale they obtained five percent of the votes, adding up to seven seats in Parliament. Since one seat had been gained directly, the six candidates who were at the top of the Social Democratic Party’s compensatory list were also elected.

Since the number of electoral districts had been reduced by 110, from 250, the borders of electoral districts were also redrawn, based on a 1989 census.

After the election, the Socialist Party claimed that the electoral districts drawn up on the basis of this census were gerrymandered. According to the SP, in the big cities, where the DP had wider popular support, electoral districts were smaller. In fact, because of the mixed system, this “gerrymandering,” if it exists, did not have a significant impact. Various experts visiting Tirana recently have advised that, because of population movements occurring in the past three to four years as society changed and became more open, another census should be conducted in the near future.

As noted above, unlike the 1990 electoral law, the 1992 law did not require a fixed minimum turn-out. This decision was based on the experiences of other Eastern European countries, which suggest that, when elections are frequent, turn-out declines (e.g., the Hungarian experience in 1991). Since it might be difficult to secure a specified turn-out in some electoral areas, it was decided not to require any fixed minimum anywhere.

The law “On Elections” stated that three commissions or kinds of commissions were to be set up to conduct the elections: the Central Election Commission, area electoral commissions, and commissions of the voting centers (Art. 34). The Central Election Commission, consisting of a chairman, vice-chairman, secretary and 14 members, is appointed by the president on the proposal of the political parties not later than 35 days before the date set for the elections. Parties without representatives who are members of the Central Election Commission may send an observer (Art. 35). Members of area electoral commissions are appointed by the Central Election Commission on the proposal of temporary pluralist executive committees not later than 25 days before the elections (Art. 37); while members of commissions of the voting centers are elected by members of the areas on the proposal of temporary pluralist executive committees not later than 20 days before the elections (Art. 39). In each case, the temporary committees must consult with the political parties before making their recommendations.

Complaints against the decisions of the electoral commissions can be made to the Central Elections
Commission (Art. 49). Decisions of the Central Election Commission can be appealed to the Court of Cassation (Art. 50). In each case, appeals must be accepted within three days of being lodged.

Who Can Vote and Who Can Run?
Under the law “On Elections,” the right to vote is granted to every Albanian citizen who has reached the age of 18 by the date of the elections, unless his or her right to vote has been revoked by a court because of mental incapacity or the commission of a crime (Arts. 2 and 3). Furthermore, by stating that “each voter has the right to cast only one vote,” and that his or her vote is “equal with the vote of every other voter” (Art. 4), the law implicitly incorporates the one-person-one-vote rule. But it was not until March 31, 1993, when Parliament passed the constitutional law “On Fundamental Human Rights and Individual Liberties” (Law No. 7692), that the one-person-one-vote principle was constitutionally enshrined. Art. 19 of this constitutional law provides that “The vote is personal, equal and secret.” Art. 19 also contains other constitutional principles concerning the right to vote, as follows:

“Every citizen who has reached the age of 18 has the right to vote and run for office.”

“Citizens from whom the capacity to act has been legally taken away are denied this right.”

“ Arrested persons and those who are in prison have only the right to vote.”

The principles of this constitutional law or “Bill of Rights,” passed after the law “On elections,” overlap somewhat with the principles incorporated in that law. To the extent that any provisions of the electoral law contradict the provisions of constitutional law on fundamental rights, the former cannot be applied. Such, for example, is the distinction that Art. 2 of the law “On Elections” draws between the right to vote and the right to stand for Parliament. The right to vote belongs to every citizen who has attained the age of 18, while the right to compete for elected office belongs only to citizens who have reached the age of 21. These two rights were unified by Constitutional Law No. 7561, and now, contrary to Art. 2 of the law “On Elections,” all Albanian citizens 18 and over may be elected to Parliament and to other offices.

Art. 2 of “On Elections” stipulates that the right to run for parliament is open to all Albanian citizens of the requisite age who live permanently in the republic. But the law also states that several categories of person are disqualified from running for office including: directors of the organs of public order and the “National Information Service” in districts, regions and cities as well as military officials in areas where their units are stationed. Furthermore, if members of the Council of Ministers or directors of the executive committees of districts, regions and cities present their candidacies (in the latter case, in the areas where they perform their functions), they must resign from their positions at least twenty days prior to the date of the elections. (Art. 19). Before the March 1992 elections, the Democratic Party, at that time in the opposition, tried to compel a number of socialist leaders to resign on the basis of this provision, in order to reduce the SP’s influence on the electorate.

All citizens who have the right to vote shall be registered on the voting lists of the electoral districts where they have their permanent residence. (This follows from Arts. 20 and 23). This requirement is also obligatory for military officers (Art. 22(2)). The rationale behind this provision was to prevent officers, who were considered pro-socialist, from voting in their military units, where, in the opinion of the opposition, they would be able to cajole soldiers in their units to vote for the SP.

The only electoral “subjects” who have the right, according to the law, to field candidates are parties, a group of parties or an individual who presents his or her own candidacy in an electoral district (Art. 12). Therefore, an individual who presents his or her own candidacy is considered an electoral subject, but no organization may take part in the elections, unless it is a political party.

This provision provoked a severe reaction in “Omania,” the organization of the Greek minority, because this group was thereby prohibited from taking part in the elections. The “Omania” organization
was unable to attain the status of a political party because the law “On Political Parties” (Law No. 7502, dated July 25, 1991) outlawed the “formation of parties on religious, ethnic and regional bases.”

This issue was very quickly internationalized. The Greek government raised it in the Council of Europe, in the Conference on Security and Cooperation in Europe (CSCE), in the European Community and in other international bodies. The Greek government had done the same earlier, when the law “On Political Parties”, which prohibits the creation of political parties on an ethnic basis, was first passed, but the direct prohibition of “Omania” from participating in the elections was widely considered a serious violation of minority rights. The problem was resolved, however, when the minister of justice registered, the “Party for the Defense of Human Rights”, which in practice consisted of members of the Greek minority as an independent party. To camouflage its ethnic character somewhat, Albanians were also admitted into its ranks.

### Other Details of the 1992 Law

An election campaign takes off with the promulgation of the date of elections and concludes 24 hours before election day (Art. 51). The 1992 law enacted several important prohibitions, such as: no campaigning can take place in military units or “depoliticized institutions” (Art. 55). Art. 6, para. 3 of the April 1991 transitional constitution identifies such institutions as the military departments of the ministry of defense and the ministry of public order, the ministry of foreign affairs and diplomatic representatives abroad, the prosecutors’ and investigators’ office, the courts, etc.

The conduct of an electoral campaign by individuals who are not Albanian citizens is prohibited (Art. 56). Being aware that most people working in local government belonged to the Socialist Party, the Democratic Party pushed hard in the commission and in Parliament to obtain a provision in the law prohibiting temporary pluralist executive committees (the local government executive bodies) from distributing campaign materials or otherwise getting involved in the electoral campaign. They succeeded in this goal (Art. 57).

Once the date of the elections is set, a heated election campaign ensues. Although the law grants to “every electoral subject and citizen the right to propagandize freely through meetings, rallies, radio, television, print and other means of mass information” (Art. 52), it actually grants considerable advantages to the major parties (the SP and the DP). Such advantages include the following:

“Radio and television shall broadcast special programs on the election campaign. The time devoted by these broadcasts to different electoral subjects will be proportional to the number of candidates fielded by them nationwide” (Art. 53);

“The state shall contribute to the electoral campaigns of electoral subjects as follows:

a) 50 percent of the amount set shall be divided among electoral subjects [parties] in proportion to the number of candidates running.

b) 50 percent of the amount appropriated shall be divided among the parties in proportion to the number of votes gained nationwide in the previous elections.

If an electoral subject does not win more than three percent of the votes in all electoral areas where it has competed, it is obliged to return to the state the amount of money provided from the state budget” (Art. 58).

These disadvantages, in particular the four percent threshold, made the small parties extremely unhappy. The disabilities heaped on small parties reflect the eagerness of the two major parties to take power (either one or the other) and to avoid a coalition with small fry at all cost. Indeed some of the minor parties, when they became aware of the content of the law, simply withdrew from the elections.

The law says nothing connected to financing from abroad during an electoral campaign. This means that the law “On Elections” does not prohibit such financing, unlike the electoral law of 1990. Art. 41 of Law No. 7423, dated November 13, 1990, contained an express prohibition in this
It stated that “the receipt by candidates of donations, financial aid or support from foreign natural or juridical persons is prohibited.”

Restrictions on Political Parties
A number of parties were created in 1991, with hopes of contesting the elections of 1992. Law No. 7491, “On the Major Constitutional Provisions” (the transitional constitution), while contemplating that “political parties and other organizations shall be created and shall carry out their activity in accord with the law,” left up to statute the regulation of parties. Such regulation took place only when Parliament approved the law “On Political Parties,” (Law No. 7502, dated July 25, 1991) and, more importantly, Law No. 7591, which amended the first law in July 1992. This law, as amended, specified under which conditions the creation of a party is not permitted or a party’s activities are prohibited:

a) when it propagates its goals or tries to realize them through the use of violence, force of arms or any other antidemocratic war-inciting means;

b) when its goals and activities have an “anti-national, chauvinist, racist, totalitarian, fascist, stalinist, enver-communist [referring to Enver Hoxha, the leader of Albania from 1944 to 1985] and marxist-leninist character [and] incite national hatred”;

c) when its goals and activities come into conflict with the constitutional principles of the lawful democratic social state, with the sovereignty of the people, with pluralism and the equality of parties, with the principle of separation of powers and the independence of the judiciary;

d) when its internal organization is contrary to democratic principles, such as the building of the party from the bottom up, democratic internal elections of party leaders, the right of each member freely to express his opinions, the freedom to join or leave the party, open declaration of the party’s financial and monitoring of their use;

e) when it creates within itself secret organizations or organizations with a military character. The formation of parties on religious, ethnic and regional bases is also not permitted, and no political party that is formed outside the territory of the Republic of Albania will be recognized (Art. 6).

In order to form a political party, according to this law, citizens must submit a request to the ministry of justice, presenting the required documents, that is the program and constitution or by laws of the party (Art. 8). The application for the formation of a political party must be signed by at least 300 persons (Art. 10). The Ministry of Justice must issue its approval or refusal of such requests for the formation of a party within 45 days from the date of receiving the request (Art. 11). An appeal may be made in court against a ruling of the Ministry of Justice refusing a request for the formation of a party or forbidding the continuation of its activity (Art. 13).

The prior restrictions laid down in the articles cited concerning the establishment and registration of political parties should not, it appears, be applicable any longer, because they flatly contradict the right of association, which, along with other human rights, was approved by Parliament on March 31, 1993, as a separate constitutional law. The law “On Political Parties” has not been amended to conform to this new constitutional law, so these provisions might still be applied if a group tries to form a party. But this has not yet happened (or, more precisely, no request has been turned down on the above grounds). The Constitutional Court of Albania, established in the spring of 1992, was asked in September 1992 to consider the constitutionality of the provision of the law “On Political Parties” making the Communist Party illegal (and pursuant to which, in July 1992, the minister of justice had ordered the de-registration of a new “Communist Party”). The complaint was obviously justified since the transitional constitution endorses the principle of party pluralism, even though the chapter on fundamental human rights and freedoms was not enacted until the following year.

By a decision dated September 16, 1992, the Constitutional Court declined to hold this provision of the law unconstitutional. The decision did
not contain much reasoning, stating only that the "the activity of political parties which have as a basis antidemocratic principles, such as the violent overthrow of the constitutional order, the taking away and limiting of the democratic freedoms of citizens, the dictatorship of the proletariat, the class struggle and so forth may not be permitted." The genuine compatibility of this provision of the law on political parties with the transitional constitution as amended by a new constitution containing similar human rights protections, remains unclear.

The law "On Elections" states that political parties must present their candidates for each electoral area, as well as the lists of candidates who will be selected on the basis of the nationwide percentage of votes obtained, twenty days before the date of the elections (Art. 13). Political parties may also present candidates jointly in one or more electoral area, but at least eight days before the elections they must send to the electoral commission of the area a report of the agreed upon division of votes earned jointly for purposes of the nationwide computation (Art. 10).

