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Over the past three months, Albania has been coming to grips with the November 6, 1994 referendum in which the electorate refused to endorse President Sali Berisha's draft constitution. In response to the unsuccessful referendum, the opposition—consisting of the Socialist Party (SP), the Party of the Democratic Alliance (PDA), the Social Democratic Party (SDP) and the Party for the Protection of Human Rights (PPHR)—convened a working group of legal specialists to prepare a draft constitution of its own. Members of this working group vowed to build on the ideas and institutional arrangements incorporated into earlier drafts of the constitution, including the previous drafts prepared by the opposition in the second half of 1994 as well as the ill-fated Berisha draft.

The leaders of the Democratic Party (DP), including President Berisha himself, denounced the opposition's initiative as illegal, arguing that it violated the "Law on Major Constitutional Provisions." Article 44 of this constitutional law stipulates that: "The provisions of this law are applicable until the adoption of the Constitution of the Republic of Albania, the draft for which shall be prepared by a Special Commission appointed by the People's Assembly." Despite Berisha's efforts to discredit the opposition's draft constitution, a final version was prepared in less than two months. The new draft basically reflects the consensus already reached in the Constitutional Commission during deliberations on previous drafts. Only the chapter on the Constitutional Court and the final provisions on the method of ratifying constitutional amendments differ somewhat from the equivalent articles in earlier drafts.

The opposition's draft constitution was published in local newspapers on February 28. In a joint declaration, the opposition parties pledged not to violate the basic law and to follow strictly the constitutional procedures for adopting a new constitution, including submitting the draft to the Constitutional Commission.

Even after the disappointing results in his November 6 referendum, the president continued to believe that a new constitution should be approved by referendum, thus bypassing Parliament. This strategy, however, antagonized even the chairman of Berisha's own DP, Eduard Selami. At several DP meetings held throughout the country, Selami emphasized that circumventing Parliament is undesirable. Subsequently, the DP leadership organized several party meetings to conciliate the supporters of the president with those of the chairman. The roughness of the debates, however, revealed that consensus would be hard to reach. To resolve the disagreements between the two groups, the DP held an emergency conference on March 5. By the end of the conference, it had become clear that Berisha's supporters had the upper hand. Encouraged, Berisha moved for Selami's dismissal. Several participants requested that voting on the motion should be conducted secretly, since party statutes require that chairmen be elected (and presumably dismissed) by secret ballot. The president and his supporters swiftly moved to block this proposal, which did not pass. Finally, without the benefit of a secret ballot, the conference voted to remove Selami. Several weeks later, he was ejected from the leadership of the DP.

The problems of judicial independence and the power of Parliament to strip judges of their immunity were also at the center of political debate. As previously reported (see EECR, Albania Update, Vol. 4, No. 1, Winter 1995), the attorney general asked Parliament to lift the immunity of Zef Brozi, chief justice of the Court of Cassation, alleging that he had improperly ordered the release of a person of Greek nationality convicted of a drug-related offense. When the question was first raised in Parliament, the DP parliamentary group proposed that the opinion of the Constitutional Court be sought as to whether "the People's Assembly is the competent organ to lift the immunity of the chairman and members of the Court of Cassation." In its decision No. 1/1995, dated January 19, the Constitutional Court ruled that "for lifting the immunity of a particular subject, when not otherwise provided by law, the organ that named or elected him has the power to decide." Because it elects the judges of the Court of Cassation, Parliament may also lift their immunity.

It took relatively long for Parliament's Committee on Mandates to investigate the attorney general's request to lift Brozi's immunity. At least several members of the commit-
Brozi's immunity. The margin was a slim four votes, and with the support of at least some members of the DP, late on the night of February 1, Parliament voted against lifting Brozi's immunity. The margin was a slim four votes, and there were many abstentions. Various commentators—both inside and outside of Albania—have asserted that the decision marks an important step toward safeguarding the independence of the judiciary.

This narrowly-repelled attack on the judiciary was indirectly linked to the referendum's defeat. The president had clashed with the chairman of the Court and wanted to remove him (see EECR, Albania Update, Vol. 4, No. 1, Winter 1995). When the referendum failed, the executive scrambled to unearth a criminal act that would allow Brozi's immunity to be lifted. Under the "Law on Major Constitutional Provisions," a judge of the Court of Cassation may be stripped of his or her immunity, only if there is evidence that he or she has committed a serious crime. Interestingly, had Berisha's draft constitution been ratified, proof of the commission of a crime would no longer have been a prerequisite for lifting immunity. Article 102.4 of the unsuccessful draft states that "judges of the Supreme Court (as the Court of Cassation would have been renamed) may be removed from duty and criminally prosecuted under the conditions provided by law on the basis of a reasoned decision of Parliament pursuant to a proposal of the president and when a majority of the members of Parliament have voted for it." This provision would have definitely made the political harassment and pressuring of judges much easier.

On February 23, the Constitutional Court issued another important decision. No. 3/1995, in response to a complaint filed jointly by SDP and SP. Petitioners alleged that submitting the constitution for popular ratification without first having it approved by Parliament violates the "Law on Major Constitutional Provisions." Article 16.2 of this law states that "the People's Assembly has the power to adopt and amend the Constitution." Although the complaint had been filed over three weeks before the referendum, the Court's decision came down more than three months afterwards. Three members of the Constitutional Court resigned in protest over this delay.

In its decision, the Court held that direct popular ratification of the constitution is lawful. The justices based their reasoning on Art. 3.2 of the "Law on Major Constitutional Provisions," which states that "the people exercise their power through their representative organs and referenda." The minority opinion castigated the Court's decision as "unconstitutional and groundless."

On February 8, a three-judge panel of the Court of Cassation, headed by Chairman Brozi, reconsidered the convictions of four ethnic Greeks sentenced last September for espionage and arms-related crimes. A fifth, convicted on a weapons charge, had already been granted amnesty. The Court of Cassation did not reverse the convictions, but decided to release all the defendants on parole. The chairman, for his part, argued that the charges were unproven and that the defendants should be exonerated. The entire case illustrates how law and politics are inextricably woven together in present-day Albania. The crimes of which the individuals in question had been convicted are considered very serious under the Albanian Penal Code and parole is ordinarily not an option in such cases. Thus, the Court's strained interpretation of the law, presumably aimed to prevent a further deterioration in Albanian-Greek relations, may set an unfortunate legal precedent. Although the decision received a positive response in and outside Albania, many jurists contended its unabashedly political character.

The prosecutor general, claiming proof of political corruption, sought to lift the immunity of two DP deputies who had once been members of the government, former Finance Minister Genc Ruli and the former minister for questions of local power, Rexhep Uka (see EECR Albania Update, Vol. 4, No. 1, Winter 1995). Parliament asked the attorney general for an explanation of the accusations. To make it clear that the attempt to strip these particular deputies of their immunity should not be mistaken for a genuine effort to fight corruption, the opposition noted that any number of more serious financial scandals had, for some reason, escaped the notice of the DP government. On March 17, having decided to employ a secret ballot, Parliament voted not to lift the immunity of the two former ministers. The margin of victory in this case was larger than in that of Brozi (about 20 votes), showing that members of the DP majority are increasingly willing (under conditions of anonymity) to oppose the government's ploys.

A financial scandal has recently received considerable attention in the Albanian press. Two years ago, the Ministry of Defense paid 300,000 dollars to a private Bulgarian firm for military trucks that were never delivered. Since the contract between the firm "Meiko" (on behalf of the Ministry of Defense) and the Bulgarian firm "Bolid 1990 Petrov" was signed so long ago, the opposition press claimed that the money must have been used for some other purposes, calling this case a sign of corruption among the DP leadership. The facts appear to have been otherwise, however. The Albanian firm, represented by its own lawyers, appealed the case to the Court of Arbitration in Bulgaria. In a session held on March 23, that Court ruled in favor of the plaintiff, requiring the Bulgarian company to return 300,000 dollars to the Albanian Ministry of Defense.

Newspapers have been focusing increasingly on corruption in the organs of public order and of justice. Corruption and ineffectiveness has even led to vigilantism and an upsurge in crimes of vengeance. This problem is most acute in northern Albania. On the other hand, Albania has recent-
ly passed new codes of criminal law and criminal procedure, finally repealing the codes inherited from the communist era, which had been substantially but selectively modified. The new codes go into effect on June 1.

Belarus

Three main tendencies have characterized the constitutional process in Belarus during the first quarter of 1995: the strengthening of authoritarian presidential power, the weakening of Parliament's influence, and concessions violating Belarusian sovereignty in favor of Russia's interests in the region. Furthermore, the president and many others routinely violate the Constitution. No institution or politically influential group seems willing or able to prevent these violations.

Belarus's parliamentary deputies were elected five years ago and held their first session on March 26, 1990. New elections are scheduled for May 14. President Alexander Lukashenka first urged the deputies to resign by the end of March, arguing that, technically, their five-year term would have already expired by that time. The president's proposal, however, violated the new Constitution, which holds that the current Supreme Soviet may preserve its powers until the first session of a newly-elected parliament.

Tensions between president and Parliament have recently been on the rise. The president, for example, has accused Parliament of stalling economic reform and attempting to restrict his powers. Lukashenka also maintains that legislation enacted by the Supreme Soviet violates the constitutionally enshrined separation of powers. The president was particularly bitter about a parliamentary decision making it impossible for him to adopt economic legislation without having to amend the Constitution. He has also claimed that massive absenteeism at recent parliamentary sessions is "an indication of inefficiency and low morale."

The president urged Parliament to resign voluntarily, but ominously added that if the deputies did not comply "measures would be taken to ensure stability." Shortly before this, the president had ordered Parliament's bank account frozen. The deputies were then presented with a five billion ruble bill (about a half million dollars) for "renting" the parliamentary chamber. Leaders of Parliament, however, managed to strike a deal with Lukashenka. They promised to end their sessions in the middle of April—a month before the scheduled elections. Distracted by subsequent events, however, this promise seemed to be quickly forgotten.

Lukashenka has also proposed that a referendum be added to the May 14 ballot on the following four questions: "Do you agree that the Russian language should be granted equal status with the Belarusian language?"; "Do you support the proposal to introduce a new flag and a new state emblem?" (The new state symbols proposed by Lukashenka resemble uncannily the old communist flag and the previous state emblem of Belarus); "Do you support the president's action, aimed at achieving economic integration with Russia?"; and "Do you agree that it is necessary to introduce amendments to the Constitution that will make it possible for the president to dissolve Parliament before its term ends when it violates the fundamental law?"

Lukashenka's aggressive campaign understandably antagonized the opposition. On April 11, about twenty opposition deputies declared a hunger strike in the Parliament building. They were protesting against the presidential decision to hold a referendum on constitutional amendments and against what they called the president's censorship of unfavorable reports. The hunger strikers were led by opposition leader Zyanon Pazdnyak.

Besides rousing political opposition, Lukashenka's initiative is likely to encounter some constitutional problems as well. According to the Constitution, Parliament must approve questions submitted to a referendum. So far, Parliament has approved only one of the referendum questions proposed by the president—the one regarding the relationship between Belarus and Russia. More importantly, the first, second and third questions would introduce changes to the Constitution which, according to the Constitution itself (Art. 148.2), Parliament cannot consider in the final half-year of its term. Nevertheless the president stood by his plan to hold the referendum on the same date as the parliamentary elections.

Lukashenka has also completed the formation of a hierarchy of heads of local governments, who now report directly to him. Practically all new candidates are recruited from the ranks of the former communist nomenklatura. In addition, the president has strengthened his control over the mass media. The National Television and Radio Company faithfully follows his orders and ignores the law on mass media as well as Parliament's demands. The Belarusian Printing House, the largest printing facility in the country, has been put under the direct control of the president's office. After taking over, the new authority immediately rescinded contracts for publishing 18 independent newspapers, some of which were critical of the president. The remainder had to be satisfied with short-term contracts renewable every three months. Eighty-four deputies have appealed to the Constitutional Court, protesting monopolization of the press, but no decision has yet been handed down.

Parliament was again humiliated at the end of March when the president dismissed Josef Syaredzich, editor-in-chief of the parliamentary daily Narodnaya Hazeta, by far the most popular and influential publication in Belarus. The editor was accused of "inciting violence" for having published a letter criticizing the president's policies. Narodnaya Hazeta was founded by Parliament and its editor, himself a deputy, had been appointed by Parliament and reported directly to it.

The president established a press supervision committee on March 16. This body is widely regarded as a new version of the Soviet censorship committee. In his speech to Parliament, the president stated that the best media Belarus
ever had was that of Soviet times. Banning the publication of
MP Syarchei Antonchyk's report on corruption, interrupting
parliamentary television broadcasts, and dismissing the
editors-in-chief of leading dailies, Narodnaya Hazeta included,
are the boldest attacks on freedom of speech in Belarus since
the communist coup of August 1991.

Acting in accord with Art. 100.20 of the Constitution,
the president has "returned" to Parliament a number of laws
without having promulgated them. Among these were laws
"On the Supreme Soviet" and "On local government and
self-government." The deputies then passed these laws by a
two-thirds majority vote, thereby overriding the president's
veto. In response, the president apparently decided that he
did not have to obey laws with which he disagreed.
Following his example, other officials have started disdain-
fully ignoring decisions made by Parliament.

Several dozen deputies have given up their parliamentar-
iany seats and, on the proposal of the president, have moved
over to his office or to other positions in the executive
branch. In an attempt to re-energize its authority,
Parliament adopted the decree "On the Implementation
of Supreme Soviet Acts" on January 30. This decree laid down
that all decisions of the legislative body, even when they are
not laws, are strictly binding and must be followed by all
Belarusian citizens. This strongly worded decree, however,
had zero effect. It seems that the attention of the
deputies, as well as of the public at large, is increasingly
focused on the upcoming elections. According to Central
Electoral Commission Chairman Alexander Abramovich,
2348 candidates have been registered, 43.3 percent of whom
have no party affiliation. Of the nearly 320 current MPs, 74
intend to run for re-election. The most competitive election
is expected in Minsk, where 15 candidates will compete for
one parliamentary seat.

After an initial attempt to check Lukashenko's power
(see EECR, Belarus Update, Vol. 4, No. 1, Winter 1995),
the Constitutional Court has chosen to keep a low profile.
At the end of March, the former minister of justice and
Communist Party secretary, Valery Tihinya, was appointed
chairman of the Constitutional Court. Tihinya had been acting
chairman of the Court since October 1994. According to
the Constitution, the president had to propose a candidate
for chairman and Parliament had to approve the choice (Art.
100.5). Having found themselves in the midst of an execu-
tive-legislative showdown, judges have occupied themselves
with rectifying minor discrepancies in current legislation.
Ticklish questions concerning presidential acts were consid-
ered only on the initiative of groups of deputies. The
Constitutional Court has apparently chosen not to react to
presidential violations of the Constitution or the law, lest it
suffer the same fate as Parliament.

Russian Foreign Affairs Minister Andrei Kozyrev,
Speaker of the State Duma Anatoly Rybkin, and President
Boris Yeltsin visited Belarus one after the other in February.

A number of agreements were concluded, among them a
treaty on friendship and cooperation, an agreement on a cus-
toms union and joint border control (with Poland,
Lithuania, and Latvia), and a deal extremely favorable to
Moscow on Russian military bases in Belarus. Parliament
was not consulted during the drafting of these agreements
and was similarly ignored at the signing of the documents.
According to the Constitution, Parliament is responsible for
ratifying treaties, but the president's office simply refused to
initiate the required procedure.

In February, Lukashenka started to echo Moscow's
warnings against any expansion of NATO's membership
and effectively put a halt to the process of eliminating con-
ventional arms, despite Belarus's obligations as a member of
the Conventional Arms Limitation and Reduction Treaty in
Europe. This last decision was a violation not only of an
international treaty but also of the Constitution itself, which
explicitly gives international treaties to which Belarus is a
party priority over national legislation (Art. 8).

Bulgaria

Political developments in the period immediately following the
December 1994 parliamentary elec-
tions reflect both the ambitions of the governing Bulgarian
Socialist Party (BSP—the party of the ex-communists), and the
strategy of the opposition. BSP's massive effort to assert itself as
the dominant political force in the country, to marginalize the
opposition, and to repeal the pro-reform legislation adopted by
previous governments will undoubtedly reconfigure the politi-
cal landscape. But these BSP goals will no doubt also encounter
resistance from the president and the parliamentary minority,
and be subject to close scrutiny by the Constitutional Court.

The first issue discussed by the new Parliament was a pro-
posal for new parliamentary regulations. The number of vice
chairmen was changed from three to five in order to ensure that
each parliamentary faction will have a vice chairman. At the
same time, the new regulations restricted the rights of the vice
chairmen to set the agenda and preside over debates. Now only
the chairman (currently BSP member Blagovest Sendov) and,
in his absence, the vice chairman of the largest parliamentary
group (i.e., BSP), have the right to chair plenary sessions.

The BSP majority also voted for two changes that will
have a considerable impact on the functioning of parliamentary
committees. First, the legislative committee, which was
used by the opposition to delay legislation of which it disap-
proved, was abolished. Second, a new quorum requirement
was introduced. Committees can now hold sessions and make
decisions with only one-third of their members present. The
governing majority argued that these changes would improve
the effectiveness of the legislative process. The opposition—
Union of Democratic Forces (UDF), People's Union (PU) and
Movement for Rights and Freedoms (MRF)—argued that
these procedural and institutional changes revealed deep anti-
The next challenge facing the ruling party was the formation of a government. Having won the elections in coalition with three small organizations (ecological, nationalist and agrarian), BSP considered including representatives of two other leftist organizations (a social-democratic coalition, Democratic Alternative for the Republic [DAR] and the nationalist coalition, Patriotic Union [PU], neither of which had passed the four percent electoral threshold) in the cabinet. Evidently, these parties were too small to receive ministerial appointments, however, and the cabinet, which assumed office on January 25, was comprised exclusively of BSP politicians. The new Council of Ministers was formed on the basis of compromises struck between various factions within BSP. Only Minister of Education Iliche Dimitrov, a prominent university professor, was viewed as a token concession to the nationalists. Before 1989, Dimitrov worked in the Central Committee of the Bulgarian Communist Party and was allegedly an active participant in the coercive campaign to "Bulgarize" the names of Bulgarian Turks. Since 1990 he has published numerous articles excoriating MRF (the political party of ethnic Turks) as unconstitutional.

The cabinet was also selected to meet the demands of the Bulgarian Business Bloc (BBB), BSP's only possible parliamentary partner. At the opening session of Parliament, BBB leader George Ganchev declared that his party's support hinged upon the exclusion of DAR and PU from the government. The first acts of the newly elected Parliament provided further evidence that BBB is the only political force with which BSP is predisposed to deal. As a quid-pro-quo for BBB support, BSP elected Ganchev to be chairman of the Committee for Radio and Television. This committee functions as a ministry, because there is still no law regulating state and private electronic media, and the committee, therefore, directly administers their activities.

Subsequent events showed that Ganchev's unwavering support for the BSP might cause tensions within his own party and even precipitate the disintegration of the BBB's parliamentary club. First, a clash between Ganchev and Kristian Krastev (BBB's vice chairman in Parliament) brought about the dismissal of Krastev from his post. Later, on March 24, three deputies declared that they intend to leave the club. Obviously concerned that internal squabbles might weaken its ally, BSP exercised political pressure on BBB parliamentarians and, after several hours of negotiations with Krassimir Premyanov, one of BSP's most outspoken leaders, BBB decided not to split. If they had, BBB's parliamentary club would have ceased to exist, since membership would have then dropped below the ten-deputy minimum needed to form and maintain a club.

At the beginning of the parliamentary term, the cabinet had to choose between two priorities—adopting the 1995 budget or preparing a "White Book," an overview of the activities of the previous governments. Perhaps because the budget is inevitably contentious and bound to be unpopular with BSP's electorate, the cabinet decided to publish the "White Book" first. The initial text was prepared during the election campaign. A later version, which contained some critical remarks about all previous governments (including Andrei Lukansov's BSP government of 1990 and the BSP ministers in Berov's 1993-1994 government), was openly attacked by Lukansov and by the current Deputy Prime Minister Kiriil Tzoev, who held the deputy prime ministership under Berov. In the final version, published on March 21, all references to Lukansov's and Berov's governments (which ruled the country for altogether 31 months) were deleted. The bulk of the text is now devoted to a rather general denunciation of the UDF government headed by Philip Dimitrov, in office for nine months from 1991 to 1992.

The BSP also succeeded in passing several laws reflecting its political priorities. The parliamentary majority amended the law on restitution of property by extending the moratorium on restituting property rights for another three years. The law affects flats and houses which the state—under the previous regime—rented at fixed prices to private citizens. What is more, it changed the law regulating control over environmental pollution, restricting public supervision of the executive branch in this area. Henceforth, an environmental expert's report will not be necessary for governmental building projects or state-run factories.

A step towards re-asserting the political influence of BSP in Bulgarian academia was the February 23 repeal of the law on the decommunization of science and education of December 1992. In its concluding provisions, the new law stipulates that all existing bodies of self-government in universities should be abolished and that new bodies should be elected by October. In another move designed to bolster the party's influence, BSP amended the law on local government and created the office of regional governor of Sofia to oversee the activities of the mayor of Sofia and other city officials. The current mayor was elected on a UDF ticket in 1991 and, although his relationship with the leaders of the coalition deteriorated, he is still considered an anticommunist and one of the few local officials in the country who opposes BSP policies. Parliament is currently debating an amendment to the law on land restitution, which will impose severe restrictions on the right to buy and sell agricultural land. The BSP majority claims that these legislative acts will decrease the social costs of reform and guarantee more effective government control over marketization and privatization. The opposition interprets them as an overt reimposition of state control and a flagrant restriction of individual property rights and the right of self-government. By now it is clear that BSP is not contemplating a repetition of its 1990 strategy, which included
President Zhelyu Zhelev reacted promptly to BSP’s legislative initiatives. He vetoed three acts: the extension of the moratorium on restitution, the concluding provisions of the legislative initiatives. He vetoed three acts: the extension of the moratorium on restitution, the concluding provisions of the law revoking of the decommunization of education and science, and the amendment of the law on control over environmental pollution. These presidential vetoes elicited an angry response from the BSP government. In February, the cabinet decided that the president and his representatives would not be allowed to attend meetings of the Council of Ministers. Article 101 of the Constitution provides that a presidential veto may be overridden by an absolute majority of all deputies, or 121 votes. Since BSP holds a stable majority in Parliament (125 of 240 seats, plus at least half of the 13 BBB deputies) efforts by the president to block legislation have been ultimately unavailing. Two of his vetoes were overridden the next day.

Given the lopsided array of political forces, petitioning the Constitutional Court has proved to be the most effective way for the opposition to counteract the uncompromising stance of the government. Five petitions were filed in the first two weeks of March. The first case was initiated by the attorney general, who asked the Court to declare the election of George Ganchev invalid, arguing that in December 1994 he was still an American citizen and therefore ineligible to be elected to Parliament. In mid-April the Court declared Ganchev’s mandate invalid, a decision which is likely to have a debilitating effect on BBB’s parliamentary faction.

The other four petitions, filed by opposition deputies, contested the constitutionality of 15 sections of the new parliamentary rules and procedures, Krastev’s dismissal from the vice chairmanship of Parliament, the extension of the moratorium on the restitution of houses and apartments, and the new coat of arms, which was hastily prepared by the government and contains the figure of a crowned lion. BSP argues that a crowned lion would have conveyed an unhealthy longing for the restoration of monarchy, while the opposition maintains that this traditional figure simply symbolizes the historical continuity of the Bulgarian state.

BSP is aware that the Constitutional Court might curb its efforts to repeal previously adopted legislation, and is therefore bent on exercising political pressure on that institution. Velko Valkanov, a prominent BSP deputy who ran for president in 1991, has recently introduced a draft amendment to the Constitutional Court Act, which would cut the justices’ salaries and abolish their right to retire with a pension upon completion of their mandate. Thus, tensions between the legislature and the Constitutional Court are mounting and may presage dramatic confrontations in the future.

Valkanov’s initiative confirms the view, shared by many observers, that a characteristic feature of the Bulgarian transition is the relentless effort by legislative majorities to gain sway over the judiciary. This effort affects the Constitutional Court, the Supreme Judicial Council (the administrative body of the judiciary), and various aspects of financial and administrative autonomy of the judicial branch. The September 1994 decisions of the Constitutional Court outlawed direct parliamentary attempts to interfere with the judiciary (see EECR, Bulgaria Update, Vol. 4, No. 1, Winter 1995). Therefore, BSP’s new strategy is to use the executive branch to subdue the courts. The conflict between the government and the judiciary was aggravated when the BSP cabinet tried to cancel a lawsuit filed by the state against the Communist Party for the sum of one billion leva and to recover 600,000 dollars illegally transferred from the state to BSP’s predecessor, the Bulgarian Communist Party, between 1952 and 1989. Though the government itself withdrew the charges, the court refused to dismiss the case, and the Sofia regional attorney pledged to keep it alive.

The response of the executive was prompt and brutal. Budgetary allocations to the judicial branch were even further reduced. The minister of justice accused the Supreme Judicial Council of receiving larger salaries than the law allows, and his announcement was smoothly transformed into a government decree cutting the benefits of Council members. Another development likely to impair the finances of the judicial branch regards compensation of investigative magistrates. In accord with the decommunization agreement reached during the 1990 Round Table talks, these magistrates were obliged to give up their military ranks. But as ex-officers they were entitled to a kind of severance pay equivalent to 12 months’ salary. In another attempt to bring the judiciary to its knees, the cabinet decided that this money would have to be paid not from the budget of the Ministry of Interior, but from the budget of the Ministry of Justice. The head of the National Investigative Service (administratively attached to the Ministry of Justice), Ani Kruleva, began to dole out the money. However, on March 29, the Supreme Judicial Council retaliated by recommending to the president that Kruleva, who has proven wholly submissive to the demands of BSP, be dismissed.

It is perhaps too early to predict if these political skirmishes will be confined by the established system of checks and balances or if, instead, the present conflicts will escalate into an open war between institutions. But the ongoing struggles which pit Parliament and government against president and Constitutional Court will undoubtedly continue to expose the constitutional system to serious strain.
The statement insinuated that CDP was responsible. Accepted a 52 million Czech crown loan from the now-ing to repay a debt of 27 million Czech crowns. The CDA are beset with financial problems. The CDU-CPP is still try-

The most eye-catching charges against the BIS, leveled by CDA leader Deputy Prime Minister Jan Kalvoda, were investigated by both governmental and parliamentary com-

The parliamentary commission, led by non-affiliated deputy Vlastimil Doubrava, unearthed little evidence to con-

As deputy prime minister for legislative matters, he ought to have discovered and reported the problem. The fourth charge, collecting materials against extremist organizations, was rejected. Five of the seven members of the Doubrava commission, including two members of opposition parties, voted to dismiss all allegations on February 16.

Both of the accusing parties, CDU-CPP as well as CDA, are beset with financial problems. The CDU-CPP is still try-

In mid-March, Josef Reichman, the head of the CDA secretariat, fell under suspicion for his handling of the party’s finances. The CDA Political Council warned that if Reichman were arrested for fraud, a party convention would be called to decide whether CDA should remain in the coalition. There were urgent talks with President Vaclav Havel, Klaus, and other leaders in order to avert the crisis, and Christian Democratic Party (ChDP) leader Ivan Pilip spoke out against the politicization of the Reichman case. Nevertheless, on March 17, Reichman was formally charged with fraud and was admitted to a psychiatric hospital because of nervous exhaustion.

Political tensions and financial scandals drove home the need to regulate party financing. Only the Communist Party of Bohemia and Moravia (CPBM) seems unaffected by financial shortfalls. Even Klaus’s CDP recently resorted to questionable fundraising practices when it hosted expensive dinners whose patrons included the heads of several ailing state enterprises which had been bailed out by Klaus’s own government. On February 8, in response to the ensuing outcry about conflict of interest, the government banned state-owned firms from donating money to political parties.

In the midst of financial scandals and security service accusations, opinion poll ratings for CDA and CDU-CPP fell. Many supporters of both parties defected to CDP. Public opinion polls predicted that five parties would win seats if parliamentary elections were held this quarter: CDP (30 percent), Czech Social Democratic Party (CSDP) (13 percent), CDA (nine percent), CPBM (seven percent) and CDU-CPP (seven percent). Another polling company showed support of the CSDP rising above 20 percent for the first time. This latter poll also showed public trust in President Havel rising from 70 percent to 75 percent since February 1994, while Prime Minister Klaus’s popularity dropped from 72 percent to 54 percent in the same period.

Disapproval of CDA’s behavior was voiced in political circles as well as in opinion polls. At the end of January, Tomas Jezek, an architect of the Czechoslovak privatization scheme, quit CDA, claiming that the party had tried to divert public attention from its internal debt scandal. In February, Jezek joined CDP’s parliamentary club, increasing its representation to 67 of 200 seats. In an official pro-

Tension within the coalition suggested that the government could break up before the 1996 elections. On February 11, CDA Deputy Ivan Masek threatened to remove his party from the coalition to preserve the party’s political independence. Rumors even circulated that the CDU-CPP would follow suit and that the two defectors would try to form a new government together with the opposition CSDP, led by Milos Zeman.

These rumors soon faded, but coalition tensions helped reawaken the debate over the Senate. The Constitution for-
bids dissolution of Parliament as a whole. This presents a problem if the coalition collapses. In such circumstances, in the absence of a Senate to keep "Parliament" in existence, Havel could not dissolve the lower house and call new elections (Art. 106.3). But senatorial elections have not been held and do not seem imminent.

Debates over senatorial election provisions have split both the coalition and the government. Klaus is ambivalent about the need for a Senate, while Havel is one of its most resolute supporters. CDP, CDA, and ChDP agree that candidates for the 81 Senate seats should compete in 81 single-member districts. Plurality rules would apply, unless no candidate gains more than 20 percent of the vote; in this case, there would be a second round. The CDU-CPP, however, still insists on the "27 by 3" formula, which gives Senate seats to the top three candidates from each of 27 three-member districts. This clever formula would effectively undermine CDP domination of the political scene.

In his address on March 14, President Havel exhorted Parliament to comply with the Constitution by creating a Senate and revamping the state administration. The Constitution calls for a separation of state and public administration and for the creation of higher administrative units. Havel also proposed the establishment of a fund to finance political campaigns. Finally, he recommended the creation of an ombudsman's office and urged intolerance for racism, antisocial behavior, and the bullying of recruits in the armed forces.

Klaus and Assembly of Deputies Chairman Milan Uhde, both CDP members, at first refused to comment on the president's address. It is no secret that they do not share the president's views. Three days later, Klaus admitted in an interview that he could not agree with Havel on a number of points, but he failed to specify which ones.

International commissions continued to criticize the Czech citizenship law and its effect on the Romany population. Klaus responded by calling a US State Department report "a distorted and simplified evaluation."

In February, Jan Kalvoda and Foreign Minister Josef Zieleniec proposed an important constitutional change. Their proposal would allow the government to send troops abroad and order defensive military action in cases of emergency without the preliminary consent of Parliament. The ministers argue that such a provision is necessary to carry out decisions of the United Nations Security Council to enforce peace and security. The proposal will be voted on during Parliament's next session. Article 39.4 of the Constitution requires three-fifths of all deputies to vote in favor of constitutional laws in order for them to pass. Although it contains no provision to suspend the Constitution or constitutional rights, this proposal would change the fundamental principle that laws may be issued only by Parliament.

Restitution has continued to breed controversy during the last few months. The case of the St. Vitus's Cathedral in Prague refocused attention on Roman Catholic ecclesiastical property. A petition promoted by writers Lenka Prochazkova and Zdenek Mahler (a playwright whose best-selling popular history of the cathedral was criticized by professional historians) claimed that the cathedral had been built with state money and that it belonged "to all the people." The petition, which demanded that Parliament pass a special law making the cathedral the property of the state, was signed by 121 MPs—including 25 deputies from the CDP and two from the CDA. The Christian parties, however, criticized the petition for putting unacceptable pressure on the judiciary.

Historically, the cathedral belonged "to itself" until the communist regime nationalized it in 1954. In 1994, the Prague First District Court ruled that the cathedral again belonged "to itself," thus transferring effective control to the Roman Catholic Church. On February 9, Havel's office appealed this decision to the Prague Municipal Court. No date has been set for the appellate hearing, but both sides have intimated that they will abide by the Municipal Court's decision.

CDP generally opposes further restitution of church property. The party maintains that, while no further property should be nationalized, property seized from the church in the pre-war land reform and by other measures prior to 1948 should not be returned. This insistence on 1948 as the baseline year for property restitution has cropped up in several other controversial property cases.

One especially noteworthy case was recently decided by the Constitutional Court. On March 8, the Court rejected a plea by Rudolf Dreithaler, a Czech citizen of German origin, to abrogate the 1945 Decree No. 108 "On the Confiscation of Enemy Property and the Funds of the National Revival." Dreithaler claimed that the decree was invalid because Edvard Benes was not legally president of Czechoslovakia when he promulgated it. Dreithaler himself was born in 1949, but his family's property in Liberec had been confiscated under the decree. His request for restitution under the 1991 law, which uses 1948 as the base year for restitution, had been denied by the local and regional courts in Liberec.

A decision in Dreithaler's favor would have had incalculably vast repercussions, since the decree formed the legal basis for the confiscation of the property of 3.5 million Sudeten Germans after World War II. If the decree had been overturned, all of those expropriated and forcibly expelled former Czechoslovak citizens and their heirs could claim restitution of their property. Indeed, Dreithaler's lawyer, Kolja Kubicek, seemed to be using Dreithaler's claims as a test case. He hoped to delegitimize the expropriation of the Sudeten Germans by drawing attention to the illegal basis of the Czechoslovak political system between 1945 and 1948.

The Court rejected Dreithaler's arguments, arguing that Benes's 1938 abdication took place under foreign pressure, that Benes was recognized as Czechoslovakia's presi-
dent by Great Britain, the USA, the USSR, and 24 other nations during the war, and that the postwar Provisional National Assembly unanimously confirmed Benes as president until new elections could be held. Finally, asserting that Benes's legitimacy cannot be judged by invoking formal criteria, the Court concluded that Benes had full authority to issue Decree No. 108 in 1945. (Furthermore, the Provisional National Assembly declared the decree to be valid laws.) In short, the Court found that these legal acts conformed to the legal system of pre-war Czechoslovakia. The Court also argued that the confiscation decree was aimed not against citizens of German or Hungarian origin but against enemies of democracy. As such, it did not conflict with the Charter of Rights and Freedoms or other agreements. The confiscation simply aimed to alleviate the suffering caused by the German occupation, the Court said.

This decision was unanimously welcomed by Czech political parties, but it has many critics within and outside the Czech Republic. These critics point to the fact that paragraph 1.2 of Decree No. 108 states that the property of "physical persons of German or Hungarian ethnicity (narodnost), except for those who can prove that they remained faithful to the Czechoslovak Republic and never acted against the Czech and Slovak nations, and either actively participated in the struggle for their liberation or suffered from fascist terror" shall be confiscated without compensation. No such confiscation was envisioned for persons of Czech, Slovak, or other ethnic backgrounds, although there were collaborators among them as well.

Meanwhile, Dreithaler has another complaint pending before the Constitutional Court. This second petition seeks a simple reversal of the specific decision not to return his family property in Liberec. This case is somewhat more limited in scope. Dreithaler is presently a citizen of the Czech Republic and his family was never expelled from Czechoslovakia, so that a decision in his favor which did not overturn the Benes decrees would not automatically apply to expelled Sudeten Germans. But Kubicek believes that it would apply to the estimated 50 to 80 thousand German-speaking citizens of the Czech Republic, who feel that they have been discriminated against in the process of property restitution.

The ongoing restitution case of Karel des Fours Walderode, an aristocrat of French-German ancestry, raises many of the same controversial issues. Walderode, whose Czech citizenship has been confirmed by the Ministry of the Interior but whose wartime activities seem suspicious to many Czechs, has claimed Hruby Rohozec castle in north-east Bohemia and about 330 acres of land. So far he has received 230 acres of forest. Many local citizens have joined a petition committee to prevent the return of property to Walderode, and he has received several anonymous death threats in connection with his case.

Property restitution claims continued to blemish Czech-German relations. The Munich-based Sudeten German Landsmannschaft criticized several aspects of the Dreithaler ruling. For example, the group interpreted the Court's reference to the "mass responsibility" of the Sudeten Germans as an attempt to introduce the discredited idea of collective guilt in a new guise. The Landsmannschaft also claimed that the Court was under pressure from the chairman of the Assembly of Deputies, Milan Uhde. Before the verdict, Uhde declared that for him the abrogation of the Benes Decrees would be "unimaginable."

The Landsmannschaft has also tried to link compensation for Sudeten Germans to compensation for victims of Nazi war crimes. The successor states of the former Czechoslovakia are the only states to which no such compensation has been paid since the war. The Czech government, however, has repeatedly spurned proposals to combine the two compensation questions.

Landsmannschaft leader Franz Neubauer has repeatedly demanded a settlement between the Czech Republic and his organization. The Landsmannschaft has urged the German Federal Government to block the Czech Republic's application for membership in the European Union until a "just settlement" with the Sudeten Germans is reached. These demands have not fallen on completely deaf ears. German Foreign Minister Klaus Kinkel recently urged the Czech government to open a dialogue with the Sudeten groups.

These advances were firmly rebuffed by the Czech government. Klaus has consistently refused to deal with the Landsmannschaft, arguing that a government can negotiate only with other governments, not with private organizations. In a reaction to Kinkel's speech, Klaus also stated that the issue of the expulsion of the Sudeten Germans and the confiscation of their property is "definitively closed." On March 19, Klaus met with German Finance Minister Theo Waigel, leader of the Bavarian Christian Social Union, which has long supported Sudeten German demands. The two did not discuss the Sudeten question directly, but Waigel asked Klaus to eliminate "strains" in Czech-German relations. Klaus responded, "I don't see any strains whatsoever."

In an interview published February 24, Czech Foreign Minister Zicheniec hinted that former residents of Czechoslovakia, including Sudeten Germans who would like to return, could obtain preferential and expedited treatment when applying for Czech citizenship.

On February 18, Havel delivered a major speech devoted to Czech-German relations. The resolute tone of the address represented a significant departure from the contrite apologies he had offered to the Sudeten Germans in the early days of his presidency. Havel rejected attempts to interpret the expulsion without taking its historical context into account and proposed turning away from the past in order to build a better future.

The country's struggle to turn its back on the communist past has also continued. On February 20, Havel pardoned Jiri Wonka, who was arrested for libel after he addressed Judge Marcela Horvathova in vulgar language. Wonka's brother
Pavel was a political prisoner who died in prison after Judge Horvathova refused his request to be transferred to a hospital. Wonka's dramatic arrest earlier in the year drew considerable public attention.

Many communist judges with similarly smudged records have been accorded tenure by the present government, causing considerable bitterness, especially among former political prisoners. Despite this discontent, Minister of Justice Novak announced on January 8 that the judiciary had been thoroughly cleansed of communist judges. According to his statement, only one-fourth of former employees remain in the courts, and only one-third of current judges belonged to a political party before 1989.

Several cases against communist leaders underwent new developments in early 1995. The last communist minister of the interior, Frantisek Kincl, was released from prison on February 13 after serving about half of his three-year sentence. He was convicted of abuse of power in October 1992, for organizing reprisals against dissidents and demonstrators in 1988 and 1989. Kincl will remain on probation for two years.

Charges against Milos Jakes, former general secretary of the Czechoslovak Communist Party, and Karel Hoffmann, former trade union leader, have been dropped for procedural reasons. Jakes and Hoffmann were accused of illegally arming the communist People's Militia.

Finally, there is the case against Pavel Minarik, an intelligence officer accused of planning to blow up the Munich offices of Radio Free Europe in the early 1970s. Minarik's 1993 conviction was overturned by a higher court, which remanded the case to the state attorney's office. The state attorney dropped the case, leading to allegations of communist ties within Czech investigative offices. The Interior Ministry's appeal to overturn the later court ruling was successful, and the case will now be reopened.

A draft law on the accessibility of communist secret police files was approved by the government's Legislative Council. Under the proposed law, anyone spied on by the security services would have access, for a small fee, to his or her own file until 2001. Unlike the German Stasi files, however, the Czech files would not be fully disclosed: the names of secret police officers would be preserved while informers would be identified by code names only, and third persons' names would be blacked out. The proposal has been fiercely criticized by organizations of former political prisoners, who are demanding a German-style full disclosure.

Other efforts to rid the republic of communist vestiges have been rather formal. On March 13, Minister of the Interior Jan Ruml ordered three international communist organizations, the International Organization of Journalists, the International Union of Students, and the World Trade Union Federation, to move their headquarters out of the republic. Their other activities on Czech territory will not be affected.

Meanwhile, a fourth communist party was founded by pre-1989 communist politician Miroslav Stepan. The new party calls itself the Party of Czechoslovak Communists. The "official" communist party (CPBM) denounced Stepan's supporters as "ambitious political bankrupts who admit that they themselves contributed to the fall of socialism and who would now like to take control of the Left."

The CDU-CPP proposed a bill on criminal sentencing in early March. The bill would impose life imprisonment on third-time repeat offenders in major crimes. The other coalition parties disapproved of this three-strikes-and-you're-out proposal, calling it populist.

On February 8, the government approved a bill outlining stricter requirements for owning firearms and ammunition. Under the proposed law, gun owners would have to be 21, have no criminal record, and present certificates of physical and mental health. They would also have to pass an examination. A controversial last-minute clause would deny firearms licenses to men who refused military service or performed civil service instead. Critics claim that the clause would restrict constitutionally guaranteed individual rights, but the government defended the measure as consistent and appropriate.

Parliament failed to agree on its own proposed rules and procedures. Almost two hundred modifications were incorporated in a draft text prepared by a commission led by Jan Kasal (CDU-CPP). Proposed amendments included an increase in the minimum size of a parliamentary club to ten deputies (which would have disbanded the five-member Liberal National-Social club and the six-member Republican club), a ban on guns and explosives in the assembly hall, a ban on smoking and alcohol consumption in the assembly hall, and a change in the committee formation rules. One proposal would have required the Assembly of Deputies to be in session every weekday of the month except one (to be reserved for contact with voters and participation in international conferences). At present, deputies spend one week each month in plenary sessions, two weeks in committee work, and one week in commission work, with the remaining few days free.

**Estonia**

Estonia's right-of-center ruling coalition was defeated by the centrist bloc, led by the Coalition Party (CP), in the March 5 parliamentary elections. Although the CP's electoral victory was convincing, the fragile alliance began to crumble as soon as it attempted to form a new government.

Nearly 69 percent of all eligible voters (550,000) went to the polls for Estonia's second postsoviet parliamentary elections. Although only two and a half years have gone by since the first elections, a constitutional law was passed providing for the early dissolution of the first Parliament and permitting pre-term elections. The newly elected members of the Riigikogu (Parliament) will hold their office for four years (Art. 60).

The party which used to control a majority in Parliament—Pro Patria (or Isamaa) Party (PPP), headed by former Prime Minister Mart Laar—expected a drubbing at
the polls after leading the country through two years of economic shock therapy. While carrying out large-scale industrial privatization and radically shifting the country’s foreign trade to favor Western partners, the Laar government also slashed agricultural subsidies and froze pensions, which had a devastating effect on many people. Nevertheless, because Estonia’s economy began to grow by as much as five percent in 1994, much of the electorate expressed support for market reforms. Thus, in pre-election maneuvering, another right-of-center party, the Reform Party (RP) led by the president of the Bank of Estonia, Siim Kallas, emerged alongside PPP. In the opposition camp, meanwhile, Tiit Vahi’s CP allied with the Rural Union (RU—led by popular Soviet-era leader Arnold Ruutel) to form a broad electoral bloc supported by both the cities and the countryside. Although branded by the right as excommunists and members of the former nomenklatura, Vahi and Ruutel proved popular among farmers and low-income voters seeking relief from the painful reforms imposed by the Laar government.

The formation of this alliance allowed Vahi and Ruutel to reap more than 32 percent of the vote, which translated into 41 seats in the 101-seat Riigikogu. Siim Kallas’s RP also fared well with 16 percent or 19 seats, while the leftist Center Party (led by ex-Premier Edgar Savisaar) came in third with 16 seats. PPP, in an alliance with the National Independence Party (NIP), survived Estonia’s electoral threshold of five percent, gaining eight seats, as did the Moderates (with six seats) and the Right-wingers (with five seats). A Russian party also entered Parliament for the first time since 1992, when Estonia’s citizenship legislation denied most of the republic’s 430,000 Russians automatic citizenship and, thereby, the right to vote. This Russian-based bloc, named Our Home is Estonia, won six seats. Most of Estonia’s political leaders welcomed the election of a Russian bloc, saying it would speed the minority’s integration into Estonian society.

The CP-RU electoral victory was disappointing to some observers who lamented that Estonia—much like Slovakia, Poland, Lithuania, and Bulgaria—had shifted from the right to the left, even after two years of highly successful economic reforms. Within the triumphant CP-RU bloc, Tiit Vahi’s CP was generally known as more market-oriented, whereas Ruutel’s RU was seen as more interested in protecting the agricultural sector. In pre-election statements, Vahi preached the need to maintain foreign investments and private enterprise, but within a more “socially-oriented market economy,” on the German model. When President Meri nominated Vahi to form a new government ten days after the elections, Vahi turned first to RP in an attempt to build a pro-reform image for the government. Wedding RP’s pro-market stance with RU’s protectionist inclinations, however, became impossible for Vahi, and he was soon forced to turn instead to Edgar Savisaar’s Center Party. Cooperation between the parties became embittered during voting for leadership posts in Parliament, disillusioning voters with their newly-elected representatives.

Finally, on March 31, Vahi and Savisaar signed a coalition agreement, pledging to continue market reforms, but conceding the need to create a more balanced social policy. Tiit Vahi’s nomination as prime minister was approved in Parliament on April 5, and his cabinet has subsequently sworn in on April 17. The formation of the new government represents a clear victory for the former opposition, which now has solid support from around 57 of the 101 members of the Riigikogu.

During the election campaign, many parties (including CP) had favored amending the Constitution to provide for direct presidential elections by popular vote. This would have opened the way for incumbent President Meri’s arch-rival, Arnold Ruutel, to avenge his loss to Meri in the 1992 presidential race. Ruutel was the top vote-getter in the March elections (with 17,000 votes in his district) and would probably fare best in a popular poll for the presidency. Disputes within Parliament appeared not only to have aggravated the problems of governance, but also to have improved Meri’s chances of reelection. Ifickering continues in the assembly and the Constitution is not amended, Meri will have a good chance to win support from the majority of parliamentarians.

On January 19, Estonia passed a new citizenship law. The new law extends the residency requirement and application period from three to six years, and imposes a new civics exam (in Estonian) for all applicants, on top of the already mandatory language exam. The new exam, which will test knowledge of the Constitution as well as of the citizenship law, was criticized by leaders of the non-citizen community as harsh and unfair. They warned that the new exam will make it even harder for soviet-era immigrants to acquire citizenship, potentially forcing them to apply for Russian citizenship. Because members of the Riigikogu were already gearing up for the election campaign, however, the bill passed without much controversy. The new law went into effect on April 1.

Meanwhile, Estonia’s Constitutional Review Chamber handed down only one minor decision during the first quarter of the year. The decision dealt with defining the scope of ministerial authority. Decided on January 11, the case stemmed from a lower court of appeals judgment addressing the legality of a February 1994 decree issued by Estonia’s Interior Minister Heiki Arike. Under Estonia’s court system, if a lower court deems a government act unconstitutional, the act is automatically appealed to the Constitutional Review Chamber for a final ruling. In this instance, the Tallinn Administrative Court had declared unconstitutional the minister’s decree (involving procedures for issuing residency permits). In the lower court case, a resident of Tallinn had contested the denial of his residency permit by Estonian authorities in 1993. In resolving the dispute, the interior minister had issued a ministerial decree. The lower court ruled that he had had no legal right to do so without receiving special authority by law. In its final decision, the Constitutional Review Chamber agreed with the lower
court and declared the minister's decree null and void. The ruling will serve mostly as a check on ministerial authority. The Court made a similar ruling in early December regarding a decree by the finance minister.

After nearly two years of activity and a total of 16 cases decided so far by the Chamber, the Chairman of the Constitutional Review Chamber, Justice Rait Maruste, who also serves as chairman of the National Court, expressed satisfaction with the process of judicial review that the Chamber has helped establish. The Constitutional Review Chamber is not a wholly separate entity, as it is in other countries, but is only a subdivision of the National Court. Five of the 17 National Court justices serve on the Chamber. In a March interview with EECR, Justice Maruste especially commended President Meri's role in challenging Parliament on several recent bills and asking the Constitutional Review Chamber to review them. In many of the cases involving the president's constitutional powers, the Estonian press has interpreted Meri's actions as designed to safeguard or expand the president's prerogatives. Justice Maruste, however, contended that the president and his legal advisors had challenged the Riigikogu on many substantive issues that needed to be addressed. Maruste also asserted that the president had been quite moderate in the exercise of his powers, as he had referred only five laws to the Chamber (of the hundreds passed by Parliament in the last two years). Good rapport between the chairman and the president may exert considerable influence on the way the system of checks and balances functions in the future.

Estonia's legal chancellor, Eerik-Juuan Truuvali, can only advise on the constitutionality of legal acts and recommend that they be changed. But Justice Maruste argued that Truuvali had been effectively doing his part as watchdog in the system—nine of the cases decided by the Chamber in the last two years were referred by Truuvali. These include the case concerning the constitutionality of the Summer 1993 territorial autonomy referendum held in the northeastern Estonian towns of Narva and Sillamäe, and several laws passed by the Riigikogu involving police and surveillance procedures. The remaining three Chamber decisions involved automatic appeals from lower courts, such as the one described above.

The Estonian legal system in general still lacks a channel for public participation or access to the highest court, which in other countries is provided by the ombudsman. The establishment of such an office could be especially important for uncovering and investigating cases of bureaucratic corruption and arbitrariness. The new Parliament has yet to pass several laws required by the Constitution. Among these are the procedures for declaring martial law (Art. 129) and state defense during peacetime (Art. 126) (see EECR, Estonia Update, Vol. 4, No. 1, Winter 1995), and for state defense in wartime (Art. 126). Another long-delayed bill was passed in the Riigikogu on the procedures for the impeachment of top state officials for criminal offenses. The offices affected include the president, legal chancellor, state auditor, and members of the National Court. The Constitution gives Parliament the right to decide these cases, but each case must be brought by another state official. For example, the president can bring a case against the legal chancellor, and vice versa.

Reasons for delay in adopting these constitutional laws vary. To begin with, the first Parliament was overburdened with lawmaking, and these laws were not viewed as especially urgent. In addition, each law is politically sensitive, involving power balancing between Parliament and the president. For example, the law on state defense in peacetime ended up in the Constitutional Review Chamber after President Meri objected to some of its provisions. Finally, institutions such as the National Court and the legal chancellor do not have the power of legislative initiative. Thus, Parliament does not always feel pressured to act. All these institutions can do is issue public statements or quietly lobby in hopes of getting necessary legislation passed.

**Hungary**

During the last quarter, the Six-Party Conference failed to establish a committee to prepare the new draft constitution, and deliberation to fill two vacant seats on the Constitutional Court continued without result. In the meantime, a struggle over the future of the government's economic program led to personnel changes in several top posts. The reshuffling began in January when the prime minister's office proposed to the board of directors of the State Assets Agency that the recent sale of a state hotel chain be invalidated. Those opposed to the sell-off argued that the sale price was too low and that the value of the chain's assets had not been adequately appraised prior to the tender of offers. Sitting Privatization Commissioner Ferenc Bartha resigned, and the prime minister's office announced that privatization matters would no longer be directed by the Ministry of Finance. A draft privatization bill was submitted to Parliament before the government decided to establish the office of Minister of Privatization (without portfolio). The draft bill must now be rewritten to include the new privatization chief. This new minister on a short government leash will take over from the Ministry of Finance the responsibility for overseeing privatization. As a member of the government, the minister is held accountable to Parliament. Minister of Finance Laszlo Bekesi resigned in response to the cancellation of the sale and the subsequent reduction of his ministry's powers.

In March, Prime Minister Gyula Horn went forward and appointed Tamas Suchman as minister of privatization matters. Article 37.2 of the Constitution stipulates that "ministers without portfolio shall perform the duties determined by the government." In his new position, Suchman heads no agency and has no staff of his own. Shortly thereafter, the government appointed two well-known economists, supporters of free-mar-
appointed minister of finance to replace Bekesi. Prior to 1989, igination of former Bank President Bod Peter Akos in vacant because the government requested and received the res-protests of the bank's insufficient independence from the gov-Boros government in December 1991 due to his repeated ket reforms, to two vacant posts. Former National Bank of Hungary was vacant because the government requested and received the resigna-tion of former Bank President Bod Peter Akos in December 1994.) Surany's colleague, Lajos Bokros, was appointed minister of finance to replace Bekesi. Prior to 1989, Bokros and Surany had co-authored a book calling for the capital-ist-style reform of the Hungarian economy.

Shortly after making the new appointments, the government enacted a stringent austerity plan. The March austerity program was perhaps the most widely-discussed issue in domestic politics this quarter. The main purposes of Resolution 1023/1995 (III.22. Kormhat) are to increase the speed of privatization, lower Hungary's trade deficit by taxing imports, restrict wages (and thereby induce inflation), revamp the collection and administration of public revenues, better manage the state debt, and curb the black market. In an effort to shrink budgetary outlays, the government has reduced unemployment, health care, and child care benefits, and will require tuition payments by university students beginning in 1996. It will, in addition, eliminate many state offices. The government is also seeking to prevent local governments from running up their own deficits, particularly in regions that are habitually insolvent. The government claims that the welfare system, while trimmed down, will better assist those truly in need. The legislative agenda of the government has been altered as a result of the austerity program. Many of the government's new decisions require Parliament to amend existing laws.

This draconian overhaul of the welfare system came as a shock to most citizens, who view these benefits as a just return on years of contributions, not as now-obsolete socialist largesse. By appealing free-market reformers in the coalition, moreover, Horn lost the support of some of the more traditional elements of the Hungarian Socialist Party (HSP). First to go was Minister of Welfare Pal Kovacs, who described the austerity measures as antisocial and tendered his resignation on March 12. Shortly thereafter, Bela Katona, minister (without portfolio) of secret services, and Janos Csurik, state secretary at the Ministry of Culture and Education, also left the government.

Hungary and Slovakia signed a Basic Agreement on March 19, which will probably be ratified by Parliament in late May. The Agreement provides protections for ethnic Hungarians living in Slovakia in exchange for the recognition by Hungary of the inviolability of the current Hungarian-Slovak border established at Trianon at the end of WWI.

During the first six months of the new government, Parliament amended 31 laws, passed 19 new laws and enacted 44 parliamentary resolutions. Fifty-one of the 66 bills slated to be submitted by the government were actually put before Parliament. Some major laws, including the rewritten act on privatization, remain to be passed. In addition to the problematic privatization bill, the government has still not submitted to Parliament a draft bill on the media. (A non-government media bill was, however, submitted by an MP of the Christian Democratic Party [CDP].)

According to the “Standing Orders of the Hungarian Parliament,” members of Parliament have three different grounds on which to speak during parliamentary question hour (the time Parliament sets aside each week for questions, answers and interpellations). Altogether, 268 question were raised during the last half-year; 88 percent of the questions were asked by opposition parties and 12 percent by government parties. Among the opposition, the Small Holders Party (SHP) was most active. The Free Democrats (FDP) raised the fewest questions. Questions were most frequently addressed to the Minister of Finance (14 percent), the Prime Minister (13 percent) and the Minister of Interior (11 percent).

Three MPs have resigned since the new government was elected, two from the FDP and one from the HSP. These resignations do not require interim elections because all MPs who resigned had obtained their seats based on the party list vote. Consequently, the FDP and HSP may simply appoint their replacements. (For an analysis of Hungary's mixed electoral system see, EECR, Feature, Vol. 3, No. 2, Spring 1994.)

Meanwhile, during the last quarter, the Constitutional Court was asked to review two social institutions: marriage and "partners-in-life" (14/1995 (III.13) A.Blk.). According to the Hungarian Laws in Force, both institutions are restricted to relationships between a man and a woman. Petitioner asked the Court to rule that the gender limitations contained in the Laws in Force were unconstitutional because they discriminated against gays and lesbians. The Constitution of Hungary does not explicitly state that marriages are restricted to male-female couples. Rather, Art. 15 of the Constitution reads, “The Republic of Hungary shall protect the institutions of marriage and family.”

The Court ruled that the state is not constitutionally required to provide for marriages between members of the same sex. In its opinion, the Court primarily focused on the historical definition of the institution of marriage. The Court reasoned that the Constitution of Hungary must be placed in the tradition of constitutions and laws that protect and value marriage between a man and a woman, and that it does not provide for marriage of homosexual couples. The Court claimed that the long cultural traditions restricting marriage to male-female couples indicated that the institution of marriage was historically and remains a legal recognition of relationships between men and women. The Court drew support for its view from Art. 12 of the Convention of European Human Rights and the practice of the European Court of Human Rights as represented in the Rees case (October 17, 1986, Series A, 1987, p. 19). The Court also explained that the Constitution does not grant the right of equal access for every individual to every state institution. In this case, the Court explained, altering the definition of marriage was not the only means by which to provide legal recognition of non-
traditional matrimony. Rather, the state could reserve marriage for male-female couples while creating another institution for same-sex couples. The Court postponed its decision on the status of the institution of "partners-in-life" until March 1996.

Several decisions handed down this quarter by the Constitutional Court assessed the constitutional validity of local government ordinances. The Court declared unconstitutional several provisions of a local government decree in the town of Nagyloc which limited access to records of public sessions of the representative body of local government (19/1995 (III.28) ABh.). According to the decree in question, only individuals living within the territory of the local government were to be given access to the records of the representative body, and only for a limited period of time. The Court ruled that this decree violated Art. 61 sec. 1 of the Constitution, which provides that "In the Republic of Hungary everyone shall have the right to know and disseminate data of public interest." The Court went on to explain that a local government may require an individual requesting information to pay for the expense of generating a report, but that charges may not be used to cover costs associated with the initial gathering of information.

### Latvia

Upcoming parliamentary elections, scheduled for October, have prompted the Saeima (Parliament) to adopt a new electoral law. During an extraordinary meeting on February 22, deputies considered three alternative drafts presented by Latvia’s Way (LW), the Fatherland and Freedom Party (FFP), and the Latvian National Independence Movement (LNIM). The electoral law proposed by LW passed its first reading, 56 to six with 13 abstentions. In accord with Art. 6 of the Satversme (Constitution), the LW draft provides for proportional elections and sets the threshold to enter parliament at five percent. Candidates must be at least 21, eligible to vote, residents of Latvia for at least 12 months prior to the elections, and fluent in Latvian. Individuals previously convicted for a premeditated crime, and KGB agents or agents of any foreign state security service or defense ministry are ineligible. The LW draft also requires each candidate pay a 2000 lat (nearly 3000 dollars) security deposit prior to elections.

By March, the Legal Commission of the Saeima had received numerous proposals for amending the draft law that had passed its first reading. Alternatives had been proposed for almost all the articles, but the Legal Commission decided to reject many of them. Among the rejected proposals, for example, were those to raise or reduce the threshold for entering the Saeima, to reduce the security deposit to 1000 lats, and to ban former officials of the Communist Party and Comsomol from running for office.

One proposed change was particularly controversial. Article 8 of the LW electoral law draft allows only parties or coalitions to submit candidate lists. The parliamentary opposition argued that this restriction was unconstitutional. The electoral law for the current Saeima did not give political parties alone the right to present candidate lists, but allowed voters to do the same if the lists had been signed by at least 100 voters. The opposition argued that the new provision violated Art. 2 ("The sovereign power of the Latvian state shall belong to the people of Latvia.") and Art. 9 ("Any Latvian citizen over 21 years of age on election day may be elected to the Saeima.") of the Constitution. The PAE faction, LW’s coalition partner, interceded in the debate to offer a compromise. PAE members suggested adopting a hybrid electoral system in which half of the deputies would be elected by a proportional system and the other half by plurality voting for specific candidates in single-member districts. This proposal was quickly rejected on the grounds that it would violate Art. 6 of the Constitution which clearly requires that parliamentary elections be held on the basis of proportional representation.

Legislative squabbles have led many political organizations to propose a major overhaul or even to repeal the Constitution. Latvia’s basic law, the Satversme, was adopted in 1922 and reinstated by the fifth Saeima in 1993, after the redeclaration of Latvian independence. First adopted over 70 years ago, the Satversme does not take into account the dramatic changes undergone in Latvia in the interim. For example, the Satversme lacks a section on citizens’ rights, required of every country petitioning for membership in the CSCE or the EU. To fill this void, the “Law on Rights and Obligations of a Citizen and Person” was adopted by Parliament in 1991.

A new draft amendment to the Constitution has been formulated by the Farmers’ Union (FU). This draft provides for a popularly elected president. (The Satversme states the president is elected by the Saeima.) In addition, it proposes instituting a constitutional court, extending the Saeima’s term from three to four years, and guaranteeing provisions for the dismissal of deputies. (Art. 14 of the Satversme prohibits MPs from being recalled.) The draft also includes an entire chapter devoted to local governments.

FU has already begun to gather voters’ signatures to bring the amendment to a referendum. According to the “Law on Referenda,” FU will have to collect 10,000 signatures in order to present the draft to the Central Electoral Committee. Then, within 30 days, the Committee must collect signatures from one-tenth of all eligible voters (nearly 130,000). According to Art. 78 of the Constitution, having been endorsed by one-tenth of the electorate, the proposed constitutional amendment draft is presented to the president, who must then refer it to the Saeima for adoption. If Parliament fails to adopt the amendment, then the bill is presented to the electorate in a referendum. Article 79 states that if at least half of all eligible voters support the draft, the constitutional amendment is adopted. FU hopes to coordinate the referendum with the elections, arguing that it would save the state...
From the financial burden of organizing an additional vote. FU is optimistic about the referendum, given polls in which 79.3 percent of the respondents support the idea of a popularly elected president.

A popularly elected president is also supported by the People's Harmony Party (PHP), PAE, and the party Saimnieks. A referendum on the question will nevertheless be necessary due to opposition by many groups, including the Fatherland and Freedom Party (FFP), which supports the parliamentary system. LW does not support change either, and would prefer not to consider the popular election of a president, as this arrangement would change the whole spirit of the Sarversme. The Democratic Party (DP), the Latvian Social Democratic Worker's Party (LSDWP) and the Latvian Popular Front (LPF) are also satisfied with the status quo. They also fear the extension of presidential power. The opposition claims there is nothing wrong with the Constitution, charging that the FU would not have proposed any amendment if the president were an FU member. That FU is well represented in Parliament is commonly adduced to explain why that party wants to extend the parliamentary term.

Recent discussion about the amendment shows that the smaller parties plan to use the amendment as a political bargaining chip. For example, the chairman of Saimnieks has announced that his party is ready to give up the idea of the popularly elected president in order to avoid potential obstacles to uniting with DP.

Anticipation of parliamentary elections has catalyzed coalition formation. On January 21, the November 18 Union and the FFP merged into the Union for Fatherland and Freedom (UFF). On the day of its founding, the new party had 466 members. Its founding congress adopted a new program geared to "protecting" Latvia. Saimnieks, DP, and the Republican Party also plan to form a coalition at the end of April. PAE will leave its coalition with LW to join the new party's coalition list for the elections, and it will join the coalition fully afterwards.

FU congress took place at the end of February. Members of the party agreed on the procedure for nominating candidates to the sixth Saeima. The congress decided that only FU members who have joined the party at least six months before the elections may be included on the candidate list. Candidates may be nominated only by regional organizations of the FU. The congress deprived the party's central board of the right to choose two candidates in each electoral district. The 25th Congress of the LSDWP took place on March 4. It accepted the party's election program, adopting a resolution appealing to all noncommunist left-wing parties, trade unions, and other organizations to form a pre-election coalition.

LW, by contrast, has announced that it will not form any coalitions before the elections, claiming it stands for strict accountability to the electorate. It also expressed its desire to promote stability and strengthen the citizens' faith in reforms.

LNIM assessed its prospects in the elections at a special conference held on February 25. With its 1820 members, LNIM is the second largest party in Latvia after FU. The aim of the conference was not to adopt a program, but to launch its electoral campaign. LNIM and its coalition partner, the Green Party, had formed eight working groups to puzzle out the pre-election and post-election strategy.

The law on financing political parties also passed on its first reading in the beginning of March. It aims to stem political corruption by prohibiting parties from receiving any financial support from the national or local government, from abroad, from stateless persons, from anonymous contributors or through the intervention of third parties. The law also demands parties keep strict annual financial records which are open to the public. Though no deputies voted against this law, the LNIM faction has worked out amendments which ensure privacy for donors.

On January 10, the City Council of Riga passed the resolution "About allowances to indigent inhabitants of Riga in the 1994-1995 heating season." Article 10 of the resolution proposes to maintain subsidies for heating only to Latvian citizens, while forcing non-citizens to bear the full cost of heating. The Ministry of State Reforms invalidated the resolution on the grounds it violated the constitutional law "The Rights and Obligations of a Citizen and Person," local government legislation, as well as the Universal Declaration of Human Rights. The chairman of the Riga City Land Commission, Egils Vigants, assured all concerned that this was only a budget issue and stated: "I suppose we will have to find some other way to solve the problem of heating and rental allowances."

Thus far, separate laws have been passed on social and labor rights for Latvian citizens and for permanent residents. At the beginning of March, PHP suggested integrating them. The 11 amendments to the draft laws expanding the rights of permanent residents are supported also by PAE, DP, and CDU. UFF, on the contrary, seems opposed.

A precondition for Latvia's admission to the Council of Europe was the adoption of a democratic "Law On Citizenship," Adopted on July 22, 1994, the law came into force on August 11, 1994. On February 1, the territorial departments of the Naturalization Office began their work throughout Latvia. The first naturalization applications have been filed and applicants have been given appointments to submit documents and to pass the Latvian language test. So far, several hundred naturalization applicants have passed the language test and the history tests will be administered beginning March 20. Parliament has recently passed legislation to simplify these procedures. The amendments give automatic citizenship to ethnic Latvians and to Livs whose place of residence is Latvia, if they register before March 31, 1996. Applicants who have passed general education requirements in a Latvian-language school or persons suffering from disabilities will now be exempt from taking the language exam.
On February 22, having tested the political waters for several months, a group of 44 lawmakers, most of them representatives of the majority Lithuanian Democratic Labor Party (LDLP), presented to the Seimas (Parliament) a draft amendment to Art. 47 of the Constitution, regarding land ownership. Though support from 44 deputies was enough for LDLP to propose the amendment under Art. 147, it is a far cry from the 95 votes needed to amend the Constitution.

During his presentation of the draft, Chairman of the Agricultural Committee Mykolas Pönckus urged support, arguing that existing constitutional restrictions hinder the proper functioning of the land market. Article 47.1 of the Constitution provides that “Land, internal waters, forests, and parks may belong by the right of ownership only to the citizens and the state.” This provision bans not only non-citizens from owning land, but also foreign and domestic corporations, which are limited to leasing land for 99 years. The amendment proposes to eliminate the word “only” from the first paragraph of Art. 47 and replace the second paragraph with “land can belong by right of ownership to voluntary agricultural cooperatives. Plots of non-agricultural land occupied by production and other facilities, and lands necessary for their maintenance can belong by right of ownership to Lithuanian and foreign legal entities and foreign individuals, as well as to foreign states for establishing their diplomatic and consular institutions, in accordance with the terms established by law.”

The opposition, led by former head of state, Vytautas Landsbergis, is reluctant to support the proposed amendment. It believes that the reference to “voluntary agricultural cooperatives” reflects an intention to reinstate soviet-style collective farms. The previous government was deliberately slow in liberalizing the land market because of its commitment to land restitution and the dissolution of the kolkhoz system.

Ongoing negotiations with the European Union brought a new urgency to LDLP’s search for a compromise with the opposition. Land ownership reform is a major stumbling block in talks between Lithuania and the EU, the latest round of which was held on February 27 in Brussels. Deputy Foreign Minister Algimantas Januska exhorted the Seimas to reach a decision quickly: “if no decision is made on a constitutional amendment allowing foreign corporations and individuals to purchase land, Lithuania’s hopes for associate membership in the EU may be forestalled or even fail.” He claimed that Lithuania was the only Central European nation not allowing foreigners to acquire land. During the talks, EU representatives in principle agreed with Lithuania’s proposal of a transitional period lasting until 1999, to bring its legislation into line with EU standards. Lithuanian officials have expressed hope that an association agreement with the EU will be signed in May or June.

In light of EU requirements, the opposition announced its readiness to participate in the preparation and adoption of a constitutional amendment and subsidiary laws to allow foreigners to purchase land in Lithuania. Except for the small Union of Nationalists faction, all political groups expressed their willingness to cooperate. This development dispelled LDLP fears that the amendment would need to be brought to a referendum. If it were to come to that, LDLP would fall into its own legislative trap: last summer, the Seimas passed a “Law on Referenda” in anticipation of the opposition’s referendum initiative. The law not only restricted the use of referenda, especially for economic questions, but also reduced their power; even if a referendum passes, the bill or resolution in question must still be adopted by a Seimas vote (see EECR, Lithuania Update, Vol. 3, No. 3/4, Summer/Fall 1994).

On January 25, the Constitutional Court ruled that the European Convention on Human Rights and Fundamental Freedoms does not contradict the Lithuanian Constitution. President Algirdas Brazauskas had brought the case to the Court, after a special working group had determined that some articles of the Convention and its protocols did not agree with certain provisions of the Constitution. Almost two years have passed since Lithuania signed the Convention, and preparation for ratification was the main reason for referral to the Constitutional Court. The Court’s ruling clears the way for Lithuania to join the European Human Rights Convention by May. However, the process of harmonizing national laws (those already passed and those to be adopted) with Convention provisions is ongoing.

On February 10, a general congress of judges, convened in Vilnius, was attended by 300 judges representing all four of the newly established levels of the court system—the Supreme Court, the Court of Appeals, area courts, and district courts (see EECR Lithuania Update, Vol. 4, No. 1, Winter 1995). The congress elected a Council of Judges, a new body that will assist the president in appointing and promoting judges. The nine-member council includes representatives from all four judicial levels.

On January 31, Brazauskas reorganized the six-month old Anti-Crime Commission—an intergovernmental commission with broad-ranging powers to fight economic crimes—into the Consultative Council for the Struggle Against Economic Crimes. The Council is to analyze the effects of anticrime policies and formulate new proposals on how to eliminate the causes of economic crimes. The president’s initiative came in response to numerous requests from members of the opposition and of his own party to rid the government of corruption. It is doubtful, however, that the president’s new Council will be more effective than the old Commission, as it includes basically the same officials and is charged with similar duties.

The formation of the new Council did not deter the media from disclosing the details of the close relationship between presidential advisor Rimantas Andrikis and leaders of the organized crime group “Taurage” throughout February. Andrikis’s shady past was well known by government officials and parliamentarians. In 1993, the presidential
advisor on national security issues, Alvydas Sadeckas, had resigned, primarily because of Andrikis's appointment. Forced to take stronger measures against corruption, Brazauskas dismissed Andrikis on March 7.