Small parties reasonably concluded that the law "On Elections" favored large parties. This is true, for example, of the requirement that "those electoral subjects who have presented candidates in not less than 33 electoral areas and nine districts of the country have the right to present lists of candidates for proportional compensatory representation" (Art. 15), of the requirement that for a candidate presented in an electoral area, each party must present a list with 400 signatures that support such a candidacy in the area where he is standing for election (Art. 13(c)); and of the threshold of four percent of votes nationwide that each party must obtain to be entitled to additional seats (Art. 11, last paragraph). Many small parties withdrew from the elections because they were not in a position to present their respective candidates in a least 33 areas and nine districts or to secure lists with 400 signatures for each of their candidates. This is why, although the number of parties was large, only a few ran in the elections. The Democratic Party said that the establishment of these barriers was necessary to eliminate those small parties which they considered satellites of the SP.

The results of the March 22, 1992 election showed that the fears of the small parties were justified. The outcome also confirmed the SP's prediction that the modified proportional representation system would improve its own results. Of the 38 parliamentary seats which the Socialist Party won, only six were filled by the majority system. The other SP candidates won their seats on the basis of the nationwide percentage of votes for their party and were taken from the compensatory list.

The predictions of those members of the Democratic Party who had argued for a pure majority system were accurate, too. DP candidates were direct winners by the majority system in 90 out of the 100 electoral areas. They obtained only two additional seats from the national list.

As noted above, the Social Democrats obtained seven seats in the new Parliament, one by direct election and six drawn from the national list. The Party of Human Rights won two seats by direct election, and one member of the Republican Party was elected directly. These results, and the totals and percentage of each party can be found in the May, 1992 edition of the Official Journal of the Republic of Albania.

Thus, the second pluralist elections in Albania resulted in an almost completely bi-partisan Parliament. Most small parties were eliminated. The party of the Greek minority was particularly displeased with having gained only two seats. In their newspapers, they reported that, in areas where they presented candidates, many abuses and falsifications took place, which accounts for the tiny number of representatives they now have in Parliament. Prior to the elections, they had used the complaint procedures of Arts. 49 and 50 to challenge the disqualification of their candidates by local commissions, and they might not have gained the two seats they did but for the court's intervention. The Greek minority party did not, however, take legal action to challenge the electoral results and neither they, nor any other party, complained of obstacles to voter registration.

Since the elections of 1992, various new parties have been formed, the most important of which is
the above-mentioned Party of the Democratic Alliance (PDA). If elections were held in the near future, the PDA would probably field several candidates, surpass the threshold, and obtain at least some representation in Parliament. (Five of their representatives are already deputies, but they were elected in March 1992 as Democratic Party members, exiting the DP later that year). However, if new elections are not held until 1996, all bets are off. The political complexion of the country and therefore the make-up and strength of its various political parties will doubtless be quite different than today, and no predictions can be safely made at this time.

Bulgaria
Rumyana Kolarova and Dimitr Dimitrov

In the Bulgarian political tradition, the electoral regime has usually been viewed as a key factor determining the prospects of competing parties and coalitions. In postcommunist Bulgaria, the restoration of a multi-party parliament also revived the instability of electoral regulations, traditional to pre-war Bulgaria. Over a period of 60 years (1879–1939), 30 general elections were held under eight different electoral laws which, in turn, were amended 27 times. The electoral system was changed at least four times from proportional to majoritarian (single-member district) and back. Strategic electoral engineering has been a routine matter for each new governing parliamentary majority.

Since 1989, general elections have been held twice (June 1990 and October 1991), under two different electoral laws. When discussing the differences and similarities of these two laws, it should be emphasized that the alternative between “proportional” and “single-member district” systems present the key dilemma in both cases. The first law combined the two systems, suggesting that, in March 1990, the main political actors were either unwilling or unable to choose rationally which rules would optimize their electoral chances. A year later, after careful assessment of the 1990 electoral results and interim political developments, the parliamentary majority opted for a wholly proportional system, generalizing the “proportional half” of the 1990 law. The following analysis will focus mainly on the 1991 electoral law, with unavoidable references to the original hybrid system designed in 1990.

At least two important political events influenced the drafting of the 1991 electoral law: the adoption of the new Bulgarian constitution and the subsequent splintering of the anticommunist coalition, the Union of Democratic Forces (UDF). The constitution-making process not only shaped the political preconditions for the elections, but also set rigid time constraints for them. Art. 7 (1) of the “Transitional and Concluding Provisions” of the constitutional text states that “elections for a National Assembly shall be held within three months after the self-dissolution of the Grand National Assembly. The date of the elections shall be set by the president.” The Grand National Assembly dissolved itself immediately after the adoption of the constitution (July 12, 1991) and, on July 16, the president scheduled elections for September 29.

Although officially dissolved, the Grand National Assembly continued to act as a National Assembly. It had to vote several bills governing the establishment of the Constitutional Court, the Supreme Judicial Council, and the elections of Parliament, president and local self-government (Art. 1, para. 2 of the constitution). Thus, despite mounting disagreements and diverging party interests, an electoral formula had to be worked out in great haste due to binding constitutional provisions.

At least four stages can be identified in the drafting of the electoral law. The preliminary stage (18-30 July) ended with a general agreement among all parliamentary groups on a PR electoral system. The legislative text was discussed in plenary sessions and the most important disagreements were aired. These differences concerned the voting rights of Bulgarian citizens abroad and the right of organizations not registered as parties to participate in elec-
toral campaigns. The scheme for computing results had to be specified as well. After long and unproductive debates, the BSP deputies (the former Communist Party had the majority of seats in Parliament) imposed their solutions to both vexed issues. Disregarding official procedures, several minutes after the last voting on the bill, the president exercised his weak suspensive vote and returned the bill to Parliament. In explaining this act, he argued that the text of the electoral law contradicted the constitution and in fact restricted the voting rights of Bulgarian citizens living or sojourning abroad (Art. 11) as well as infringing upon freedom of speech and association (Art. 54.4). The next day, the BSP deputies, disregarding the two burning issues raised by the presidential decree, imposed a scheme for computing electoral results called “the Videnov Variant.” Non-BSP deputies protested, boycotting plenary sessions. After long consultations, the electoral law was nevertheless passed and promulgated on the last possible date (August 22) in accord with the 60-day interim legally required for the organization of elections (Art. 21.2 of the electoral law) and the three-month deadline fixed in the constitution. The president then promulgated the law, simultaneously switching the date for elections to October 13. The BSP majority made only one concession to the president and the parliamentary opposition. Paragraph 4 of Art. 64—banning electoral campaigning by citizens’ (nonparty) organizations—was deleted. Up to this point, the drafting of the law was almost totally dominated by BSP’s parliamentary majority.

The third stage in the drafting of the law was instigated by the parliamentary opposition. All other deputies united against the BSP parliamentary group and declared jointly that their parties would boycott elections conducted under the “Videnov Variant” scheme for computing results. The electoral law was therefore amended on the very day of its promulgation—August 22. The opposition demanded a simple and reliable computation method, and the “Videnov Variant” was replaced with the d’Hondt method for seat allocation. This solution in practice was the proportional half of the 1990 electoral law “writ large.”

The fourth stage concerned the colored ballot sheets, one of the peculiarities of electoral law and voting behavior in Bulgaria. Color happens to be a traditional means of partisan identification in Bulgarian politics. (Violet has been the color of the conservatives since 1883, green of the liberals, and, later, red of the communists and orange of the agrarians.) In 1990, color choice was an important symbolic step in the electoral campaign of the anticomunist coalition, the Union of Democratic Forces. Ever since UDF opted for blue, this color has been universally perceived as the “trademark” of the united democratic opposition. Blue became a scarce resource, therefore, when UDF split into three parts. The Central Electoral Committee (25 persons appointed by the president) was authorized “to register and announce the parties and coalitions participating in the elections and also to determine the color of their ballot sheets” (Art. 34, para. 3).

In their applications to the Central Election Committee, all three UDF spin-offs demanded to be registered under the UDF label and to be assigned the blue ballot sheet. Priority in time was the only argument accepted for registering the first applicant as the UDF. Immediately after the committee announced its decision, the other two “blue applicants” (“UDF-center” and “UDF-liberals”) urged a new amendment to the electoral law. They suggested changing Art. 71, para. 3 (“White, orange, blue, green and red might be used as colors for the ballot sheets. When these colors are allotted, the sheets should be white with one to three stripes on their bottom part”) demanding either the introduction of light and dark variations of the basic colors, or striped sheets in all basic colors. The BSP majority rejected both options, obviously afraid that red might be misused as well, and voted a trivial and pointless correction to the text (“on their bottom part” was deleted). This second amendment passed on September 12, 1991.

Such a case-by-case approach to the drafting of electoral rules led to the existence of three simulta-
neously valid electoral laws: the “Bill for the Election of a Grand National Assembly” (April 1990), the “Bill for the Election of National Assembly and Local Authorities” (August 1991) and the “Bill for the Election of the President and Vice President” (September 1991). A comparison of these three laws will help us analyze both their constitutional basis and their possible interpretations. But, it should first be noted that a restricted number of electoral regulations were also entrenched in the constitution. Among these constitutionalized electoral provisions is the citizen’s right to vote. Art. 10 states that, “All elections and national and local referenda shall be held on the basis on universal, equal and direct suffrage by secret ballot.” Art. 12 (1) adds that, “Every citizen above the age of 18, with the exception of those placed under judicial interdiction or serving a prison sentence, shall be free to elect state and local authorities and vote in referenda,” and Art. 12 (2) reads, “The organization and procedure for the holding of elections and referenda shall be established by law.”

Registration procedures governing the preparation of voters’ lists, as set down in the 1991 bill, did not in reality guarantee equal voting rights for citizens living abroad or who recently changed their place of residence within the country (Art. 11, Art. 12, para. 2 of the 1991 bill). The 1990 law was more liberal, permitting voting abroad as well as voting with a “certificate for voting elsewhere” when sojourning within the country. The election results showed that emigrant votes went predominantly to the anticommunist opposition (UDF). Meanwhile, the certificate system was alleged to be a source of forgeries favoring the former communists (BSP). UDF and BSP deputies struck a compromise at the price of discriminating against both groups. Such citizens could exercise their voting rights only by paying additional private costs (time and travel expenses to reach their permanent place of residence). This burden was lifted in the “Bill for Election of the President.” Though never publicly discussed, the 1991 restrictions affected not only the UDF and BSP but also, and even especially, the Turkish minority party, the Movement for Rights and Freedoms (MRF), because, since 1989, roughly 30 percent of Bulgarian Turks have emigrated.

Engagement in political activity by citizen associations is banned, Art. 11, para. 4 of the constitution states that “There shall be no political parties organized on ethnic, racial or religious lines, nor parties which advocate the violent seizure of state power.” Art. 12, para. 2 stipulates that “Citizen associations, including trade unions, shall not pursue any political objectives, nor shall they engage in political activity which belongs in the domain of political parties.”

This specific constitutional restriction on freedom of association is a contentious and frequently discussed issue in Bulgaria. Unlike the restrictive interpretation of voting rights, the constitutional ban on parties along ethnic and religious lines was never actually applied. In 1991, the issue was twice raised and resolved in favor of MRF. A first attempt to implement the restrictive constitutional norms was vetoed by the president. The drafters amended Art. 54, para. 4 of the 1991 electoral law, restricting the ban on campaigning by citizen organizations to trade unions. But the promulgated legislative text still envisaged registration of party lists under the conditions of Art. 11, para. 4 of the constitution. By that time, the Movement for Rights and Freedoms applied to the courts for registration under the name of “Party for Rights and Freedoms.” First the Regional Court and subsequently the Supreme Court refused to register such a party. The Central Election Committee then re-registered the organization under its previous name, the “Movement for Rights and Freedoms,” invoking a decision of the 1990 Central Election Committee. The registration was accepted by a slim majority of 13 out of 25 votes, based on the principle of continuity between party registration in 1990 and 1991 (Art. 34, para. 3 of the 1991 law). The ruling was immediately appealed to the Constitutional Court by BSP deputies, but was decided only after the elections. In principle, MRF candidates could run for parliamentary seats even if the Movement
was not registered, since the 1991 bill permitted the registration of independent candidates. This baroque solution was favored by opponents of MRF's registration as a party.

The registration of the Turkish minority party was based on precedent therefore, but it remained an exception and no other similar organization (representing any other ethnic or religious minority) was allowed to register with party lists at the election.