The sensationalism surrounding the Vytas Lingys murder trial is slowly dwindling (see EECR, Lithuania Update, Vol. 3-4, No. 3-1, Spring 1994-Winter 1995). A collegium of the Supreme Court, consisting of three justices, concluded that there were no grounds for reviewing the sentences of Lingys's murderers. Boris Dekanidze, leader of the criminal gang "Vilnius Brigade," was sentenced to death last November for ordering the murder. The sentences were reviewed a second time, upon appeals by Dekanidze's lawyers, who claimed that conflicting evidence was not eliminated during the trial. Dekanidze's relatives have now asked the president for amnesty, and their appeal is now under consideration.

At the ceremonial March 11 Seimas session, commemorating the fifth anniversary of the restoration of Lithuanian independence, Seimas Chairman Ceslovas Jursenas publicly apologized on behalf of the LDLP for crimes committed against Lithuanians by communists. In his address, he stated: "for more than 20 years I was a member of Lithuanian Communist Party. I feel morally responsible for those who, in the name of the party, committed crimes against the Lithuanian state. That is why today I want to apologize to all Lithuanians, who in those hard times were persecuted, deported, and impoverished." Jursenas urged former communists belonging to other parties, namely the Center Union (CU) and the Homeland Union-Conservatives of Lithuania (HU-CL), also to accept responsibility for these crimes.

Neither HU-CL nor CU responded to the LDLP's request, but this did not seem to affect their performance in the municipal council elections, held on March 25. Results seemed to replicate the 1989 elections, when members of the Sajudis Movement were victorious in the first multi-party elections held since 1940. Before the 1992 parliamentary elections, the Sajudis leadership splintered into basically two right-wing parties: HU-CL and the Lithuanian Christian Democratic Party (LCDP). Despite the low (42.5 percent) turnout in the March elections, HU-CL enjoyed a decisive victory over other parties, winning 426 of 1488 municipal seats (29 percent of the vote), while LCDP received 247 seats, or almost 17 percent. The poor showing of the ruling LDLP—a modest 297 seats or less—was attributed to its unclear strategy for economic reform and its indifference to public opinion.

The elections were based on proportional representation with a four percent threshold required to win municipal council memberships. Seventeen political parties participated in the elections, and 16 are now represented. Other winners include the Lithuanian Farmers Party (LFP), CU, and the Social Democratic Party (SDP) with 6.9 percent, 5.5 percent, and 4.8 percent respectively.

The Electoral Action of Lithuanian Poles (EALP) stirred up some controversy from the very beginning of its campaign. During a press conference, which was conducted in Polish, EALP candidates described their intention to decentralize the relationship between local and state government, create an autonomous, multilingual district of the Vilnius and Salcininkai regions, and postpone the deadline for ethnic minority assimilation. Provoked by EALP's broadcast press conference (which was not translated into Lithuanian) and their bold political agenda, Committee on Education and Culture Chairman Bronislovas Genzelis (LDLP) appealed to Minister of Justice Jonas Prapiestis to review the legality of the coalition's declaration. Prapiestis ruled that the EALP could not campaign on its present platform in local elections, stating that, according to Art. 112 of the Constitution, local councils must "implement parliamentary legislation, not sabotage it." He added that, although there were grounds to dissolve the coalition for its antistate rhetoric, current political party legislation did not provide procedures for enforcing the law, he advised the Seimas to adopt such legislation in the future. Prapiestis required the EALP either to retract its campaign promises before elections or be removed from the ballot. Given this ultimatum, the EALP opted to compose a bland and uncontroversial platform in order to remain a contender in elections. Nevertheless, EALP won its first local district seats and will be represented in nine constituencies, with majority positions in the Vilnius and Salcininkai regional councils where Poles make up the majority of the population.

On March 1, Waldemar Pawlak, prime minister and leader of the Polish Peasant Movement (PPM), became the latest political casualty of high-stakes political maneuvering in Poland. The dismissal of the Pawlak government by the Sejm (Parliament) followed a protracted power-struggle between the president and the governing coalition (PPM-Union of the Democratic Left [UDL]) and, more personally, between President Lech Walesa and Pawlak. While Walesa and Parliament were shaking the foundations of the present constitutional order, the Constitutional Commission of the National Assembly continued to pave the way for a new constitution by reaching agreement on many controversial issues.

The conflict between the president and Pawlak's government can be traced to a dispute about filling the vacant offices of minister of defense, ambassador to the Vatican, and minister of foreign affairs (see EECR, Poland Update, Vol. 4, No. 1, Winter 1995). Walesa and the government sharply disagreed over the degree of influence the president should wield over executive appointments. The continued vacancies led the president to accuse the governing coalition of intentionally creating a "paralysis of the state." He even promised to take "appropriate steps" to remedy the problem. The president also warned the coalition that its ill-managed finances were—so he alleged—cause for sus-
The Constitutional Tribunal played a mediating role in the clash between the president and the governing coalition. Walesa appealed several laws adopted by Parliament to the Tribunal, claiming that they were unconstitutional. These laws included the tax law, the “Law on State Salaries,” “Law on the Rights of the Members of Parliament,” and, as mentioned above, the budget.

The president declared that he would not sign the budget until the Constitutional Tribunal had determined its constitutionality. Specifically, he asked the Tribunal to make a ruling about the tax law’s provision, related to the budget, for decreasing tax deductions for housing expenses. When the Constitutional Tribunal ruled, in the first of two opinions, that the provisions of the tax code in question did not responsible for lagging privatization and increased inflation, and generally viewed him as an obstacle to economic reform.

The UDL agreed that Pawlak could be removed, but it wanted to reconfigure the government while retaining the existing coalition. The opposition’s proposal of a government of experts rather than politicians was rejected. A new coalition agreement between PPM and UDL was struck on February 15, and Oleksy was asked to form a new government.

On March 1, Parliament dismissed Pawlak’s government with 285 deputies voting in favor and five against with 127 abstentions. FU was among the parties that abstained. On the same day, Parliament approved the coalition’s choice for prime minister, and Oleksy set about assembling a cabinet. But he at first refused to resign from his post as parliament speaker before his new government was approved by Parliament. As a result, he came under heavy fire, and the president even refused to speak with him until he agreed to step down from his position as speaker.

This time the Sejm did not wait for either Walesa or the prime minister (elect). On March 3, Parliament broke the deadlock by replacing Oleksy with Jozef Zych (PPM) as speaker and simultaneously approving Oleksy’s cabinet.

In a conciliatory move, Oleksy appointed Walesa’s candidates to the “presidential ministries,” that is, offices which, according to Article 61 of the Little Constitution, require the prime minister to consult with the president before choosing a candidate. The president tagged Władysław Bartoszewski for minister of the foreign affairs, Jozef Okonski for minister of defense, and Andrzej Milczanowski for minister of the interior.

Oleksy’s appointment to the prime minister’s symbolically significant. A member of the Polish United Workers Party and a minister in the last communist government, Oleksy is the first prime minister with a communist background since the Roundtable Talks. In his first address as prime minister, he assured the nation that he would not seek to re-establish the People’s Republic of Poland, vowing to support a democratic state of law and tolerance, to encourage entrepreneurship and to preserve a social safety net for the needy. He also pledged to seek and gain Poland’s entry into NATO and the European Union.

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After Oleksy’s government was sworn in on March 8 and, at last, promulgated the budget, Walesa did not wait for the second decision concerning the constitutionality of the tax law which was scheduled to come down any day. Ironically, in the second ruling, the Tribunal agreed with the president and decided that the law on taxes violated the basic principles of the democratic state, including the principle of no retroactive legislation, protection of rights already acquired, preservation of vacatio legis, and the prohibition against introducing changes into the tax law during the course of the tax year.

Walesa’s threat to dissolve Parliament was not taken lightly and no doubt influenced the Sejm’s decision to amend the Little Constitution, making it more difficult for the president to close down the assembly. The amendment process was conducted with unprecedented speed. On the morning of January 20, the draft amendment reached Parliament and, on the motion of the Labor Union, was automatically put on the day’s agenda. Two hours later, the draft was sent to the Legislative Commission with a notice that it needed to be ready for a second reading during the February 3 session. Usually constitutional revision takes at least several months, but recent memory made this particular amendment almost universally popular among parliamentarians. Starting in June 1993, Parliament had remained dissolved for four months, and unable to monitor or check the executive.

The new amendment is designed to avoid extraordinary term breaks. Such breaks may take place only if Parliament dissolves itself by a two-thirds majority or if the president dissolves it (Art. 4 of the Little Constitution). Presently, “the term of office of the Sejm and the Senate ends on the day on which a Sejm resolution or presidential decree on the dissolution of the Sejm is announced” (Art. 4, 5). The amendment provides that Parliament remain in session after its dissolution until the election of the new assembly. Interim breaks between parliaments may occur only if Parliament has served its entire four-year term.

When sitting after having been formally dissolved, however, Parliament does not possess full powers. It cannot make changes to the Constitution, to the electoral law, to the budget, or to any laws that would directly affect the budget. In addition, according to the amendment, during such a period, the government would not have the right to introduce urgent legislation as provided in Art. 16, or submit any drafts of constitutional laws concerning rights and freedoms of the citizens, or drafts of budget laws, tax laws or any electoral laws.

The deputies of the Freedom Union (FU) failed to convince Parliament to suspend the speaker’s right to call a general meeting of the National Assembly during an interim. If a joint session were called, a dissolved Parliament could impeach the president for, among other things, illegally dissolving Parliament.

The new amendment was passed by the National Assembly with 401 votes in favor, three against and four abstentions. It is the first amendment to the Little Constitution. Walesa opposed the amendment and vetoed it on February 6, contending that it violated the separation of powers and the constitutionally guaranteed balance between the legislative and executive branches. He also argued that the amendment violated the principle of equality in the elections since sitting deputies could use Parliament as a platform from which to conduct their own campaigns.

Walesa stated his willingness to accept a similar amendment, on the condition that Parliament could only debate draft bills that were submitted to it prior to its dissolution and that the (officially dissolved) National Assembly could not impeach the president. But the president’s veto was overridden with 303 votes in favor of the override, 11 against, with 21 abstentions. Walesa was therefore forced to sign the amendment on March 24. He did not have the right to petition the Constitutional Tribunal in this case because the amendment altered the basic law itself. Leszek Spalinski, a spokesman for the president, stated that the amendment tilted the balance of powers toward Parliament and announced that Walesa planned “firm actions” to right the balance.

The Constitutional Commission of the National Assembly, which in January began work on the final unified draft of the constitution, decided to incorporate the provisions of the new amendment into its own proposal. The final unified draft was prepared by the Editorial Commission on the basis of the work of six subcommittees. To build (an uneasy) consensus among the disparate factions taking part in the drafting, many crucial compromises were required. The Commission began its work on the final draft of the constitution with three preliminary and general agreements. First, the preamble was deleted altogether. UDL deputies supported the removal of the preamble because it was “impossible to write a preamble that could justly evaluate the history of the Polish nation and, therefore impossible to write a preamble that would not divide the people.”

Secondly, the Constitutional Commission decided on a bicameral assembly. (It did not, however, spell out the role of the second chamber.) Finally, the Commission agreed that the president would be “the guarantor of the continuity of executive power” but not “the head of the executive branch,” as supporters of the presidential model had advocated.

The Commission then set to work on the first chapter of the constitution, the “General Principles.” Three articles which establish the political character of the state proved particularly controversial. First, after prolonged debates on the basic attributes of the state, the Commission endorsed a draft article that envisions an active social function for the state. Draft Art. 1 now reads, “The Republic of Poland is a democratic state of law implementing the principles of social justice.” Second, the
provides that the relationship between the state and the church is neutral and impartial. The drafters also agreed to a clause that replaces the word 'separation' with a reference to the 'neutral autonomy' of the church and the state. The final wording of Art. 16 gives far-reaching concessions to the Catholic Church in matters of religion and conscience with state 'impartiality.' The drafters also agreed to a clause which provides that the relationship between the state and the Catholic Church will be determined by the concordat between Poland and the Holy See. The wording of Art. 16 was proposed by Tadeusz Mazowiecki from the opposition FU. Although the chairman of the Constitutional Commission, Aleksander Kwasniewski, voted against this provision, he expressed satisfaction with the compromise, hoping that it might prevent the Church from asking Catholics to reject the Constitution in the ratification referendum.

The Church was also satisfied with draft Art. 37 concerning freedom of conscience and belief. This article states that, although parents have a right to raise their children according to their own morals and beliefs, such upbringing "should take into consideration the child's will, degree of maturity, and freedom of conscience and beliefs." According to Jozef Krukowski, an Episcopate expert, the article intends to restrict parental powers by allowing the state to pressure parents whose children might be influenced by various (non-Catholic) sects. Another provision of Art. 37 permits public expression of beliefs and religious instruction in schools but, prohibits the use of coercion in such activities. The Commission, which meets for three days every two weeks, also managed to compromise on other controversial issues, such as "the right to life." By establishing vaguely that "everyone has the right to life," it avoided (and no doubt tabled) a constitutional debate on the death penalty and abortion.

On March 2, the press published a statement by Archbishop Jozef Glemp which was highly critical of the current situation in Poland. "Although economic liberalization has been initiated," said Glemp, "there is a residual antipathy towards God, believers and the Church." The archbishop referred not only to the draft constitution, but also to the coalition's attitude towards the ratification of the concordat with Rome that was signed by the Suchocka government in July 1993. After a year, Parliament postponed the ratification of the concordat until the ratification of a new constitution. (See, EECR, Poland Update, Vol. 3, No. 3/4, Summer/Fall 1994.) Parliament created an extraordinary commission to "evaluate legal implications of the ratification in the light of the current Constitution and other laws." This commission is obliged to submit a final report on its findings immediately after the constitutional referendum but no later than the end of 1995. So far, the commission has established that the law on marriages and the law on freedom of conscience and religion need to be amended. If ratified, the concordat would also require state financing of the Papal Theological Academy. The commission determined that the Concordat does not violate the current Constitution, despite one of its own subcommission's arguments to the contrary.

Due to the commission's decision, the ratification of the concordat was the main topic at the March 27, 1995 session of the Social Democratic Party (SDP), the main party of the Union of the Democratic Left. Aleksander Kwasniewski stated that "ratification of the concordat will mean defeat for the SDP." Other members of his party said that the "Concordat is unacceptable in its present form" and called for renegotiations. Soon afterward Parliament decided by a narrow margin to postpone ratification of the concordat.

With presidential elections approaching this fall, the conflict between the president and the governing coalition was often linked to the presidential campaign. The Supreme Court's resolution of March 19 concerning the confidentiality of journalistic sources of information, will have a substantial impact on the campaign. According to this law, "a journalist and the editor of a paper cannot refuse to be a witness in criminal proceedings about matters covered by professional secrets if a court or a prosecutor releases a journalist from confidentiality."

This resolution was accepted by the Supreme Court on the motion of a regional court. The ombudsman and several politicians joined the journalists and their unions in criticizing the resolution. The ombudsman stated that protection of professional secrets is essential for guaranteeing freedom of the press, radio and television which is, in turn, a pillar of the democratic state. The chairman of the Supreme Court, Adam Strzembosz, vigorously defended the resolution, arguing that "journalistic secrecy is one of the guarantees of freedom of speech, but it must be sacrificed if the information in question would prove a citizen's innocence or guilt." At the same time, he admitted that current law does not adequately guarantee the journalist's right to protect his sources. The chairman submitted to Parliament an amendment which provides that journalists, doctors and lawyers be instructed to violate confidentiality only on the order of an independent court, rather than on the instructions of a procurator as is now the case.
president, Emil Constantinescu, supported by the National Peasant Party (NPP), decided to hold internal elections for the coalition's presidency. This decision stirred up controversy regarding the structure of the DCR and its mode of electing a president. A question also arose as to whether the newly elected coalition president would be the sole DCR candidate to run in the 1996 presidential elections. The upshot was that the Social Democratic Party (SDP), the Civic Alliance Party (CAP), the Liberal Party '93 (LP '93), and the Democratic Alliance of Hungarians in Romania (DAHR) all decided to quit the coalition. Several MPs and other prominent members of CAP and LP '93, however, abandoned their defecting parties to form a unified liberal party that stayed within the DCR. Emil Constantinescu was elected DCR president and won the coalition's nomination for the 1996 presidential elections. He defeated 1990 presidential candidate Ion Ratiu, nominated by the World Union of Free Romanian (WUFR) and Nicu Stancescu, nominated by the Democratic Unity Party (DUP). Constantinescu was also DCR's candidate in the September 1992 presidential elections, but was defeated then by current president, Ion Iliescu.

While the main opposition forces were in turmoil, the government coalition closed ranks. Around mid-January, its four core parties signed a protocol reassuring the public that they retain their commitment to effective government and social stability. Thus, the leftist and ultranationalist members of the ruling coalition have now officially become "law-and-order" parties. The signing of this protocol marks the emergence of a political formation that many commentators are calling the "red quadrilateral."

The four-party protocol sometimes operates all too smoothly. The income tax law, for instance, was debated and passed between February 7 and March 1, an incredibly short period compared to the time it took last year. Similarly, the budget was passed with 244 votes in favor and 102 against, with 32 abstentions. While Romanian education, health and cultural expenditures remain the lowest in Eastern Europe, the Vacaroiu cabinet nevertheless submitted its anti-inflation package, which easily passed. This will translate to even larger budget cuts for education, health, and culture. The opposition charges that the government's fiscal policy hinders reform and discourages private initiative.

The voting discipline of the majority coalition was not in much evidence, however, when debate began on the draft privatization law, only a day after the budget was adopted. In the Senate, which had dedicated almost the entire autumn to this draft, the governing parties clashed among themselves from the very first day of the debates. After ten hours of heated discussion, the senators agreed only on the title of the law. The Socialist Labor Party (RSLP) even suggested abrogating all laws on privatization and returning to a system of state and group property, even though the protocol of January 20 had committed the party to supporting legislation initiated by the Vacaroiu cabinet.

The countless concessions of the Party of Social Democracy (PSDR) to its leftist allies in the past two years may now be backfiring. Although government stability has been guaranteed and the opposition's motions of no confidence cannot carry, the government's main initiatives are systematically undermined from the inside.

Nevertheless, ever since the coalition vowed to support Vacaroiu's government, the latter has become much more self-confident. It now openly defies Parliament and the courts, and ignores pressure from international institutions. For example, the minister of justice—a member of the Party of National Unity of Romania (PNUR)—declared that he would initiate procedures for banning DAHR. Although PSDR initially promised to ask for his resignation, it was unable to sanction him. PSDR later paid for this gesture at the Parliamentary Assembly of the European Council, where it was denied membership in the social democratic parliamentary group.

Vacaroiu's administration also launched an attack against various local officials whom it perceived to be opposition-minded. The government has been unsuccessful so far in its bid for total control over town halls and county councils. In most towns, the opposition won the local elections three years ago, and the prefects appointed by the executive have been apparently unable or unwilling to follow instructions coming from the center. To make up for these electoral losses, the government has resorted to two basic strategies: either luring mayors affiliated with the opposition over to the governing party, or dismissing them and calling new elections. The cost of organizing new elections is covered by the municipal budget, not by the government. In many communities where mayors were dismissed, people showed no interest in electing successors. Often, more than two polls were necessary because participation ranged from 13 to 20 percent. In January, as many as 11 mayors and 17 counselors were charged with corruption and violations of the law, and were subsequently dismissed by the government. Overall, 133 mayors have been dismissed by government-appointed prefects, and another 264 have resigned on their own. Of the 62 mayors who appealed to the Court of Justice only four received redress. Despite the reactions of the parliamentary opposition, international organizations and the electorate, the executive seems determined to carry on its program of purging mayors and local counselors.

Besides "the Mayors Scandal," a further example of the government's aggressive policies is the so-called "Scandal of Ordinances." During Parliament's winter holiday (end of December to February 6), the government practically took over the prerogatives of the legislature, issuing ordinances and orders at an astounding rate. The law which empowered the government to do this was adopted by the Senate on December 20, 1994, and was approved by the Chamber of
Deputies a week later. In accord with procedures established by Art. 74.2 of the Constitution ("ordinary laws are approved by a majority vote of the members present in each chamber"), the legislature authorized the Vacaroiu cabinet to adopt "normative acts with the power of law" so long as they do not encroach upon constitutional laws. On December 28, 53 opposition deputies filed a petition with the Constitutional Court asking that the December 20 law be declared unconstitutional. The authors of the petition claimed that the "empowerment act" violated Art. 114.1 of the Constitution ("Parliament can pass a special law to empower the government to issue rulings in areas which do not come under statutory laws"), because Art. 1g and Art. 3 of the law might be interpreted to allow the government to legislate on matters exclusively subject to regulation by "statutory laws" (according to Art. 72.1 of the Constitution, Parliament may enact three types of laws: constitutional laws, by means of which the Constitution is revised, statutory laws, and ordinary laws). Moreover, petitioners argued that the "empowerment act" should be considered a "statutory law," therefore requiring approval of an absolute majority of the members of each chamber (Art. 74.1 of the Constitution).

By Resolution no. 2 of January 5, the Constitutional Court denied the petition, and the president subsequently promulgated the "empowerment act." Meanwhile, another 50 deputies addressed the Constitutional Court, this time contesting the constitutionality of several ordinances issued by the government. One of these, Ordinance 18/1994, authorized the government to obtain and guarantee foreign credits. On January 24, the plenum of the Constitutional Court rejected this petition too, stating that this ordinance did not violate the fundamental law.

Another controversy emerged in the aftermath of the enactment of Ordinance 50/1994, which introduced a 15,000 lei tax for each Romanian citizen traveling abroad (approximately 15 percent of the average monthly salary). The Constitutional Court declared this ordinance unconstitutional (Resolution 139/1994). According to the Court's decision, the government may not tax the exercise of a fundamental right, as that would constitute an inadmissible financial burden, countervenning Art. 49 of the Constitution.

The Cabinet, however, refused to obey the Court's decision, invoking Article 145.1 of the Constitution, according to which any bill declared unconstitutional by the Constitutional Court shall be returned to Parliament for reconsideration. If the bill passes unchanged by a majority of at least two thirds of the members of each Chamber, the objection of unconstitutionality shall be removed, and promulgation thereof shall be compulsory. The Cabinet then insisted that, until Parliament's final vote, the ordinance must be applied.

In reply, the plenum of the Constitutional Court issued, voting six to three, Decision no. 1 of January 17 on the compulsory nature of its constitutional decisions. The Court noted that Article 145.2 of the Constitution stipulates that "the decisions of the Constitutional Court shall be binding and effective only for the future," meaning that they are binding unless and until Parliament votes to override them. The three judges who voted against this interpretation pointed to the absence of any provision in the Constitution or in Law no. 47 of 1992 (on the Constitutional Court) empowering it to issue such an interpretive decision. At last, on March 14, Parliament voted against the law on the border crossing toll (only 122 votes in favor), and the cabinet was forced to accept the unconstitutionality of Ordinance no. 50. It seems that this affair is not yet over. Acting on a proposal by the Ministry of Finance, PSDR has reintroduced a modified version of the law, insisting that the revenue at stake is necessary for financing social programs. At this point, it is hard to predict the fate of the bill.

To understand why Parliament sided with the Court, one must be aware of another controversy which was unfolding at the same time. On February 14, the Constitutional Court declared unconstitutional Law 53, 1994, which granted members of Parliament a tax exemption on their daily allowance. Immediately after the adoption of that law, representatives of the CDP—led by the ex-prime minister, Petre Roman—had appealed to President Iliescu not to promulgate a law legitimating parliamentary privilege in violation of the constitutional principle of equal civil rights. The chief of state declared that he would not promulgate the law. A month later, Iliescu openly charged Parliament with greed and corruption. He asked all MPs to resign from administrative positions in state-owned companies, which provided them with additional remuneration for defending obscure local interests. Against this background of ever increasing conflict between president and Parliament, and between the government and the Constitutional Court, the legislature could re-establish its prestige only by supporting the Constitutional Court and standing up against the border tax.

Both the border tax and issues concerning national minorities have re-animated disputes between pro-Europeans, such as the minister of foreign affairs, clustered around the president, and the leaders of the two chambers and their ultranationalist allies, often supported by ordinary members of the governing parties. Faced with this tension within the governing coalition, the majority frequently removes controversial issues from the agenda and endlessly delays debates. The strategies of pressure, postponement, blackmail, and threats brandished by the allies in debating laws necessary for institutionalizing reform are also used to hinder the resolution of foreign policy problems.

Ethnic relations in Romania have been complicated by the activities of DAHR and by debates surrounding the preparation of a Romanian-Hungarian treaty. At the beginning of the year, DAHR's leadership decided to establish "Representative Councils" in Covasna and Harghita counties, central areas of Romania where ethnic Hungarians are
numerous and concentrated. This move was justified as a form of territorial self-determination on ethnic grounds, a principle definitively rejected by both chambers of Parliament, the cabinet, and the opposition (the DCR and DP). DC president, Emil Constantinescu, asked DAHR leaders for a clear and unambiguous statement expressing “their commitment to observe the Constitution and national laws.” The DAHR refused to answer this request and, on February 26, its representative council decided to withdraw the party from the DCR. Asked at the beginning of February by the mayor of Cluj to declare a state of emergency in several counties inhabited by Hungarians, Iliescu stated that the DAHR leadership was acting “irresponsibly.”

The expected bilateral political treaty with Hungary, the completion of which is the main condition for membership in European organizations, also affected domestic politics. The minority issue is contentious within the governing coalition, as well as among the opposition. The pivotal issue is the inclusion of a provision establishing “the principle of territorial autonomy based on ethnic criteria” in the treaty. This controversy aggravated political tensions between PSDR and its extremist allies. Extremists attacked the president and the Foreign Ministry, and demanded a national referendum to approve or reject the treaty with Hungary, after having asked—during negotiations—that DAHR be banned. Gheorghe Funar, president of PUNR, backed by PRM and PSM leaders, made the following statement: “as negotiated by Romanian and Hungarian expert teams, the treaty is a betrayal of Romanian national interest, making room for territorial secession.” Overall, the bilateral treaty with Hungary stands a poor chance of ratification. On March 17, after a meeting with his Hungarian counterpart, Minister of Foreign Affairs Theodor Melescanu announced that the Romania-Hungary treaty could not be signed before March 21. In effect, normalization of relations with Hungary was postponed, even though the European Council was pressing for this and the Slovak-Hungarian treaty to be worked out no later than March 20, when the Conference for European Stability was to be held in Paris. On Saturday, March 18, the prime minister summoned the parliamentary parties (except PL’93 and DAHR) to Victoria Palace, demanding that common ground on the treaty be reached. All political parties rejected the position of the Hungarian government, and approved of their own cabinet’s decision to postpone signing the bilateral treaty. DCR issued an official statement on the occasion of the Conference for European Stability expressing its “support for the Romanian government and its prime minister.” In Paris, the Romanian and Hungarian prime ministers signed a declaration stating their commitment to continue talks over the minority problem with a view to reaching a compromise. Settling the matter of the Magyar minority represents an essential step toward integrating Romania into Europe. Since the authorities have been unable to tackle it so far, they will have to justify their actions before a public which strongly favors European integration.

Finally, the upcoming elections have prompted an airing of public discontent with the electoral law. Taking up a suggestion made by a national newspaper, representatives of DAHR have submitted a draft electoral law to Parliament. The opposition parties have also drawn up a draft electoral law which combines the proportional and majoritarian systems. A third draft was presented by the League for Human Rights. It is likely that debates over the new electoral system will come to the forefront of Romanian politics in the next few months.

Although the undeclared war in Chechnya drags on, the spring in Moscow has been marked by a strange complacency about the wholesale carnage and devastation. There were essentially no public demonstrations against a military campaign that all opinion polls revealed to be very unpopular. And not a single liberal reformer seems to have resigned from the government or from President Boris Yeltsin’s broad circle of experts and advisors. The president and Parliament, for their part, have been increasingly preoccupied by the elections still scheduled for December and June 1996. While the public at large seem sickened by Russia’s first televised war, it is apparently either too skeptical about the effect or too preoccupied with daily life to stir from its deep political passivity.

After more than a year since the Constitution’s adoption, the requisite 19 justices on the expanded Constitution Court were finally all in place. The last justice, Marat Baglai, was approved by the Federation Council on February 9. The Court’s resurrection has been long and arduous. In October 1993, largely because the the then chairman, Valery Zorkin, sided openly with the insurgent Supreme Soviet, the president suspended the Court’s activity. Following Parliament’s passage of the “Law on the Constitutional Court” last summer (see EECR, Roundtable Vol. 3, No. 3/4, Summer/Fall 1994), the president found it unexpectedly difficult to win Federation Council approval for his candidates. In January, Yeltsin’s chief of staff, Sergei Filatov, announced that the president would give up proposing candidates if the Council were to continue rejecting them out of hand.

Perhaps frustration over its inability to curtail the “executive action” in Chechnya and hopes that a sitting Court might strike down some of Yeltsin’s most outrageous decrees finally led Parliament to confirm the nineteenth justice in February. During his confirmation hearings, in response to senatorial questioning on the legality of the Chechen conflict, Baglai was critical, noting that the “greatest danger to human rights and liberties [in Russia] comes from the executive branch.” Former deputy director of the Academy of Labor and Social Relations and a widely respected legal scholar, Baglai refrained from making direct comments about Chechnya after his approval. At his
inauguration, he stated that he would be guided in his work “by the Constitution alone, and by nothing or no one else.”

The new Court consists of 13 justices appointed with tenure set according to the old Constitution, and six new justices who, in principle, will serve 12-year terms under the new Constitution. Those elected under the old Constitution must retire only at age 65 and those chosen under the new Constitution either at age 70 or after 12 years (whichever comes first). Baglai is 63. On February 13, the justices elected Vladimir Tumanov as chairman and Tamara Morshchakova as vice chairman of the Court. Although by law the chairman serves a three year term, Tumanov, who is now 68, will be required to retire from the Court when he turns 70, a year before the normal end of his three-year term. On February 14, the Court formed its two chambers, one of nine justices, the other of ten.

The Court issued some official pronouncements about its possible future role in the Chechnya crisis before and after the Baglai appointment went through. Speaking on February 15 at the Court’s first press conference, Chairman Tumanov stated that “If we receive an appeal, the Court will carry out a legal scrutiny of the documents which provided the basis for sending Russian troops into Chechnya.” Earlier that week, Tumanov had identified the top priorities of the Court as interpreting the Constitution and ensuring that regional laws be consistent with it. He admitted that implementation of the Court’s decisions would be difficult. He went on to say that the Court is “not a fire brigade which should motor out to every political event and forget other issues. A major political case can turn out, in practice, to be something very minor from the Court’s point of view.”

Initial attempts at gathering the one-fifth support of members in either the Duma or the Federation Council to request the Court to review the legality of the Chechnya issue were unsuccessful. But an official Duma request was finally filed on April 7. On April 13, a petition of higher constitutional status was filed by the Federation Council. What galvanized the Federation Council into action was the revelation that the president had issued a secret decree on November 30, “On Measures to Restore Constitutional Law and Order in the Chechen Republic.” On April 12 the Council voted 97 to one to petition the Court with a formal inquiry. Roughly speaking, the Council’s request combines the Duma’s objections to the published decrees with its own objections to the secret decree.

According to Art. 125 of the Constitution, the Court may examine the constitutionality of laws and regulations which were directly related to the action in Chechnya, but it cannot review the actions of governmental bodies or individuals. The Council has therefore asked the Court to analyze the constitutionality of all three legal documents: the presidential decree of November 2, 1994, “On the Basic Provisions of Military Doctrine of the Russian Federation,” his secret and still unpublished decree of November 30, 1994, and the December 9, 1994 resolution of the government, “On the Provision of State Security and Territorial Integrity of the Russian State.”

Against the two published decrees, the Federation Council objects that they unconstitutionally imposed a state of emergency, a decision which clearly requires Council approval (Art. 102.1). Against the unpublished decree, the Council invokes Art. 15.3 of the Constitution, which invalidates all unpublished decrees affecting basic rights, and the “Law on the State of Emergency” adopted by the Supreme Soviet of the RSFSR on May 17, 1991. Article 21 of this law permits the use of MVD and KGB troops during an emergency, but does not permit the use of the regular army. (Art. 28 reinforces this limit.)

In Art. 87.2, the Constitution stipulates that a state of war, where the army clearly may be used, can be introduced only because of a threat of imminent aggression against Russia. The
"Law on Defense" allows the use of the armed forces only against an aggressor or to fulfill international obligations.

The published decrees were very broadly written, moreover, and do not directly order the use of the army in Chechnya, but instead instruct the power ministries to use "all necessary means" to bring Chechnya back under federal authority. Some lawyers argue that the decrees were crafted vaguely in order not to fall afoul of the Constitution. The Court's press office has announced that it will consider the Council petition quickly. An additional dilemma is that the Court has no procedure for reviewing secret decrees. Moreover, at present the Court does not even possess a copy of the secret decree.

Other controversial cases were widely reported to have been filed at the Constitutional Court. No statement has yet been issued on whether any were accepted for review. One such case concerns Alexei Kostin, the publisher of the "erotic" magazine, Yeshcho. He was held in Moscow's Butyrka pre-trial detention facility for more than a year on charges of publishing and distributing pornography. In late February, Kostin pled not guilty to the charges and was released provisionally. His lawyer requested that the case be sent directly to the Constitutional Court to test the Soviet-era criminal code, still in force, in light of the new Constitution's commitment to free speech. The magazine still holds a valid Russian license and the defendant was supported by a letter from Sergei Gryzunov, chairman of the Press Committee.

A tense dispute between the president and the Moscow mayor, Yuri Luzhkov, arose after the president dismissed the Moscow City Procurator Gennady Ponomaryev, and Chief of Police Vladimir Pankratov. The president took this action in the wake of the murder of the nationally popular journalist, Vladislav Listyev. Yeltsin announced the dismissals during a nationwide broadcast saying it was "a small punishment" for Listyev's murder. The mayor protested that he had not been consulted and that the dismissals were in violation of the Constitution. Moscow law enforcement officials, according to law, answer to both the Moscow city government and the federal ministries. The lines of authority are not, however, clearly defined, particularly in the case of the chief of police. The mayor threatened to challenge the constitutionality of the firings before the Constitutional Court, giving numerous interviews on television and in local newspapers to express his outrage. He also threatened resignation in case the two officials were removed. They were eventually replaced, but Luzhkov remains in office and he has apparently filed no case at the Constitutional Court. It is still unclear if the president's dismissal of the two law officials has weakened Luzhkov politically. Actions by both sides were widely interpreted to be the first steps in a long presidential campaign.

The one case decided by the newly constituted Court was so thoroughly uncontroversial that most newspapers did not even cover it. The Federation Council requested that the Court clarify two articles of the Constitution regulating the procedure of the Federation Council's review of legislation: Art. 105.4, which imposes a two-week limit on the Federation Council for discussion on bills passed by the lower house, allowing the bills automatically to pass if the upper house does not examine the legislation within that time, and Art. 106, which lists especially important areas of legislation, mandatory for the upper house to consider, without setting any specified time limit. The Federation Council asked the Court to determine whether Art. 105.4's 14-day limitation applied to Art. 106.

The Court determined that the initiation of a discussion of Art. 106-type legislation must be initiated under the rules laid down in Art. 105.4. That is, the upper house should begin discussion of these kinds of bills within 14 days of receiving them. If such bills are not voted on, however, they should continue to be considered at the next parliamentary session. This decision was thought to split the difference because it means that the Federation Council does not have to complete consideration of Art. 106-type legislation within the stringent two-week limit.

A dissenting opinion by Justice Luchin argued that the 14-day time limit of Art. 105 was not at all applicable to Art. 106-type legislation. He disagreed with the majority's view that the Federation Council was required at least to begin consideration of Art. 106-type legislation within two weeks of receiving it from the State Duma. He objected further to the imposition of a fourteen-day requirement to initiate review of Art. 106-type legislation on the grounds that it has no practical legal consequences. The Federation Council remains constitutionally obligated to vote on all Art. 106-type legislation, fourteen-day requirement or not.