The type of mandate is settled by Art. 67 of the constitution, which reads 

"(1) members of the National Assembly shall represent not only their constituencies, but the entire nation. No member shall be bound to an imperative mandate; (2) members of the National Assembly shall act on the basis of the constitution and the laws and in accord with their conscience and convictions." The terms of office, in turn, are fixed by Art. 63 which states that "The National Assembly consists of 240 members and is elected for a term of four years.

Art. 64, para. 3, of the constitution, states that "Elections for a new National Assembly shall be held within two months from the expiry of the mandate of predecessors." The supremacy of Parliament is manifested in its power to dissolve itself. Though nothing of this sort is explicitly stated, it is in fact presupposed by the constitutionally defined procedure. There are no fixed-calendar parliamentary elections, and the president has only the rather formal power to schedule election day by choosing a weekend not later than two months and not earlier than 50 days after Parliament has decided to dissolve itself. In case of a parliamentary crisis, the president cannot dissolve Parliament during the last three months of his term of office. Hence, simultaneous parliamentary and presidential elections are impossible.

The Grand National Assembly is a special legislative body, vested with the power to amend some basic constitutional provisions, and consisting of 400 members. It is elected following a special decision of Parliament and its term of office expires upon the passage of the proposed constitutional amendments.

Conditions for eligibility to this constituent body are established by Art. 65 of the constitution which reads 

"(1) Eligible for elections to the National Assembly shall be any Bulgarian citizen who does not hold another citizenship, is above the age of 21, and is not under judicial indictment, and is not serving a prison sentence. (2) A candidate for a National Assembly seat holding a state post shall be temporarily suspended from that post upon the registration of his candidacy."

Perhaps the initial groundswell of democratic fervor explains why, according to the 1990 election law, candidates for the Grand National Assembly are eligible at the age of 18, while candidates for the National Assembly have to be above 21. Candidates for president are eligible at age 40 (Art. 93, para. 2 of the constitution).

Art. 66 reads "The legitimacy of the elections may be contested before the Constitutional Court by a procedure established by statute." There are no time constraints on challenges to the results of parliamentary elections, while the Constitutional Court must rule on the legality of presidential elections within a month of the elections (Art. 93).

The right to appeal to the Constitutional Court is the most essential constitutionally entrenched regulation concerning the contestation of electoral results. Only one-fifth of the deputies, the president, the cabinet, the highest court and the chief prosecutor are entitled to raise such a challenge. After the 1991 elections, the Constitutional Court rejected 14 appeals by political parties, coalitions and independent candidates contesting election results.

Effective monitoring power, in fact, lies with the Central Election Committee. This is a quite autonomous body, appointed by the president, and it should comprise representatives of political parties and non-affiliated citizens, predominantly lawyers. The broad competencies of the CEC include: registering party lists and allocating colors for the ballot sheets; appointing and supervising regional electoral committees; ascertaining the eligibility of candidates and the legality of voting procedures; and calculating and announcing the results of the elections.

An important difference emerges when we compare the 1990 and 1991 bills governing parliamentary elections. In the 1990 law, no authority
was assigned responsibility for publishing the detailed and definitive results. Results were announced, in fact, but never published, and this anomalous procedure substantially limited opportunities for checking and contesting. The legislative text does not specify how to hold the Central Electoral Committee (CEC) accountable for the aggregation of votes from the tally sheets prepared by local electoral committees. The technical procedures designed by the CEC itself made it virtually impossible to reconstruct the process by which results were calculated. This defect was noticed by two specialized parliamentary committees, the first created by the Grand National Assembly and the second by the National Assembly elected in 1991. Uncheckability casts doubt on the authenticity and trustworthiness of the announced results. In this respect, the first Bulgarian elections are comparable with the Romanian elections and to the recently held Russian parliamentary elections. The 1991 electoral law was substantially changed in order to put a stop to such unaccountability on the part of those who tally the votes. Hence, the 1991 electoral results, published in the State Gazette and, within a month, in a special volume, are considered wholly reliable.

In general, the 1991 electoral law was quite detailed in defining technical procedures and thus in confining the CEC's areas of discretion. Another essential development occurred in the legislative regulation of campaign financing. In the 1990 bill, state financing was not explicitly regulated. The CEC simply ensured equal access to state finance, proportional to the number of candidates which each party registered in various electoral districts. The main concern of the drafters of the bill was to keep track of financing from abroad and from private donors. Both were severely restricted on paper, although no effective monitoring mechanisms were established.

The second electoral law, by contrast, regulated state financing of the 1991 campaign by restricting both the access of small parties (only parties and coalitions that had received more than 50,000 in the 1990 elections qualified for funds) and the maximum amount of money for each candidate (30,000 leva).

The technical description of the electoral system introduced in the 1991 electoral law basically is the following: the 240 deputies of the National Assembly are elected in 31 constituencies on the basis of the closed party-list proportional representation system. Votes are translated into seats using the nationwide district principle and seats are allocated among the 31 different lists using the d'Hondt method. There is a national four percent threshold both for parties and coalitions. Seats which fall vacant between general elections are filled by substitutes chosen at the same time as the candidates elected ("the next on the party list").

Despite proportional representation, the results of the elections were rather "majoritarian." Although 38 parties and coalitions were registered, only three succeeded in entering Parliament (UDF received 110 seats, BSP 106 and MRF 24), and 25 percent of votes cast were "thrown away." Hence, a two-and-one-half party structure—comprising radical anticommunists, former communists, and the Turkish-minority party—emerged. Many commentators claim that this seemingly majoritarian outcome was predetermined by the four percent threshold (and by the five basic colors: red, blue, green, orange and white for all independent candidates). Perhaps it is more reasonable to suggest that it resulted from the irrational strategy chosen by political leaders and from an "insane" proliferation of parties. There were two competing agrarian party lists (winning respectively 3.88 percent and 3.44 percent of the votes) and two post-UDF coalitions (with 3.2 percent and 2.81 percent). The knock-down argument for the irrationality of the agrarians was that they relinquished the orange color of the ballot sheet, traditional for them, and a marginal, and completely unknown organization got .55 percent of the votes in rural constituencies "misusing the orange."

The paradoxically "majoritarian" electoral results, in any case, did not alleviate the fragmentation and inefficiencies of Parliament. A year after the elections, the proliferation of "center-oriented
parties" gradually reappeared within Parliament. Various deputies from the three parliamentary groups initially declared themselves independent and then started establishing organizational structures for their own "independent" parties. The first and the most deeply affected was the loosest coalition, the UDP with 29 defectors. It was much more difficult to secede from the BSP (four defectors at present) or from the MRF (five defectors) because of strict party discipline and/or ethnic identification. The basic result of this "restructuring of Parliament" was not merely that UDF was ousted from power and that the BSP actively supported the new cabinet, but that an "expert cabinet formula" was adopted for the executive. A consensus in the need for pre-term general elections also merged.

In assessing East European electoral laws, it is essential to consider the delicate balance between maximizing representation of divergent social interests and preventing unproductive party proliferation. Two contrary dangers—a high percentage of non-utilized votes and an overly fragmented parliament—have to be avoided by a careful crafting of electoral rules. But the last Bulgarian general elections and the experience of the current Parliament strongly suggest that electoral law cannot always fend off these twin dangers. Rules do not suffice to rationalize the outcomes of elections and establish interest representation and effective government. Rational actors (politicians) have to exist as well. It might be argued that an unstable party system is typical for the early phases of political democratization, but this cannot explain why, once elected to Parliament, postcommunist politicians tend to interpret democracy as the right to secede capriciously from their party and even to "privatize" their office. No democratic representation of interests can exist without clear and robust party loyalties. The rationality of Bulgarian politicians resembles the rationality of an insane chess player whose strategy is to win by promoting all available pawns into queens—in this case, by converting every faction into a party of its own.

**Romania**

*Elena Stefoi*

Elections to Parliament and the presidency in Romania are regulated by two laws that were drafted, debated and passed by Parliament according to the provisions of the new constitution adopted by referendum on November 21, 1991. Laws 68 and 69 came into force on July 15, 1992, corroborating in broad outline Executive Order No. 92/1990 issued by the Interim Council for National Union. For the first free elections after Ceausescu's fall, which took place on May 20, 1990, the new ruling body favored the admission of as many parties as possible to Parliament. The National Salvation Front (NSF), assured of its own political power, was trying to take precautions against winning an excessive and self-discrediting majority. The lack of a democratic response from the electorate, the weak organization of the newly formed parties and the huge popularity of the revolutionary nucleus that had assumed all responsibility for the dissolution of the communist structures guaranteed a smashing victory for the group led by Ion Iliescu. Yet, in order to adopt a new constitution and to convince Western chancelleries of the irreversibility of the turn to a multi-party system, it was first of all necessary to create a parliament with a viable and visible opposition. Therefore, Executive Order No. 92 reflects the governing party's desire to provide their political competitors with an opportunity to obtain at least one-third of the seats in Parliament. The executive order establishes the principle of proportional representation without any electoral restrictions. As a result, all parties that stood for elections and had a sufficient number of supporters in a single constituency reached Parliament. In the time between the poll of May 20 and the adoption of the constitution, the political capital of the majority party and its satellites was wasting away. The draft of the electoral law submitted by the executive for parliamentary discussions reflects an entirely different state of mind than that which characterized the interim government period: the fear of not winning an absolute majority was gradually replaced by the fear of losing everything. Reflecting this new anxiety, the draft of the electoral
law revealed a complete loss of interest in the fate of small parties. It created instead an electoral system that guaranteed the success of the strongest political groupings. This time the draft observed the principle of seat allotment to territorial-administrative units using a five percent electoral threshold. All four parties composing the government at that time participated in the elaboration of the draft: the National Salvation Front, the National Liberal Party, the Romanian Agrarian Democrats Party and the Ecologist Movement. On the other hand, the opposition formed a coalition of its own, called the Democratic Convention, and scored significantly in the local elections. It too was deeply interested in promoting an electoral law designed to diminish the chances of small political groups, all the more so as the number of parties officially registered was increasing by the day. At first, it seemed a mere formality for the electoral law to be passed by Parliament. Lack of knowledge and legislative inexperience on the part of deputies and senators accounted for all the delays.

Gradually, both sides underwent a spectacular volte-face. This reversal of views was triggered by the evolution of the relationship between Prime Minister Petre Roman and President Iliescu on the one hand and a schism in the opposition on the other. The recall of Roman's government and the split of the ex-NSF into two distinct and rival groups had direct repercussions on the debates over the electoral law, as none of the factions had a clear sense of its electorate. Moreover the National Liberal party walked out of the Democratic Convention after the new generation of liberals revolted against the leadership, consisting exclusively of former political prisoners, and formed the Liberal Party-Young Wing. The legislative process was therefore undermined by schisms and intraparty quarrels. As none of the political groups felt particularly strong, they all agreed to sacrifice the initial draft of the electoral law, eventually replacing it with one of a quite different hue. Entirely abandoned was the initial system that has favored the most important parties and implicitly guarantees the creation of a functioning Parliament in which the main political alternatives were represented.

The principle of proportional representation, based on Executive Order no. 92, was observed again, while the electoral threshold was lowered from the initial five percent to three percent. This solution, favoring small parties, opened the floodgates to political fragmentation and parliamentary instability.

Giving up the initial draft of the electoral law in the face of turmoil and political insecurity meant delaying the elections. Initially, the ruling powers supported the idea of organizing an election in the spring of 1992, while the opposition concentrated its efforts on obtaining a delay of presidential elections vis-à-vis parliamentary elections. In order to force the organization of separate presidential elections, the Democratic Convention did its best to block the adoption of the relevant law. The representatives of the parliamentary majority countered this tactic by putting off the vote on the law for parliamentary elections. This mutual blackmail continued for a time, but eventually both sides gave up their own demands for fear of violating certain constitutional provisions. According to Art. 80, para. 2 of the constitution, elections were to take place within one year of its ratification. Preparation and running of the electoral campaign implied a preliminary clarification as far as the parties were concerned. The political group of President Iliescu (the present Social Democracy Party of Romania, initially the National Salvation Front) became legal only after the electoral law was passed. The problems facing the opposition were no less weighty. It took endless discussions to reach common ground regarding the way to draw up the electoral lists of the Democratic Convention and to designate a candidate for the presidency. The price paid was the creation of new source of internal tension. Every minor quarrel turned into a political argument for endlessly prolonging the disputes over the electoral law. The delay in passing the law until midsummer 1992 had two consequences: the election was delayed until the fall and the simultaneity of presidential and parliamentary elections became compulsory.

The negative effects of this fragmentation-fostering electoral law, supported by parties which considered themselves defeated beforehand,
became obvious immediately after the results of the September 27, 1992 elections became known. A few parties, with only narrow electoral bases and extremely virulent, even ultranationalist views reached Parliament. Moreover, the possibility of forming a coalition depended upon these small groups, as no party obtained the required majority for governing. Political instability, parliamentary obstruction, increasing tension between the president and the legislature, as well as between the parliamentary majority and their parliamentary allies, resulted from the choice of an electoral law which makes political polarization, or a clear choice between government and opposition, impossible. As a consequence, the confidence of the public in the parliamentary system is diminishing.

Law Nos. 68/1992 and 69/1992 do not introduce essential alterations in Executive Order No. 92/1990. The electoral bureaus comprise magistrates and representatives of the political parties, and constituencies are organized on a territorial-administrative level. Each national minority has the right to a seat in the Chamber of Deputies in case they took part in the elections but did not obtain for its lists the required number of votes. The thirteen ethnic minorities admitted by designation to the Chamber of Deputies form a separate parliamentary group. The Hungarian minority, the only ethnic minority in Romania actually to win seats for senators and deputies on their own lists, also forms a separate parliamentary group. The Jewish minority in Romania did not participate in the elections and therefore did not obtain a seat by designation.

The innovations of the electoral law, mainly those touching the chapter on “returning of votes in the constituencies,” aggravate the problem of political fragmentation. Executive Order No. 92/1990 stipulates that the unused votes in one of the territorial-administrative units should be allotted to parties having the widest representation, that is, to the larger groups. According to the new law, votes that remain unused on the list of a certain party or coalition are gathered on a nationwide level and the Central Electoral Bureau distributes them among political groups, depending on the total number of votes obtained. This redistribution of the remaining votes is constitutionally endorsed. The re-allotment stipulated in the former executive order led to an overrepresentation of certain territorial-administrative units, thereby violating the principle of one-person-one-vote. The re-allotment introduced on a nationwide level, led to a political paradox: by the reassignment of unused votes, a party with a small representation in a territorial-administrative unit receives one or several seats from a constituency where it has no electorate at all. The contradiction between lack of real representation in the locality and a number of seats obtained in Parliament muddies the relationship between parliamentarians and the electorate.

By spirit and letter, the electoral law in force today does not deviate from democratic rules, as international observers are bound to admit. Yet, in practice, during the electoral campaign and immediately after counting the votes, it became obvious that the law left room to different interpretations, thus generating serious discontent. According to the opposition parties, the fact that disputes are settled by the Central Electoral Bureau, and not in court, diminishes the chance of objective verdicts. The ruling powers, in turn, state that the staff of the Electoral Bureau of the constituencies should be chosen from the local administration instead of being designated by magistrates and members of political parties. According to the parties in the Democratic Convention, Iliescu should not have entered the elections on the Senate lists of the present governing party. The Constitutional Court, however, rejected this claim, invoking Art. 34, para. 31 of the electoral law, which allows a simultaneous candidature. The president’s opponents have contested the validity of this decision, basing their argument on the fact that, according to the constitution, the chief of state should not belong to any party. Those contesting the candidacy have in mind the president in office while its defenders support the rights of plain citizen Iliescu. Another cause of discontent was the huge number of invalidated ballots, approximately three million, which in the opinion of the opposition bespeaks electoral fraud. The Central Electoral Bureau ordered a rechecking of the canceled ballots and one-third were declared valid after being
reviewed. Yet the election results were not altered thereby, and thus the authorities rejected all claims of fraud. The Central Electoral Bureau released a statement explaining the surprising number of invalidated ballots by an excessive proliferation of parties and the electorate’s ignorance of the law, as well by the fact that many citizens intended to express their disagreement with all political groups by applying the stamp several times to the ballot papers. Members of Petre Roman’s party state that, on a local level, a second stamp was applied to ballots initially cast for the opposition, and thus votes not favoring Iliescu’s side were conveniently canceled. Still, a thorough and detailed investigation of the canceled ballot papers was never made and therefore it is not known which groups were more disadvantaged by the multiple stamp “method.” The violation of a provision of the law referring to the permanent lists as well as the issuing of voters’ cards motivated by the lack of time and technical equipment, kept alive the suspicions of the opposition. From a strictly legal standpoint, due to a lack of hard evidence, none of the contested actions fell clearly into the category of electoral fraud.

A year and a half after the elections, the electoral law on the election to the Chamber of Deputies and the Senate has been brought forward for discussion by the governing party for the first time. Not long ago, the executive president of the ruling party, the ex-minister of foreign affairs, Adrian Nastase, stated that he favored a change in the law, to streamline the party system and thereby elect a functioning parliament. The president, in turn, expressed reservations about the bicameral system, considering it a hindrance to the legislative process, one which weighs heavily upon the shoulders of the present cabinet. Greatly outnumbered after the nationalist and ultranationalist parties reached Parliament, the opposition asks more and more urgently for a referendum on the form of governing, although the holding of a referendum presupposes an alteration in the constitution. Organic laws on referenda and on party organizations have not been passed by legislature so far, though the constitution stipulates that their adoption is compulsory. The only referendum since 1989 regarded the constitution, and was considered by the ruling powers to signal an implicit approval by the people of a presidential republic. During the debates with the International Monetary Fund, certain journalists and left-wing leaders asked Iliescu to initiate a consultative referendum regarding agreements concluded with the IMF. According to the constitution, the president may take such a step only after consulting Parliament, lest the ostensibly consultative vote should degenerate in a binding plebiscite. Neither the majority party nor the opposition took this solution seriously.

The majority and minority in Parliament regard the shortcomings of the electoral law from completely different standpoints and, therefore, their dissatisfaction are differently motivated. The way electoral observers were accredited and the way broadcast time was allotted on national television during the electoral campaign are minor matters for the ruling party and the same is true of the debates concerning who should monitor the legality of the elections and how. But the opposition lays stress on precisely these aspects of the problem, refusing to admit that another system (be it based upon two poll lists, uninominal lists or on the majoritarian system) might solve the problem of the parliamentary balance of power. For all their differences, both sides now urge the creation of a permanent electoral regime, having its own logic and independent, it would seem, of all political parties.

Krenar Loloci is Professor of Law at Tirana University; Rumyana Kolarova and Dimitr Dimitrov are professors at Sofia University and Elena Stefoi is editor-in-chief of Dilemma Review, Bucharest, and press correspondent for Radio France International in Bucharest.
Making Sense of the Russian Elections

Inga Mikhailovskaia and Evgenii Kuzminskii

It is difficult to describe and impossible to understand the results of the December elections to the State Duma without taking the new electoral system into account. The place to start is with the Regulations on elections of deputies to the State Duma in 1993, approved by Yeltsin's ukaz of October 1, 1993.

Previous electoral procedures were radically altered in four ways. First, a mixed proportional/plurality system of representation in the lower chamber of the Russian Parliament, the Federal Assembly, replaced a purely majoritarian system of representation. Half the deputies were elected on the basis of a system of proportional representation in one federation-wide electoral district (Art. 3 of the Regulations). In accord with the regulations, nominations to the State Duma from the federation-wide electoral district may be put forward by "electoral associations" (Art. 5, para. 1). Such associations include federal parties, federal political movements registered with the ministry of justice, or a bloc of associations formed for the electoral period (Art. 5, para. 2). A bloc may include not only political parties and movements, but other federal public associations so long as their statutes allow them to participate in federal legislative elections.

Second, in accord with Art. 23, para. 3 of the Regulations, an electoral association can nominate candidates who are not presently members of these political parties and the public associations which comprise it. The consequence of this rule, on December 12, was that almost half the deputies (48 percent) elected on the basis of the proportional system were not members of the electoral associations that nominated them (Table 1).*

Third, an electoral association registering a federation-wide list of candidates (100 thousand signatures by electors from different regions are required, and signatures collected in a single region

Table 1*

<table>
<thead>
<tr>
<th>Party or Bloc</th>
<th>Deputies Elected</th>
<th>Of Those Elected:</th>
<th>Total Registered as Members of Parties, Movements and Associations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Total Registered as</td>
<td>Non-Party Members</td>
</tr>
<tr>
<td>Agrarian Party of Russia</td>
<td>21</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Yavlinskii-Boldirev-Lukin</td>
<td>20</td>
<td>15**</td>
<td>5</td>
</tr>
<tr>
<td>Russia's Choice</td>
<td>40</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Democratic Party</td>
<td>14</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Communist Party</td>
<td>32</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Liberal Democratic Party</td>
<td>59</td>
<td>24</td>
<td>2</td>
</tr>
<tr>
<td>Party of Russian Unity and Accord</td>
<td>18</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Women of Russia</td>
<td>21</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>225</td>
<td>69</td>
<td>10</td>
</tr>
</tbody>
</table>

* The data is from the list of deputies to the State Duma of the Federal Assembly of the Russian Federation, published in Rossiiskaia Gazeta, December 28, 1993.

** Party membership of the deputies is not quite clear from the official list. Thus, deputies representing the Yavlinskii-Boldirev-Lukin bloc (Yabloko) are listed as non-party members while deputies representing Russia's Choice are listed as members of their party.
cannot make up more than 15 percent of the total number) can nominate candidates in single-member electoral districts (districts where elections are held on the basis of a plurality system, Art. 24, para. 1). A candidate nominated for the federation-wide election can also be nominated in a single-member electoral district (Art. 25, para. 5 of the Regulations). If this candidate does not win in the single-member district, he can be elected deputy on the basis of a party list. Thus, according to the data of V. V. Vinogradov, deputy to the State Duma (the Union of December 12), out of 225 deputies elected to the Duma in the federation-wide electoral district, 66 deputies (29 percent) lost their electoral bid in single-member districts (29 from the Liberal Democratic Party, 13 from the Communist Party of Russia, 9 from Russia’s Choice, 5 from the Women of Russia, 4 from the Agrarian Party, 3 from The Party of Russian Unity and Accord, 2 from the Democratic Party of Russia, 1 from the Yavlinskii-Boldirev-Lukin bloc).

Fourth, the procedure for determining which candidate won the elections in single-member electoral districts was radically changed. In accord with Art. 39, para. 2 of the Regulations, a candidate who “receives the greatest number of valid votes” is to be declared the winner. At the same time, elections are valid if at least 25 percent of registered voters participate (Art. 35, para. 3). Another condition must also be met. The number of votes cast against all candidates must not exceed the number of votes cast in favor of the candidate winning a plurality of votes.

Once we have grasped the peculiarities of the 1993 regulations, data concerning the number of deputies nominated by those parties and blocs whose representatives were elected in the federation-wide electoral district and in single-member electoral districts becomes of considerable interest (Table 2).

### Table 2

<table>
<thead>
<tr>
<th>Party or Bloc</th>
<th>Deputies Elected From the Federation-Wide Electoral District</th>
<th>Number of Deputies Elected From Single-Member Electoral Districts Who Were Nominated by an Electoral Association</th>
<th>Total Elected</th>
<th>As a Percent of all Deputies Elected to the State Duma</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agrarian Party</td>
<td>21</td>
<td>12</td>
<td>33</td>
<td>7.4</td>
</tr>
<tr>
<td>Yavlinski-Boldirev-Lukin</td>
<td>20</td>
<td>2</td>
<td>22</td>
<td>4.9</td>
</tr>
<tr>
<td>Russia’s Choice</td>
<td>40</td>
<td>27</td>
<td>67</td>
<td>15.0</td>
</tr>
<tr>
<td>Democratic Party</td>
<td>14</td>
<td>1</td>
<td>15</td>
<td>3.3</td>
</tr>
<tr>
<td>Communist Party</td>
<td>32</td>
<td>15</td>
<td>47</td>
<td>10.8</td>
</tr>
<tr>
<td>Liberal Democratic Party</td>
<td>59</td>
<td>5</td>
<td>64</td>
<td>14.4</td>
</tr>
<tr>
<td>Party of Russian Unity and Accord</td>
<td>18</td>
<td>1</td>
<td>19</td>
<td>4.2</td>
</tr>
<tr>
<td>Women of Russia</td>
<td>21</td>
<td>2</td>
<td>23</td>
<td>5.1</td>
</tr>
<tr>
<td>Total</td>
<td>225</td>
<td>65</td>
<td>290</td>
<td>65.1</td>
</tr>
</tbody>
</table>

**Implications of the data**

Almost a third of the deputies (27.9 percent) claimed no membership in any political party or movement, and thereby denied allegiance to any platform or program of action. Thus, no political mandate or electoral commitment constrains their activities in the Duma.