Following the Court's first decision, it announced that its next scheduled case would be heard in April. It concerns the basic question of what should be considered the "general number of deputies" (obscheye chislo deputatov) of Parliament required to constitute a quorum. Again, problems that stem from sloppy drafting of the Constitution will have to be resolved by judicial construction. The Constitution explicitly states that the Duma is comprised of 450 seats (Art. 95), and then goes on, in several articles (Art. 103, Art. 105, and Art. 117), to invoke the "general number" of deputies as the baseline for determining how many votes make up a majority or two-thirds. The choice of a legally minimal number of deputies out of which majorities and supermajorities can be formed is important because it will determine if seats which are not filled, either due to death (several deputies were murdered in the Duma's first year) or to other problems (such as Chechnya's failure to hold elections), will systematically count as negative votes. The question the Court will have to decide is how this "general number" should be calculated, either strictly by the letter of the Constitution, or according to the number of people who could possibly attend, or according to how many deputies actually attend the legislative session. This issue is additionally touchy because absenteeism is epidemic, and the practice of giving one's voting card to fellow MPs, who then vote in one's place, is widespread. There is also considerable speculation whether a strict construction of the Constitution would throw past votes into question. For instance, Ivan Rybkin, speaker of the Duma, did not receive the majority required—half the "general number"—plus one vote
(226)—when he was elected. Although such questions are commonly discussed, it is highly unlikely that the decisions of the past 18 months will be changed.

In the lead-up to parliamentary and presidential elections, slated to take place during the next year, political realignments continue to occur. One of the first casualties of pre-campaign maneuvering was MP Sergei Kovalev. On March 10, the Duma voted to remove Kovalev from his position as ombudsman by changing the January 1993 resolution which distributed parliamentary posts among the various factions. Kovalev had been named to his position during the first session of the Duma as part of a delicately brokered deal. His removal was the first instance in which this agreement began to unravel, signaling that previous deals are now off. It seems that political regrouping has now begun in earnest.

Sergei Baburin’s nationalist Russian Way (RW) group proposed Kovalev’s removal, which passed by a vote of 240 to 75, with three abstentions. Because of Kovalev’s painful revelations about human rights violations in Chechnya, he also became a premier target of attacks from Vladimir Zhirinovsky and his Liberal Democratic Party (LDP). In January, as a member of a parliamentary delegation to the Council of Europe, Kovalev’s statement, that “as long as blood is being split in Chechnya, it is absurd, immoral and blasphemous to discuss membership,” outraged many Russian politicians. The Council of Europe’s subsequent decision in February to suspend membership talks with Russia, citing human rights violations in Chechnya, was clearly influenced by Kovalev. (The Council of Europe also urged amending the Russian Constitution to give Parliament more control over the executive.) Somewhat surprisingly, given his brazen criticism of the war, Kovalev retains his position as chairman of the presidential Human Rights Commission.

With parliamentary elections due in December, time is running out for passage of the necessary electoral laws, which must be published at least four months before an election, leaving the legislature only until August 12 to complete its task. Draft legislation is now under debate. Public discussion concerns not only the substance of the laws, but also the prior question of whether the elections will take place at all or be postponed. Although parties and alliances continue to multiply, rumors fly that the elections will not take place as scheduled. The president’s extremely low approval rating, seven percent in March, leads some commentators even now to believe that Yeltsin will postpone both the presidential and parliamentary elections.

On March 24, the Duma passed their final versions of the laws on the election of the president and of Duma deputies. The bill on presidential elections was passed by a vote of 284 to one, with one abstention. The final bill, which the Federation Council accepted, requires candidates to collect one million (originally two million) signatures in order to be listed on the ballot. Fifty percent of the voters must turn out for the election to be valid. The Duma rejected Yabloko MP Viktor Sheinis’s proposal to reduce the minimum voter turnout for a valid election to 25 percent. Conceivably voter apathy could invalidate the elections even if Yeltsin himself does not postpone them by decree.

The electoral law for the Duma was passed on March 24 by a vote of 257 to 37, with one abstention. The Duma retained its provision to split evenly the 450 seats, requiring 225 to be elected by party list and 225 in single-member districts. Yeltsin favors single member districts, giving 300 seats to those deputies and 150 to those on party lists. Officially, the reasoning behind his position is that the party system is so poorly developed in the regions that it results in a Moscow-dominated Duma. Unofficially, or so his opponents argue, the president wants to keep the party system weak and limit any organized opposition. All parties and electoral associations must collect 200,000 signatures to participate in the election, with no more than seven percent of these signatures being gathered in any one subject of the Russian Federation. There will be only one round of voting in the Duma elections, and a party must receive at least five percent of the votes nationwide to gain seats in the party-list half of the Duma.

The two bills were sent for approval to the Federation Council and both were rejected on April 12. On May 4, however, the Council did pass the law on presidential elections, (see above), with 111 in favor, nine opposed, and eight abstentions. Only 11 senators voted in favor of the Duma proposal. On April 10, the Federation Council Committee on Constitutional Law, Judicial, and Legal Issues recommended that the upper house reject the Duma’s bill on the election of Duma deputies. The Committee endorsed the president’s proposal distributing fewer seats to party lists. Federation Council Chairman Vladimir Shumeiko, who has been waging a campaign against the Duma proposal, has even argued that no Duma deputies should be elected on party lists. Following the recommendation of the Council Committee, Shumeiko warned that the Duma would have to compromise if it wanted elections. Now that both the presidential and Duma electoral laws have been rejected a conciliation commission has been formed to resolve the dispute. With the president and Federation Council both favoring reduced party representation, the Duma may eventually have to settle for a system in which only one-third of its members (150) will be elected on party lists.

But the most controversial of all the electoral laws is the one that will regulate the selection of the next Federation Council. This body is deeply and increasingly divided over its electoral future, and the rules under which the body will be elected in the future will define to a great extent the power relationship between the legislature and the president. The current Federation Council was directly elected by popular vote in the December 1993 elections. But the Constitution says that the rules under which the Upper House will be “formed” in the future must be decided by...
federal law (Art. 96.2: “the order of the formation of the Federation Council and the order of the election of deputies of the state Duma will be determined by federal law”).

Roughly half of the Council appears to favor MP Yelena Mizulina’s proposal for the direct election of two representatives from each region. It is unclear how the representatives would be nominated. In theory, her proposal would make the body something like the post-17th Amendment US Senate. Current Council members would be allowed to run in the December elections. The Federation Council speaker, Vladimir Shumeiko, however, is energetically pushing to have the Council at least partly appointed by the president. The argument for his proposal (and his opposition to the one-half party-list formula for Duma elections) is that the legislature is in desperate need of “stability.” Following his proposal, Yeltsin would be able to re-appoint a significant number of the current Council members, thus ensuring continuity. Those opposed to the Shumeiko proposal denounce its enhancement of presidential powers. They also note that presidentially appointed regional representatives will also be governing in their respective regions and will therefore be often absent from the national legislative process in Moscow. With members frequently absent from the national legislature, they claim, regional concerns will go unvoiced. But a Federation Council permanently in session might also give regional elites a smaller stake in national politics.

During this electoral dispute, on April 25, Prime Minister Chernomyrdin announced the formation of his own center-right bloc to compete in the December Duma elections. At the same time Speaker of the Duma Ivan Rybkin announced that he would form a center-left bloc. Both made it clear that they wanted to create broad coalitions, including all groups except the extreme left and right parties. Chernomyrdin claims to have the support of the entire cabinet (although this is denied by several ministers) and hopes to pull together the business and financial interests of the country who support the government’s “reform” agenda. Rybkin’s bloc is intended to bring together the heretofore dispersed agrarian interests. At the announcements, Izvestia suggested that the two blocs were not really rivals but rather two branches of the same party—“the party of power.”

Slovakia

Characteristic of recent Slovak politics has been the unwillingness of members of the National Council squarely to confront important political issues. Instead of handling their internal disagreements politically, parliamentarians have been trying to use the Constitutional Court as a means of resolving their disputes. Surprisingly, then, the Court has come to occupy center-stage in the seemingly endless constitutional controversies between Prime Minister Vladimir Meciar’s newly formed government and the opposition (see EECR, Slovakia Update, Vol. 4, No. 1, Winter 1995). Domestic political troubles, however, have not distracted Meciar from scoring political victories on the international scene, as shown by the signing of the March 19, Slovak-Hungarian Basic Treaty in Paris.

The recent elections marked the political resurrection of Meciar whose Movement for a Democratic Slovakia (MDS) won 34.96 percent of the vote (see, EECR, Slovakia Update, Vol. 4, No. 1, Winter 1995). Elected to office three times in the past four years (1990, 1992, 1994) and ousted twice (1990, 1993), Meciar is the phoenix of postcommunist Eastern Europe. After inter-party negotiations that lasted ten weeks, the MDS and the Peasant Party (PP) were able to secure a majority coalition together with the Association of Workers in Slovakia (AWS) and the Slovak National Party (SNP). This governing coalition controls 83 of the 150 seats in the National Assembly. In an apparent political concession, the nationalists (SNP) were given the Ministry of Education to satisfy their concerns about language and minority policy. As a result of similar concessions, the Ministry of Privatization was given to the AWS, and Meciar supported the establishment of a new ministry of public works. Whether such political bargains encourage the political and economic reforms Meciar claims to support are unclear. The government was installed on December 13.

Only days after the coalition was formed, the Constitutional Court became embroiled in a power-struggle with the government. On December 29, the Court handed down an opinion concerning Order No. 221/1993 issued by the Ministry of Health. This order required patients themselves to pay for certain medication and medical services. Pursuant to Art. 125 of the Constitution, which establishes the Court’s power of abstract review (“The Constitutional Court shall have jurisdiction over constitutional conflicts between: (1) laws and the Constitution or constitutional statutes; (2) regulations passed by the ministries or other authorities of the central government and the Constitution, constitutional statutes or other laws”), the Court had jurisdiction to determine the constitutionality of the decree. In this case, the Court found the ministerial regulation to be in conflict with Art. 13 and Art. 40 of the Constitution as well as Art. 4 and Art. 31 of the Bill of Rights and Freedoms. Article 40 of the Constitution provides that “every person shall have the right to protect his or her health. Through medical insurance, citizens shall have the right to free health care and medical equipment for disabilities under the terms to be provided by law.” The Court held that the Ministry of Health did not, therefore, have the authority unilaterally to alter medical privileges. According to the Court’s ruling, any change in health care services to citizens must be adopted by a law of the National Council.

The Ministry of Health replied that it would simply not obey the Court’s order. Court chairman, Chief Justice Milan Cic, responded in turn that the Court’s rulings are binding on the state administration and that it is the responsibility of other branches of government to enforce such decisions. This sober rejoinder promptly cost the chairman his automobile, which was being provided by the government and, more ominously, his
bodyguard, also furnished by the state. Meciar then attacked the Court, stating that "a situation where the Constitutional Court, by its interpretation of the law either broadens or changes the Constitution cannot be tolerated." A substantial break between Cic and Meciar, the main architects of the Slovak Republic after the splitup, could have important political ramifications, particularly for the MDS. In a perhaps conciliatory gesture, Meciar ultimately returned the Chairman's automobile.

The Constitutional Court has received 1618 petitions since it was established two years ago. Close to one-third of these petitions involved the reconsideration of criminal sentences imposed by general courts. Fifty-one petitions concerned national and local election procedures, 31 cases requested an interpretation of the Constitution, and 24 petitions involved individuals seeking remedy for an alleged violation of basic rights. In 1994, the Court decided on 118 petitions of the 841 received. Another 112 requests were rejected for want of jurisdiction. Cases involving interpretation of the Constitution and individual rights (especially the right to social support and health care) attracted the greatest attention from the public and the mass media. During the first three months of 1995, the Court has received 239 new petitions. To date, the Court has considered 50 of them.

Like the Court, President Michal Kovac is finding it difficult to remain above the fray of parliamentary politics and, in particular, to steer clear of conflict with Meciar's MDS. On March 6, Parliament passed an amendment to the "Law on the Slovak Intelligence Service" which transfers the power to appoint and remove the director of the SIS from the president to the government. Dusan Macuska, an MDS deputy who proposed the amendment, argued that keeping the appointment power in the president's hands did not make sense because the president "does not have the support of Parliament or even of the majority of the population." Furthermore, Macuska added, the SIS director is responsible to the Council of State Defense, of which the president is not a member and over which the prime minister presides as chairman. Article 102.g of the Constitution, however, provides that the president shall appoint and remove the principal officers of national bodies and high officials, as defined by law. Most commentators believe that, if asked, the Court would defer to the National Council's determination of which government officers are to be considered "principal" under Art. 102.g. Opponents of the amendment argued that the president should appoint the nation's top security official precisely because the president is not involved in day to day party politics. Speaking for the opposition, the chairman of the Party of the Democratic Left (PDL), Peter Weiss, asserted that "the secret service must serve the state as a whole, not just the government," thereby expressing concern over the politicization of the security service. Of the 79 deputies present (opposition members did not attend the session), 75 voted in favor of the amendment and four abstained.

On March 17, the president returned the amendment to Parliament, but his provisional veto can be overridden by a simple majority in the National Council. Article 87.3 of the Constitution states simply that "when the president returns a constitutional law or other laws with comments, then the law shall be debated again in the National Council." On April 5, the law was passed by Parliament a second time, forcing the president to promulgate it on April 11.

The opposition regards this amendment as another step in a concerted campaign by the governing coalition to discredit Kovac and to limit his powers. Earlier, on January 25, the government orchestrated a formal parliamentary resolution criticizing the president for his response to a letter from William Orme, executive director of the Committee to Protect Journalists. Kovac had disagreed with Orme's claim that freedom of the press was threatened in Slovakia. The opposition contends convolutedly that this parliamentary censure represents an attempt by the government to prepare the public for the ouster of President Kovac, on grounds that his criticism of Orme constituted censorship of the media. In February, in another move to weaken the presidency, the government slashed the budget of the presidential office.

The composition of Parliament itself has also become a matter for constitutional politics. Notwithstanding the Electoral Commission's ruling that the Democratic Union (DU) collected the requisite 10,000 signatures to contest the Fall 1994 national elections, the government remains intent on removing the DU's 15 deputies from Parliament. At a recent SNP press conference, party Vice Chairman Bartolomej Kunc indicated that the matter could be brought before the Constitutional Court once again (see, EECR, Slovakia Update, Vol. 4, No. 1, Winter 1995). Kunc claimed that the Court may very well "change its standpoint under the influence of new evidence." DU Deputy Milan Knazko warned that the government's attempt to expel DU from the National Council may be a mere first step in a longer plan. The subsequent division of seats according to PR would give the ruling coalition eight new parliamentary seats (and the opposition, seven). The government would then be in a position to garner the 90 votes needed to amend the Constitution outright.

MDS's efforts to forge party cohesion may also have constitutional consequences. Jan Cuper, an MDS deputy, confirmed in an interview with RFE/RL, on January 23, that MDS deputies have each pledged to pay five million Slovak koruna (160,000 dollars) to MDS should they ever choose to leave the party. Legal experts from the opposition argue that this contract contravenes Art. 73 of the Constitution, which mandates that deputies be "representatives of the citizens," be "bound by no directives," and "exercise their mandates individually and according to their best conscience and conviction." To date, the Court has not been petitioned to rule on this issue.

During the interregnum between the September 1994 elections and the installation of the new government, the president petitioned the Court to rule on the status of ministers in the departing government. In November 1994, the National Council passed a no-confidence vote against two
ministers of the outgoing government. The cabinet members in question had submitted their resignations upon their electoral defeat, in accordance with Art. 117 of the Constitution. But the former government was scheduled to remain in office until the new government was installed (see, EECR, Slovakia Update, Vol. 4, No. 1, Winter 1995). The Constitutional Court handed down its opinion on January 31 and discussed the interplay between constitutional Articles 117 and 116.3. Article 117 provides that “the incumbent government shall submit its resignation after the opening session of the newly elected National Council of the Slovak Republic; the former government shall, however, remain in office until the new government is formed.” Article 116.3 stipulates that “The National Council of the Slovak Republic may also pass a vote of no-confidence in an individual member of the government in such a case the member shall be dismissed.” The Court reasoned that the government and its members, after their resignation following an election, remain in office by force of the Constitution, not by the will of the newly elected National Council. Therefore, the Court concluded, the National Council cannot use Art. 116.3 to dismiss a member of an outgoing government who had already resigned pursuant to Art. 117 of the Constitution.

The government program was made available to Parliament on January 11. Parliamentary committees met on January 16 to discuss the program, and the plenary debate opened on January 19. Rather than lock horns on the program’s substance, opposition leaders, with significant backing in the press, decried the presentation of the program as unconstitutional because it was four days late. This led the National Council’s chairman, Ivan Gasparovic (MDS), to declare that it was up to him to respect the Constitution’s requirement of timely presentation. No petition was submitted to the Court. The National Council approved the program on January 20, with a strict party-line vote. Of 139 members present, 83 voted in favor of the program, while the rest either voted against (44) or abstained (11).

The government’s program includes several amendments to the “Act on Political Parties” and the “Act on National and Local Elections.” The government claims that the new measures are needed “to stabilize political life.” Additional legislative priorities include a new bill on parliamentary procedures and a bill on conflicts of interest. Meciar has continued to argue that stabilization of democracy requires profound changes in the political and constitutional system. At the end of December, at a rally in Zilina, he claimed that a presidential system would help Slovakia avoid future political crises. Furthermore, Meciar defended the need for “a law on the protection of the republic,” which could be used “if the opposition does not accept its electoral defeat and tries to organize mass protests” or if ethnic and social conflicts threaten stability.

Claiming that the privatization program had been ill-prepared, the new government postponed until July 1 the second wave of voucher privatization, which had been scheduled by the previous government to start on December 15, 1994. Former Minister of Transportation Mikulas Dzurinda (Christian Democratic Movement [CDM]), noted that the previous government’s program had provided for the sale of at least 70 billion koruna worth of property through coupon privatization. Moves by the current government, he said, mean that the value of property which can be purchased by each coupon holder will fall from about 20,000 to 14,000 koruna.

On January 12, opposition deputies from CDU, DU, the Party of the Democratic Left (PDL), the Social Democratic Party (SDP), and the Hungarian Coalition (HC) submitted to the Constitutional Court a petition to review two privatization laws recently passed by Parliament. One law is an amendment to the large-scale privatization bill transferring control over privatization from the government to the National Property Fund. The other law cancels all direct-sale privatization projects carried out by the Moravcik government after September 6, 1994. The two laws were initially passed by Parliament on November 4, vetoed by the president, and then definitively approved by the legislature on December 21.

Since the formation of the new government, many personnel changes have occurred in the state administration. The government recalled 27 directors of district offices, for example. On March 10, the National Council voted to strengthen the control of the government over ministries and enterprises. State secretaries will be able to vote for ministers at cabinet meetings, and the government will be able to appoint the leadership of various central organs of the state administration. Parliament also approved the cabinet’s proposal to create a new Ministry of Construction and Public Works.

Cancellation of three television programs devoted to political satire provoked widespread public protest. These programs were among the most popular on Slovak TV. Organizers of a petition “against the violation of freedom of speech in Slovakia” have collected 115,000 signatures condemning the cancellation. Several mass demonstrations were held in Bratislava to increase the political effect of the petition.

In the run-up to the Conference on the Pact of Stability, Prime Minister Meciar and Hungarian Prime Minister Gyula Horn signed the Slovak-Hungarian Basic Treaty on March 19. At the core of the Treaty is the acceptance of the present Slovak-Hungarian border by the Hungarian government and the ethnic Hungarian community living in southern Slovakia. In exchange, Bratislava shall grant linguistic, educational and representation privileges to the Hungarian minority. To the extent that this treaty resolves the simmering disputes between ethnic Hungarians and Slovaks, it is an achievement of historic significance. Many Slovaks date their grievance with Hungary at least as far back as the early nineteenth century. Because Slovaks toiled as agricultural workers under Hungarian domination for centuries, nationalists claim, Slovaks now owe no special favor to the Hungarian minority. Ethnic Hungarians, on the other hand, have contested the Slovak-Hungarian border that has sepa-
rated them from Budapest ever since the reordering of Europe at the end of the First World War. The common desire of Hungarians and Slovaks to curry favor with the European Union may, at least for the time being, soften mutual recriminations. But the bilateral treaty remains to be ratified by both parliaments, and may cause problems within Meciar's majority coalition. SNP National Chairman Jan Slota, whose party holds nine seats in Parliament and two ministerial appointments, argues that granting national minorities the right to establish autonomous organizations is "unacceptable." Article 1201 of the Council of Europe's Recommendations envisions autonomous organizations (this intentionally ambiguous phrase is meant to cover anything from school boards and cultural institutes to sports teams) as an integral component of the political exchange between Bratislava and the Hungarian minority, but there are no provisions specifying how these organizations are to be established. Thus, the countries themselves are left to decide how and where CE recommendations will be implemented. Although the possibility for creating autonomous territorial governments exists in the CE recommendations, it is doubtful that Slovakia will interpret them in this way.

**Slovenia**

The most important legal development of the first quarter of 1995 came in early March, when the Italian government agreed to withdraw its objections to an association agreement between Slovenia and the European Union. The Italian government had been dissatisfied with regulations regarding Istrian property confiscated from former Italian residents by the communist government after 1945. This issue was addressed by the 1983 Rome Agreement between Italy and Yugoslavia, under which the latter agreed to pay compensation for the property. Slovenia was quite willing to continue its share of this compensation, but the Italian government decided after Slovenian independence that former Istrian Italians should have a chance to participate in the proposed privatization of the property. The Slovenian government first insisted that the property issue should be kept separate from talks about relations with the EU, but finally agreed to link the questions.

The Slovenian Constitution bars foreigners from holding or purchasing property in Slovenia. Prime Minister Janez Drnovsek said that a constitutional amendment will be enacted after all EU members have accepted the Slovenian association agreement but before the agreement is signed, possibly in September. If the necessary amendment is not passed, Italy may yet veto the signing of any treaty.

Any such amendment will face considerable opposition in Parliament, where it will need a two-thirds majority to pass. A storm of parliamentary activity was set off by the joint press release announcing the agreement between the Italian and Slovenian foreign ministers. Deputy Chair of the Foreign Relations Committee Borut Pahor called a meeting to discuss the repercussions of the press release. Parliament had decided in March 1994 that the Rome Agreement of 1983 definitively settled the legal questions connected with former Italian property. Pahor reiterated this decision, announcing that the foreign ministers' agreement changed nothing.

Even the promise of a change in the property laws greatly angered opposition members of Parliament. On the first day of the January legislative session, seventeen of them proposed to indict Prime Minister Drnovsek for violating the Constitution. The motion was rejected by a large majority, though the Slovenian People's Party (SPP), the Social Democratic Party (SDP), and the Slovenian National Party (SNP) supported it and the United List of Social Democrats (ULSD) opposed only the proposal's form.

Popular opinion is also resistant to the change: polls have shown that almost 75 percent of Slovenians oppose preferential treatment for Italian former residents. Slovenians fear that the Italians will consistently outbid them in privatization and will literally buy them out of house and home. Lingering fears that Italy will reopen the question of its border agreement with Slovenia also fuel opposition to the property law amendment.

Slovenia has made considerable progress in relations with Croatia. Although the border disputes which flared up last fall have not been permanently settled, energy and financial issues have been successfully resolved. After several meetings between their respective economic ministers, the two republics agreed in March on a formula for ownership of the Krsko nuclear power station. The station, situated in Slovenia near the Croatian border, will be half owned by each republic. Slovenia will own the "golden share," entitling it to veto important decisions about organization, security, and closing down the reactor. The talks also addressed the use of the Adriatic oil pipeline and transit gas line. The problem of the allotment of state property, though discussed in earlier meetings, was not resolved. The Slovenian delegation proposed, however, that the formula used in the Krsko case could be applied to the problem of property generally.

In February Slovenia agreed to pay Croatian citizens who held foreign currency deposits in the Ljubljanska Banka 204 million dollars. This agreement allayed Croatian criticism of a Slovenian law passed in August 1994, which attached the settlement of the debt question to the problem of resolving all legal disputes among the successor states to former Yugoslavia. These disputes are unlikely to be settled in the near future. Croatian citizens had held nearly 600 million dollars in hard currency exchange in the Slovenian bank before foreign exchange deposits were frozen by the Yugoslav national bank in late 1990. Since then roughly 369 million dollars of the debt has been transformed into Croatian bonds, and the money remaining in Slovenian banks will now be paid. The Slovenian government also agreed to repay its debt to the Croatian Health Insurance Fund by the end of 1995.

These agreements mark considerable progress in Slovenian-Croat relations, which were unsettled by border disputes in late 1994. The Slovenian law on municipalities, passed in October,
incorporated four villages claimed by Croatia into the Slovenian local government structure. Croatia also objected to Slovenia's claim to jurisdiction over the Bay of Piran, a body of water off the Istrian peninsula. The settlement of the Croat-Slovenian border may have to await a final agreement on the respective rights and duties of the successor states to the Yugoslav Federation.

Ethnic conflicts have surfaced in Slovenia in recent months. In Maribor, the second largest city, members of the right-wing Slovenian National Social Federation have formed patrols they say are intended to protect the Slovenian population from violence by non-Slovenes. An athletic association set up by the Party of the National Right has similar goals. Interior Minister Andrej Ster stated publicly that such "protection" activities are illegal. Right-wing extremist nationalists targeting mainly refugees from Bosnia and Croatia and foreign workers in Slovenia's industrial cities.

The Defense Ministry ordered the occupants of 1200 apartments owned by the former Yugoslav People's Army to move out or face eviction. Most of the tenants are non-Slovenian former Yugoslav officers and army employees. As of March 29, the tenants of 25 apartments had left and eviction proceedings had begun against 90 more. Under pressure from human rights groups, Prime Minister Drnovsek called for a halt to this mild version of ethnic cleansing.

Although the United States Department of State praised Slovenia's human rights record in 1994, both Amnesty International and Helsinki Watch have reported rising human rights violations in the republic. These violations concern mainly Serbs, Croats, and other former Yugoslav citizens, especially foreign correspondents. The secretary-general of Amnesty International met with Interior Minister Ster on January 10 to discuss human rights issues, and warned that Amnesty would undertake thorough investigations if new reports of violations were received.

Despite projected GDP growth of seven percent for the current year, the Ljubljana Stock Exchange has fallen 15 percent since the beginning of 1995. Analysts say traders are worried that privatization issues will flood the market. The privatization program began in January 1994, and is slated to continue through the first half of 1995. Newly privatized companies fear entering the Stock Exchange, however, because Slovenian regulations make takeovers easy. Parliament is expected to pass a new law on takeovers this year. Current securities laws restricting and closely regulating foreign investment are also expected to change, and Slovenia's two largest banks may be privatized.

A dramatic climax in the ongoing saga of relations between the Ukrainian central government and the autonomous province of Crimea occurred on March 17, when the Verkhovna Rada (Parliament) passed a series of seven legislative acts, including cancellation of the Autonomous Republic's 1992 Constitution as well as abolition of the office of provincial president. This Constitution was officially reinstated by the Crimean Parliament in May 1994, but immediately suspended by Kiev, and its suspension, in turn, disregarded by Sevastopol. Parliament's new laws reasserted the authority of the Constitution of Ukraine in Crimea, rescinded all Crimean legislation in conflict therewith, recognized as solely authoritative in the peninsula the national government's Supreme Council and executive, and suspended the financing of all institutions considered unconstitutional. Also canceled were local council elections scheduled for April 29. Criminal proceedings against Crimean President Yuriy Meshkov for various illegal acts were authorized as well. Would-be President Meshkov, already in disfavor with his own Crimean parliamentarians, spent several days in his office isolated and incomunicado. The national Parliament in Kiev acted on the basis of a report by an ad hoc committee set up last autumn to investigate all aspects of the Crimean situation. Presenting a catalog of all the misdeeds of Meshkov and his Parliament, the report also denounced various instances of Russian intrusion, and dwelled at length on the rising crime rate in Crimea as a sign of the provincial government's ineffectiveness.

In addition, the Verkhovna Rada passed a new law on the Autonomous Republic of Crimea which, at least on paper, firmly subordinated the recalcitrant province to central authority and gave it a limited sphere of jurisdiction. The law emphasized Crimea's autonomy, but declared that its relation to the center is to be municipal in nature, not federal. Emphasis on the term "autonomous" was meant to downgrade Crimea from its self-designation as a "republic." In its reaction to the decisions made in Kiev, the Crimean Parliament asked Russia to withhold approval of its impending agreement with Ukraine. Russia acquiesced. On March 24, the Ukrainian Parliament slated local elections in Crimea for June 15.

This decision provoked President Leonid Kuchma's decree placing ultimate power of appointing the Crimean government in his own hands and restoring as its head his son-in-law, Anatoliy Franchuk. The Crimean government was to be subordinated to Kiev until the new constitution was drafted by the provincial assembly, sometime before May 15. Undeterred, the Crimean legislators passed a vote of no-confidence in the Franchuk government on March 22. On April 1, Kuchma restored him to the premiership and threatened the provincial Parliament with dissolution. For the time being, the Crimeans demurred.

Earlier, on January 12, Kuchma had authorized the cancellation of a series of four Crimean government decrees (issued between November 1993 and August 1994), as well as (on February 12) half a dozen of Meshkov's presidential edicts, put out between May 15 and September 9, 1994. Turmoil continued within the Crimean Parliament, meanwhile, as several votes of no-confidence removed most of the presidium and even, temporarily, the parliamentary speaker, Serhii Tsekov. Originally ousted by the industrial lobby, Tsekov was reinstat-
ed in early March. Indicative of the separatist mood of the province, in mid-March the Crimean Parliament was debating, in defiance of Kiev, a bill on dual (Ukrainian-Russian) citizenship. This debate, however, was postponed and in any case overtaken by the events described above.

Work on the Constitution of Ukraine, in the meantime, has not progressed very far. Reconstituted by Kuchma in Fall 1994 (see EECR, Ukraine Update, Vol. 4 No. 1, Winter 1995), the Constitutional Commission met at the end of December and in early March. At the latter meeting, Kuchma noted that stylistic and political agreement had yet to be reached on many provisions. The very form of government (parliamentary, presidential, or presidential-parliamentary) was yet undecided, as was the question of which institution would be responsible for foreign policy. Oleksandr Yemets, on the other hand, reported, at the end of March that his section of the Commission had reached the conclusion that Ukraine needed a presidential system, on the American model, in view of the hyperfragmentation and weakness of its political parties. It had been agreed, moreover, to merge the section dealing with civil society into the general provisions of the Constitution and the section on rights. Proposals were introduced to reduce the size of Parliament from 450 to 250-300 members, and to institute a mixed (majoritarian and proportional representation) electoral system. Some questions about the courts and the appointment of judges remained undecided. The Commission’s secretary, Albert Koryeyev, reported at the beginning of March that work was two to three weeks behind schedule—a rosy assessment, given that the process of writing a new Constitution for Ukraine began in 1990.

While he continued to co-chair (with parliamentary speaker Oleksandr Moroz) the Constitutional Commission, Kuchma was at the same time shepherding his own interim solution to the constitutional impasse, the draft law “On State Power and Local Self-Government in Ukraine,” through Parliament (See EECR Ukraine Update, Vol. 4 No. 1, Winter 1995). The president justified the bill, which was introduced to Parliament on December 22, and given its first reading on December 28, as essential to economic stabilization. It would, he claimed, eliminate conflicts between branches of government by properly dividing and delineating their powers. It would also permit formation of the Constitutional Court and the establishment of an economic court. The first quarter of 1995 began with Parliament acting as judge in its own cause, following the precedent set down in Soviet legislative practice. By a vote of 221 to 181, Parliament denied the honorary chairman of the right-wing Ukrainian Republican Party and former ambassador to Canada, Levko Lukyanenko, the assembly seat he had won in an earlier by-election. It was alleged that illegal campaign materials had been used during the electoral campaign, but the move was purely political. Undeterred, Lukyanenko continued to press for recognition, and his mandate was finally approved on February 9, by a vote of 205 to 107.

Speaker of Parliament Moroz came under a cloud in February, when a scandal erupted over his apparently having authorized issue of a credit of 30 billion karbovantsi to a city in the Sumy province. According to a published copy of the memorandum, signed by Moroz, there was one condition: the city had to kick back one-third of that amount to a citizen by the name of Smirnov, who needed to travel to California for an eye operation. By this time, Smirnov had disappeared into Russia or some other part of the CIS, and an embarrassed Moroz shifted blame to his erstwhile business adviser, Viktor Bozhenar. Investigation of the Smirnov case uncovered an even bigger fraud, an illegal loan of 80 billion karbovantsi. On March 9, Bozhenar, basketball coach, businessman, and advisor to Moroz and, before that, to President Leonid Kravchuk, was arrested and charged with embezzlement of state funds.

The front page of one newspaper, Bozhenar was shown in an undated picture together with Yefim Zvyahilskyi, former acting prime minister for Kravchuk, in a friendly handshake. On the run for several months, Zvyahilskyi saw his parliamentary immunity lifted in November 1994 and was charged with illegally siphoning off 25 million dollars from energy deals while in office. He was tracked down in Israel and, in a newspaper interview on March 3, denied his involvement in any illegality. The charges were fabrications, he alleged, and he had fled not from justice, but for fear of his life.

In a move expected since January, Prime Minister Vitalii Masol tendered his resignation on March 1. Two days later, he was replaced by Yevhen Marchuk, who became acting prime minister. Appointed by Kravchuk just

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before the presidential elections in 1994 to woo the left-wing vote, Masol had, it was thought, become increasingly out of step with the reformist cabinet created in the course of Kuchma’s presidency. Of course, Masol had also served as chairman of the Council of Ministers of the Ukrainian SSR from 1987 to 1990. Head until July 1994 of the Security Service of Ukraine (SSU), successor to the KDB (Komitet Derzhavnoyi Bezpeky; in Russian, KGB), Marchuk had been named Kuchma’s chief crimebuster and, since December 1994, had served as first vice premier. Whether the appointment of a secret police chief as prime minister is appropriate at this moment in Ukraine, or whether it foretells the beginnings of a police state, is a moot question. Marchuk is said to be very much his own man and not a client of the president, and he may even be a candidate for the presidency himself in the future.

In any case, Marchuk’s tenure seems less than secure because on April 3, by a margin of 292 to 15, the national Parliament passed a vote of no-confidence in his government. The ministers will remain in office until Parliament approves a new government according to Art. 117 of the Constitution. The vote came in response to the government’s annual report to Parliament on the state of the economy. Deputy Speaker Oleh Dyomin, criticized the government for failing to carry out parliamentary and presidential legislation. This dismissal of the government, the first since independence, will allow President Kuchma the opportunity to put together an entirely new administrative team, something he has apparently wanted to do since taking office.

A little-noticed event in this time of big changes was the unexpected death, on March 3, of Leonid P. Yuzkov, the chairman of the Constitutional Court and a member of the Constitutional Commission. Although the Court was created in 1992, and Yuzkov was appointed in July of that year, Parliament has held up other appointments, preventing the Court from convening. With Yuzkov’s death, the formation of the Court will have to begin from scratch. The Constitutional Court’s functions continue to be usurped by president and Parliament as part of their never-ending struggle for power.
A Letter from Poland

Wiktor Osiatynski

Poland has a new government, its sixth since 1989. The constructive vote of no confidence, cast by the members of two ruling parties, the Union of the Democratic Left (UDL) and Polish Peasant Movement (PPM), led to former Prime Minister Waldemar Pawlak’s (PPM) replacement by Jozef Oleksy (UDL). Thus the postcommunist UDL finally assumed direct responsibility for the government, something it had resisted sixteen months ago.