Because parties and blocs represented in the Duma are numerous and their relative importance is trifling, stable and ad hoc alliances,
unions, compromises, and backstage agreements are inevitable.

The absence of genuine party discipline, at least in the democratically oriented parties and movements, makes it harder to predict the degree of internal party (or bloc) consolidation. Unlike the communist parties (the CPR and the Agrarian Parties) and the nationalist LDP, Russia’s Choice and the Yavlinskii-Boldirev-Lukin bloc seem able to act in unison only in extremis.

Among deputies without official party affiliation, many are well-known for their political orientations. We can therefore suppose that the reformist and anti-reformist stance of deputies will continue to serve as the decisive dimension on which political polarization will occur.

Variation within the official party spectrum in the Duma is enhanced by the process whereby deputies without party affiliation form their own groups (Union of December 12, New Regional Policy). It is therefore premature to speak of a clearly delineated political landscape in the lower chamber of the Federal Assembly.

Finally, changes in the electoral system have further weakened the already ephemeral connection between voters and deputies, even permitting those who lost the elections to enjoy equal status with those who won.

Was it possible to predict the results of the December vote? In order to answer this question let us turn to the results of sociological polls carried out in September, October, and November of 1993. During this entire period, only 25 to 30 percent of those polled had a stable political orientation leading them to identify with a particular party. In September, before the October events, 78.9 percent of respondents displayed no interest in any political party or movement. In October, the population became more politicized as it started gearing up for the announced elections. Even then, 42.2 percent of those polled were not interested in political parties. In November, the percentage of those displaying indifference toward politics in general dropped to 38 percent. Out of those respondents who expressed political sympathies of some sort, 30 percent emphasized the individual qualities of the leaders, 20 percent emphasized political programs, and 41 percent found it difficult to explain why they preferred one political party or movement to another.

These pre-election polls also revealed that the desire to have “order,” even at the expense of freedom, still drives a considerable part of the population, namely those who see no acceptable mode of existence other than the uravnilovka or egalitarian distribution system. The state served as a source of “nourishment” for many and, for them, statehood appears as a unifying, even rescuing concept. It often assumes the guise of nationalism.

Mystification of the concept of statehood in mass consciousness generates a mythological form of ideology. Hence, the seeming irrationality of Russian voters. Their electoral behavior can neither be explained nor predicted scientifically. These observations allow us to interpret Zhirinovsky’s success. (Under the existing electoral rules, he alone secured 60 out of the 64 seats in the Duma for his party). According to the October poll, 64 percent of respondents said that they would never vote in favor of Zhirinovsky and 20 percent had not yet made up their minds, and on December 12, Zhirinovsky’s LDP won 24 percent of the votes in the PR half of the election.

We will be in no better position to explain the mercurial behavior of the Russian electorate when we compare voter expectations with the slogans and promises put forward by various parties, blocs and movements during the campaign.

Results of a poll conducted in September 1993, revealed that, in the population’s systems of values, the following are the most important: family (60 percent), health (63 percent), a good standard of living (52 percent). Thus, most people are oriented toward private values, with social and political values playing a much less prominent role. And citizens expect authorities to safeguard their priorities. The October poll revealed the population’s expectations regarding their new rulers. Responses to the question,
“What is the most important and immediate thing that the officials you elect should do?” generated the following distribution:

- Lower the crime level: 84%
- End inflation: 82%
- Prevent the break-up of Russia: 74%
- Stop the price rise: 74%
- Fight corruption: 71%
- Secure human rights: 70%
- Strengthen economic ties between Russia and the former republics of the USSR: 65%
- Restore the international prestige of Russia: 63%
- Strengthen discipline, restore order: 62%
- Raise earnings: 58%
- Support culture: 58%
- Support the army: 54%
- Protect Russians in the former republics: 52%

These data show that over half the population expects their lives and security, their economic status and national pride to be effectively protected. During his campaign, Zhirinovsky gave definitive explanations of, and proposed simple solutions to, all these problems, and every elector who voted for him (one out of seven) believed that his harebrained schemes could be carried out.

Given the high degree of political polarization in society, especially after the October events, the numerous electoral blocs that sprang up before the elections introduced considerable confusion in people’s minds. In situations of mass disorientation, the distribution of support for one or another party or bloc among the population is likely to be random. But if we compare the results of polls conducted in September, October and November of 1993 with the elections results, we can observe the following well-defined tendencies (Table 3).

From this table, it is clear that hardline anti-reformist parties (the Communist Party, the Agrarian Party and, especially, the Liberal Democratic Party) won substantially more votes than we could have predicted from the polls. Women of Russia too, won surprisingly many votes. Since democratic parties did not lose their core supporters, the claim that electoral support was redistributed and that voters turned away from the democrats is unsubstantiated. Those without any well-defined political position and who did not know whom to support were the ones who handed victory to the opposition. Zhirinovsky with his extremist demagoguery, comprehensible to the politically undereducated, with his irresponsible promises which many find

<table>
<thead>
<tr>
<th>Party or Bloc</th>
<th>September</th>
<th>October</th>
<th>November</th>
<th>Election Results in Federation-Wide District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agrarian Party</td>
<td>-</td>
<td>-</td>
<td>2.7</td>
<td>9.3</td>
</tr>
<tr>
<td>Yavlinskii-Boldirev-Lukin</td>
<td>4.6</td>
<td>3.7</td>
<td>5.4</td>
<td>14.2</td>
</tr>
<tr>
<td>Russia’s Choice</td>
<td>9.7</td>
<td>12.6</td>
<td>14.1</td>
<td>17.8</td>
</tr>
<tr>
<td>Democratic Party</td>
<td>9.7</td>
<td>7.05.16.2</td>
<td>4.8</td>
<td>26.2</td>
</tr>
<tr>
<td>Communist Party</td>
<td>-</td>
<td>-</td>
<td>3.0</td>
<td>8.0</td>
</tr>
<tr>
<td>Liberal Democratic Party</td>
<td>-</td>
<td>5.5</td>
<td>4.8</td>
<td>26.2</td>
</tr>
<tr>
<td>Unity and Accord</td>
<td>9.7</td>
<td>-</td>
<td>2.7</td>
<td>9.3</td>
</tr>
<tr>
<td>Women of Russia</td>
<td>-</td>
<td>-</td>
<td>2.7</td>
<td>9.3</td>
</tr>
</tbody>
</table>
appealing, made the boloto (swamp) turn to him and to other anti-reformers.

What caused this disappointing turn? What factors determined it?

While we do not claim that our list is complete, we would like to point to at least some factors, both global and local, general and specific.

Property relations in Russia are not yet developed. Backwardness in this all-important area not only causes society to "atomize" and impedes the development of its social structure, but also prevents people from understanding what their true interests are. When combined with a mythologized consciousness, this structurally-induced unclarity about interests induces instability in the system of values and priorities which, under present circumstances, creates inconsistencies between words and actions.

Part of the population is unable to adapt to the new living conditions, which require new forms of economic and professional behavior, and refuses to admit it. This failure to adapt generates, as a defensive gesture, a highly unrealistic image of the beautiful past. Electoral associations attuned to such dispositions need not ensure that their programs (if any) and slogans are logical and well grounded in order for some voters to embrace them, consciously or subconsciously.

Without property or power, many people who marched to the polls to drop into a box a sheet of paper with an unknown name have yet to realize the importance of this form of political participation. The outburst of political activity in 1990 and 1991 was more emotional than rational, at least in the sense that people's desire to rid themselves of the existing political regime prevailed over any clear picture of the kind of society they wished to establish. Hostility to the old system has combined with high expectations of rapid and radical changes for the better that would take place in all spheres of life. As it turned out, people were not psychologically prepared for the hardships of the post-totalitarian period, and the shock deprived them of all illusions regarding the new power-wielders. Here we should mention one historical peculiarity of the Russian intelligentsia, the most politicized and socially active part of the population. After becoming free, a substantial number of intellectuals saw opposing power as their sole responsibility. Their readiness and ability to act "against" government is far greater than their ability and readiness to act in support of government.

Reformers paid a high price for their attempt to build a multi-party system by means of bold but poorly conceived experiments in electoral law. Parties had no well-formed branch organizations, and national parties did not speak for or to specific social classes. This lack of constituency specialization meant that there was no realistic hope of forming a multi-party system from the top down. For this reason, the privileges which the Regulations on the elections granted to electoral associations increased the unpredictability of the results. Changes in campaign strategies also contributed to this unpredictability. Wooden monologues by leaders of various parties and movements on topics of their own choice replaced public give-and-take between party representatives. Since a great number of people still respond more warmly to leaders than to programs, this new campaign tactic gave a palpable advantage to those whose voices were louder and who appeared most winningly on television.

There are good reasons to believe that democratic blocs and parties entering the elections did not have, or did not consider carefully, correct information about the dynamics of voter sympathies and attitudes. Thus, on the eve of the elections, some groups supporting Russia's Choice had in their hands the following data from polls conducted by the Foundation "Public Opinion" on December 5, 1993 (Table 4).

That respectable leaders had faith in data reflecting favorably on democratic electoral associations is strongly suggested by the notorious political television marathon of December 12-13. Democrats, expecting to win easily, experienced a huge shock before the eyes of their viewers, and pro-reform voters who failed to go to the polls, assuming that communists and nationalists would not enjoy mass support, were presumably equally surprised.

Conclusions
In Russia today, political activity, including elections to the highest legislative body, cannot significantly affect relations between the two opposing political forces, the
proponents and opponents of reform. Using Gaidar’s terminology, the anti-reform group is made up of a parasitic bourgeoisie, symbiotic with a corrupt bureaucracy and political elite. The pro-reform group is much harder to define. Reform draws support from people with various social profiles, some belonging to the power structure and some far removed from it. (See the article by Mikhailovskaia in EECR, Vol. 2, No. 4, 1993/Vol. 3, No. 1, 1994.)

Lack of organizational structure among the pro-reform forces weakens their position strategically. Today the most pressing need is to form a political party that can unify the scattered efforts of those supporting a free society. Such a forum party, pulling together all those who favor reform, could canalize personal ambitions and provide clear procedures for settling internal disputes.

Despite all their errors, misfortunes and weak organization, reformist forces are “blessed” in one sense. It is objectively impossible to restore the old totalitarian system, and those anti-reformist forces who belong to the establishment, profit from inflation, and uninhibitedly use their office for illegal gain also dread economic and political chaos.

Given the current Russian situation, even such important political events as elections to the highest legislative body of the country cannot transform relations between property owners and power-wielders. As a result, elections are of limited significance if we consider the practical changes they bring about. Before new property relations arise and solidify on a massive scale, election results, or even a coup d’état, can only slow down or speed up, but never halt, the unstoppable processes of post-totalitarian change.

Evgenii Kuzminskii is Director, Laboratory of Social Studies, Research Institute, Ministry of the Interior of the Russian Federation. Inga Mikhailovskaia is Professor and Board Member, the Russian-American Human Rights Group (non-government).
# Table of Twelve Electoral Laws

**Christian Lucky**

The following table outlines the laws and constitutional provisions governing the most recent elections to twelve East European legislative bodies. In countries with bicameral legislatures, the electoral regime of the lower house alone has been described.

Twenty questions are asked of the laws and constitutions in the region in order to generate the analytic categories that comprise the matrix of the chart. The category entries are selective summaries. All of the laws contain numerous technical provisions that are beyond the scope of this comparative analysis.

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| Number Of Seats In Assembly | 101 Members §6(3), Const. §60 | 368 Members §20(1) | 100 Members §§5, 10 |

| Turnout Requirements | Seats Shall Be Distributed To The Electoral Districts In Accordance With The Number Of Citizens Entitled To Vote §6(3) | Population Of Each District Is Roughly 60,000, Entire Area Of Local Government Within One District Where Possible. Ethnic, Religious, Historical And Other Local Genuinity Shall Be Taken Into Account Where Possible Appendix I, §4(3); Territorial District To Correspond To The Territory Of The Capital And The County Respectively, App. I §7 | Seats Are Accorded Each District Based On The Number Of Voters In The District §17, Const. §7 |

| Principles Governing Districting And Prescient Boundaries | Estonia Election Committee §6(4) | Parliament | Central Election Committee §17 |

| Districting Authority | All Citizens At Least 18 Years Old §1(1): Disqualified: Those Declared Incapable By A Court Of Law. Those In Prison May Not Vote §2(4), Const. §§57, 58 | Citizens Of Majority Age §2(1): Disqualified: Persons Incarcerated, Judicially Prohibited From Public Service Or Judicially Declared Incompetent §2(2), Const. §70(2) | All Citizens At Least 18 Years Old §1; Disqualified: Persons Serving Sentences. Detained. Accused Or Charged If Imprisonment Is Considered A Security Measure §3, Const. §8; Persons Declared Incapitated According To Legal Procedures §2 |

| Franchise Requirements | Parties May Be Freely Founded Provided They Show Respect For The Constitution And the Statutes Of Constitutional Law §3(1) | }
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| List Requirements For Parties And Coalitions | Parties May Present Candidates On A Single List Only §20(1); Each Candidate May Only Be Nominated In One Territorial District; National Lists May Only Include Those Candidates Who Have Been Presented In The Territorial Electoral Districts §20(1) | Only Parties That Have Nominated Candidates In A Territorial Electoral District May Forward A List In That District §5(3); National Lists May Be Forwarded By Parties That Have Lists In At Least Seven Territorial Districts §5(4) | Any Citizen Can Be Nominated To A List Even If The Candidate Does Not Live In The Region $21$; Candidates May Appear On Several District Lists Of The Same Title, But Not On Lists Of Different Titles §19; 100 Voter Signatures |

| Deposit Requirements For Candidates, Parties and Coalitions | Persons Submitting Candidates Or Lists Shall Transfer As Security Payment One-Half Of The Monthly Salary Of A Member Of The Riigikogu Per Candidate Nominated; Security Returned If Candidate Receives Votes Equalling At Least Half Of Simple Quota §20(4) | All Candidate Lists Must Be Backed By A Security Deposit Of Fifty Average Monthly Salaries. If At Least One Candidate From The List Is Elected In Any District. The Deposit Is Returned §17 |

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| Thresholds | 4% Nationally | Lower Tier: 5% Nationwide For Parties, 8% Nationwide For Coalitions; Upper Tier: 7% Nationwide | 3% Nationally |

| Number Of Seats In Assembly | 141 Members | 460 Members | 387 Members Plus National Minority Seats |

| Turn-Out Requirements | Forty-Percent Of All Registered Voters In A District Must Cast Ballots. By-Elections Are Held If Not Met §75: One-Quarter Of All Registered Voters Must Vote In National District §76 | | At Least Half Of The Electorate In A District Must Vote For Elections To Be Valid In That District §70 |

| Principles Governing Districting | Number Of Inhabitants In Districts May Not Differ By More Than Twenty-Five Percent §9 | Number Of Seats Per District Shall Range From 3 To 17 Depending On The Population Of The District §45 | Seats Shall Be Distributed Among Districts According To The Representation Quota Obtain By Dividing The National Population By 387; A Deviation Of 15% Is Allowed In Relation To The Size Of Electoral Constituency §14 |

| Districting Authority | Central Election Committee §8 | The National Electoral Commission §12 | The Number Of Deputies That May Be Elected In Each Electoral Constituency Will Be Established By The Government §14 |

| Franchise Requirements | All Citizens At Least 18 Years Old. Disqualified: Persons Who Are Declared Incapable §2, Const. §34 | All Citizens At Least 18 Years Old: Disqualified: Persons Deemed By A Court Mentally Incapacitated, Persons Whose Public Rights Have Been Denied By A Court Ruling, Or Persons Denied The Right To Vote By Tribunal of State Ruling §§12, 13; Const. §§95, 99 | All Citizens At Least Eighteen Years Old §9. Disqualified: Mentally Incompetent And Imprisoned Const. §34(1) |

<p>| Party Formation | May Freely Form Political Parties Provided That Do Not Contradict The Constitution And Laws Const. 35 | Parties Who Threaten The Social And Political System Or The Legal Order Shall Be Prohibited Const. §84(2) | Political Parties Must Respect The National Sovereignty, Territorial Integrity, The Rule Of Law And The Principles Of Democracy §8(2) |</p>
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<td>Parties May Propose One List In Each District And One National List §78; A List Must Have The Support Of 3000 Citizens Of The District §79; Once A List Has Been Nominated In Half Of The Districts In Poland, It May Be Nominated In Other Districts Without Citizen Signatures §79; Signature Requirements Do Not Apply To Lists Who Have Formed A Caucus Of At Least Fifteen Deputies §79; Each List Must Have At Least Three Candidates §79; A Citizen May Nominate More Than One List §88; National Lists May Be Nominated By Parties That Have Nominated Lists In At Least Half The Districts In Poland §91: A National List Must Include At Least 69 Candidates §91</td>
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<td>During The Campaign All Candidates, Parties, Social Organizations And Citizens Are Entitled To Express Their Views Freely And Without Any Discrimination Through Meetings, Television, Radio, Press and Other Mass Media $50; Access To Radio And Television Is Guaranteed And Free Of Payment $51</td>
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Focus: Hate Speech Jurisprudence in the United States and Hungary

Hate Speech and the U.S. Constitution

Geoffrey R. Stone

One of the most difficult issues in working out a system of free expression arises out of the need to reconcile a society’s often competing commitments to freedom of speech and individual dignity. This conflict is posed most poignantly in the context of libel, group defamation and hate speech. To what extent must a society, to be true to its commitment to free expression, tolerate speech that deliberately insults and degrades a group or individual on the basis of race, religion, gender or ethnic origin? On what theory does the right to free expression embrace the right to engage in individual or group defamation? On the other hand, to what extent may a society, in furtherance of its commitment to individual dignity, censor unpleasant racist or sexist or homophobic speech merely because it offends, or even deeply offends, particular groups or individuals? Can this possibly be a principled basis on which to censor ideas and opinions in a society committed to open public debate? For the past fifty years, the United States Supreme Court has wrestled with these questions. While at first the Supreme Court hinted at the possibility that some regulation of group defamation and hate speech would be constitutional, the Court has now quite firmly concluded that such regulation would most likely be unconstitutional.

The history of libel, group defamation and hate speech regulation in American constitutional law begins with the Supreme Court’s 1942 decision in Chaplinsky v. New Hampshire, 315 U.S. 568 (1942), in which the Court announced that some categories of speech are of only “low” First Amendment value and are thus accorded less than full constitutional protection:

“There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or “fighting” words. . . . It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.”

The significance of this passage is that whereas the Supreme Court views laws restricting most forms of expression—for example, a law prohibiting the advocacy of communism—as presumptively unconstitutional and sustainable only on a showing that the restriction is necessary to prevent a clear and present danger of some very serious evil (a standard the Government almost never can meet), the Court views laws restricting “low” value speech as presumptively constitutional and will sustain such restrictions on a showing of mere “reasonableness.”

Less than a decade after Chaplinsky, the Court confronted the issue of group defamation in Beauharnais v. Illinois, 343 U.S. 250 (1952). Beauharnais, the president of the White Circle League, organized the distribution of a leaflet calling on the city council of Chicago “to halt the further encroachment, harassment and invasion of white people, their property, neighborhoods and persons, by the Negro.” The leaflet called upon the “white people in Chicago to unite,” and added that “If persuasion and the need to prevent the white race from becoming mongrelized by the Negro will not unite us, then the aggressions [rapes], robberies, knives, guns and marijuana of the Negro surely will.”

As a result of his participation in the distribution of this leaflet, Beauharnais was convicted under an Illinois statute declaring it unlawful for any person to distribute any publication which “portrays depravity, criminality, unchastity or lack of sobriety.”
of virtue of a class of citizens, of any race, color, creed or religion” or subjects them “to contempt, derision, or obloquy.”

In a five-to-four decision, the Supreme Court upheld the conviction. Relying on Chaplinsky, the Court explained that, because “libelous utterances [are not] within the area of constitutionally protected speech,” it was irrelevant that Beauharnais’ speech did not create a clear and present danger of any serious harm. It was enough, the Court said, that this was not a “purposeless restriction unrelated to the peace and well-being of the State.” Pointing to the history of racial conflict in Illinois, the Court observed that “we would deny experience to say that the Illinois legislature was without reason in seeking ways to curb false or malicious defamation of racial and religious groups.” In response to Beauharnais’ argument that he should at least have been permitted the defense of truth, the Court concluded that the State could constitutionally prohibit group defamation without regard to the truth or falsity of the statements if the defendant did not act “with good motives and for justifiable ends.”

Although Beauharnais seemed a landmark decision that would significantly affect the Supreme Court’s interpretation of the First Amendment for years to come, in fact it has never been cited approvingly by the Supreme Court and, for all practical purposes, has been de facto overruled. The beginning of the end for Beauharnais was New York Times v. Sullivan, 376 U.S. 254 (1964). Sullivan, an elected official in the city of Montgomery, Alabama, brought a civil libel action against the New York Times alleging that the Times had published several statements that inaccurately described his involvement in suppressing a demonstration by black students who were protesting racial segregation. Upon finding the statements to be false, the jury returned a verdict for Sullivan in the amount of $500,000. The Supreme Court reversed. At the outset, the Court confronted its own past statements in Chaplinsky and Beauharnais to the effect that libelous utterances are not “within the area of constitutionally protected speech.” In rejecting these earlier statements, the Court declared that “libel can claim no talismanic immunity from constitutional limitations” and “must be measured by standards that satisfy the First Amendment.”

Turning to the task of articulating these standards, the Court observed in an oft-quoted passage that “we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” The essential difficulty, the Court explained, is that “erroneous statement is inevitable in free debate,” and even false statements must therefore be “protected if the freedoms of expression are to have the ‘breathing space’ that they ‘need to survive.’” Thus, the Alabama law of libel could not be “saved by its allowance of the defense of truth,” for a rule compelling the critic of official conduct to guarantee the truth of all his factual assertions would lead to intolerable “self-censorship.” Indeed, under such a rule, “would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court.” Such a rule, the Court concluded, “dampens the vigor and limits the variety of public debate.”

With these considerations in mind, the Court held that public officials may not recover damages for defamatory falsehood relating to their official conduct unless they can prove “that the statement was made . . . with knowledge that it was false or with reckless disregard of whether it was false or not.”

New York Times revolutionized the law of libel and, at the same time, undermined the principles underlying Beauharnais. The decision in Beauharnais had been based on the premise that defamatory utterances are “unprotected” by the First Amendment, whether or not they are false. New York Times emphatically and unequivocally rejected that premise. As a result, in the thirty years since New York Times, it has come to be accepted in American constitutional law that the Illinois statute upheld in Beauharnais would no longer be held constitutional, and that such actions for group defamation are incompatible with the First Amendment because they suppress ideas, opinions and assertions
that may offend; but these do not create a clear and present danger of serious harm.

The extent to which Beauharnais has been discredited was made clear in the 1977 Skokie controversy. In 1977, Skokie, a northern Chicago suburb, had a population of about 70,000 persons, 40,000 of whom were Jewish. Approximately 5,000 of the Jewish residents were survivors of Nazi concentration camps during World War II. Frank Collin, leader of the National Socialist Party of America, informed Skokie officials that the party intended to hold a march through Skokie. Collin explained that the demonstration would consist of thirty to fifty individuals marching in single file wearing uniforms reminiscent of those worn by the Nazi Party in Germany under Hitler and that they would wear swastika armbands. The marchers would also carry banners containing a swastika and signs bearing such messages as “Free Speech for Whites.”

Skokie officials filed suit seeking to enjoin the marchers from wearing their uniforms, displaying the swastika, or distributing any materials that would “incite or promote hatred against persons of Jewish faith or ancestry.” The complaint alleged that the march, as planned, was a “deliberate and willful attempt to exacerbate the sensitivities of the Jewish population in Skokie and to incite racial and religious hatred” and that the display of the swastika in Skokie “constitutes a symbolic assault against large numbers of the residents of Skokie and an incitement to violence and retaliation.”

The Illinois Supreme Court held that the proposed demonstration was protected expression and that an injunction against the march would violate the First Amendment. The Supreme Court of the United States declined even to review the issue. (Eventually, Collin agreed to move the demonstration from Skokie to downtown Chicago. In 1978, he held an hour-long rally at which 400 riot-helmeted policemen protected the twenty-five Nazi demonstrators from several thousand counter-protesters. There were seventy-two arrests and some rock and bottle throwing but no serious violence.)