In the September 23, 1993 elections, UDL received 20.5 percent of the vote. Because of the weighted electoral system, however, it obtained a disproportional 37.2 percent of the seats in the 460-seat Sejm. The PPM, a post-1989 spinoff from the communist satellite United Peasants Party (UPP), similarly saw its 15.4 percent of the vote translated into 28.7 percent of the seats in the Sejm (See EECR, Poland Update, Vol. 3/4, No. 4/1, Fall 1993/Winter 1994).

The coalition had been forged on the basis of the two parties’ shared affinity for the communist past and of similarities in their electoral platforms. During the 1993 campaign, both parties criticized the post-Solidarity government for taking excessively harsh economic measures. The coalition, by contrast, promised pay hikes, a slow-down of privatization, and a more effective fight against unemployment and inflation. Acknowledging the general need to continue reforms, the new coalition nevertheless criticized the liberal faith in free markets and promised to pursue “capitalism with a human face.”

But the parties soon diverged on their visions for the future. Responsible for crucial economic departments in the government, UDL soon realized that there was no alternative to continuing market reforms. PPM, instead, tried to undo many of the reform measures introduced in 1989-1993. To this end, PPM’s principal strategy was the idleness of the prime minister himself. For example, when UDL’s minister for privatization wanted to continue turning large state factories into publicly-held corporations, Pawlak withheld his signature from the necessary documents for almost six months. Instead, PPM worked out an alternative strategy, the so-called “commercialization” of state factories. “Commercialized” enterprises were to be even more dependent on the state and, by virtue of state support,
more resistant to privatization. Thousands of positions on the boards of “commercialized” enterprises were to be handed out to PPM’s political allies.

Pawlak and Michal Strak, his minister of local administration, halted the reform of local administration begun by the government of Hanna Suchocka. They replaced almost all incumbent local officials, promoting, wherever possible, PPM activists.

The government primarily focused on two activities. First, reflecting its immediate electoral interests, PPM subsidized and protected the poorly organized and inefficient agricultural sector. It introduced protective tariffs on food imports and spent enormous sums on rescuing the Bank of Alimentation Entrepreneurship from bankruptcy. It eventually became clear that the principal aim of Pawlak’s government was to shift the economic burden of reforms onto cities in order to shelter the agricultural sector from painful but necessary restructuring. Pawlak feared that such reforms would undermine the otherwise steady electoral support of PPM among the more than 25 percent of the workforce still employed in agriculture and living in villages.

Second, displaying even more clearly his intent to strengthen his party’s political base, Pawlak placed his cronies in every available position in the administration, in industry and on the boards of banks, industrial enterprises, and foundations created by the government. Pawlak may not have introduced the spoils system to post-1989 politics, but he mastered it to perfection, creating a dense and far-flung web of clients. In his vision of government-by-colleagues, room for market reform became smaller and smaller. After all, big government with broad powers and ample budgets meant more perks for clients.

If leaders of the Alliance initially counted on controlling the government from behind Pawlak’s back, they soon realized that they had miscalculated. Pawlak effectively claimed and asserted power. An incident in early 1994 was significant. Pawlak fired a deputy finance minister, blaming him for improprieties in privatizing a bank. The deputy minister was responsible for appointing the Ministry of Finance’s representatives to the boards of privatized banks and enterprises. Marek Borowski, a UDL deputy prime minister and the acting minister of finance, first threatened to resign unless Pawlak revised his decision, and then actually submitted his resignation. This move was perceived as an attempt to pressure Pawlak and strengthen UDL’s position in the negotiations between Pawlak and Kwasniewski, to be held after the latter’s return from a trip abroad. Without consulting Kwasniewski, however, Pawlak announced his acceptance of Borowski’s resignation. Angrily, UDL yielded.

In the wake of this incident, relations between the leaders of the coalition parties were tense. Kwasniewski did not trust Pawlak, who would promise and never deliver. The simplest decision would take him months. Pawlak was also hopelessly vague in communication, never making eye contact when speaking. He would not say much to begin with, dodging the press and almost never answering questions straightforwardly. He once admitted that he had learned the art of negotiation from a Polish translation of Getting to Yes by Roger Fisher and William Ury. The lesson he learned was that the best negotiating strategy is to say nothing.

Having made a decision, however, Pawlak was utterly stubborn. He three times reappointed a police commissar-general who had submitted his resignation after being implicated in a cover-up of police corruption. Pawlak was simply there, no action, no idea, nothing. He just killed time and let his buddies divvy up state offices and assets among themselves.

UDL leaders were powerless. They convened a number of coalition meetings with top PPM leaders, often negotiating past midnight. Pawlak would reluctantly promise to treat his partners seriously only to relapse into his normal pattern of inaction, promise-breaking, and issuing false, contradictory, and curt statements. By the fall of 1994, Kwasniewski was seeking the advice of professional psychologists on how to deal with Pawlak.

UDL’s situation was frustrating. While it was the stronger partner in the coalition, its freedom of action was minimal as it could not form a government single-handedly. Some UDL leaders, including Kwasniewski, would have readily accepted a coalition with the Union of Freedom, which had emerged in spring 1994 from the union of the Democratic Union and the Liberal Democratic Congress. Tadeusz Mazowiecki and his colleagues, however, did not want to emulate the
Hungarian example, and refused to enter a coalition with former communists. The only alternative left for UDL was abandoning the coalition, and power, altogether, thereby handing the government completely over to PPM. This option, however, was especially unacceptable to UDL members serving in the administration, for they had no doubt PPM would sweep them away within weeks of a UDL withdrawal.

The only hope for UDL leaders was staying in the coalition with PPM, but switching prime ministers. Though Kwasniewski hinted at such a switch a number of times, it was to no avail, since Pawlak had two important assets. First, he had the unwavering support of activists in his party. He had helped PPM avoid the misfortune of the Democratic Alliance, another Communist Party satellite, which had supported the Solidarity-backed government in 1989. Unable to find new leadership or supporters, the Democratic Alliance practically ceased to exist in 1990. By contrast, Pawlak, who is only 33 and therefore too young to be marked as a communist collaborator, provided the Peasant Party with stable leadership. He devised a strategy of rebuilding the party, using local cells, agricultural cooperatives, and banks to transform PPM into a modern interest-group party. Using this strategy, the PPM succeeded in rapidly eclipsing the two post-Solidarity peasants’ movements. Ever since his first stint as prime minister in 1992, Pawlak has personified for power-hungry peasant activists their own prospects for advancement and success.

Pawlak’s second asset was more complex. On the one hand, he was not skilled at public relations. The media did not like him, and he did very little to ingratiate himself with reporters. Politicians from other parties feared and disliked him. He was ridiculed by the intelligentsia, who looked upon him condescendingly. Nevertheless, until almost the very last days of his prime ministership, Pawlak enjoyed the solid support by over 50 percent of the population. In early fall 1994, he was even considered a top presidential contender. Intellectuals, especially, had difficulty comprehending the undeniable popular appeal of this grumpy, increasingly arrogant youngster.

In fact, Pawlak’s popularity epitomizes the gulf that has existed more than three hundred years between Poland’s elite and the rest of the public. The Polish elite has long cherished aristocratic values, even if a Polish nobility no longer exists, having been transformed into intellectuals, professionals, and politicians. Condescension and paternalism toward “commoners” are central features of this value system. Elites act on behalf of “commoners,” but they never conceal their sense of superiority. The elite value system was especially attractive to those who had successfully climbed the social ladder, flirting with and seeking acceptance from traditional elites, adopting elite manners and values, and severing links with their past. Many communist leaders had taken this path. Many Solidarity leaders, including Walesa, acted similarly. Walesa, for example, aimed to prove to the intellectual opposition that nothing could be accomplished without him. On the surface, Walesa may constantly fight Mazowiecki, Geremek, Michnik, and other elite politicians. Deep inside, he dreams an unattainable dream of being accepted by his former intellectual advisors as a full-fledged member of the Polish upper class.

Pawlak’s originality can be understood only against this backdrop. He was the first Polish political leader who rejected the values and manners of the elite outright. Pawlak stuck with ordinary people and sent a clear message that he did not care what the media, the intelligentsia, or other politicians thought of him. His popularity with common people owed much to his personal interactions with them. He served as Chairman of the Association of the Voluntary Fire Brigades, a movement of volunteers with chapters in every small town and village. While he had no time for many state duties, Pawlak never missed a meeting or annual dance organized by firemen. Every Sunday, he showed up for mass, often in a remote village church. For common folk, Pawlak was the one leader who did not betray them. By snubbing the elite, Pawlak gave the masses, especially the rural population, a sense of self-esteem.

For such popularity to endure, however, Pawlak had to stay at the top and constantly win at the political game. The Polish people, unlike the Polish intelligentsia, do not admire losers.

Pawlak eventually lost, however, for two major reasons. First, he was unwaveringly loyal to his buddies, even corrupt ones. One of his ministers was implicated in corruption. Another had a drunk driv-
ing accident, and was also suspected of attempted rape. Still another was caught lying in public. The press, disliking Pawlak, sensationalized these stories.

An even more damaging story charged that Pawlak himself was involved in securing a contract with a bankrupt firm, now owned by one of his friends, to computerize a government office. A related story claimed that the prime minister had had a love affair with a secretary employed by that firm. Pawlak either ignored these stories or responded with vague, inconsistent explanations. He refused to terminate ministers tainted by scandal. For the Polish people, who are fairly judgmental, these issues began to overshadow Pawlak's populist appeal. But these problems were nothing compared to the blows dealt to Pawlak, indeed to the entire coalition, by Walesa.

If Walesa ever had grounds for treating himself as a providential figure, it was precisely after the 1993 elections. The right-wing parties were unwilling or unable to form a coalition, and none crossed the five percent vote threshold needed to enter Parliament. The Solidarity Union similarly fell 0.1 percent short of the threshold. As a result, over 30 percent of the popular vote was not represented. This 30 percent was subsequently redistributed among the represented parties. The Democratic Union won 10.5 percent of the popular vote and 16 percent of the seats in the Sejm. It was to become the major opposition party. For many reasons, however, it could not play this role effectively.

First, representing a small minority, the reformers could play only a minimal role. Their legislative impotence frustrated many of the party's ambitious leaders. In time, some got so bored they almost never attended parliamentary sessions.

Second, between October 1993 and Spring 1994, the party was absorbed by its unification with the Liberal Democratic Congress into the Union of Freedom. Previously, each party had blamed the other for failing to form a coalition prior to the 1993 elections (as a result of which the liberals did not enter Parliament at all). The union included a move to the right, causing a radical and noisy counter-reaction on the part of the left. Some members created the Social Forum within the new party, a group with sharply anticlerical tendencies. Certain members of the Forum, including Wladyslaw Frasyniuk, a legendary leader of the Solidarity workers' movement in 1980-1981, were extremely critical of the Union's leadership and suggested forming a coalition with the postcommunist UDL. The Forum was subsequently excluded by the Union of Freedom. This struggle resulted in a decline in support for the unified party to about 12 percent, compared to the combined support of 16 percent enjoyed by the two parties before their union.

The Union of Freedom also divided over selecting a presidential candidate. Most party members supported Jacek Kuron. At the center-left of the party, Mazowiecki and his colleagues in leadership preferred either former civilian minister of defense Janusz Onyszkiewicz or former prime minister Hanna Suchocka. In the party's unofficial primaries, Kuron garnered more votes than all other candidates combined. In his presidential bid, Kuron had previously distanced himself from party infighting and from the Union of Freedom itself. He replaced his jean jacket with suit and tie and presented himself as the candidate of a coalition broader than a single party. (Incidentally, as early as June 1994, former President Wojciech Jaruzelski told the author that he would ask UDL to support Kuron for president, but only if he put on a proper jacket.)

At the party's April 2 national convention, Kuron received 225 votes on the first ballot, while Hanna Suchocka received 109, and Janusz Onyszkiewicz 145. If all supporters of Suchocka had switched to Onyszkiewicz, Kuron would not have been nominated. Fearing Kuron's defeat would result in the party's split, some delegates voted for him in the second round. As a result, Kuron received 242 votes compared to 231 for Onyszkiewicz. The slim margin of victory surprised everyone. Even more surprising was the wide margin by which Jacek Balcerowicz won the chairmanship of the Union of Freedom, trouncing Mazowiecki who had held the chairmanship since the creation of the Democratic Union in 1990. Doubts about Mazowiecki's leadership had been growing both after the party's failure to form a coalition with the liberals before the 1993 elections, and especially after his own poor showing in the presidential elections of 1990 (where he lost not only to Walesa but also to an unknown Stan Tyminski) and in the par-
liamentary elections of 1993 (when he received, within one district, only a fraction of the votes received by Suchocka).

A change in the party chairman had been in the works since February, when a group of leaders had proposed a plan to invigorate the party by renewing its leadership. Leszek Balcerowicz, a deputy prime minister under Mazowiecki and an architect of Poland's economic "shock therapy," joined the party. In a bid against his former boss, Balcerowicz promised to transform the Union of Freedom into the party of the growing group of citizens who feel their situation has improved since 1989. Hoping to keep all current groups within the party, he nevertheless expected more discipline and loyalty from the various factions. He also rejected considering a coalition with either UDL or right-wing parties. According to Balcerowicz, a coalition at this stage would have disrupted the party. He proposed creating a strong reform-minded party which could solidify its popular base and eventually bid for an electoral victory. Mazowiecki, however, did not intend to step aside gracefully, and the party was torn by another conflict.

It would seem that Balcerowicz's natural allies would be liberals who had joined the party during the union, as Balcerowicz personified the economic success of liberal measures adopted in Poland. To everyone's surprise, however, the liberals were initially discontented with Balcerowicz's candidacy and instead leaned toward Mazowiecki.

One possible explanation for this oddity is that Balcerowicz was never an insider in the social circle of Gdansk liberals. He would have overwhelmed them. They hardly had a program on the basis of which they could compete with Balcerowicz for support and influence within the party. Donald Tusk, Janusz Lewandowski and other liberals spied more room for themselves around Mazowiecki's aging leadership. Only one day before the party convention did another liberal leader, former Prime Minister Jan Krzysztof Bielecki, support Balcerowicz for the chairmanship.

Mazowiecki refused to negotiate a proposed compromise formula whereby he would become chairman of the specially formed council of the party while transferring day-to-day leadership to Balcerowicz. On April 1, Balcerowicz beat Mazowiecki in a landslide, 313 votes to 174.

Thus, the architects of change in the Union of Freedom succeeded in their twin aims of promoting Balcerowicz to party leadership and of supporting Kuron's bid for the presidency. Both men are now confident they can lend support to each other and win broader support for the Union of Freedom. They also believe that, in the event of a presidential victory by Kuron and parliamentary elections returning the Union of Freedom to power as part of a new coalition, President Kuron could offer Balcerowicz a protective umbrella similar to the one Walesa held over economic reforms from 1991 to 1993.

Torn by all these internal conflicts, the Union of Freedom was unable to play the role of effective parliamentary opposition. Its deputies would not speak for fear that their statements could be misused in party infighting. Their liberal influence in Parliament was negated by the Union of Labor, another post-Solidarity opposition party, but one with social democratic leanings.

This brings us back to Walesa as the sole, determined player capable of challenging the postcommunist coalition. He truly accomplished the unthinkable. Singlehandedly, he shattered a coalition with an overwhelming majority in both houses of Parliament. Even though he had announced such plans a mere three weeks after the UDL-PPM victory (in an interview with EECR on October 12, 1993), no one believed it possible. Neither Walesa's parliamentary support, represented by four percent of Sejm seats won by the pro-Walesa BBWR party, nor his presidential powers suggested that Walesa could successfully face and challenge the postcommunist coalition. By hook or crook, however, he assembled the necessary power. Walesa waited a few months until the campaign promises given by the winners turned out to be impossible to fulfill. He then launched his attack on the coalition. The first issue he raised concerned the proposed change in the mode of adopting a new constitution. Walesa favored a constitutional initiative by citizens. (See "Poland's Constitutional Ordeal," Wiktor Osiatynski, EECR, Vol. 4, No. 2, Spring 1994.) To bolster his position, Walesa claimed to represent the over 30 percent of right-wing voters not
represented in the National Assembly. He downplayed Parliament's legitimacy by arguing that during the 1993 presidential elections he had received a greater percentage of the popular vote than the ruling coalition had obtained in 1993. Finally, he re-established links with Solidarity, which followed up Walesa's legal initiative and submitted, in September 1994, a citizens' draft constitution.

Although Walesa's popularity ratings were low, around 20 percent or less, he projected an image of much greater strength by giving the impression that he enjoyed support from the right and the Solidarity union. Using his veto power to kill a liberalizing amendment to the abortion law, Walesa reaffirmed his ties to the Church.

By the fall of 1994, Walesa had reached out to another group: the poor, the pensioners, and others compensated directly from the state budget, that is, teachers, doctors, and communal employees. For example, he opposed an otherwise much-needed law disassociating public sector salaries from wage increases in private enterprises by making such salaries dependent on inflation instead of the growth of private sector wealth. He also opposed the tax law which set tax rates at 21 percent, 32 percent, and 45 percent. His rhetoric also reflected increasing appeals to the poor and to those disappointed with the government.

But the main instrument Walesa used in his struggles with the coalition was constitutional politics. Walesa has long favored a strong presidency modeled, in his mind, on the French Fifth Republic. Last October, the National Assembly, in establishing the broad outlines of a future constitution, chose to give the president only a modest role, making him an arbiter, not a chief executive. Two weeks later, in a televised address to the nation, Walesa asked the people to support the presidential model of government in a national referendum.

Walesa did not wait for a new constitution. With the help of Lech Falandysz, deputy chairman of the Presidential Chancery in charge of legal issues, he claimed as much power as possible. Given the absence of a Polish constitution and a weak constitutional culture, Falandysz would interpret the many vague provisions of the Little Constitution so as to increase presidential power. This was possible because very few of the decisions of the Constitutional Court had clarified the relevant provisions. Falandysz termed his strategy "balancing on the verge of legality," and Walesa praised this effective, broad, and nonrigid use of law. Though Walesa and Falandysz did not actually violate the letter of the Constitution, they often ignored its spirit.

The struggle for control of the National Board of Radio and Television was a good example of this artful legal strategy. The law states that the president appoints three of nine board members, including the chairman, but says nothing about the president's right to remove his appointees or the chairman. In March 1994, disappointed with the broadcasting license granted to the nomenklatura-based Polsat television station, Walesa recalled Marek Markiewicz, the chairman appointed by the president, and replaced him with another member of the Board.

In response, the ombudsman for citizens' rights asked the Constitutional Tribunal to clarify when its interpretations of law become effective. On April 5, the Tribunal ruled that its interpretations are not new laws, and therefore apply from the time the law being considered came into effect. Thus, Walesa's removal of Markiewicz was illegal. There is no mechanism to reverse Walesa's decision, however, for the president's decisions cannot be legally challenged in administrative courts.

Moreover, Markiewicz cannot be renominated as chairman, for he was recalled from the Board altogether. In November 1994, Falandysz creatively interpreted a sentence fragment from the decision of the Supreme Administrative Court and justified Walesa's decision to recall Markiewicz and another presidential appointee, Maciej Ilowiecki, for "gross violation of the law." Walesa replaced them with two men, one of whom was a close friend of Falandysz. Falandysz's interpretation was so spurious that a public uproar ensued, with both Board and Parliament protesting the decision. Eleven people, including the two removed by the president, attended board meetings for a while. Everyone criticized the president for abusing his powers. After a few weeks, however, the noise subsided. The terminated members gave up, and Walesa triumphed.

With similar tactics, Walesa also claimed authority over three governmental departments: the military, foreign affairs, and internal affairs. The Little
Constitution states that the prime minister appoints ministers upon consultation with the president (Art. 61). According to Walesa and Falandysz, this means that these ministries should effectively be under the president's control, an interpretation to which the government yielded. After General Tadeusz Wilecki, chief of staff and Walesa's man in the army, clashed with Minister of Defense General Kolodziejczyk, Walesa hosted a lunch during which he asked the generals to pledge allegiance to the chief of staff. Even though a special commission of Parliament defended Kolodziejczyk as guardian of civilian control over the military, Walesa persuaded Pawlak to dismiss him.

Ewa Milewicz, political correspondent for Gazeta Wyborcza, coined the new Polish word "falandyzation," meaning to twist the law to serve one's short-term political purposes. By the end of the year, Falandysz had turned his legal mind to fighting the ruling coalition. At issue were the budget and a series of statutes to be passed with it, including the tax law (see Poland Update in this issue). The Little Constitution states that the budget should be passed within three months of its submission to the Sejm. If the Sejm fails to act on time, the president may dissolve Parliament. The Sejm and the Senate passed the budget in less than two months. Falandysz, however, claimed that the three-month deadline includes the time designated for the president's suspensive veto (30 days) and its overriding by the Sejm. Under this interpretation, sending the budget to the Constitutional Tribunal, another presidential prerogative, would give cause for dissolving Parliament. The reasoning was dubious, but there was no authority to prove Falandysz and Walesa wrong. Moreover a vivid precedent was set in the spring of 1993, when Walesa dissolved Parliament and ordered the doors of the Sejm sealed.

As the three-month deadline approached, and Walesa and Falandysz hinted at dissolution, Parliament adopted a resolution stating that dissolution would be illegal and could provide grounds for the constitutional responsibility of the president. Without making open threats, Walesa dismissed the resolution as groundless. At the same time, he began pointing at Pawlak and hinting that a change in the cabinet could save Parliament. Thus, Walesa succeeded in widening the rift between Pawlak and Kwasniewski. UDL leaders, later joined by top PPM leaders, became openly critical of the prime minister. Finally, the PPM itself proposed replacing Pawlak with Jozef Oleksy, then speaker of the Sejm, and appointing deputy chairman of PPM, Jozef Zych, as new speaker. The mechanism for making this change was a constructive vote of no confidence cast by deputies of the two ruling parties.

Walesa has always had an ambivalent attitude toward Pawlak. In June 1992, on the very night he asked the Sejm to dismiss Jan Olszewski, he appointed the 31 year old to be prime minister. Pawlak helped Walesa gain control over the military and ministry of internal affairs and thus curb the dissemination of secret police files by Olszewski's minister of the interior. Walesa expected gratitude and loyalty in return for his appointment. Pawlak displayed some, but not for very long. When he returned as prime minister in late 1993, Pawlak began to believe ever more firmly that he was his own man, not Walesa's creature. Walesa, however, continued to behave paternalistically toward the young prime minister. Their breakfasts on Mondays became shorter and less cordial. Walesa began to distrust Pawlak, realizing that he could no longer count on him. He became bitter, and, in the end, wanted Pawlak out.

Pawlak's political assets had significantly depreciated. But still believing in his popular appeal, he pressed for dissolving Parliament and calling new elections. That option, however, was too risky for PPM leaders, who realized that even if they retained their support in the electorate, the right would not this time forfeit 35 percent of its seats to the coalition. PPM leaders were uncertain as to what a new coalition would look like and whether there would be room for their clients. They preferred to stay in a coalition with UDL and sacrifice Pawlak to their interests. His broad popular support proved immaterial, since the mass electorate does not vote at secret meetings of top leaders.

The governing body of PPM gave Pawlak token support by making him chairman of the party. New leaders, however, came to the fore in PPM and in the newly organized governing coalition. Jozef Zych, the new speaker of the Sejm, became perhaps the most
outspoken PPM representative. In the Oleksy government, Roman Jagielinski of the PPM has been appointed minister of agriculture and one of three deputy prime ministers. Jagielinski is the foremost advocate of structural changes in Poland's agricultural sector. In one of his first interviews, he said that the modernization of Poland will entail finding employment outside of agriculture for more than half of the country's peasants. Such an idea would never have entered Pawlak's head. Under his leadership, PPM had insisted on special constitutional protection for family farms.

During the recent crisis, PPM radically changed its program. Abandoning leftist rhetoric, it embraced traditional Polish Catholic values, placing itself at the right of center on the political spectrum. We may well be witnessing the long-delayed arrival of Christian Democracy in Poland. Although pro-Church elite parties of the intelligentsia failed in recent elections, Christian Democracy may be establishing itself in villages and small towns, where Church followers are more devout, conservative, and reliable than in cities.

Only after some initial hesitations, did Walesa appoint Oleksy prime minister. Falandysz had devised an interpretation of the Little Constitution to permit Walesa not to appoint Oleksy. This interpretation strikingly contrasted with the constructive vote of no-confidence, where the president must accept the will of the parliamentary majority. Nevertheless, the authors of the Little Constitution sloppily confused two words in Articles 58 and 59, permitting Professor Falandysz's imaginative constitutional construction. After informing Walesa of the possibility, Falandysz submitted his resignation on February 15.

Falandysz's resignation had nothing to do with Walesa or with the legal issues he had been dealing with. He resigned for the very same reason all his colleagues had: his inability to cope any longer with Walesa's alter ego, Mieczyslaw Wachowski, who seems to have gained total control over Walesa and his office. Wachowski was Walesa's driver, friend, and confidant. When Walesa was in prison, Wachowski took care of his family. He took care of Walesa when the latter was unemployed. He stood by Walesa in fair weather and foul.

Wachowski is very ambitious. After arriving at the president's Chancery, he assumed control of the president's milieu. He became Walesa's liaison for personal politics. It was Wachowski, for example, who would take Pawlak hunting. It was Wachowski who drank with Boris Yeltsin and induced him to accept Poland's membership in NATO, words bitterly abjured after Yeltsin had sobered up. It was Wachowski who became the closest friend of the chief of staff, the commanders of special military services, and the intelligence chiefs. In short, it was Wachowski who provided Walesa with extraconstitutional influence over the special services and the most sensitive elements in the internal security apparatus.

In recent months, Wachowski had become jealous of Falandysz. When Walesa was waging constitutional war, there was not much room on the battlefield for the legally untrained Wachowski. As the media focused on Falandysz, Wachowski became increasingly sour. He lashed back in whatever way he could, causing petty irritations and humiliations. When I visited Falandysz at the peak of his legal wars with Parliament, he mentioned that all these were nothing compared to his problems in the Chancery. Two days later, he resigned.

In an interview not long afterwards, Falandysz stated his fear that there is no role left for the president's legal counsel, as Walesa may now be tempted to use the tools provided by the likes of Wachowski. He also announced that he would not vote for Walesa in the forthcoming elections. "If Mieczyslaw Wachowski is to receive such immense power, it is he who should run rather than Walesa," Falandysz said.

Two years ago, Jaroslaw Kaczynski publicly accused Wachowski of having been a secret police agent. Kaczynski showed on television a photograph of five young men playing soccer at a summer camp for police officers, one of whom he claimed was Wachowski. A few days later, Arnold Superczynski, police chief of Lublin, recognized himself in the picture as the man Kaczynski claimed to be Wachowski. Superczynski and Wachowski have since become good friends.

Last week Superczynski was appointed to head the most sensitive police district in the country, the one in Warsaw which oversees, among other things, the police who monitor the Sejm and other Polish politicians. This appointment deeply shocked and frightened Falandysz.
A Dilemma of Dual Identity: the Democratic Alliance of Hungarians in Romania

Aurelian Craiutu

The ethnification of politics in Central and Eastern Europe has been one of the most disquieting consequences of the fall of communism. Although it seems unlikely that a tragedy on the scale of the former Yugoslavia could occur in Romania, the dangers of internal unrest and violence cannot be simply dismissed. The complexity of minority rights is illustrated by increasing tensions between the Romanian majority and the Hungarian minority. Structural and circumstantial factors create a complex situation beset with strong subjective components that often exacerbate controversies and impede dialogue. Each side has felt threatened by the other and has accused the other camp of radicalism, thus fueling enmity and postponing negotiations toward a reasonable compromise. As a corollary, substantive differences over important issues have sometimes appeared to be almost irresolvable and mutual mistrust has given radicals unexpected leverage over moderates in both camps. At the same time, real differences between the Hungarian minority and the Romanian majority in lifestyle, income, culture, and education have decreased. Moreover, Transylvania, where most of the 1.7 million Hungarians live, has had a long history of cultural, political and religious pluralism, tolerance and self-government.

Facing the dilemma of dual identity

The Democratic Alliance of Hungarians in Romania (DAHR) was originally formed to represent the interests of Romania’s Hungarian minority. An Executive Committee of DAHR was appointed in Bucharest on December 25, 1989 and by January 1990, the new party had founded various local affiliates. Its principal objective was preserving the identity of the Hungarian minority as reflected in its tradition, culture, and language. It also supported a constitutional order on the separation of powers, freedom of the press, and administrative decentralization as well as a regime of private property and free markets.

DAHR has constituted itself as an alliance of associated members that share common goals, identities, and aspirations. It has 21 local affiliates (in 21 counties) and 16 legal organizations that cooperate with DAHR in resolving problems of the Hungarian minority in Romania. Among these organizations are the Hungarian Christian Democrat Party in Romania, the Party of Small Landowners, the Federation of Hungarian Youth Organizations in Romania, the Association of Hungarian Workers in Romania, and the Federation of Hungarian Students in Romania. Various scientific, cultural, technical, and professional societies and organizations are also affiliated with DAHR. According to the principles of internal pluralism, all these organizations enjoy autonomy and have some control over the enactment of decisions made at the center.

From the very beginning, DAHR played a vital political role in an environment that forced it to assume a problematic dual identity. Subsequently, this double role placed significant constraints upon the party, reducing its ability to maneuver in negotiations. DAHR appeared on the one hand, as an ethnic party, aimed at advancing and representing the interests of the Hungarian minority in Romania. On the other hand, it emerged as a member of the opposition to the newly formed government led by the National Salvation Front (NSF). The two components have, however, carried different weight. For better or for worse, the main focus has been on ethnicity, which assumed priority over other—allegedly more democratic—forms of interest articulation and representation.

In the months following the December 1989 revolution, the political atmosphere was not particularly
conducive to reasonable dispute-resolution and pragmatic problem-solving. Indeed, it was widely thought that an “all or nothing” approach would have to prevail over a policy of compromise aimed at securing full exercise of political rights. This atmosphere contributed to an early radicalization of the Hungarian minority that mirrored the radicalization of Romanian society as a whole in the first six months of 1990. Government-opposition relations became almost exclusively confrontational, while political negotiations were perceived as a zero-sum game. Some political analysts now believe that this zero-sum spirit has been extremely detrimental to DAHR, especially in light of its problematic dual identity. As a member of the opposition, DAHR assumed the role of a political opponent seeking to take power while, representing a minority, it was viewed by authorities in Bucharest as advancing claims that were potentially threatening to Romania’s territorial integrity. As a result, minority issues were highly politicized and handled by the government as if they involved a significant threat to political stability.

In the May 1990 elections, DAHR won 41 seats in the Chamber of Deputies and the Senate, and became an important component of the opposition. As the legislative body was adopting a new constitutional text, DAHR’s representatives were intensely involved in the parliamentary debate, focusing naturally on provisions that affected minorities. In November 1991, DAHR decided to vote against the new constitutional text, claiming that it had failed to secure political, economic, and cultural rights for minorities as required by international covenants. The main object of dispute was Art. 1 which defines Romania as a “unified national state.” To DAHR, this “old-fashioned” article proved that the constitutional document did not sufficiently take into account the existence of Romania’s 16 national minorities. The phrase “unified national state” was also interpreted as potentially suggesting that members of national minorities are “inferior” or second-class citizens against whom the state may discriminate at will.

DAHR claimed that, by prohibiting “positive discrimination,” the Constitution failed to comply with international covenants, thereby disadvantaging citizens in education, justice, and public administration. Furthermore, DAHR argued, the Constitution did not guarantee the right of minorities to interact freely with their mother countries, though Romanians living abroad enjoyed this right. DAHR also criticized the Constitution for not guaranteeing the use and teaching of native minority languages. These anxieties were triggered by Art. 4: “The state is based on the unity of the Romanian people,” and Art. 13: “In Romania, the official language is Romanian.”

DAHR also criticized the Constitution for not guaranteeing the use of native languages in education and justice and pointed out that statutory and organic laws might prohibit the use of minority languages. DAHR’s leaders further argued that the Constitution did not guarantee an effective separation of powers, a complaint with which the entire opposition agreed. DAHR’s representatives conceded that the Constitution recognized the right of minority citizens to preserve, develop, and express their ethnic, cultural, and religious identity, but they argued that the Constitution failed to provide institutional means for putting these rights into effect, which would have meant establishing minimal forms of minority self-determination.

In the February 1992 local elections, 161 mayors, 2681 local councilors and 151 county councilors who were members of DAHR were elected. In the September 1992 general elections, DAHR won 27 seats in the Chamber of Deputies and 12 in the Senate (7.5 percent of the votes). The formation of the new government strongly influenced DAHR’s subsequent parliamentary behavior. Having failed to secure the support of the Democratic Convention in forming the new government, the Party of Social Democracy in Romania (PSDR) decided to ally with four other political parties, including the Party of Romanian National Unity (PRNU) led by Gheorghe Funar and the Greater Romania Party (GRP) led by Corneliu Tudor. Both parties are outspoken opponents of granting more political rights to Hungarians and use extreme nationalism as a means to further their own electoral agenda. As mayor of Cluj-Napoca in Transylvania (where half the population is Hungarian), Funar repeatedly attempted to stir up ethnic tensions by defaming the Hungarian minority and threatening to outlaw DAHR for its alleged anti-Romanian activities.
DAHR’s radicalization and its consequences

DAHR had to cope with the new balance of forces in Parliament. On the one hand, it intensified its collaboration with parties of the Democratic Convention. On the other hand, the rise to power of extreme Romanian nationalists radicalized DAHR itself, increasing the gap between moderates and radicals within the party and diminishing the chances for reasonable compromise with government moderates.

In the first two years of its existence, DAHR successfully avoided internal conflicts. The division into radical and moderate factions, however, can be traced to the second congress of the Alliance in 1991. DAHR’s first president, Geza Domokos, advocated a gradualist policy for securing political and collective rights, not ruling out occasional compromises with the government. Domokos believed Romanian-Hungarian relations would improve only as a result of gradual changes in political culture and political, economic and social life. These transformations were intended eventually to generate greater responsiveness to minority rights and ethnic pluralism.

Led by DAHR’s honorary president Laszlo Toke’s and its then vice president Geza Szocs, the radicals increasingly opposed this gradualist policy, claiming that it had failed significantly to improve the situation of the Hungarian minority. They even argued that such a policy had given a political boost to Romanian nationalists. They criticized Domokos for failing to achieve important goals set in 1990, such as the establishment of a ministry for national minorities, promulgation of a law on national minorities and education, and revival of the Hungarian-language Bolyai University in Cluj-Napoca. Tokes and his followers challenged the leadership’s “submissiveness, conformism, and opportunism,” claiming that DAHR needed a resolute policy of self-determination and autonomy. They urged an end to compromises with parties hostile to the Hungarian minority.

This radical wing used the rhetoric of self-determination and autonomy to gain support within the party in early 1992. Distressed about the possibility of secession, Romanian authorities reacted vigorously. The very suggestion of territorial autonomy aroused the stout resentment of the Romanian majority and justified extreme Romanian national-ists in pursuing of their own agenda of ethnic hatred. This response embittered the Hungarians in turn, and contributed to their radicalization. One outcome was the Cluj Declaration, adopted by DAHR on October 25, 1992, which defined the Hungarian minority in Romania as a “co-nation” or a “state-building nation.” This document’s emphasis on the multinational character of the Romanian state was intended as an outright rejection of Art. 1 of the Constitution. To promote the political equality of Hungarians, DAHR called for “communitarian autonomy,” which it described as the continuation of a long tradition of self-government and ethnic pluralism in Transylvania. While insisting on self-administration, the declaration did not rigorously define autonomy, thus leaving the concept open to different, often conflicting, interpretations.