The Supreme Court returned to the hate speech issue fifteen years later in R.A.V. v. City of St Paul, 112 S.Ct. 2538 (1992). After burning a cross on a black family’s lawn, the petitioner, a teenager, was charged under the St. Paul, Minnesota, Bias-Motivated Crime Ordinance, which prohibited the display of a burning cross, a swastika, or other symbol which one knows or has reason to know “arouses anger, alarm or resentment in others” on the basis of race, color, creed, religion or gender. The Minnesota Supreme Court interpreted the ordinance as prohibiting only constitutionally unprotected “fighting words.”

In Chaplinsky, the Court had listed “fighting words” among the “well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem.” Indeed, in Chaplinsky itself the Court had upheld the conviction of an individual for calling a police officer a “damned racketeer” and a “damned Fascist.” The Court explained that “fighting words” — personal epithets hurled face-to-face at another individual which are likely to cause the average addressee to fight — are “unprotected” by the First Amendment because they “are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.”

In the half-century between Chaplinsky and R.A.V., the Court had consistently narrowed the scope of the fighting words doctrine and, indeed, had not upheld a single fighting words conviction. Nonetheless, the Court never directly called into question the continued vitality of the doctrine itself. Thus, given that the state courts in R.A.V. already had interpreted the ordinance as limited to fighting words, there would not seem to be any serious question about the constitutionality of the ordinance. (Note: The question whether the burning of the cross actually constituted “fighting words” was not considered by the Court because the defendant had not yet been tried.)

Nonetheless, the Supreme Court invalidated the St. Paul ordinance, holding that the ordinance was invalid even if it was limited only to fighting words. This was so, the Court explained, because the ordinance was selective among fighting words
—it prohibited only some fighting words (those related to race, for example), but not all fighting words (those related to political affiliation). The Court began by noting that the “First Amendment generally prevents government from proscribing speech because of disapproval of the ideas expressed.” Regulations of speech because of its content “are presumptively invalid.” And this is true, the Court reasoned, even within a category of otherwise unprotected expression. Thus, although “the government may proscribe libel, it may not make the further content discrimination of proscribing only libel critical of the government.” In R.A.V., the ordinance restricted only those fighting words that “insult, or provoke violence on the basis of race, color, creed, religion or gender.” This, the Court concluded, is impermissible:

“Displays containing abusive invective, no matter how vicious or severe, are permissible unless they are addressed to one of the specific disfavored topics. Those who wish to use “fighting words” in connection with other ideas—to express hostility, for example, on the basis of political affiliation, union membership, or homosexuality—are not covered. The First Amendment does not permit St. Paul to impose special prohibitions on those speakers who express views on disfavored subjects.”

Finally, the Court rejected the claim that the “discrimination” in the ordinance was justified because it was necessary to further the city’s compelling interest in helping “to ensure the basic human rights of members of groups that have historically been subjected to discrimination.” The Court explained that the content limitation was not “necessary” to achieve the city’s interest because the city could have achieved its ends without the content limitation by banning all fighting words. Thus, “the only interest distinctively served by the content limitation is that of displaying the city council’s special hostility towards the particular biases singled out. That is precisely what the First Amendment forbids.”

The distance traversed from Beauharnais to R.A.V. is considerable indeed. After R.A.V., it would seem that no direct regulation of speech, even of otherwise unprotected speech, that is drawn explicitly to protect particular groups against offensive or hurtful expression will pass constitutional muster. And this is so because, as the Court has often said, apart from the existence of certain categories of “low” value expression, there is an “equality of status in the field of ideas” and, “above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” Police Department of Chicago v. Mosley, 408 U.S. 92 (1972).

In Wisconsin v. Mitchell, 113 S.Ct.—(1993), the Court’s most recent foray into this area, the Court upheld a Wisconsin hate-crime penalty enhancement statute. In 1989, a group of black men, including Mitchell, were discussing a scene from the motion picture “Mississippi Burning,” in which a white man beat a young black boy who was praying. At that point, a young white boy walked by and Mitchell said, “There goes a white boy; go get him.” The group then ran towards the boy and beat him severely. Mitchell was convicted of aggravated battery, an offense which ordinarily carries a maximum sentence of two years’ imprisonment. But because the jury found that Mitchell had intentionally selected his victim because of the boy’s race, the maximum penalty for Mitchell’s offense was increased to seven years under a state statute providing for penalty enhancement whenever the defendant “intentionally selects the person against whom the crime is committed because of the race, religion, color, disability, sexual orientation, national origin or ancestry of that person.”

The Court unanimously rejected the argument that this statute violated the First Amendment because it “enhances the maximum penalty for conduct motivated by a discriminatory point of view more severely than the same conduct engaged in for some other reason.” The Court explained that “a physical assault is not by any stretch of the imagination expressive conduct protected by the First Amendment.” Thus, this case is different from R.A.V. because “the ordinance struck down in R.A.V. was explicitly directed at expression,” whereas “the statute in this case is aimed at conduct
unprotected by the First Amendment." Moreover, although reaffirming that a state may not punish an individual more severely because he has unpopular or even odious beliefs, the Court nonetheless concluded that this statute involved enhanced punishment for motive, which is commonplace in the law, rather than for abstract belief.

The current state of the law, then, would seem to permit penalty enhancement for non-speech crimes when the defendant acts for impermissible, hate-based motives, but to prohibit punishment for speech (including symbolic speech, like wearing a swastika or burning a cross) because it offends or otherwise harms particular groups or individuals on the basis of such factors as race, religion, gender or ethnicity.

The Court has thus subsumed hate-speech and group defamation legislation within its more general assumption that most forms of content-based restrictions of speech are presumptively unconstitutional. The underlying rationale of this approach is that government cannot be trusted to make judgments about which ideas can and cannot legitimately be aired in public debate. Moreover, to guard against the risk that government might effectuate its preferences for some ideas over others merely by claiming that it is restricting speech because it is harmful, the Court has held that government may not regulate expression because of its content except in the most extraordinary of circumstances.

Thus, just as the government cannot constitutionally restrict advocacy of communism, agitation against an on-going war, burning of the American flag, or the expression of ideas that deeply offend others, so too is it foreclosed from restricting speech that insults or degrades particular racial, religious, ethnic or gender groups. The point is not that such expression is harmless. It is, rather, that there are better ways to address the harm than by giving government the power to decide which ideas and opinions the citizens of a free and self-governing nation may and may not express.

Geoffrey R. Stone is Harry Kalven, Jr. Professor of Law and Provost at the University of Chicago

Hate Speech for Hostile Hungarians

Andras Sajo

Dean Stone reviews the past fifty years of the U.S. Supreme Court's struggle to work out a system of free expression that reconciles "a society's often competing commitments to freedom of speech and individual dignity." The emerging democracies of Eastern Europe have had only three or four years to devise their own solutions to this same problem. Legal rules chosen in haste, however, may have a lasting social impact. This article reviews the hate speech/free speech debate in postcommunist Hungary, in the light of U.S. standards (which, as it happens, played a major role in the Hungarian Court's deliberations).

Unrestrained speech, on the one hand, given the social and political conflicts racking Hungarian society during the transition period, may endanger social stability. Restricted speech, on the other hand, may immobilize nascent civil society, limit fundamental freedoms, and stifle the lively criticism of government so essential to democracy. The present-day legal system in Hungary seems to be torn between these two irreconcilable positions. The constitution as amended in 1989 guarantees freedom of thought and religion and the right of
everyone freely to express his or her opinion, including the right freely to disseminate information of public interest (Art. 61 [1]). The Hungarian Republic recognizes and protects freedom of press (Art. 61 [1]). The language of the Hungarian Constitution is nearly as unconditional as that of the U.S. First Amendment, since it includes no special clauses restricting free speech or freedom of the press. Moreover, under Art. 8 (2), the essential content of a fundamental right cannot be curtailed, and any law regulating freedom of press must be adopted by a two-thirds majority of the MPs present.

After the 1989 Constitution came into force, however, the Press Act (II) of 1986 was amended to add a number of restrictions which may not necessarily accord with the Constitution's unconditional approach (Act XI of 1990). The Press Act distinguishes between periodicals and other printed matter (including books, leaflets, single issues of periodicals, television and radio programs, videos, and so forth). Periodicals are subject to registration only, while other printed matter must be licensed "except for the production and publication of printed matter exempted from the publication permit requirement by the government" (Art. 13 a). The government then granted a broad exemption for published material: decree 58/1989 declared that except for military publications and stamp catalogues, licenses are unnecessary. Thus, unlimited freedom of the press exists in Hungary by fiat, thanks (only) to a general governmental authorization. If the government had not enacted this general exemption from licensing restrictions, then permits would be required. This is true even though such permits, in turn, would represent a clear violation of the constitution.

The right is indeed even more tenuous than this arrangement makes it seem. Under specified conditions and subject to judicial review, the responsible administrative agency—the Ministry of Culture—can annul the registration of periodicals. Moreover, the public prosecutor may order a halt to the publication of printed matter and request a court injunction to that effect. All such restrictions on free expression are applicable in case of violation of Art. 3(1) of the Press Act, which states: "The exercise of press freedom cannot constitute a crime or incitement to commit a crime, it cannot violate public morality, and it cannot cause a breach of other people's personality rights." ("Personality rights" are defined by the Civil Code as including human dignity, the right to one's name and honor, as well as personal and business data. The personality rights section includes anti-defamation rules.) Theoretically, both defamation and any conduct by the press that is defined as a crime by the Criminal Code may result in temporary confiscation, an injunction to cease printing, and even in the banning of a newspaper.

Although such sweeping restrictions are not unprecedented in Europe, the level of restriction possible in Hungary has led constitution-makers elsewhere (e.g., in Greece and Italy) to ground such limits on free expression in the constitution itself. Moreover, some of the new East-Central European constitutions have included sweeping provisions limiting freedom of expression. The Romanian Constitution, for example, limits free speech by prohibiting the defamation of the country and the nation, and by proscribing instigation of national hatred or incitement to territorial separatism (Art. 30). The Bulgarian Constitution contains a similar provision against incitement of hatred and requires that the court decide whether or not to confiscate materials which seem to violate this rule (Art. 39, 40).

The Hungarian Criminal Code, as revised in 1989, contains a number of provisions which are traditionally considered ex post speech restrictions. Besides criminal libel and slander provisions, the Criminal Code penalizes different forms of incitement. Art. 269 (as reformulated in 1989) states: "(1) Whoever incites hatred with great publicity [i.e., through publication in the press], (a) against the Hungarian nation or any nationality, (b) against any people [nation], faith or race or single groups of the population, commits a crime and is punishable by imprisonment of up to three years. (2) Whoever, with great publicity, uses an expression that is offensive or demeaning to the Hungarian nation, any nationality, people [nation], faith, or race or commits other similar acts shall be
punished for misdemeanor by imprisonment of up to one year or a fine.”

These provisions have not been overlooked by state prosecutors. *Szent Korona* (Holy Crown) and *Hunnia*, two right-wing periodicals, published a series of anti-semitic, anti-gypsy, and anti-Slovak articles, denying the existence of the Holocaust and making reference to a Jewish world conspiracy. The articles related this alleged conspiracy to racial characteristics of the Jewish people. The public prosecutor charged the author of the articles in *Hunnia* under Art. 269 of the Criminal Code. In 1991, the district court suspended the prosecution and requested the Constitutional Court to decide whether Art. 269 of the Criminal Code is in conformity with the constitution.

(As an aside, one should note that racist statements in general, and anti-semitic speech in particular, are relatively common in the public sphere in Hungary. In 1990, an article in the leading daily newspaper, *Nepszabadság*, suggested that a quota should be adopted to restrict Jewish presence in the media. The author of this article was appointed head of the Government Information Bureau in September 1993. In right-wing weeklies and monthlies, a number of articles have been published describing Jews as rootless cosmopolitans who are conspiring to destroy national values or even the Nation itself. Discussions of this issue were reported at great length in the daily press, and indeed have became routine part of national political debate. The prosecutor’s office has interfered only in extreme cases. For instance, the Press Act was used to ban the distribution of a book, entitled, *Csendorsors*. The author of *Csendorsors* participated in the deportation of Jews in 1944 and, in his book, he praised these expulsions as an act of national purification. The second major action taken under the criminal code was the prosecution of Ferenc Kunszabo, the editor of *Hunnia*.)