Reliance on the murky term “autonomy,” in fact, gave rise to general confusion and stirred passions on both sides. Parliamentary debates reflected ethnic tensions, with radicals in both camps displaying bitter rage and blocking a reasonable dialogue. The PRNU and GRP eagerly exploited this new opportunity to play with the Romanian majority’s ethnic anxieties. Funar’s party even called for a ban on DAHR. Almost all political parties, including all but one of DAHR’s allies in the Democratic Convention, as well as the president himself, expressed their disappointment with the Cluj Declaration. Moderates did their best to persuade public opinion that the declaration was intended as a bid for further dialogue, not as a step toward potential secession. The radicals, however, with Tokes in the lead, did not explicitly rule out the latter. Again, the party was caught in a “solidarity vs. betrayal” dilemma that reduced the moderates’ room for maneuver and shifted the emphasis to ethnic solidarity. Thus, the radicals made it more difficult for the moderates to be heard and enjoy credibility.

Convened at Brasov in January 1993, DAHR’s third Congress was expected to see the radical wing, led by then presidential candidate Tokes (he eventually decided not to run), wrest power from the moderates. The participants avoided an all-out confrontation, however. A new president, Marko Bela, was elected. He served as a bridge between radicals and moderates, as his views fell somewhere between those of
Domokos and Tokes. The new DAHR program tried to address the internal crisis that threatened to end the party’s unitary strategy. The controversial term territorial autonomy was replaced by more moderate phraseology about local and regional self-administration, personal and cultural autonomy. Not surprisingly, these terms, too, were misinterpreted in the mass media, increasing the confusion, and lending support to the radicals in the PRNU, GRP, and PSDR.

Between semantics and politics

More moderate, but still controversial, concepts were prominent in the drafting of DAHR’s Memorandum concerning Romania’s admission to the Council of Europe (August 1993) and the Bill on National Minorities and Autonomous Communities (November 1993), two important DAHR documents on minority rights. Naturally, the terms in question (such as personal and cultural autonomy or self-determination) were susceptible to conflicting interpretations. As political analysts noted, territorial autonomy and regional self-determination leading to secession could be two sides of the same coin. Only by securing individual rights, it could be argued, are we capable of defending personal autonomy and collective rights. The position of DAHR radicals, however, was unambiguous. To them, these terms meant, first of all, the right of the Hungarian minority to elect its own representatives to a kind of Parliament. This initial step toward “self-determination” would lead to the creation of a controversial Council of Mayors and Local Councilors in January 1995.

The draft Bill on National Minorities and Autonomous Communities, submitted to Parliament for debate, gained recognition as a seminal document for its articulation of a political doctrine of minority rights. DAHR introduced four key concepts: autonomous community, internal self-determination, political entity, and legal entity under public law. Autonomous communities defined as “that national minority that identifies itself as such and exercises its rights according to the principle of internal self-determination.” The three forms of autonomy associated with it are personal, local, and regional. The term community, however, is ambiguous. It could refer either to minorities who accept the legitimacy of the state within which they live or to minorities who consider themselves members of another state.

The concept of internal self-determination has also met resistance. If linked to the idea of autonomous community, understood in the separatist sense, it might foment civil unrest. Even more problematic is the notion of an autonomous community as a political entity and key component of the state, because this conceptualization leads to a redefinition of the state itself. By advancing the idea that national minorities should be considered legal entities under public law, DAHR’s bill offers a new conception of the relationship between minority groups and their members. Adoption of the concept of self-determination may very well weaken the protection of individuals of minority groups against encroachments on their rights as guaranteed in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities adopted by the UN in December 1992, or even in Recommendation 1201 of the Parliamentary Assembly of the Council of Europe. International documents usually refer only to the rights of persons belonging to national minorities, and thereby aim at protecting individuals. Article 2 of Recommendation 1201 of the Council of Europe stipulates that membership in a national minority shall be a matter of free personal choice and no disadvantage shall result from the choice or the renunciation of such membership. Related to this last issue, some political analysts have argued that the DAHR bill does not contain sufficient guarantees against abuses of individual rights by minority leaders.

The Memorandum on Romania’s Admission to the Council of Europe (August 1993) registered DAHR’s main objections to Romania’s legal system and drew attention to the reforms necessary before Romania would be eligible to join the Council. DAHR charged, for instance, that political pluralism had not produced equality of opportunity. Minorities, it claimed, are excluded from leadership positions in all areas of public life, especially in public administration and the judiciary. DAHR also complained that the government had increased its monopoly over the media through the newly founded Audio-Visual Council. It criticized the government for failing to implement decentralization, as required by the
Constitution. Additionally, it criticized the Constitution itself for not declaring inviolable the right to private property. Finally, DAHR claimed that the 1991 law on land distribution discriminates against minorities and their churches.

To bring the Romanian legal system into compliance with international standards, DAHR asked that the public media be made independent. Its other demands included creating real financial independence for local administrations and the adoption of a law on local budgets; a constitutional guarantee of the inviolability of private property and the restitution of nationalized, expropriated or confiscated private property; a new law on national minorities that would recognize collective rights and incorporate the principle of positive discrimination; the use of native languages in private and public life, including the use of bi- and multilingual signs; and a new law on education that would guarantee the development of a native-language school system encompassing all levels and types of instruction. Finally, the Memorandum pressed Romania to sign and ratify the European Convention on Human Rights and Fundamental Freedoms, the European Charter on Self-Government, and the European Charter on Regional and Minority Languages.

The Note concerning Romania’s Association with the European Union and the enclosed Aide-Memoire, published in January 1994, advanced almost identical claims, and focused on (a) signing and ratifying international conventions, (b) promoting the rule of law, and (c) observing human rights and the rights of national minorities. These documents also call for guaranteeing judicial independence by revising laws which now permit the Ministry of Justice to give judges instructions. Finally, DAHR urged a change of Art. 300 of the penal code, which punishes homosexuality and requested the release of those imprisoned on ethnic or political grounds.

Recent developments
Since publication of these four documents, DAHR has concentrated its energies in two areas. First, it has introduced significant amendments to the draft law on education submitted to Parliament by the government in late 1993, and it has insisted on passing the overdue law on religious denominations, which would restore nationalized properties to churches. Second, it has continued to plea for strict observance of constitutional articles requiring administrative decentralization and for the adoption of a law on local taxes and a law on public finances, both of which would further this decentralization. DAHR has thus attempted to promote its three forms of autonomy (personal, local, and regional) by creating institutions for their implementation and enforcement.

The first issue aroused heated debate in Parliament. Referring to Recommendation 1201 of the Council of Europe, which provides for the right of persons belonging to national minorities to be educated in their native language, DAHR’s representatives argued that the draft law on education did not comply with international standards and discriminated against the Hungarian minority. Moreover, they added that the draft law ignored or restricted constitutional articles, such as Art. 32.3 according to which minorities are entitled to study in their native language at all levels of education. DAHR also claimed that minorities were denied access to a traditional form of education-confessional schools-and asked for the creation of a special office within the Ministry of Education to deal with the issue of education in the students’ native language. Amendments submitted by the Hungarian minority met with the opposition of the ruling coalition, which contended that the bill contained sufficient guarantees for the education of minorities and the preservation of their identity. Time and again, the most radical Romanian nationalists from PRNU, GRP, and PSDR voiced their apprehension that the ethnic Hungarian requests for Hungarian-language schools and group self-government are but the edge of a wedge, first steps toward the territorial secession of Transylvania and its annexation by Hungary.

The second issue, autonomy and decentralization, did nothing to ease tensions within Parliament or in the press. On the contrary, efforts at a dialogue were swamped by extreme nationalist rhetoric and undermined by extremists in both camps. DAHR radicals, for example, rejected negotiations within the framework of the newly created Council on Minorities, which is linked to the General Secretariat of the Government. The most controversial proposal included using the native language in education, administration, and judi-
cial procedures, the free use of national symbols, and the display of bi- and multilingual inscriptions in counties where minorities account for at least 30 percent of the population. DAHR stressed that all these issues remained unresolved. Government officials, in response, complained about DAHR's inflexibility.

Negotiations with Funar's PRNU led to a reshuffling of the cabinet in August 1994, and members of this nationalist party were appointed to important positions. In January 1995 the cooperation of the four parties (operational since October 1992) was formally approved by its participants: the FSDR, PRNU, GRP and Socialist Party of Labor (SPL). This decision had significant consequences for subsequent relations and negotiations with DAHR.

In fact, these changes marked the beginning of a new wave of DAHR radicalization. On January 14 of this year, DAHR held a conference on self-government in Sfintu-Gheorghe (Covasna county) with elected DAHR local representatives. They elected a new body, the Council of Mayors and Local Councilors. The latter was given full jurisdiction over matters of local administration. The Council also acts as an advisory board to the Council of Representatives, the main decision-making body of DAHR. Its main responsibilities include: debating all local administrative and professional matters and protecting interests of the Hungarian minority; coordinating the activities of DAHR within local governments and initiating and coordinating other activities at the local level, such as developing economic and cultural relationships between communities; preparing strategies and proposals for local elections; submitting draft laws and motions for amendments to DAHR's Parliamentary Group; coordinating the activity of local administration with churches and local civic associations; and establishing its own expert committees in the main fields of local administration. The Council is organized on a regional basis, while the representation of a region is proportionally related to the number of the administrative office-holders in the districts where DAHR's branches operate. The Council is composed of 75 members and can be convened for regular and extraordinary sessions (regular sessions are held at least twice a year).

Romanian public opinion was confused about the meaning of this new step taken by DAHR. The founders of the Council claimed that it was established pursuant to Art. 6 of the Constitution (guaranteeing national minorities the right to preserve, develop, and express their ethnic, cultural, linguistic, and religious identity) and to law 69/1991 "On Local Administration." The latter declares decentralization and autonomy to be fundamental principles of local administration and guarantees the right of association (Art. 2110). DAHR also claimed that the formation of the Council respected the provisions of the European Charter of Local Self-Government, which states that local authorities are entitled to form associations for the protection and promotion of their common interests (Art. 10.2). The charter also holds that "local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities to carry out tasks of common interest" (Art. 10.1).

The legality of the Council was contested by almost everyone, including President Ion Iliescu. The most extreme nationalists, like Funar and Tudor, took this opportunity to reiterate their call for outlawing DAHR, and the minister of justice, a supporter of PRNU, seemed to support this call for a ban. On January 16, Funar went so far as to propose that the Romanian government initiate negotiations with Hungarian authorities regarding population exchanges between the two countries. A few days later, in a letter sent to President Iliescu, he proposed prosecuting ethnic Hungarians for flying Hungarian flags or singing national anthems. This letter also suggested that Hungarians be dismissed from the army. Funar then accused Romanian authorities of making too many concessions in their negotiations of the long-delayed treaty with Hungary, and condemned the president for his irresolute management of the demands of the Hungarian minority. On January 20, the Romanian government issued a formal communiqué pronouncing the formation of the Council unconstitutional and demanding its dissolution. While abjuring the extremist tone of Funar, Iliescu voiced his concern about the perturbing step taken by DAHR and asked the authorities to prosecute the unconstitutional acts of extremist DAHR members. Moreover, members of the Democratic Convention formerly allied with DAHR criticized DAHR's con-
ception of autonomy and the formation of the new Council as aspects of an overall drive to carve out some kind of territorial autonomy based on ethnic criteria. Disagreements generated by DAHR's initiative worsened the internal crisis of the Democratic Convention and, in March, caused the withdrawal of four important members from the coalition, among them DAHR.

On January 18, DAHR's leadership issued a statement rejecting the charges brought against the party and reasserting its willingness to continue working to achieve its three forms of autonomy (personal, local, regional) within the legal framework of the Romanian Constitution and international norms. On a recent visit to London, Marko Bela asserted that the nation could not deal satisfactorily with the minority problem, a statement that irked the president and some MPs. During stormy debates in the Chamber of Deputies on February 13, more moderate members of DAHR pointed out that the party's recent publications do not speak of "autonomy" on purely ethnic grounds. The express goal is, instead, personal, cultural, and local autonomy grounded on the principle of subsidiarity, with clearly-worded provisions regarding the use of Hungarian, along with Romanian, in public. They again defended the legality of the Council elected in January by invoking the Charter on Local Self-Government which Romania is to sign in the near future.

Romania and Hungary are currently engaged in negotiations on a bilateral treaty that is a condition for membership in the European Union and NATO. Hungary's new socialist-led government has given a new impetus to the treaty negotiations, which had met with the resistance of the former government led by the late Jozsef Antall. Improved relations is demonstrated by the willingness of DAHR leaders and members of the government to participate in a roundtable at the Carter Center, sponsored by the Princeton-based Project on Ethnic Relations. Hungary now agrees to recognize existing borders and formally to renounce any territorial claims, but requires that Romanian authorities include the much-disputed Recommendation 1201 in the text of the bilateral treaty. It also demands that the Romanian government change its rigid policy on minority issues and cease supporting extreme nationalists within the ruling coalition. On this last point, DAHR's leaders denounced the "duplicity" of the Romanian government whereby it "one day supports the extremists and the next day condemns them."

In a recent statement, Teodor Melescanu, the Romanian Foreign Minister, insisted that Romania would continue to reject the inclusion of the principle of ethnic autonomy in the treaty. Unlike Slovakia, the foreign minister argued, Romania would not agree to include in the treaty the much-disputed Recommendation 1201 of the Council of Europe, which grants national minorities the right to set up autonomous organizations. However, he reiterated Romania's willingness to observe the provisions of the Framework Convention for the Protection of National Minorities and continue its negotiations with Budapest.

Conclusion
In 1996, Romania will hold general and presidential elections. New coalitions have already been formed, while former alliances seem to be on the brink of dissolution. Of particular significance is the current internal crisis of the Democratic Convention, which will have a strong impact on future relations with DAHR and on the opposition's chances to win the elections.

DAHR will have to overcome its own internal crisis generated by factions and rivalries between moderates and radicals. A more pragmatic approach is necessary to prevent the issue of Hungarian minority rights from becoming an electoral slogan that legitimizes extreme nationalism on both sides. Reconfiguring the balance between ethnicity and other forms of interest representation might suggest a way out of the present dilemma which threatens to marginalize the DAHR. The signing of the treaty with Hungary may bring about a significant improvement of minority rights in Romania. However, subsequent developments depend at least on the Romanian government's willingness to compromise and on important changes in the country's political culture.

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The dubious status of the Charter of Rights and Freedoms

A Constitutional Anomaly in the Czech Republic?
Cass R. Sunstein

On May 1, 1995, Prime Minister Vaclav Klaus, the remarkable leader of the Czech Republic, visited the University of Chicago. His visit became the occasion for an intriguing discussion of the status of constitutional rights in the Czech Republic.

The bare facts are these. In 1991, the Federal Assembly of the Czech and Slovak Federal Republic passed the Constitutional Act Instituting the Charter of Fundamental Rights and Freedoms. This Charter was written with considerable help from Western Europeans and Americans. It contains an ample set of rights and freedoms, including freedom of speech and religion, protection against abuse of police authority, protection against discrimination, and much more in the way of civil rights and liberties. The Charter also includes a set of social and economic guarantees. Consider the following examples:

Article 28: Employees are entitled to fair remuneration for work and to satisfactory working conditions.

Article 29: Women, adolescents, and handicapped persons are entitled to increased protection of their health at work and to special working conditions. Adolescents and handicapped persons are entitled to special protection in labor relations and to assistance in vocational training.

Article 31: Citizens are entitled under public insurance to free medical care and to medical aid under conditions set by law.

Article 30: Citizens are entitled to material security in old age and during incapacitation for work, as well as in the case of loss of their provider. Everybody who suffers from material need is entitled to such assistance as is essential for securing his or her basic living conditions.

Article 32: Parents who are raising children are entitled to assistance from the state.

Article 26(3): Everybody has the right to acquire the means of his or her livelihood by work. The State shall provide appropriate material security to those citizens who are unable without their fault to exercise this right.

Shortly after the enactment of this Charter, the conflict between the two republics threw the status of the Charter into great doubt. But the Charter had a continuing effect on Czech and Slovak constitutionalism. The Constitution of the Slovak Republic was passed on September 1, 1992, and it expressly included the Charter, with deliberate modifications, in its text. On December 16, 1992, the new Czech Constitution was enacted. It did not, however, contain an explicit set of provisions guaranteeing fundamental rights and freedoms. Unlike the Slovak Constitution, it did not include the Charter in its text. Instead it contained two very short, relevant articles:

Article 3: The Charter of Fundamental Rights and Freedoms forms a part of the constitutional order of the Czech Republic.

Article 4: The fundamental rights and freedoms shall enjoy the protection of the judicial power.

To say the least, these are unusual provisions. A lawyer, a political scientist, or a citizen of the Czech Republic should at this stage raise two questions: What is the precise status of the Charter in the current Czech Republic? And what was the genesis of these puzzling articles? The first question seems easier to answer than the second. Articles 3 and 4 appear to give the Charter the same status as anything else in the Czech Constitution. Something that is "a part of the constitutional order" seems, at least to an outsider, to be a part of the Constitution. In any case some such conclusion seems very important to reach, since if the Charter is not part of the
Constitution of the Czech Republic, there is no bill of rights in that republic—no protection of free speech, freedom of religion, fairness in the criminal justice system, or anything else. It therefore seems easy to conclude that the Charter has been made part of the Czech Constitution.

But we should not jump to conclusions, for the problematic genesis of Articles 3 and 4 raises many relevant questions. Some people in the Czech Republic claim that these Articles were not voluntarily adopted by the Czechs at all, and were not a product of any deliberative judgment from the leaders and citizens of the Czech Republic. On their view, these articles were produced by a form of compulsion from the Council of Europe and from West European intermediaries, and in particular from Brussels and Strassburg. This appears to be right, but it may not be the whole story. Some observers claim that Articles 3 and 4—and the specific contents of the Charter—had something to do with pressures from, among others, communists and former Communists, who wanted social and economic guarantees to receive constitutional status.

I do not claim that either of these accounts is entirely true. In fact I do not know exactly what lay behind Article 3 and 4. But it now seems clear that the odd genesis of both the Charter and Articles 3 and 4 has made their legal status highly questionable. Are they or are they not a serious part of the Czech Constitution? Are they enforceable in the Constitutional Court? Are they binding on the prime minister and the Parliament? Do the prime minister and other officials take them to be binding? What is the current status of the Charter and its many parts? Do the social and economic guarantees have the same status as political and civil rights? Might uncertainty about the guarantees create similar uncertainty for the rights? These are very important questions. But they are not easy questions to answer.

We might draw three general conclusions from all this. First: The leaders and citizens of the new Czech Republic have not yet had a sustained discussion of what sorts of rights and liberties they want in their Constitution. Such a discussion should probably occur before very long, so as to create more security for rights than Article 3 and 4 may now provide.

Second: Sometimes the problematic origins of a constitutional provision will give that provision dubious legitimacy. When leaders are aware of those problematic origins, a constitutional provision may not mean much.

Third: In some parts of some postcommunist nations, the real-world consequences of constitutional provisions remain unclear. Under communism, constitutional guarantees were not worth the paper on which they were written; leaders felt free to ignore them if the situation so required. There is no doubt that many leaders in postcommunist nations, including Prime Minister Klaus, have done remarkable things under difficult circumstances, displayed brilliance and courage, and improved prospects for their people. But in some postcommunist nations, it is far from certain that leaders will deem themselves bound by constitutional provisions that they find inconvenient or that they dislike, because of their dubious origins or because of their consequences.
The Politics of Economics in the Czech Republic

Stephen Holmes

The most formidable challenge facing postcommunist societies is the creation of effective and accountable instruments of government, able to extract resources efficiently and channel them not into private pockets but toward the provision of elementary public goods—such as security, sanitation, education, transportation, currency stability, and the legal preconditions of a functioning market economy, including enforceable contract law. Those who say that postcommunist societies are burdened by “state decay,” then, are not being nostalgic for an iron fist, but are simply looking forward to the creation of, among other things, a coherent legal framework and an effective and nonpredatory civil service. But how can we say that state weakness or disorganization is the principal problem of postcommunist societies if the greatest achievements of the much-praised Czech Republic have been deregulation, pulling down political barriers, preventing administrative interference, and allowing the market to flourish?

The answer is that Prime Minister Vaclav Klaus, far from being the antistatist he pretends to be, is the most talented state-builder of postcommunist Europe. Despite Klaus’s Chicago School rhetoric, the relatively successful liberalization process in the Czech Republic has been painstakingly planned and managed from the top down. A certain sequence of reforms has been orchestrated in Prague, for instance, and a cushion provided to absorb the economic shock, so that marketization has been anything but the spontaneous outcome of decentralized choices by millions of private actors. The “transition,” in this its most successful version, therefore, is not simply a matter of applied economics. It has required political savvy and leadership. Above all, it has required careful attention to legitimacy as well as efficiency. Klaus has not had Konrad Adenauer’s good fortune. The West has not handed him the resources with which to provide public goods and thereby win popular support and cooperation. Indeed, he can gather the resources he needs only by first winning popularity at home and abroad. At this difficult boot-strap operation, he has, so far, excelled.

In any case, Klaus’s team (20 well-trained economists who make decisions while sitting around a table), not the “miraculous” market, has been in charge. Thus, the Czech example confirms, a contrario, that political weakness, ineptitude, inconsistency, and venality are the fundamental problems plaguing postcommunist regimes. The shedding of Slovakia, essential to Klaus’s aim of quick entry into the EU, is a case in point. This was the achievement not of an economist but of a state builder.

The same can be said about Klaus’s creation of local party chapters for the Civic Democratic Party, the most successful example of liberal party-building in the postcommunist world. (Ironists refer to it as “a liberal party of the Leninist type.”) As a result of Klaus’s organizational strategy, in any case, his party garnered a formidable 25 percent in last year’s local elections, while recent polls show popular support for the party fluctuating between 27 and 32 percent. Klaus has also managed to keep a firm grip on power by a deft use of the committee system in Parliament. And he has brilliantly played the issue of the missing Senate, neither going forward to elections nor backwards to a constitutional amendment. In this way he has strengthened his own government, despite coalition tensions, by depriving the President of his normal right of dissolution. His recent push for a referendum on membership in the EU, when juxtaposed to his avoidance of a referen-
dum on the breakup of the federation, reveals his skillful opportunism in the service of a public cause.

Klaus’s unrivaled mastery of the capitalist buzzwords has probably contributed significantly to the Republic’s exceptional attractiveness to foreign investors. But constant professions of the free-market creed also help him throw dust into the eyes of adversaries and potential critics. Chicago economics is very useful in this regard. He says publicly that all he is doing is “lifting restrictions” and letting the market work. People who do not look too closely criticize him for being heartless, then, because he purportedly refuses to intervene in the economy. This criticism, although inaccurate, is welcome because it distracts attention from the important ways his government strategically intervenes in the economy, keeping down the value of the koruna to boost exports, for instance. His political style is “hands on” not “hands off.” Coupon privatization itself was a political decision, of course, and a stage-managed process. (The proof is that the head of the National Property Fund was dismissed for mismanagement.) In short, Klaus does not broadcast it openly, but he knows perfectly well that an energetic centralized state has an essential role to play in economic reform. That is why his party has consistently and fiercely opposed administrative decentralization.

The Europe into which Klaus seeks admission is a system of economies all of which operate within highly complex, and increasingly integrated, legal frameworks. The pursuit of entry, therefore, requires both the dismantling of the totalitarian state and the building of the liberal state (in line with EU standards). Only an effective state can enforce the law and extract sufficient taxes to protect basic rights, including property rights. The legislative task facing all postcommunist regimes is therefore immense, including the creation not only of contract law, but also of trespass law, bankruptcy law, patent law, condominium law, environmental law, and so forth. And the state being built also has to have sufficient strength to repel demands for budget-swelling subsidies and to prevent the formation of noncompetitive monopolies. From bitter experience, the Czech government has learned the need for more stringent licensing procedures for, and greater Central Bank supervision of, private banks, reliable depositor’s insurance, and so forth. All this is a matter of state building. In general, private property is meaningless (will not elicit investment or improvement) if owners do not feel relatively secure about the future. Hence, in West European language, the state must be powerful enough to provide sécurité juridique or Vertrauensschutz, the protection of legitimate expectations. For the sake of foreign investment, presumably, the government will also have to be able to prevent Czech policemen from shooting to death German motorists who like to speed.

Even the most brilliant economic policy will fail, under conditions of electoral democracy, if it does not gain support of the public. Since daily life in the Czech Republic remains hard for many people, Klaus cannot neglect legitimacy in a one-sided Chicago-style pursuit of efficiency. The basically untouched social safety net, an extremely cautious housing policy (rents remain below building maintenance costs), the 3.1 percent unemployment rate (the lowest in Europe), output-per-worker statistics which place the Czech Republic behind Poland, and the tiny number of bankruptcies in the country all reflect governmental worries about public responses to marketization. (If the banks that supervise the funds that, in turn, own the “privatized” enterprises expect government bailouts, it should be noticed, then they are purely private actors in name only, which might explain some politically welcome unemployment-reducing delays in restructuring even after privatization.) Since his government first took office, Klaus’s principal challenge has been to lead the Czechs to perceive market-oriented reforms as harbingers of a better future. If he succeeds in this attempt, he will be able to use his government’s stored-up popularity (along with foreign investment) to keep reforms on track even when unemployment begins to mount.

Given his lack of material resources, Klaus is compelled to pursue legitimacy by symbolic means. He is postcommunism’s greatest Machiavellian for, as Machiavelli remarked, if you want to make a successful revolution, call it a restoration. Instead of allowing people to think they are being colonized by the West, which implies the worthlessness of everything the Czechs have been, Klaus spreads the message that the old Bohemia, full of hard-working Czechs, is back where it belongs, awoken from a long slumber,
released from a Soviet detention camp. This is not a wholly accurate message of course. (Many of the bourgeois Bohemians about whom he boasts were actually Germans and Jews, for instance, which is only to say that the old Bohemia was brutally destroyed and that there is simply no chance of picking up where the country left off; moreover, the idea of a “return” to the capitalist past should be measured against the fact that Eastern Europe’s largest communist vote in a semi-fair election, 38 percent, occurred in the Czech part of Czechoslovakia in 1946.) But the slogan “back to Europe” has proved immensely popular. It may even, as Klaus hopes, turn into a self-fulfilling fiction. For similar reasons, Klaus is coaxing the Czech public to speak and think about integration into the EU, to prevent it from contemplating the unappetizing prospect of annexation to a Greater Germany.

An aggressively reformist state requires not merely acquiescence, but also cooperation. Postcommunist citizens are being asked to adapt their behavior to new and complicated rules of the game. This increases the government’s need for legitimacy. But by what means can this legitimacy be attained by a state that is short on carrots as well as sticks? Once again, symbolism turns out to be an important, and relatively cheap, element in the legitimation of Czech reforms. Although President Havel, when thundering against the spiritual emptiness of television commercials, probably irks the impatient and professorial Klaus, he may add to the global legitimacy of the regime, lessening the political alienation of those who have lost most from the transformation, and preventing them from voting communist or looking for extra-parliamentary representation. If this is true, then the new Czech system resembles the nineteenth-century British regime memorably described by Walter Bagehot: the Queen is the moral and emotional symbol of the nation, while the Prime Minister is an effective technocrat who gets the job done. In the Czech case, Klaus’s policies are probably strengthened, rather than weakened, by Havel’s wholly impractical and apolitical criticisms of the shortcomings of market society.

Legitimation problems are especially acute when it comes to first property rights. An economist will tell you that it does not matter how first property rights are assigned. So long as free exchange is guaranteed, an efficient outcome will result. But most human beings are not economists. So the palpable injustice of private holdings presents a political problem. Western countries never faced this problem, since they democratized under conditions of historical amnesia, having long forgotten the acts of piracy and fraud by which private property was originally acquired. (The Czechs cannot forget because, unlike some of their neighbors, they had absolutely no private property before 1989, and they continue to be reminded of the injustice of initial appropriation by the country’s politically necessary but morally questionable refusal to restore the property expropriated from 3.5 million Sudeten Germans after 1945. (See Czech Update in this issue.) The consequences of a palpably unjust distribution of first property rights for postcommunist marketization are difficult to calibrate. But one thing is certain. Private property, in the Czech Republic today, cannot be justified by its origins, but only by its result. Unable to “sacralize” property in the Western manner, the government must show people that marketization pays off. While the postcommunist liberal state cannot be “based on justice,” then, it can at least make possible a minimally decent life. Klaus has been successful, relatively speaking, because Czechs believe (as the latest “Eurobarometer” public opinion survey, for instance, strongly suggests) that he is on the way of leading them to a better life.

All methods of privatizing state assets while the public is watching have their characteristic defects. Consider the five basic methods: restitution, domestic auctioning, direct sale to well-heeled citizens, direct sale to foreigners, and voucher privatization. Restitution is problematic for several moral reasons (why should those who lost their lives or careers not be compensated as well?); but its main shortcoming is that it cannot bear enough of the real burden, which involves putting hundreds of state enterprises into private hands. Domestic auctioning and direct sale to citizens are also questionable because money stashed away by domestic groups in the last years of communism or the early years of democratic exhilaration was probably stolen. (Nomenklatura privatization, by this route, does not take scads of money, incidentally, since
dirt-cheap prices can be arranged by “contacts.”) For obvious reasons, direct sale to foreigners will sound fine to a Chicago economist, but not to a state builder like Klaus. The political costs of such a “sell out” would be intolerably great. To solve some of the legitimacy problems, to dilute, or distract attention from, foreign and nomenklatura buy-outs, voucher privatization was introduced into Czechoslovakia. Its purpose was first political, then economic.

Unfortunately, voucher privatization has problems of its own. These problems were nicely illustrated by the October 1994 arrest of Jaroslav Linzer, chairman of the Center for Voucher Privatization, found with 300,000 dollars in his briefcase, provided by a police anticorruption squad in an sting operation. In other words, the coupon system itself can be manipulated to the benefit of inside-traders. But even a public which knows about primitive accumulation will eventually become disaffected if exposed schemes for the self-enrichment of government officials are regularly swept under the carpet.

The exploitation of public office for private benefit is widespread throughout the postcommunist world. The most pathological example of pervasive privatistic attitudes and the weak sense of public property is the furtive sale of weapons by Russian draftees to Chechen fighters. But the private use of public office is ubiquitous, from customs officers to tax collectors, from privatization ministers to policemen working hand-in-glove with organized crime. Corruption on such a scale necessarily fuels cynicism and bitterly antipolitical attitudes among the public. The crying need for political legitimacy, then, suggests the wisdom of serious conflict-of-interest legislation. So why has conflict-of-interest legislation been so slow in coming, if it can help solve the postcommunist state builder’s acute need for public acceptance and cooperation?

One reason there has been no effective “clean hands” movement in any postcommunist society may be that there are so many assets being divvied up that even the opposition gets its cut. A secondary reason may be that conflict-of-interest legislation, if it were genuinely and fairly enforceable, might exacerbate the recruitment problems of postcommunist state-builders. How can an East European government recruit talented and well-trained young people into government service when it has to compete with the private sector but can supplement the glamour of office only with noncompetitive salaries? (The need to recruit talented young people is pressing, for government officials must be at least as bright and innovative as the average tax evader.) The most widely chosen technique for solving this problem throughout the region is to write vague and toothless conflict-of-interest laws, allowing government officials to hold second jobs, even in the industries they monitor, in order to keep their salaries at a normal level. This recruitment-corruption dilemma remains important in all postcommunist societies, including to some extent in the Czech Republic.

A concluding note here about the Czech Republic’s struggle to join the EU. Every inclusion is an exclusion. When Slovenia snuggled up to Austria, it left Croatia behind to a difficult fate. The analogy with the Czecho-Slovak breakup are too obvious to mention. But the Milan Kundera fantasy, that Bohemia was on the wrong side of a political borderline which should simply be shifted to the east is unrealistic. Advocates of a selective treatment of postcommunist countries by the West may gracefully draw our attention to ancient spiritual frontiers. But there will be no second Yalta. The backdoor will not be slammed shut out of respect for age-old religious and cultural divides. For one thing, Russia is now too weak to seal its own borders. Hence, the Czech accession to the EU, if it happens, will not resemble West Germany’s entry into Western Europe after the war. And the now-uncloseable roadway to the east presents problems (such as the wholly unregulated market in ground-to-air missiles) that cannot be solved by Chicago economics. Such problems can be confronted only by determined political actors, struggling to build effective states with few material resources, and who succeed in bringing collective efforts to bear on common problems.
Feature: Parliament by Design

Introduction
David Olson

The papers published here cover five very different parliaments. Our five countries range from one with a tradition of parliamentary government (Czech Republic) to two from within the former Soviet Union (Belarus and Russia). Of the other two countries, Slovakia shares a common tradition with the Czech Republic, but is experiencing a somewhat different set of parliamentary developments, while Romania illustrates its own distinctive political behavior within Southeastern Europe. This set of five parliaments, while it does not exhaust the variety to be found within the region, does present us with a wide range of institutional experiences.

Four of the five countries discussed are successor states. Only Romania has had a continuous existence as an internationally recognized independent nation-state. The consequences for the legislatures can be enormous. The previous provincial level assemblies never had any experience with either foreign policy or of macro-economic decision making. The range of their internal structures (such as committee systems), their staff resources, and the complexity of their rules, were even less developed at the provincial level than in national-level communist era legislative bodies. Four of these five legislatures, then, are experiencing a dual transition: not only from communist to democratic, but also from provincial to sovereign.

The countries vary in the specific ways in which they encounter generic and pervasive issues in parliamentary organization and functioning. Representative and decision making legislatures, as opposed to royal councils or the inert and decorative bodies of communist rule, face the twin tasks of both expressing and resolving policy disagreements. If one task is to express the sentiments of the street, another task is to express those sentiments differently, in a parliamentary and deliberative, rather than in a street-crowd manner.

In a rule-of-law state, parliaments and also executives, are bound by clear and accepted rules of procedure both internally and externally. Parliamentary rules and procedures reflect the decision making rules of democratic elections: disagreements are expressed in a manner which can be resolved through a voting process. Voting by deputies on legislative questions resembles voting by citizens on parties and candidates. A commonly accepted definition of the fair rules of contest is essential to both processes. But in neither are those rules easily arrived at. In both, the rules develop through an interactive process.
between written word and human action within an institutional context.

The articles published here provide detailed examinations of how newly democratized parliaments, only recently emerged from communist rule, are facing the enduring challenge of rules development. All democracies and their legislatures face the task of developing rules of procedure which can be regarded and accepted by both citizens and political elites as reasonable, fair, and workable. In newly democratized political systems, they must accomplish this task rapidly. Haste, however, is a threat to both consensus and thoroughness.

The papers in this symposium explore the many different ways in which the largely inexperienced members in legislatures of little accumulated institutional development discover and cope with the ambiguities of their new institution. They have the splendid opportunity to make new policy choices for their countries, but also carry the formidable burden of having to develop their own rules and institutional practices while making those policy choices. They are, simultaneously, policy makers, constitution writers, and institution builders through each and every act and decision taken during their terms of office.

The newly democratized postcommunist parliaments face far more encompassing and intractable tasks than do the legislatures of more stable and settled political systems. At the same time, however, they have fewer resources with which to accomplish their tasks. The rules according to which parliaments function both help define their relationships with other elements in the state system and are an important internal resource. Internal procedures, known to all members, help guide the expression and also resolution of disagreements. New, ambiguous, or absent rules, are handicaps to, but also an inevitable part of, new legislatures facing new tasks with new and inexperienced members.

**The categories of rules**

Three different topical categories for which legislative rules are needed, but are also disputed, have been identified in the papers below. First, some rules, usually found in the constitution, specify the cameral structure of parliament. Second, some rules have a strong external impact, because they govern the formation and dissolution of governments. Third, other rules are more internal in their scope. Our papers discuss a wide range of specific rules, needs for rules, and conflicts over rule formation.

The cameral structure of parliament is a major source of confusion and disagreement in the three countries with bicameral parliaments. The Constitution establishes a Senate within the Czech Parliament, but only the Chamber of Deputies is in existence. The constitutions likewise provide a Senate in Romania and a Federation Council in Russia; the existence of these second chambers, rather than their absence, creates difficulties in both countries.

In the parliament's external relations, the critical question concerns the executive. Either the parliamentary rules or the constitution—but in some cases both are silent—can define the procedures by which a prime minister and cabinet officials are nominated, selected, and ejected. In those countries with an active president, such as Slovakia and Russia, questions of proper jurisdiction and procedures among president, parliament, and prime minister are both unclear and contentious.

Most rules affecting parliaments, however, are more internally directed. One set of rules and practices concerns the allocation among political parties of committee seats and officers. While the general practice seems to be proportionality, i.e., parties share committee seats in ratio to their strength in the chamber, there are many variations on, and departures from, that general principle. The single most important exceptions concern committee chairs: in some parliaments, the party forming the government-of-the-day or the multi-party coalition would hold all chairmanships, as in both the Czech Republic and in Belarus, while in others, all the larger parties share those committee leadership positions, as in Romania. The most startling departure from proportionality has been reported in Slovakia, in which the governing coalition, as of early 1995, had wholly excluded opposition parties from at least some committees.

A second set of internal rules and practices concern parliamentary parties. Can elected members change parties? Can members form new parliamentary parties (sometimes called "clubs")? In the first several years of the newly democratic legislature, party dissolution, formation, and recombination, has been
observed in most Central and Eastern European countries, perhaps most frequently in Poland and Slovakia, and least commonly in the Czech Republic and Hungary. These rules, however, vary greatly. Minimally, rules specify the number of deputies required for their recognition as a parliamentary party. The most restrictive proposed rule is found in Slovakia, where, in early 1995, the government parties attempted to prohibit party switching. Recognition as a party unit within parliament often brings privileges in committee seats, membership in the chamber’s steering body, office space and staff (and thus financial subsidies), and even regarding the right of participation in floor debate.

A related set of rules, and especially of internal party practices, may define party discipline and its limits. The most disciplined parties among the countries examined here are found in the Czech Republic, but party practice is not clearly defined in any set of written rules. While the article on the Czech Parliament suggests too much party discipline, other papers in this symposium voice the opposite complaint.

A third set of internal rules concern agenda setting. This question, for both weekly and daily sessions, has been a constant source of conflict in the newly democratized parliaments. Time is a precious and scarce resource. Not only do parties differ on their priorities, but individual members pursue their own preferences. Time has often been consumed at the beginning of a week or day to debate and decide what is going to be debated and decided, thus further delaying consideration of specific items on the agenda.

Fourth, conflicts of interest are often found, or at least alleged. In some instances, as in Slovakia, there are problems of dual office holding by deputies in government or other positions. More commonly, conflicts of interest involve both salaries and privileges for deputies, and their pursuit of private gain through businesses and the privatization of state economic assets.

Finally, a set of rules defines the structures and procedures through which all of the previous questions are raised and resolved. The inherited communist presidium, most clearly described in our paper on Belarus, provided the initial steering mechanism for the newly democratized parliaments. The powerful position of the speaker in communist legislatures, too, has remained a source of difficulty in the postcommunist period.

The collective internal governance function has been handled in several different ways. Sometimes, the presidium has been transformed into a different steering body, called, to cite the Czech example, the Organization Committee. In other cases, a consultative grouping of the leaders of each parliamentary party has been formed, as in the Political Gremium in Slovakia, or the State Duma Council in Russia. A third coordination device is a collective decisional and coordination group among the governing parties, as found, for example, in both the Czech and Slovak republics.

Another coordination device is the Superior Coordinating Committee on Legislation in the Duma. It provides coordination between the Duma and the Federation Council. That this coordinating group, which includes external participants as well as Duma leaders, is a subcommittee of the Committee on Law and Legislation is indicative of the importance of that committee (though variously named) in many of the postcommunist legislatures. The Committee on Law and Legislation, holding joint jurisdiction with other and substantive committees on a wide range of legislation, seems both a distinctive inheritance of the communist past and an effective coordination body within the newly democratic parliaments across the region.

The status and formal powers of the presiding officer have also been revised in the newly democratized parliaments. Paradoxically, leadership has become more collective and less personal than in the old legislatures.

A wide variety of other rules and practices, and behaviors developed in the absence of rules, are considered in this symposium. Quorum provisions, special procedures for budget and financial bills, the formal powers and legislative skills of the presiding officer, parliamentary review of administration, the availability of professional staff, and the frequency of floor stage amendments, for example, are mentioned as serious problems confronting at least one of our legislatures.

It is also striking, however, that some topics which occur in established democratic legislatures are not mentioned here. The availability, and even
existence, of floor proceedings and voting records, have occasioned major disputes in Western legislative history. Ethnic parties are not discussed as a surely complicating factor in the development of fair rules. Participation by private organizations in the legislative process is discussed in most of the papers, though in none of the countries covered is lobbying now subject to regulation. How and when government proposals are submitted to parliament is a controversy in some of these legislatures. Some of the articles discuss the openness of parliamentary proceedings, mass media coverage, and low public esteem of the new parliaments as consequences of the lack of rules. But missing from these accounts is any mention of the interpersonal conduct of deputies in their capacity as either officers or ordinary members. The more frequent rude behavior and insults spoken on the floor, the greater the need for rules.

**Sources: from constitution to decree**
The sources of the rules and regulations affecting the new parliaments of the region are varied. Some broad structural questions, especially the cameral structure of parliament, are answered in the constitutions. But a constitution can also detail legislative steps, as in Belarus. Some constitutional documents are explicitly temporary, as in Belarus, or contain transitional sections, as in Russia. Though not explicitly discussed in the articles below, some laws have the special status of “constitutional acts,” which develop more specific rules and procedures for legislative activity and organization.

Parliamentary chambers can each adopt their own rules, as is discussed in the Romanian and Russian papers; long disputes, however, can prevent adoption of those internal regulations (as in the Czech Republic) just as they have prevented adoption of new constitutions. The election law, too, can specify conditions of parliamentary party membership, as in Romania. The parliamentary parties, in addition, can adopt their own internal ordinances, as in the Czech Republic. Presidential decrees are another source of rules, especially in Russia, within which the new parliament works. This wide variety of sources of rules indicates the hurried and ad hoc ways in which the new postcommunist democracies have been groping their way toward stability.

Our papers do not explicitly refer to the processes by which the many rules affecting parliaments have been developed. In many parliaments, long debate has led to inconclusive results. Even established parliaments face unexpected problems and develop new precedents, but only occasionally do they directly face the task of recodifying their emerging practices. The severe conflicts encountered in at least some of the newly democratized parliaments promise a long period of disputes over rules as well as over the substance of policy decisions.

**From past to future**
To construct a rule of law state out of an authoritarian past is no mean task. This task is especially difficult for postcommunist legislatures. Their authoritarian experience was unique, quite different, for example, from Latin military dictatorships.

A lively question in current scholarship on the new democracies concerns the impact of the past. How extensive and pervasive is the communist legacy? The paper on Slovakia gives explicit attention to this question. Other commentators claim that certain practices, especially in the successor republics to Czechoslovakia, reflect the practices of the inter-war Parliament. The question of the influence of the past on the present can best be answered, perhaps by examining the structure, rules and procedures of the newly democratic legislatures.

The topical coverage of the rules, their varied sources, and their internal conflicts and ambiguities, are not unique to the legislatures and constitutions of postsoviet countries. These difficulties are universal in ordered societies and in structured institutions. The British Parliament and American Congress, the occasional legislatures of many developing countries, as well as the new postauthoritarian legislatures in both Latin America and Eastern Europe, all share the same dilemmas. But none have had to act so swiftly. Time is more compressed in postcommunist legislatures than elsewhere.

Legislatures themselves are great examples to their societies of how it may be possible to express
social conflicts and disagreements clearly and in a regularized manner, and of how it may be possible to work toward solutions in the same way. Legislatures both reflect the existing status of rules and decisional procedures in a political system, and have the opportunity, or perhaps obligation, to further develop those same rules. Legislatures both reflect and educate a new political system.

Throughout the postsoviet region, parliaments are resorting to ad hoc, very pragmatic and/or expedient sets of practices which adapt the existing rules, largely a communist-era inheritance, to the exigencies of the moment. This “ad hocracy” of searching experimentation is a function of both the new members in a resource-strapped institution, and the diversity and ambiguity of the existing written rules. Paradoxically, as newly democratized parliaments gain experience, and develop both regularized internal structures and procedures, their capacity to write explicit rules will increase, while their need for them will diminish.

At some point, the more continuous elements of the new emerging practices may be reduced to writing. The papers collected here may thus help define a future agenda for formulators of parliamentary rules. Whether the new rules of new democratic legislatures are written in this or the next decade remains for current and future parliaments to discover for themselves.

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Russia

Alexey Alyushin

Russia's current Federal Assembly (Parliament) was elected on December 12, 1993. At the same time, the Constitution was adopted by referendum. Anomalously, then, parliamentary elections were held under the obviously erroneous assumption that the Constitution, yet to be ratified, was already in force. Notwithstanding this unconventional birth of the Federal Assembly and of the Constitution itself, the first Parliament convened after the adoption of the new Constitution is governed by the latter's "Closing and Transitional Provisions." One sign that this is indeed only a transitional parliament is that its term runs two years instead of the usual four.

Experience with the current Parliament, however transitional, has revealed defects in some of the constitutional provisions governing its activities. This experience has also disclosed some gaps in the law which require correcting if parliamentary performance is to improve.

Bicameralism

One defect of the December 1993 Constitution lies in its inadequate provisions governing the formation of future Federal Assemblies. To begin with, the composition of future assemblies is unclear. For example, even though Art. 95.3 sets the number of Duma deputies at 450, the comparable provision governing the composition of the Federation Council is open-ended. Article 95.2 provides that "the Federation Council consists of two representatives from each subject of the Russian Federation: one each from the representative and the executive organs of state power." What this provision will mean in practice is further obscured by the absence of rules for determining the time, place, and manner of future elections to Parliament. All the Constitution says on this matter is found in Art. 96.2: "The procedure for composing the Council of the Federation and the manner of electing deputies of the State Duma are established by federal laws." Because the Constitution does not fix the mode of elections, this important set of arrangements lies at the mercy of ephemeral majorities. So far, federal laws governing these elections do not yet exist, although the various draft bills governing elections to the next Federation Council are now being debated (see "Russia Update" in this issue).

The composition of the Federation Council poses important practical problems which remain unsolved by the Constitution. The first of these questions is whether members of the Federation Council should be nominated or elected. The language of the Constitution is ambiguous in this respect, although it seems to favor the nomination option. "Members" (член) of the Federation Council stand in verbal contrast to "deputies" of the State Duma (Art. 98). The potential significance of this language is also reflected in the transitional provisions. Representatives in the first and transitional Federation Council were elected, and the Constitution refers to them as "deputies of the Federation Council." Finally, the Constitution refers hazily to the "formation" (формирование) of the Federation Council, whereas "elections" will be held for the State Duma.

If the Federation Council is to be elected, who should elect it? Should local legislatures select the members, or should they be elected directly by the people in the component subjects of the federation? In April, a proposal allowing the component subjects of the Russian Federation to decide for themselves how their Federation Council representatives would be elected (and recalled). The provision would make the Federation Council members wholly dependent on
the regional electorate that sent them to the capital, thereby significantly facilitating regional lobbying. If selection by local legislatures is accepted, then one must deal with the fact that local legislatures themselves have not yet been elected in over 20 subjects of the Russian Federation. The fact that executive bodies alone exist in these subjects raises a thorny constitutional problem, as Art. 95.2 requires that one of the two representatives come from the “representative...organ of state power.” Another problem is that nearly 60 current heads of local administration (nearly 70 percent) have been appointed personally by the president. According to one presidential decree, elections for heads of executive bodies in the subjects shall be held simultaneously with the federal presidential elections, scheduled for June 1996. This means that these presidentially appointed heads of local executives will still be in office during the 1995 Federal Assembly elections. Given the local influence of such leaders, many of them may well be elected or nominated to the Federation Council. In such a case, there is a chance that the next Federation Council will be packed with members beholden to the president.

Third, there is the question of the Federation Council’s term, especially whether or not it should coincide with that of the State Duma. Furthermore, there is the question of whether the terms of individual members of the Federation Council should be staggered, in order to give the institution a greater sense of continuity.

That these questions have been all but ignored so far reflects the faultiness of the Russian Constitution. The haste of its authors in drafting this provision, and their indecision about how exactly to include the regional electorate and elites in the political process, has essentially turned over the formation of the legislature to unaccountable and shifting personal and corporate interests. As many current members of the Federation Council are eager to retain their positions, a self-interested, and perhaps myopic, electoral law is to be expected.

Legislation and relations between the chambers
Once the State Duma adopts a federal law, it must be sent to the Federation Council within five days (Art. 105). Once it receives the bill, the Federation Council has 14 days to act on it. If it does not act within this period, the bill is considered approved. Should the Federation Council reject the law, the chambers may form a conciliation commission, pursuant to Art. 105.2, to overcome their disputes. Afterwards, the Duma may again consider the bill, and even override the Federation Council’s veto by a two-thirds vote of the total number of deputies. This procedure clearly indicates that the Duma is meant to play a more active legislative role. The Federation Council seems to be designed primarily to slow down the legislative process, not to have an equal say with the Duma.

But parliamentary experience has revealed in practice the inadequacy of many of the rules governing the institution. The practical result of these ill-designed rules is twofold. On the one hand, parliamentarians sometimes abide by them, in which case the result is undesirable because of the perverse incentives created by the rules. On the other hand, parliamentarians sometimes ignore the rules and settle on informal practices. This evasive tactic does not say much for having the rules in the first place.

Parliament has at times reached beyond its jurisdiction and attempted to deal with problems not assigned to it by the Constitution. For example, in the spring of 1994, issues such as the situation in the agricultural sector and the so-called crisis of non-payments, though clearly within the jurisdiction of the executive, were introduced onto the agenda of the Federation Council. The discussion of these issues was not particularly productive and ate into valuable legislative time.

The reason why the Federation Council took up these issues is that the upper house has begun functioning as the primary lobbyist for regional and local interests. Most of the members of the Federation Council represent institutions of local governments, namely their executive and legislative bodies, and therefore often view matters from a narrow local perspective, as they try to attain their regional and corporate aims as well as to improve their standing in the eyes of their local constituencies. This parochial approach does not help solve national problems, however. But so long as the Constitution’s compatibility provisions allow officials to hold both local and
national offices, this conflict of interest will persist. When the local officials come to the center, they will not come with national, federal problems in mind, but with the aim of pushing narrow local agendas.

The simultaneous holding of local and national office in this first, transitional Federation Council also finds support in the Constitution's transitional provisions, which state that "the Federation Council members of the first convocation exercise their powers on a "non-constant basis" (Concluding and Transitional Provisions; paragraph 9). In practice, this means that members of the Federation Council need not view their membership in the Council as their main job. Eighty-six of 171 Federation Council deputies are either heads (or first deputies) of their respective legislatures or heads of the executive bodies in the respective component subjects. However, for the Federation Council to be effective, its members must first and foremost be Federation Council deputies and work on a constant basis. Whether such a rule change would lead the regional elite to lose any residual interest they may still have in the national legislature is another question.

The importance of concentration on the work of the Federation Council is apparent from another defect in the constitutional rules, namely the 14-day provision for reviewing legislation passed by the Duma. Given the reality of working on a "non-constant" basis, the Federation Council has experienced inordinate difficulties in meeting this deadline. Whereas the Duma holds a plenary session twice weekly, except for two annual vacations, the Federation Council meets only between long interruptions which may exceed 14 days. Thus, if the Duma passes a law during a Federation Council recess, the Federation Council may not even convene before 14 days have elapsed.

Parliament has attempted to solve these problems by convening extraordinary meetings when very important laws are being considered. The problem with this approach is that it is too expensive, unpredictable, and unwieldy. Not the least problem is lack of agreement over what constitutes "important" legislation. A second way in which the bodies have tried to overcome this difficulty is for the Federation Council to reject automatically any law it cannot consider within the allotted time. This rejection is then followed by mediating sessions in an Art. 105.4 conciliation commission. Ironically, the work of the Conciliation Commission itself has no time restrictions. Neither solution, however, is practical or desirable. A better solution would be either a constitutional amendment extending the time period for consideration—from 14 to 30 days, for example—or an interpretation by the Constitutional Court stating that only days on which the Federation Council is actually sitting should count toward the 14-day period.

The awkwardness of this entire situation becomes even more apparent when we consider the tension between Art. 105 and Art. 106 of the Constitution. Article 105 states that the Federation Council only has 14 days in which to act on a law passed by the Duma. By contrast, Art. 106 states that certain federal laws adopted by the Duma "are subject to compulsory examination" in the Federation Council. The Constitution is therefore unclear about whether the 14-day rule should be strictly enforced in Art. 106 situations. This question has been officially referred to the Constitutional Court by the Federation Council (see "Russia Update" in this issue).

The inadequacy, vagueness, and mutual inconsistency of these rules predetermines the observed lack of coordination and insufficient interaction between the chambers. The only mode of interaction provided by the Constitution is the Art. 105.4 conciliation commission. This provision, however, does not seem sufficient, as information does not flow constantly and reliably between the two chambers. Personal communication between deputies and experts serving the two bodies is also lacking. One inevitable consequence of this lack of inter-chamber coordination is confusion in legislation. In the first few months after the elections, bills on the very same subjects were independently drafted by the two bodies, each unaware of what the other was doing.

The lack of coordination, symbolized by the physical separation of the two chambers (they meet in two separate buildings in the center of Moscow), is not accidental. In the wake of the events of September and October 1993, President Yeltsin was unwilling to allow Parliament to gain too much strength. Even though there were compelling arguments for allowing both chambers to reside in one building, Yeltsin, concerned that the
legislative bodies would again crystallize into an opposition as they had done under Ruslan Khasbulatov, chose a divide-and-rule strategy. The problems of years past, however, may not justify the current obstacles of parliamentary efficiency and inter-chamber coordination.

The two chambers, it is interesting to notice, have adopted an extraconstitutional mechanism for easing cooperation, thus compensating for some of the deficiencies of the Constitution. A Superior Coordinating Committee on Legislation has been created as part of the State Duma’s Committee on Legislation, the most powerful Duma committee through which all legislation must pass. The Superior Committee, which has only consultative functions, includes representatives of the several bodies that possess the right of legislative initiative.

Another confusingly ambiguous provision of the Constitution is the enumeration of Parliament’s powers in Art. 102 and Art. 103. The two articles enumerate certain limited powers as “belonging” to the legislature. These powers should not exhaust the legislative power, but a narrow reading of the articles could restrain Parliament’s jurisdiction. To prevent such a restrictive understanding, the State Duma, for example, has incorporated in its Rules of Procedure norms that establish its prerogative to issue declarations and petitions concerning foreign policy and international relations. Similarly, the Federation Council has also enacted an internal rule that allows it to issue “conclusions, declarations and petitions” on “general political and on socio-economic issues.”

Party discipline

The composition of Parliament is an important cause of its relative ineffectiveness and lack of focus. There is no majority party in the Duma, though perhaps the distribution of seats may be a faithful representation of the ideological composition of Russian society. That as it may, the absence of a majority party, coupled with the inability of deputy associations or parties to form consistent voting blocs, has made legislation unpredictable and slow. In fact, it has often proved impossible for a majority to form, which partly explains the low volume of legislation passed so far, a failure that has left unregulated many areas of social life desperately requiring new legislation.

Contributing to the difficulty of forming majorities in support of any bill is the well-publicized lack of party discipline. Individual deputies often do not follow party leaders. To prevent deputy defections, the Liberal Democratic (“Zhirinovsky”) faction, the most ambitious and aggressive parliamentary group, attempted to introduce a parliamentary rule whereby a deputy would lose his mandate if he systematically voted contrary to his faction’s position. This proposal, of course, was a reaction to the way the Liberal Democratic faction had been losing deputy support due to Vladimir Zhirinovsky’s bizarre, authoritarian leadership style. The proposed rule fell on deaf ears. What has kept parties working together, even if inefficiently, is the State Duma Council, created by the Duma when it was drafting its Rules of Procedure. This Council is composed of the Chairman of the Duma and of the leaders of factions and deputy groups. Its functions include scheduling hearings, agenda setting, forwarding bills to committee, and accepting bills from those empowered to initiate them. Its activities are subject to control by the plenum of the Duma.

As the Zhirinovsky experience suggests, strict adherence to party positions may not always be desirable. In this case, Zhirinovsky’s charisma and hypnotic style has lured a group of irresponsible zanies into the Duma who do not heed the needs of the electorate. From this experience, one might draw the conclusion that an exclusively party-list system of voting may not, in fact, accurately reflect the sentiments of the people.

The fault here lies with the electoral system. In the 1993 national elections, half of the Duma’s deputies were elected through party lists, while the other half was elected directly in electoral districts. In retrospect, the proportion seems too heavily weighted in favor of political parties. The shortcomings the 1993 electoral system are supposed to be corrected by the forthcoming bill on the Duma elections. As of May 1995, however, no consensus had been reached on this matter. The draft bill favored by the Federation Council provides that 300 Duma deputies
be elected, with only 150 deputies running on party lists. The version preferred by most Duma members preserves the equal, 225/225 representation used in the 1993 elections. So, the question remains open.

Relation with the executive
In the present constitutional scheme, as a reaction to legislative overreaching in the past, the presidency is the most powerful branch of government. The government is controlled by the president and has only limited independence. The only power that can even begin to compete with the presidency is the federal legislature. Notwithstanding the great imbalance of power in favor of the presidency (Yeltsin, after all, had great influence over the drafting of the Constitution), Parliament still has some possibility to act independently and decisively, which is essential if there is to be an effective balance of power between the branches. An example is the power of amnesty, granted by the Constitution. In early 1994, the State Duma granted amnesty to all insurgents who participated in the events of October 1993. This action shocked Yeltsin, who realized that the new Parliament would not necessarily bend to his commands.

The legislature's independence, however, is limited. Currently, Parliament is completely dependent on the president financially and materially. By presidential Decree N. 1400, September 21, 1993 (section 11), all organizations and establishments previously supplying goods and services to the Supreme Soviet were withdrawn from its jurisdiction and placed under the supervision of the federal executive (the Council of Ministers). As a result the total reorganization of these organizations and establishments introduced by the decree, crucial economic supply functions were taken over by the president's Administrative Management Department (Upravlenie Delami). The provision of everything from office buildings to hospital rooms, from limousines to computers, is under the president's control, a humiliating situation for Parliament.

The basic problem of legislative/executive imbalance can be traced to the Constitution. The Russian Constitution does not exhaustively enumerate the subjects on which Parliament may pass laws. Neither does it clearly delineate the scope of presidential lawmaking powers. The enumerations appearing in the Constitution are only partial lists. As a result, there is a recurring confusion about whether the president or the legislature has the exclusive right to make rules governing a certain domain. In practice, because of the above-mentioned deficiencies in the legislative process, the president has taken over the active lawmaking function, further threatening the integrity of Parliament. Similarly, the executive, including both president and government, is much more active in initiating legislation than the chambers themselves.

The new Constitution as a whole clearly favors the president, especially if compared with past Russian Constitutions. The 1978 Constitution, for example, gave the Congress of the People's Deputies of Russia "the right to accept for consideration and to decide on any question which lies within the jurisdiction of the Russian Federation" (Art. 104.2). The present Constitution, by contrast, was meant to resolve such doubts in favor of the president.

The Constitution's pro-presidential bias is reflected in the contrast between the power of the president and that of the Federation Council to review the Duma legislation. If the Federation Council misses the 14-day deadline, the law is considered approved. If the president misses his deadline, no legal consequences follow. The president of Russia may thus keep a law unsigned and unreturned for as long as he wishes, something he does quite often.

Another example of presidential prerogative in practice is the appointments process. According to the Constitution, the Federation Council has the power of appointing the attorney general (Art. 102.1). It is unclear, however, what time restrictions apply to the president for presenting candidates for this and other appointed positions on which the Federation Council or State Duma must finally decide. The Federation Council's Rules of Proceeding now establish a two-week deadline. But it is not obvious that the making of such a rule lies within the competence of the Federation Council.

The president may simply decline to come up with nominees. Or, if his nominee is rejected, as has been the case with the current attorney general, Alexei Ilyushenko, the president may nevertheless decide to appoint his original choice as "acting" officer.
Ilyushenko, for example, is now serving as acting attorney general. Under this title, the president’s choice may actually hold the office, and wield all its powers, without having been approved by Parliament.

Or consider the State Duma’s right to consent to the president’s nomination for prime minister (Art. 103.1.a). If the Duma three times rejects the president’s candidate, the Constitution gives the president the power to dissolve the Duma and announce new elections (Art. 111.4). A similar situation holds with no-confidence votes, also a right given to the Duma. Yet, once again, the Constitution checks the exercise of this right by allowing the president to dissolve the Duma if it passes two votes of no-confidence within a three month period.

The war in Chechnya has clearly demonstrated Parliament’s inability to control the executive in situations where military force is used by the government. Notwithstanding Parliament’s initially sharp criticism of the interior and defense ministers’ handling of the war, the assembly could not remove them, because these two “power” ministers are directly appointed by the president (Art. 83 and Art. 112.2). The bitter irony is that the only figure over which the State Duma has exercised its constitutional right of dismissal was Sergey Kovalev, the commissioner on human rights, who worked to try to resolve the conflict peacefully.

Parliament and legitimacy
Parliament has been unsuccessful in its legislative efforts, partly as a result of constitutional rules, partly because of its interim character, and partly because of its makeup and factionalism. It has, nevertheless, served one very important function: legitimation of the political and governmental system established by the 1993 Constitution. By dissolving the old Parliament, Yeltsin had clearly violated the Constitution in force at the time. But he rested his right to dissolve the legislature on what he believed was a more fundamental law: the basic principles of “Recht,” as opposed to positive law, which asked the president to fulfill his duty to protect national security and socioeconomic reforms. The parliamentary elections, however, demonstrated to the president that his justifications had not persuaded the electorate and that he had suffered a serious loss of legitimacy.

At the same time, the new parliamentary elections presented an opportunity for many former deputies to run for office again and be elected. Presenting themselves as political martyrs, they easily found their way back to the legislature. Even though they may not have countervailing legal powers, the parliamentarians’ political prestige does effectively counterbalance that of the president.

All of this, in a roundabout way, gave a boost of legitimacy to the president. By running for office, being elected and taking up their posts, the new deputies, including Yeltsin’s enemies, were recognizing the legitimacy and legality of both the “usurper president” and “his” Constitution. For voters opposed to the president, the placement of opposition deputies in Parliament was a recognition of the legitimacy of the president’s new system. These developments have been crucial to the maintenance of whatever political stability Russia has experienced during the past year.

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Is legislative illegitimacy the price of political effectiveness?

Czech Republic
Milos Calda and Mark Gillis

Compared to most East and Central European legislative bodies, the Czech Parliament has enjoyed relative stability. The assembly's ability to maintain its steadiness and effectiveness can be largely attributed to strong party discipline, the influence of the government on legislation and the decisive role of majority-dominated committees in passing this legislation. But despite its stability, the Czech Parliament is unpopular. Czech citizens seem little concerned with blatant violations of the Constitution, such as Parliament's failure to convene the Senate. But popular discontent has been stirred by the many privileges and opportunities enjoyed by deputies, a direct result of deputy immunity and the absence of meaningful conflict-of-interest legislation.

The structure of Parliament
Majority control of committees, cooperation of the majority with the government, and party discipline have generally given the Czech Republic one of the more outwardly stable postcommunist parliamentary systems.

The parliamentary majority decisively influences the makeup of committees. Most committee seats are occupied by members of the ruling coalition parties. Committee members are nominated by the parliamentary clubs which are, in turn, composed of deputies of the parliamentary parties. As a result, the majority coalition holds the chairmanships of all 12 committees. Even though members of the minority are represented on the committees, the majority can (and does) regularly outvote them.

The only constraints on the majority seem to be informal ones adopted by the parties themselves. For example, although parliamentary rules require proportional representation of all parliamentary parties only on the Organizational Committee and any investigative commissions, in practice, the proportionality principle holds on all committees. Each committee, therefore, includes members not only of the more moderate opposition parties, but also of radical groups such as the Communist Party of Bohemia and Moravia and the populistic and nationalistic Republican Party (AR-CRP).

Considerations of expertise have also served as a constraining factor in committee formation. Even the strongest parties will refrain from nominating technically unqualified members for committee positions if they feel that expertise is needed. An example of this partisan self-restraint occurred during the nominations for the Committee on Petitions, Human Rights, and Nationalities. Since the majority coalition felt unable to nominate enough qualified candidates from its own ranks, members of the opposition now constitute a majority on the committee.

Committee work absorbs the bulk of legislative activity. Even so, the human and financial resources of the committees are very limited. Efforts to improve the situation have been impeded by budgetary constraints. Perhaps this shortage of resources helps explain the dependence of legislation on government initiatives and proposals. Most bills are initiated by the government. Although committee members may propose amendments, not many of their amendments find their way into the laws. Only one-sixth of all proposed amendments have been accepted and passed into law.

When proposing amendments, committee members will probably be toeing their party line. Party discipline, especially for the majority coalition, is indeed very high on committees and in Parliament as a whole. One indicator of this pervasive discipline is that few committee decisions are rejected when considered.
by the assembly as a whole. To enforce party discipline, the majority coalition uses what it calls the "pilot" technique. Before the start of a voting session, the party designates an experienced deputy to be the "pilot." The other deputies of the coalition are to follow the lead of the "pilot" and vote the way he does. As a result, parties almost always vote in blocs. Individual deputies routinely receive instructions from their party clubs. Prior to voting in committee, similarly, clubs hold sessions where individual proposals are discussed and where the whip gives cues for voting.

This high degree of discipline should not be surprising given the Czech tradition of party loyalty. Loyalty to one's party is often seen as a moral issue of loyalty to the organization and principles which enabled the deputy to enter Parliament in the first place. A practical mechanism for enforcing party discipline is provided by the proportional electoral system, in which deputies represent parties rather than a particular voting district. Parties have the ability to place the names of rebellious deputies near the bottom of the party list, or even to deny them a position on the list altogether. Especially for politicians of the majority coalition concerned with reelection, this mechanism provides a strong reason for adhering to party positions. Fulfillment of campaign promises is relatively easy to monitor, for under this system it is equivalent to simply keeping faith with the party platform.

There are, however, some signs of decreasing rigidity in party ranks. The starting point for this shift is Art. 26 of the Constitution, which states that "deputies and senators shall carry out their mandate personally in accord with their oath and at the same time they shall not be bound by anyone's command." This provision has already had an impact. For instance, parties such as Prime Minister Vaclav Klaus's center-right Civic Democratic Party (CDP) have not included party discipline in their internal regulations, believing that the deputy is a free human being entitled to vote his conscience. Even when the party makes voting recommendations to its members sitting on committees, it does not oblige them to vote the party line, and in the past has tolerated dissenting votes.

In some instances, there have been defections from parties, especially those in the opposition, further demonstrating the influence of the government. For example, several deputies have abandoned the Liberal Social Union, an electoral conglomeration of parties sharing little in common. The Republicans have also suffered defections. Half of the club's members defected when their leader Miroslav Sladek ordered them to pay substantial parts of their salaries into the party fund. Perhaps most noteworthy, the Communist Party of Bohemia and Moravia, which practices the strictest control over its members, lost a substantial number of deputies, who in turn formed their own grouping, the Left Bloc. As a result, the number of communist deputies dwindled, from 35 to ten.

Given the backdrop of party loyalty, defectors often justify their shift in loyalty by arguing that their party has not remained faithful to the promises it made to the voters. Defectors do not lose their parliamentary seats. Despite the relative opprobrium still attached to defections, some defectors even receive handsome rewards. Consider the example of Bohdan Dvorak: after defecting from his party and joining Klaus's Civic Democratic Party, he became a member of the leadership.

The problem of bicameralism
The Czech Constitution provides for a bicameral Parliament composed of an Assembly of Deputies and a Senate (Art. 15.2). Article 106 of the Constitution holds that the Assembly is responsible for creating the Senate. Yet, more than two years after the adoption of the Constitution, the Senate has not been institutionalized. This breach of the Constitution has led to negative commentary in the press and among the public. The CDP has gone so far as to state that, if a Senate is not going to be formed, the provisions on the Senate might as well be removed from the Constitution. It also remarked that the whole situation was reminiscent of recent "history when the communist state introduced the Constitutional Court into the Constitution and, for 30 years, was not able to bring it to life."

Not everyone is complaining about the absence of a Senate, however. When the Constitution was adopted in December 1992, many, including the Social Democrats and the Communists, criticized the bicameralism provi-
sion. As the Czech Republic is a relatively small "uni-
tary" state and the population is relatively homoge-
neous, it would seem that a second chamber, designed
to protect minority rights, would be superfluous.

Indeed, many of the arguments advanced to sup-
port the creation of a Senate in accord with the
Constitution are unpersuasive. One argument is that a
Senate will ensure the continuity of legislative power
in times when the assembly is not in session, particu-
larly when the president has dissolved the chamber or
during the interval between two electoral terms.
These concerns, however, may be misplaced.
According to Art. 35 of the Constitution, the assembly
may be dissolved in only four situations, none of which
is likely to occur unless the assembly actually wishes
to be dissolved. As for the interim between terms, its
duration by law is only 30 days and it occurs only once
every four years. These do not seem like sufficient rea-
sons for creating a Senate.

The argument that a Senate would force greater
deliberation and prevent hasty lawmaking is no
more convincing. Even with the Senate's suspensiv-
be, the assembly may adopt statutes with an abso-

pential entire without Senate approval.
Perhaps the Senate can function as a check on ill-
considered legislation passed when small numbers
of deputies are present. The president, however, is
armed with the same suspensive veto, making the
Senate's power superfluous.

Historically, the inclusion of a Senate in the
Constitution may have simply been a self-interested
move meant to assure deputies of the Czechoslovak
Federal Assembly a position of political prominence.
In the wake of the split, Czech deputies of the
Federal Assembly wanted to secure a role for them-
selves in the new legislature. Even if promises were
made, they have, of course, been broken by now.

These doubts about the need for a Senate and
the reasons for its original inclusion, however, over-
look a very important function played by the
Senate in the Constitution. The Senate is to be elect-
ed on the first-past-the-post principle, thus balancing
the proportionally elected Assembly of Deputies. In
crucial cases, such as those involving Art. 10
(international treaties concerning human rights and
fundamental freedoms and constitutional acts), the
Constitution requires that three-fifths of all
deputies and three-fifths of all senators must register
their approval before the act is adopted. In addition,
a declaration of war and approval of the stationing
of foreign troops on Czech soil requires the
approval of an absolute majority of both senators
and deputies (Art. 43). Electoral laws may not be
adopted without the consent of the senate (Art. 40).
The senate must consent to the president's nomi-
nees for appointment to the Constitutional Court
(Art. 87.2). These legislative acts and decisions are

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simply reflect an unwillingness on the part of the leading parties to submit to elections for fear of losing the strong position they now hold. So the assembly and the present government—which never submitted itself to a vote of confidence when the Czech Republic was created—shall both remain in power until June 1996 without any possibility that the assembly will be dissolved.

**Parliament’s image**

Despite its efforts at openness, the Czech Parliament has been suffering in public opinion polls. Parliament has not only opened its sessions to the public, as mandated by Art. 36 of the Constitution, but most parliamentary committees have opened their proceedings to the public as well. The press, government officials from departments proposing legislation, and representatives of citizens’ initiatives regularly attend these proceedings. Nonetheless, Parliament’s popularity ratings hover consistently between 20 and 25 percent. The executive contributes to Parliament’s bad press by complaining regularly about the poor quality of legislation and the many “gaps” in the laws. Although some of Parliament’s unpopularity may be attributed to misinformation, there are concrete reasons, embedded in rules that govern deputy behavior, which account for its poor public image.