The Constitutional Court ruled (30/1992 [V. 26] AB) that incitement to racial hatred can be constitutionally prohibited even if the incitement per se has no immediate consequences. It is not necessary, in other words, that the incitement to racial hatred result in any clear and present danger. On the other hand, the Court held that prosecution of offensive speech, as defined under Art. 269, para. 2, is unconstitutional.

The Court’s decision upholding the constitutionality of legal restrictions on public incitement to racial hatred is based on solid principles and its arguments reflect commonly accepted European free-speech standards. Nevertheless, the position of the Court on this matter remains highly controversial both in the legal-political community and in society at large—and not only among the likely victims of hate speech. At the hearings of the case, both the attorney general and the president of the Supreme Court argued that the “offensive speech” provision was constitutional, since it was regarded as a necessary means for protecting minorities and public order. Public criticism of the resolution is based on the assumption that democracy is not yet well enough developed and that extremist speech may therefore have real consequences and even endanger the democratic order.

It is easy to discern parallels here with the German concept of “militant democracy,” meant to prevent the Federal Republic from repeating the Weimar Republic’s failure to react effectively to an authoritarian threat. The Nazi and World War II experiences played a major role in shaping limits to free speech in Europe; and the Hungarian Constitutional Court, in its broad acceptance of restrictions on incitement to racial hatred, did pay tribute to this past. The Court employed comparative analysis and referred to laws against the incitement of racial hatred in England, Canada, and New Zealand. The restriction of free speech, admittedly, always entails a danger of social injustice and diminished human creativity: “The free expression of ideas and views, the free publication of even odd and unpopular ideas, is a fundamental condition of the existence of a living society capable of development.” The Court stated in its resolution that a fundamental right can be curtailed only “if the protection or realization of another fundamental right and freedom or the protection of another constitutional value cannot be achieved by any other means.” Fundamental rights here receive an instrumental
interpretation: “they are to be protected as part of the maintenance of the constitutional order and its functioning.” The individual right of free expression shall be protected to the extent that the free formation of public opinion, as an indispensable element of democracy, shall be protected as well. The Court applied a proportionality test to determine constitutionality: were the criminal law restrictions proportional to the legislative purpose underlying them? The Court also pointed out that twentieth-century history teaches that ideas of racial superiority endanger civilization, and that incitement to hatred against groups may disturb the public peace and engender violent social conflicts. Unlimited expression may incite hatred and disrupt the peaceful coexistence of social groups. Incitement to racial and other forms of group hatred contradicts the constitutionally protected democratic and peaceful order of society, denies human dignity, and deprives people of their right to be different. Moreover, the U.N. International Covenant on Civil and Political Rights (1966), which was incorporated into Hungarian law in 1977, expressly requires that “any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited” (Art. 20 [2]). The Strasbourg-based European Court of Human Rights has repeatedly upheld the view that restraints on expressions of racial hatred are in conformity with the European Convention.

The Hungarian Court found the incitement rule too restrictive. Incitement means a statement capable of generating sentiments in a crowd. (The definition cited by the Court, incidentally, is the standard definition used by the precommunist judiciary, a usage reminiscent of the fighting-words test.) In cases where incitement is alleged, it is irrelevant whether the negative consequences represent a “clear and present danger.” (This phrase appears in English in the Hungarian resolution.) What matters instead is that the incitement endangers a sacrosanct constitutional value. Public order has to be protected even on a very abstract and symbolic level. But, the Court found, no such protection is necessary when, in the case of offensive words, the disturbance of the peace remains remote and even hypothetical, and there is no direct breach of the rights of other parties (including injury to group pride).

Matters are different with “offensive words.” Because these appear in the press, they should be answered, according to the Court, not by criminal penalties, but by a right of reply. “It is part of this process that one has to take into consideration excessive damages. Criminal sanctions, however, are not intended to shape public opinion and political styles—this would be paternalism—but they should be used as a sanction in order to protect other rights in cases where this proves necessary.” Criminal punishment of offensive speech, in other words, is unconstitutional.

In denying constitutional protection to words inciting hatred against racial and other groups, the Hungarian Court’s position is similar in many respects to the position adopted by the U.S. Supreme Court in Chaplinsky and Beauharnais. “Inciting words” closely resemble “fighting words.” Because “fighting words” are usually understood to be speech of low value, it is enough that a simple reasonableness requirement is satisfied whenever the court applies the proportionality test. The clear and present danger test was held to be inapplicable to low-value speech in Beauharnais, just as it was held to be inapplicable in the Hungarian case. It was enough in both cases that the limitations placed on free expression did not amount to a “purposeless restriction unrelated to the peace and well-being of the State.” As in Beauharnais, the truth of a statement is an irrelevant or inadmissible consideration. In the Hungarian case, too, there were good grounds to believe, given European history, that “we would deny experience to say that the legislature was without reason in seeking ways to curb false or malicious defamation of racial or religious groups.” The Hungarian Court, however, did not maintain that defamation alone justifies criminal measures. Stone writes that “the beginning of the end for Beauharnais was New York Times v. Sullivan.” But the Hungarian Court seems to have considered the lesson of the New York Times case only in passing. As mentioned above, limitations on group or racial defamation is
accepted in Hungary as part of press freedom, although the New York Times case is focused on public officials and not on group libel. In Stone's view, however, “such actions [as those under the Illinois statute] for group defamation are incompatible with the First Amendment, because they suppress ideas...that may offend but that do not create a clear and present danger of serious harm.” While the Hungarians come close to these developments in offensive speech regulation, in terms of incitement they are still far away from the American approach. Neither the Skokie case nor the St. Paul case would find application in Hungary (or in any other country of East-Central Europe). Totalitarian insignia, such as the swastika (a crucial symbol in Skokie) have been expressly banned by legislation.

The Act, so far, has remained constitutionally unchallenged on equal protection grounds. As for the St. Paul test, the Hungarian incitement rule protects only some of those categories constitutionally protected under American law (for instance, it has no gender discrimination provision). At the same time, the Hungarian rule fails to use any noncontent-based unifying criteria—such as: incitement is punishable if it directly “advocates violence”—as is required by the U.N. Convention.

In cases of offensive hate speech, the Hungarian Court affirmed its confidence in the corrective power of wide-open public debate. Interestingly enough, the Court invoked a marketplace-of-ideas argument in an area where market failure seems most undeniable. The justification of constitutional protection of hate speech by reference to the marketplace-of-ideas metaphor is notoriously difficult, because there is little or no communicative value in hate-inspired communication. (To be sure, the non-criminalization of hate speech may be justified, or, more properly speaking, its criminalization may remain insufficiently justified, if different tests and approaches are used.) Compared to the American approach, the Hungarian Court's apparently similar reluctance hides fundamental differences. On the one hand, the Hungarian Court failed to recognize the overbroadness of the incitement provision (which remains applicable even where there is no actual possibility of inciting hatred, not to mention the possibility of concrete action being brought about). In fact, the Court allows criminalization of race-related hate-inciting speech for the sole reason that it will, in the long run, cause deterioration of social harmony. Given the European experience and the susceptibilities of postcommunist public opinion, this may seem a reasonable assumption.

But, in this case, the lack of criminal sanctions against offensive speech against minorities (and races in particular) may have an equally destructive influence on social harmony.

The Court, in any case, expressed its belief that private law (torts) sanctions will be sufficient to counter the pernicious effects of hate speech if they simply include increased penalties. Although journalists complain about excessive damages, in fact punitive damages are limited to 500,000 Hungarian Forints ($5000), while they are unlimited for defamation not occurring in the media. Moreover, the courts are reluctant to award large damages, and the most common sanction applied is mandatory retraction and (in all defamation cases) declaratory judgments which may be published by court order. The Hungarian Constitutional Court was almost wholly unmoved by the chilling-effect argument, although the justices believe that the press plays an essential role in any democratic society. The Court seemed unconcerned, furthermore, that the Press Act makes it possible to shut down newspapers, and other media, for defamation or immorality or any crime—a very chilling prospect indeed. Probably the Court's indifference can be explained on procedural grounds. The Press Act never came before the Court, and the infamous Art. 3 (1) may yet be struck down as unconstitutional.

Notwithstanding the controversial nature of the Hungarian press law, the Constitutional Court's hint that free speech issues should be resolved by using corrective measures available to individuals, namely the civil courts, is in conformity with the requirements of building civil society, a task which certainly cannot be advanced by criminal sentences. If, however, the diagnosis of the Court is wrong, and society proves inclined to use violence against
minorities, that is, if minorities have a good reason to feel menaced, then the level of protection which seems to be adequate in a liberal society may turn out to be insufficient in societies like Hungary. The menace to minorities and the psychological suffering caused by hate speech, the argument would then run, requires criminal protection under the circumstances. In order to stop neo-nazis, a more militant position—for instance, the unmistakable message of prosecution—is needed to make everyone understand that racism has no place in a democratic culture. (The counter-arguments—the Kantian idea that this approach reflects an instrumental approach to punishment, and the pragmatic argument that persecution may make ideas more interesting and attractive—are also well-known.) It remains to be seen whether tragic historical experience and burning social conflicts do not, in effect, compel constitutional courts to “constitutionalize” specific content-based restrictions on speech in order to protect racial groups and other minorities.

Author’s Note: The court of first instance in the Hunnia case acquitted the anti-semitic editor and journalist on the grounds that the incriminating articles, though undoubtedly offensive, did not constitute incitement. It remains to be seen whether private groups will take the initiative to use tort law, and whether damage awards will have a sufficient deterrent effect to keep public discourse within the limits of “decency.”

Andras Sajo is professor of constitutional and environmental law at Central European University in Budapest.
From The Center

Conference on Central Banks
On April 21-23, the Center for the Study of Constitutionalism in Eastern Europe and the Law School of the University of Chicago sponsored a conference on central banks in Eastern Europe and the former USSR. Organized by Kenneth Dam, Max Pam Professor of American and Foreign Law, and Geoffrey Miller, Kirkland and Ellis Professor of Law, the Conference brought together central bankers, finance ministers and government officials from Eastern Europe and the former Soviet Union, IMF, World Bank and Federal Reserve representatives, as well as financiers and professors of law, political science and economics. As several speakers explained, control over the money supply presents a delicate question of political design. Many countries have addressed the problem of monetary discipline by giving their central banks some measure of autonomy. But an independent central bank, if not coupled with responsible political leadership within the government or if adequate mechanisms for dialogue with the government do not exist, may create problems of its own. An autonomous central bank may not cooperate with the fiscal authorities to develop a comprehensive national economic strategy. There is, moreover, a danger that runaway central banks may follow monetary policies not favored by the people as a whole and that may even be damaging to the economic system. The conference addressed the political independence of central banks with reference to six major issues—monetary policy and central bank independence, currency reform and the Ruble Zone, the role of the central bank in bank supervision, the role of the central bank in the development of markets and payment systems, the central bank as fiscal agent for the government and the central bank’s role as lender to the government. Conference papers will be edited and published in book form. The conference was supported by the Eurasia Foundation, George Soros Foundation, German Marshall Fund of the United States, Ford Foundation, John D. and Catherine T. MacArthur Foundation and University of Chicago Law School.

Conference in Nizhny Novgorod
The Ford Foundation supported a Center seminar on the comparative constitutionalism of postcommunism held in Nizhny Novgorod on March 23-26. Participants in the seminar, besides a diverse group of lawyers, professors, and politicians from Nizhny, included Inga Mikailovskaya, Alexander Blankenagel, Edward Walker and Stephen Holmes.

Center Visitors
The following persons visited the Center over the course of the past six months: Ernest Ametistov, Justice of the Constitutional Court of the Russian Federation; Ales Blazek, Charles University, Czech Republic; Daniel Daianu, Chief Economist, National Bank of Romania; Natasha Gevorkyan, Columnist, Moscow News; Andrei Kortunov, Chairman of the Board, Russian Science Foundation; Daniel Lipsic, Comenius University, Chairman, Civic Democratic Youth Party, the Slovak Republic; Alexander Lukashuk, Correspondent, Radio Free Europe/Radio Liberty; Tamara Morschchakova, Justice of the Constitutional Court of the Russian Federation; Vladimir Razuvaev, former head of the Institute of Europe; Sergei B. Parkhomenko, Columnist, Nezavisemaya Gazeta; and Igor Petrukhin, Professor, Institute of State and Law, Moscow Academy of Sciences.

Russian-Language Review
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