First, as mentioned, the rules governing incompatibility and conflict of interest are defective. Article 22, which declares that “the office of deputy or senator is incompatible with the discharge of the office of the president, the office of a judge, and with other offices, which shall be designated by an act of Parliament” is overly broad and imprecise. Furthermore, very few restrictions apply to the professional activities of legislators, the main focus being on private activities, such as involvement in business deals. The Czech Republic has recently been rocked by several political scandals involving conflict-of-interest issues. Although these scandals have thus far implicated members of the executive branch, there is nothing to prevent legislators from engaging in similar shady practices.

Second, the public seems upset by the rules of parliamentary immunity, which shield parliamentarians almost totally from prosecution for criminal wrongdoing and allow them to break laws with impunity. When CDP deputy Ladislav Blazek was stopped by the traffic police and found to be inebriated, parliamentary immunity prevented him from being charged with driving under the influence. He was not even tested for the alcohol level in his blood. While the framers of the Constitution justifiably sought to protect deputies, the immunity provisions they drafted are indisputably overbroad. To preserve public respect for representative institutions, deputies must at least be made accountable for ordinary offenses.

Finally, Parliament suffers from problems of symbolism. For instance, parliamentarians earn a salary more than two and a half times greater than that of the average Czech. Even more galling has been Parliament’s decision to move its offices to three former palaces in the fashionable Lesser Quarter district of Prague. Though the use of these premises for parliamentary purposes was not unprecedented, it seems nevertheless to have confirmed public suspicions that legislators take better care of themselves than of the country.

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Recently events in Slovakia show how a strong Parliament can complicate cabinet formation and undermine executive power, particularly when political parties are fragmented and undisciplined and the political elite is unsettled and adversarial. The outcome can be a régime d'assemblée, modeled on the Third or Fourth Republics in France. One consequence of ineffective government has been further popular disenchantment with the political process. The better educated, in particular, have tended to withdraw from political participation, leaving the field open to less educated citizens from rural areas mobilized by populist and nationalist politicians. An examination both of the relationship between Parliament and the executive and of the inner workings of Parliament itself shows that many of the deficiencies of the political process can be traced to unproductive elite behavior, largely caused, in turn, by the inadequacy of constitutional and parliamentary rules governing that process. The inadequacy of these rules reflects the conflicting legacies of Slovakia’s past, including its experiences with communism, the interwar parliamentary tradition, and hasty drafting of the Constitution after the 1992 elections.

Constitutional structure and relations between powers

To understand the dynamics of executive-legislative relations in the Slovak Republic, it is helpful to divide recent history into three distinct periods. The first period runs from January 1, 1993 (the establishment of Slovakia) up through the vote of no-confidence against Prime Minister Vladimir Meciar’s government on March 11, 1994. The style of Meciar’s rule during this period was marked by controversy and an inability to maintain the support of his political partners, so that he gradually lost his parliamentary majority. Attempts to regain a majority in Parliament through institutional changes (including a redistribution of mandates, and establishing either a chancellor democracy or a presidential regime) were already initiated at this time. The second period covers the rule of the broad coalition government (five political parties) under the leadership of Josef Moravcik, which enjoyed the support of the Hungarian political parties in Parliament. This period demonstrated the workability of a broad coalition government within a parliamentary framework on the basis of certain nonparliamentary institutions and procedures designed to impose party discipline, ensure a majority, and facilitate voting along party lines. The third period begins from 10 weeks after the early elections of 1994 and runs until the installation of the new government. This latest period has revealed the weakness of the incumbent government, which has led, in turn, to the shift of some important powers (related to privatization) from the government to other bodies that can be controlled only by Parliament.

During the writing of the new Constitution, given Prime Minister Meciar’s well-known political style, various observers speculated that the executive branch would simply overwhelm Parliament. Some of the prime minister’s constitutional powers, such as the right to dismiss cabinet members, the right to return laws to Parliament for further consideration, the right to turn the vote on a bill into a vote of confidence in the cabinet, and creation of the position of state secretary to be nominated and removed only by the cabinet (Chapter 6, Section 2 of the Slovak Constitution), were interpreted as authoritarian provisions aimed at strengthening the prime minister in particular and the executive branch in general.

Even brief perusal of the Slovak Constitution, however, reveals that Parliament itself enjoys consid-
erable powers. These powers, some of which are enumerated in Art. 86, include electing and recalling the president (Art. 86.b), adopting constitutional laws (Art. 86.a), amending the Constitution (Art. 84.3) and declaring war (Art. 86.k). These powers may be exercised only upon a favorable vote of three-fifths of all deputies (Art. 84.c). Article 86 lists other powers of Parliament, including the power to propose referenda, establish ministries and other institutions of state administration, debate fundamental issues of domestic, international, economic, social, and other policy, approve the budget, and consent to the sending of troops beyond the borders of the Slovak Republic.

A review of the constitutional provisions governing relations between the legislative and executive branches also corroborates the supremacy of Parliament. The articles governing votes of no-confidence in government and ministers are a good example, for they essentially make executive leadership by the prime minister impossible. These provisions (Art. 88, Art. 115, and Art. 116) facilitate votes of no-confidence, as illustrated in March 1994, when Meciar lost his legislative majority. The Constitution does not provide for a constructive vote of no-confidence, and it is not clear that the dismissed government is to remain in office as an incumbent government until a new government is formed (Art. 117). Still, Meciar's government evacuated the office surprisingly quickly. Although an extreme destabilization of the executive was averted, because a new coalition government was successfully formed soon after the vote, this episode drives home Parliament's latent capacity to sabotage the executive.

The vote of no-confidence is also used frequently against individual ministers. This same parliamentary power may also explain the vacancies in Meciar's cabinet. During the first period, eight ministers—there were 16 ministerial posts in all—either resigned, were dismissed or voted down by votes of no-confidence. The vote of no-confidence also began to be employed by the opposition parties (Movement for Democratic Slovakia [MDS] and Slovak National Party [SNP]) in order to destabilize the new cabinet after the formation of the coalition government in March 1994. This tactic did not enjoy its previous success only because the government coalition seemed able to maintain some coherence and to impose discipline on its parliamentary supporters.

Even without a no-confidence provision, the Constitution seriously weakens the executive branch simply because the rules for government formation are uncertain. The Constitution has been interpreted as denying the prime minister autonomy in appointing and removing ministers. Both Parliament (Art. 86.g) and the president (Art. 116) may refuse to endorse the prime minister's candidates for ministerial positions. In addition, Parliament may both dismiss ministers and prevent the prime minister from removing an insubordinate minister. The prime minister's only constitutional freedom in this area concerns the initial stages of the appointment process. He does not have to appoint a person he does not want as a minister. Even in this case, if his own party does not have an outright majority, the prime minister may come under political pressure from a coalition partner to make a ministerial appointment.

The absence of clear constitutional rules concerning government formation and pre-election coalition agreements have led to a peculiar state of "bi-governmentalism" during the third period. Meciar's coalition with the Slovak National Party (SNP) and the Association of the Workers in Slovakia (AWS) has gained a majority of 83 of the 150 seats in Parliament. To ensure that its policies are carried out, the parliamentary majority has succeeded in transferring some important executive powers (mainly in the area of privatization) to institutions under its direct control. (See EECR, Slovakia Update, Vol. 4, No. 1, Winter 1995.) Parliament is able to do this by virtue of its power to create government departments and administrative bodies. Although the government's consent is nominally required, practice shows that no such consent is effectively needed (Art. 86.f). Hence bi-governmentalism.

Parliament's influence over the executive is also manifested in the power of individual deputies. The Constitution grants specific powers to deputies, such as the right to interpellate (Art. 80.1). Members of Parliament may submit oral or written requests to a member of the government or any head of a state administrative office, including
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senior civil servants, asking for an explanation of administrative decisions.

"MP inquiries" represent a deputy-centered political practice that further reflects legislative self-aggrandizement. A minister may ask any deputy to investigate an issue (say, privatization projects) and provide a report to the ministry. In practice, a deputy often initiates such an inquiry on the request of voters, organizations or associations, or on his own. As a result of such involvement of deputies in administrative matters, several deputies have been appointed to administrative posts, as "experts," during both Meciar's and Moravcik's prime ministerships. The only posts incompatible with the post of deputy are president, judge, prosecutor, security service member, prison or judicial guard or professional soldier (Art. 77.1).

The extent of the Slovak Parliament's control over the executive may seem extraordinary. A consideration of recent history suggests an institutional explanation. By introducing party control over the entire administrative apparatus, the Communist Party in effect laid the foundation for such parliamentary overreaching. The Party's advisory committees, its control through local organizations over the state administration, and the duplication of departments within the Central Committee are all practices now being replicated by the current Parliament. Communist organizational practice, which is ironic given the common view of the communist state as a highly centralized system, subverted the centralization of the state administration and the executive branch. After the collapse of the communist regime, the party disappeared, but the system of advisory committees and legislative superiority remained, transformed from a formal arrangement to political reality.

Legislative supremacy can also be explained from a historical/cultural perspective. In the first Czechoslovak Republic, Parliament was the dominant political institution. The idea of parliamentary sovereignty was further strengthened by the rhetoric of the communist regime, which hailed Parliament as the supreme representative body of the "people's democracy." Hence, in a way, the ideology of legislative supremacy has always guided Slovak politics.

Parliamentary rules

Under certain conditions, committees can wield power over the government. During the period of "divided" power in 1994, for example, committees exercised even more influence than they do now in the third period. That parliamentary deputies are aware of this potential is clear from the intensity of activity in the new parliamentary committees, especially compared to the low level of activity in the chamber as a whole.

Committees exercise substantial power under the Constitution. Article 92 holds that the "National Council of the Slovak Republic establishes committees of deputies as bodies for proposing legislation and for oversight." The oversight function refers in part to Art. 85, which provides that "members of the governments ... or heads of other bodies of state administration must participate in a session of the National Council ... or in a session of any of its bodies, at the request of the National Council ... or of its bodies." This power to summon any minister or senior civil servant obviously strengthens the monitoring role of the committees.

Although the Act on Legislative Procedures requires the establishment only of the Mandate and Immunity Committee, Parliament established many other committees, specializing in important policy areas. On October 26, 1993, for example, Parliament established the Committee for Privatization in order to control the questionable privatization schemes of Meciar's government. Unsurprisingly, the prime minister's MDS voted against the formation of this committee on the grounds that it would throttle the privatization process. The 1994 parliamentary elections showed, in fact, that committee structure can be exploited to yield even more legislative power over the government than was previously believed possible. (See EECR, Slovakia Update, Vol. 4, No. 1, Winter 1995.)

Power over the committees can prove immensely important, therefore, and for internal parliamentary purposes, too. It has become clear, for example, that control over the only standing committee which is explicitly stipulated by the act on parliamentary rules, the Mandate and Immunity Committee, can be crucial. This was demonstrated recently when MDS,
SNP and AWS, using their seats on this committee, were able to challenge the mandates of Democratic Union (DU) deputies in Parliament on the grounds that the DU had failed to submit the number of signatures required in order to be officially registered to participate in elections. They have demanded that the DU seats be distributed according to the requirements of the proportional representation system (see EECR, Slovakia Update, Vol. 4, No. 2, Spring 1995).

Given the actual and potential power of committees, it is not surprising to see competition between parties for committee positions. The Act on Legislative Procedures holds that, although parliamentary caucuses may nominate their members to serve on committees, Parliament as a whole makes the final decision. This rule has resulted in the transfer of many opposition deputies, who used to serve on important committees, to relatively unimportant committees or to committees not reflecting their expertise.

The Committee on Constitutional Law and Legislation, the only committee that reviews all proposed legislation, is uniquely situated to influence all bills before they go to the plenum.

The Act on Legislative Procedures also lays down the rules for committee consideration of legislation. Once a bill is presented, the committee selects a reporter charged with preparing the committee report and presenting it to the plenary session. Voting on complicated bills proceeds by section and paragraph, with members permitted to propose amendments at every stage. The final version of the bill is sent to the floor only if adopted by majority vote, meaning that a majority on a committee effectively controls the content of legislation introduced to Parliament. Individual deputies may propose amendments during the floor debate, but this is hardly a very effective means of influencing legislation.

Paragraph 50 of the Act requires parliamentary committees to cooperate with administrative agencies in the legislative process. Committees are given the authority to require any administrative agency to provide information, including reports by outside experts. Further, committees may institute inquiries into the activities of administrative agencies and state-owned enterprises. Committees also have the power to establish permanent or temporary commissions composed of deputies, independent experts, or representatives of various economic and political organizations.

One type of ad-hoc commission is the investigating commission, empowered to investigate matters that appear to violate the public interest. Investigating commissions are permitted to scrutinize administrative bodies. Once an investigation is completed, a report must be submitted to Parliament along with commission recommendations. During the first and second periods, several investigative commissions were formed to investigate matters of privatization and foreign trade. After the 1994 elections, new investigative commissions were formed, including those charged with inquiring into the legality of the DU mandates and the "parliamentary crisis" of March 1994. It is still too early to tell what the impact of these investigative commissions will be.

**Representation, parties, and discipline**

One basis for stable government is a stable and disciplined parliamentary majority. The communist past, however, produced an understandable bias against rigid conceptions of discipline and even led to a general rejection of party discipline and its instruments. By the same token, Czechoslovak history during the interwar period illustrated the problems of political fragmentation and extreme pluralism. In response to these opposing concerns, the first postcommunist electoral law introduced a proportional-representation system that established a five percent threshold for a single party, a seven percent threshold for coalitions of two or three parties, and a ten percent threshold for coalitions of four or more parties.

While a system of proportional representation may well succeed in inhibiting extreme political fragmentation within the assembly, it does not ensure the cohesiveness of the parties themselves. In Slovakia, Parliament has experienced an extreme deficit of discipline among party members. Lack of party discipline among the ruling parties, for example, has even led deputies from these parties to vote against their own ministers in no-confidence votes.

Another way weak party discipline hurts the executive branch can be observed in the area of legislation. Bills proposed by MPs are reviewed by the gov-
The government and its Legislative Council. The Legislative Council has the right to decide against recommending passage of these bills originating from Parliament. With a well-developed and stable party system the chances of such bills passing would be minimal. In fluid and unstable systems such as Slovakia's, opposition bills are enacted more easily, as even members of the governing parties end up voting for them.

One cause of the lack of party discipline may perhaps be sought in political culture; but it is also important to notice how rules affect the behavior of deputies. Constitutional provisions such as Art. 73 provide the ultimate justification for lack of party discipline. In a clear break with the political past, Art. 73 provides that deputies "carry out their mandate personally, according to their conscience and convictions and are not bound by any orders." This uncompromising emphasis on the unencumbered mandate no doubt reflects a desire to form a new democracy free from the rigid party discipline that characterized the discredited communist regime. A similar lesson was drawn from the First Czechoslovak Republic, where political parties dominated Parliament and government. In the first republic, for example, in the run-up to elections, candidates had to sign a "commitment" letter in which they promised to vote according to the party line or risk losing their parliamentary seat.

The Constitution furnishes further incentives for deputies to act individually, including the power of interpellation. Not all such incentives have a constitutional status, however. The Act on Legislative Procedures, for example, provides deputies with an opportunity to defy party leaders and break party ranks. It allows deputies to defect freely, cross party lines, and form new parliamentary caucuses. The only significant requirement for the formation of a parliamentary caucus is the existence of five willing deputies. When there is no legal or parliamentary sanction against such lack of discipline, it may be unrealistic to expect party solidarity. In Slovakia, where the rules endorse and even encourage such behavior, cabinet stability may be virtually impossible.

The parties, needless to say, have been trying to circumvent the rules in practice, first and foremost by their treatment of deputies who defect or fail to vote the party line. In this attempt, political parties are using the electoral law to their own advantage. Political parties play the major role in nominating candidates for elections to the legislature, as prospective candidates must secure a place on a party list in order to run. Parties prepare lists of candidates and submit them to the electoral commission in each district. Although candidates need not be party members, the trend since 1990 has clearly been toward a decline in nominations of "independent" candidates on the party slate. It is now unusual for parties to include such candidates on their lists. Parties rank candidates in order of preference. In voting for a party, a voter must either accept the party's top choices, or specifically select four other names on the ballot. Unless the voters are specially intent on voting for a particular person, or unless a lower-listed candidate is well enough funded to conduct his own campaign, chances are that the party's highest ranked candidates will be elected. The crucial role of political parties in candidate nomination was confirmed in interviews with deputies elected in the 1992 election: over four-fifths of those interviewed (and two-thirds of the legislature was) stated that they were either members of a party or that a party had specifically requested them to place their names on the ballot.

Parties have also begun monitoring their deputies and overseeing their activities in Parliament. Deputy performance in voting, general participation, work on committees, and activity on the floor are regularly reviewed. This review is designed to assess deputy performance so that the party can decide whether or not to support the deputy in the upcoming elections. In a pre-electoral effort to secure cohesiveness, parties have also reportedly asked their candidates to sign letters of "commitment." Unlike the homonymous practice of the interwar period, however, these "commitment letters" have not been enforceable. Recently, MDS leaders have tried to impose party discipline in ways they believe they can enforce, admitting that MDS deputies have made commitments to compensate the party financially should they defect (see EECR, Slovak Update, Vol. 4, No. 2, Spring 1995).

Parties have also made an effort to build parliamentary institutions that will encourage party discipline. A Politicke Gremium, or Political Consultative
Body, has been established as a forum for leaders of the parliamentary parties to discuss political problems and facilitate voting. Although the intention of this institution is to control agenda setting and create parliamentary order, its effectiveness may be limited, because its decisions are not binding on deputies.

There are even some preliminary signs that these efforts to impose party discipline are beginning to succeed. For example, party control over appointments to the executive branch seems to be growing. Voting on committees, moreover, has increasingly become party-line voting. Party members themselves seem to desire greater discipline. In interviews, deputies tend to claim that the party’s national leadership exercises decisive influence on party policy, and consequently, on positions taken by deputies in Parliament.

The establishment of a broad coalition government in March 1994 led to the creation of a nonparliamentary institution which made it easier for the executive to deal with the legislature. This Coalition Council was a mechanism for mediating between the differing opinions of coalition parties on legislative proposals. It facilitated support for governmental proposals in Parliament and introduced an element of predictability into the executive’s relations with the assembly.

Other causes of disillusionment

Slack party discipline and the debilitation of the executive by the legislature have led to a situation of parliamentary uncertainty and ineffectiveness. This confusion at the top, in turn, has caused high levels of popular disillusionment.

But there are also other major reasons for widespread distrust of the political process. One is Parliament’s obvious inability to put a damper on corruption. Consider the example of MP inquiries. The substance of these inquiries reveal that a major function of this institution is to facilitate MP participation in privatization projects. Debates in Parliament and scandalous stories in the mass media have chronicled several attempts by deputies to influence ministerial decision making about privatization projects. The questionable influence trafficking of deputies has even extended to getting relatives involved in privatization. Nepotism in the allocation of state assets shows the crying need for effective conflict-of-interest legislation. No conflict-of-interest bill has yet been passed, however.

Another example of corruption concerns the salaries of deputies. Parliament has the power to fix deputy salaries. In 1993, the National Council voted to increase its members’ salaries and benefits to a level five times the national average. In a situation of transition, marked by a decline in the standard of living, this was a very controversial decision, and became an issue, although a minor one, in the 1994 electoral campaign.

Deputy incompetence is another source of public disillusionment. Floor debates demonstrate the modest level of the deputies’ professional and political skills. Whereas some important bills dealing with significant economic and social reforms have not elicited much debate and were quickly adopted, other bills, such as those relating to symbols of the nation and ethnic issues, have been subject to strong disagreements and vituperative exchanges. Disputatious behavior has contributed to the fall of public support for Parliament from 70 percent in 1990 to 30 percent in 1994.

Another example of professional incompetence is legislative drafting. Deputies, of course, have the power to submit bills for consideration. In 1994, 27 percent of all bills proposed were submitted by members of Parliament. Because they do not have legislative staffs and legal support, however, the quality of this legislation has been distressingly low. After many complaints about this problem, Parliament established an Office of the National Council, meant to provide deputies with the necessary legislative staff.

A related problem is a palpable lack of interest on the part of some parliamentarians in the work of Parliament. Complaints have been voiced about deputies not showing up for parliamentary meetings. One might imagine that chronic absenteeism is due to outside interests or extraparliamentary careers. Many deputies, however, report that their seat in the assembly is their only occupation. Perhaps an alternative explanation can be sought in the significant turnover among representatives and the concomitant lack of political experience. In the 1992 and 1994 elections, 50 percent and 41 percent respectively of parliamentary seats were won by newcomers. In the 1994 elections, this high per-
centage was partly a result of the tactics of the parties which formed electoral coalitions to maximize election gains. The participation of new groups, such as the AWS, which gained new seats, also helps explain the massive turnover. Many of the new deputies rarely speak in the sessions, and they seldom participate in the legislative process by, for example, submitting proposals for legislation.

The Slovak Constitution and the Act on Legislative Procedures clearly favor Parliament over the executive, and have therefore had a decisive impact on the course of Slovak politics. At the same time, even under the current rules, stability seems within reach, as is shown by the observable trend toward increasing party discipline. The political class, in any case, has often failed to abide by the rules in place and this procedural laxity has given parties such as the MDS a justification for proposing a presidential system (see EECR, Slovak Update, Vol. 4, No. 2, Spring 1995), instead of developing and improving institutions compatible with parliamentary democracy, such as party discipline. Some further conditions for retaining a parliamentary system, and avoiding a flight into presidentialism, might include an elite settlement, reflected in a new Act on Legislative Procedure or in the formation of a Coalition Council, and the introduction of a constructive vote of no-confidence. It seems inevitable that Slovakia will soon face momentous institutional choices once again.

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Like many other East European legislatures, Romanian's bicameral Parliament has been ineffective, breeding popular disillusionment. The ineffectiveness of Parliament has also had a negative impact on relations with the executive, which is in turn attempting to increase its influence within Parliament by enticing members of the opposition into its own party ranks. One danger of public alienation and executive leverage is the growing power of a single party. Part of the problem can be traced to constitutional provisions governing Parliament and to internal procedural rules adopted by the legislature itself.

The problem of bicameralism

Under Art. 59.1 of the Constitution, both chambers of Parliament are directly elected by the people according to one and the same electoral law. This provision for a monochrome bicameralism, however, was not the original plan of the framers, who, preferring a differentiated bicameralism, wanted to make the Chamber of Deputies alone a directly elected body. The Senate, by contrast, was to represent the counties. One rationale for this distinction was that it specified which decision-making body would resolve all conflicts between the powers. In the event of disagreement between the two chambers, the Chamber of Deputies, because of its greater popular legitimacy, would have prevailed. In this way, legislative delay and deadlock would have been avoided.

The final Constitution called for an undifferentiated bicameralism, however, conferring an identical democratic legitimacy upon both chambers. This unusual choice was partly motivated by the framers' fear that one institution's claim to ultimate legitimacy might permit an excessive concentration of power. Thus, carbon-copy bicameralism was introduced, ostensibly as a mechanism to check authoritarianism, with the two chambers checking and balancing each other.

The equal stature of the two chambers, furthermore, was originally thought to imply that deliberation in each would be of equal value. This lack of any hierarchy between the two houses, it was argued, would lead to greater judiciousness and avoidance of hasty lawmaking. Another argument in favor of undifferentiated bicameralism was that two chambers enjoying popular legitimacy could more effectively counteract the danger of executive aggrandizement than one. This concern surfaced when President Ion Iliescu publicly expressed his preference for unicameralism during the debates over the future constitution. In addition, representatives of minority parties apparently believed that carbon-copy bicameralism would diminish the danger of majority tyranny. Full equality of the two chambers was considered proof of the triumph of democratic principles.

Recent developments, however, have cast doubt over earlier assessments of the virtue of bicameralism in general, and of undifferentiated bicameralism in particular. Representatives of both the governing majority and the opposition have expressed their dissatisfaction with the bicameral system. For one thing, many now recognize that the simultaneous transition from communism to both democracy and a free market economy requires the rapid drafting and adoption of massive amounts of legislation. Bicameralism, however, slows down this all-important process and provides excessive opportunities for dissension and obstructionism. The ostensible advantages of bicameralism, sup-
porters of unicameralism argue, can be replicated simply by having unicameral parliaments go through several “readings” of proposed legislation.

The sole supporters of the current form of bicameralism are ultranationalist and left-wing parties, which benefit from the endless delays that, to their delight, demonstrate the failure of both economic reform and parliamentarism in general. The majority party, the Party of Social Democracy in Romania (PSDR), unable to implement its new political and economic program, has been the premier victim of bicameralist procrastination and paralysis. Though the governing party has powerful reasons to want to change the current bicameralist formula, alteration seems impossible. Any such radical change would require reconsideration of the Constitution, and all parliamentary groups concur that this would be a risky experiment under current conditions. Thus, the parliamentary groups continue their futile discussions, while the two chambers obstinately seek to render each other powerless.

Admittedly, the Constitution provides two mechanisms for resolving tensions between the chambers: the mediating mechanism and the provision for convening in joint session (both in Art. 76). In the event of deadlock or inability to agree upon the context or wording of a bill, the chairmen of the chambers may request the formation of a mediating commission, the composition of which is governed by the internal regulations of each chamber. The commission then submits its negotiated document to the two chambers for their approval. Both chambers must independently approve the compromise bill.

If mediation fails, according to Art. 76.2, the matter is referred to a joint session. (Art. 62.h, in a sweeping clause, permits joint sessions to be held to “discharge other duties, in accord with the Constitution or the bylaws.”) But joint sessions should be reserved for consideration of matters of grave national emergency, and it therefore seems awkward to resort to this mechanism to resolve routine political crises.

The awkward coexistence of the two chambers is further demonstrated by the absence of any set procedures for handling legislation and coordination between the chambers. As a result, the two chambers often obstruct each other’s work by producing vastly different bills or resolutions that purport to deal with the same problem. Bills passed by one chamber do not get priority consideration in the other. Similarly, no precedence is given to bills the government considers particularly urgent.

The function of committees
One way of making the legislative process more effective would be to give legislative committees some power over the drafting of legislation. Instead the rules governing committee activity and the political practice that has evolved around them have helped make committees ineffective. Committee activity now has a strong political flavor, is marked by delay and inefficiency, is an impediment to the executive, and is a means for personal gain.

Art. 61.5 of the Constitution holds that “parliamentary committees are formed in accord with the political configuration of each chamber.” This might suggest that a majority in Parliament will also have a majority on every committee, in which case one might expect at least some efficiency in the legislative process. Other rules, however, undermine this outcome.

Although internal regulations of the chambers require deputy participation in committees (e.g. Art. 43 of the Senate Regulations), they also prohibit deputy or senatorial participation on more than two committees. Depending on the number and importance of committees and on the political process of appointment, the majority on some committees may consist of members of the opposition. Two important examples of this phenomenon are the Senate’s committees on privatization and on employment and social protection. One consequence has been substantial delay in the legislative process.

The Senate Committee on Privatization is headed by a member of the Party of Romanian National Unity (PRNU), an ally of the ruling party. When the executive submitted a draft of the privatization law, this committee simply suspended any consideration of it, floating instead its own very different project. This new project was defeated in the plenum. Despite this defeat, the committee succeeded in foil-
ing the executive by delaying any decision on privatization. The result is that economic restructuring, a goal shared by almost every political party, is for all practical purposes blocked.

The high stakes involved in privatization fuel disputes over the process, as parliamentary groups turn privatization legislation into a permanent electoral campaign. Different parliamentary parties realize that their respective political capital very much hinges on the success or failure of reform. This is one reason why the economic and privatization committees have attracted so much attention. Debates on these committees reflect the serious differences separating the majority and its putative allies in Parliament. The entire process also reveals the opposition's inclination to vote against major reforms merely to block government initiatives. Current parliamentary rules give free rein to the political parties' opportunism in this context.

A second example concerns the Committee for Employment and Social Protection, which is headed by a member of the opposition Civic Alliance Party (CAP). The majority initially wanted to let the opposition run this committee, hoping that the public would then hold the opposition responsible for increasing unemployment and declining standards of living. Subsequent events, however, have revealed this to have been a miscalculation, since the government has now been forced to coordinate its policies with those of the committee. When the government submitted unemployment legislation, the committee tried to attach many amendments to it. As a consequence, the entire effort failed. The cabinet then presented a second proposal which incorporated some of the committee's ideas. The committee, however, opened itself to suggestions from private citizens and associations. As a result, unions, organizations of war veterans, women's groups, and pensioners' organizations have begun communicating directly with the committee, thereby circumventing the executive.

The increasing social tensions and nostalgia for the communist social safety net has forced the government to become more accommodating to the committee's requests. In fact, because of the sensitivity of the situation, this is probably the only committee with which the government works harmoniously, promptly answering requests and observing "audience hours." The entire situation is paradoxical: the opposition, which heads the committee, is right-wing in its ideology, but is forced by its position on the committee and its competition with the government to support socialist policies. The government, which is social democratic, is forced by the IMF and the World Bank to initiate market-oriented reforms. Although the government and the committee are searching for a compromise, this example nicely illustrates the anomalies engendered by the combination of committee formation practices and political competition between the majority and the opposition.

Even when the majority has complete control over a committee, effective committee performance is not guaranteed. Lip service is paid to the importance of consensus on the committees. On several occasions, however, committees have presented two different and diverging reports on the same topic, because representatives of the majority and the opposition could not agree on a final version. These disagreements have also paralyzed legislation.

In cases where a committee does reach internal consensus, its work may be undermined when the bill is brought to the floor. Unlike plenary sessions, the proceedings of permanent committees are closed to the public. This closed-door rule enables committee members to deliberate in an unconstrained and nonideological fashion, to develop a rapport with one another, and to work more efficiently in reaching an agreement. As a result, on a few bills, such as the foreign investment law and the war veterans' law, committees submitted reports favorable to the opposition's position. The vote in the plenum, however, tends to be dominated by the majority, where party discipline is more effectively enforced, so much so that even committee members who had previously voted one way in committee, have changed their vote in the plenum.

Gains within committees, therefore, are often lost when bills are brought to the floor. Even though house rules explicitly prohibit rediscussion in the plenum of amendments approved or rejected by committees, this rule is often ignored.
The result is that the plenum debates a greater number of amendments than do the committees.

Rule infringement is also a feature of the committees' relation to the executive. If the government has initiated a dialogue with a committee, such as the Committee on Employment and Social Protection, it is probably because of political necessity. In general, the executive is reluctant to cooperate with committees. Even committees enjoying a good relationship with the executive complain about limited access to official information, since they cannot even ask individual ministries for essential statistical data. Article 110.1 of the Constitution requires the government and other organs of public administration to provide requested information to committees. In practice, however, the government ignores this provision, feeding committees insufficient or irrelevant information.

When summoned by the committees—even in instances where presence is mandatory because the summons has been issued three days in advance—members of the government tend not to show up, dispatching officials of lower rank instead. Parliamentary committees have no legal means by which to enforce a summons or to compel the executive to cooperate. Understandably, the government prefers to confront legislators when they meet in plenary session, where it enjoys majority support. The government's readiness to bend and break rules is thus partly a response to the procedures governing committee formation, which allow the opposition to control some of the committees. Given governmental tactics, the committees, although formally assigned a central role in legislation, are almost wholly unproductive.

Parliament may also set up special commissions dedicated to a single task. Article 61.4 of the Constitution stipulates that “each chamber...can set up investigative commissions or other special commissions.” Parliament has recently made increasing use of this power, primarily for politically sensitive matters. Commissions have been formed to investigate everything from scandals in sugar importation to incidents relating to former King Mihai's attempt to enter Romania. Attempts to use this power have had negative consequences, however, and in many ways have undermined the separation of powers and heightened tensions between Parliament and the executive.

Two examples will illustrate this pattern. One is the senatorial commission set up to investigate the crimes of December 1989, and the other is the parliamentary investigative commission established to inquire into official acts of corruption. The first of these commissions, which has already had two different chairmen and is currently headed by a member of the opposition, has failed to observe its report deadlines. It blames its tardiness on the uncooperativeness of institutions in the executive branch, such as the police, army, and national security service. While some representatives from these institutions have responded to certain inquiries by the investigative commission, they do not seem particularly eager to examine the past. In fact, the Intelligence Service published a report on the events of 1989 which tried to shift attention away from criminally culpable individuals or groups. After the entry of former Ceausescu supporters into Parliament, a clear tendency to “reinterpret” the events of 1989 also emerged. Under these circumstances, the secrets sought by the commission are becoming increasingly elusive and, as time goes by, chances for discovering the truth diminish.

The idea of commissions to investigate corruption surfaced after the press reported several scandals involving powerful deputies. The majority has been particularly nimble in using such commissions as instruments with which to fight the opposition. The parliamentary minority has refused to sign the commissions' final reports, accusing the majority of protecting criminals. Thus, reports by special commissions are just as likely to be held hostage to intractable disagreements as reports issued by permanent committees.

The most glaring fault of these investigative commissions, however, is that they are interfering substantially with the prosecutorial power of the executive. The activities of investigative commissions have clearly exceeded the proper jurisdiction of Parliament itself. Ironically, even though Parliament is engaged in institutional self-aggrandizement, it is unable to take any concrete action to remedy the problems it investi-
gates. For instance, recent investigations into a corruption scheme involving the allotment of apartments and houses to deputies who already have residences resulted in no charges or indictments being filed. The only result was acute political embarrassment and further popular disillusionment with representative government. Parliament, of course, is institutionally ill-suited to take over the functions of prosecution and adjudication. All efforts in this direction have failed, and have resulted only in a popular perception of parliamentary weakness or complicity in corruption.

**Compatibility and conflict of interest**

Although the Constitution states that deputies and senators may not exercise any “public position of authority” (Art. 68.2), deputies are allowed to serve as members of the government. In practice, this incompatibility provision means only that parliamentarians may not be magistrates, judges, or prosecutors. If a deputy or senator violates the incompatibility rule, he must resign ex officio from Parliament, after which a must choose which position he prefers. In spite of this rule, a senator from the ruling party acted as chairman of the State Property Fund for two years. His own party finally demanded that he give up one of his positions. After he refused, his mandate was suspended.

The compatibility between membership in Parliament and service in the cabinet has prompted some members of the opposition, such as Emil Tocaci of CAP, to demand that incompatibility be declared between a parliamentary seat and service in executive posts dealing with privatization and economic restructuring. This proposal has fallen on deaf ears, however, as the majority coalition, which seeks unbounded control over privatization, is quite hostile to parliamentary incompatibilities.

The compatibility issue also raises serious questions about the private sphere, as sitting deputies are simultaneously able to pursue lucrative private careers. Over 90 percent of parliamentary deputies have a second job, which absorbs time and energy presumably needed for political activities. It is not surprising, therefore, that television broadcasts from Parliament often show virtually empty chambers. One consequence of close attention to outside pursuits is the relatively poor preparation of deputies for their legislative work. The press frequently criticizes parliamentarians for their diletantism and vacuous rhetoric.

Particularly disturbing is the inadequacy of conflict-of-interest legislation. While certain outside careers may not involve conflicts of interest, others, such as engagement in law and business, resoundingly raise such issues. One result of the absence of effective conflict-of-interest legislation can be observed in the change in the personal fortunes of deputies. In addition to the generous salaries they receive for being parliamentarians (many times higher than the national average), many members, especially in the majority, have been able to benefit personally from privatization by becoming owners of land, factories, and other business enterprises. Equally disturbing is the tendency of some deputies to engage in schemes that border on the illegal for getting rich quickly. Given the immunity provisions of Art. 69 of the Constitution, however, it is almost impossible to deter this shady behavior. Article 69.1 states that a deputy or senator cannot be detained, arrested, searched, or charged with a criminal offense without the consent of the chamber to which he belongs. The only exception is set down in the second paragraph’s provision for capital offenses. For institutional as well as political reasons, Parliament will lift a deputy’s immunity only in the rarest of cases.

**Party discipline and deputy independence**

Article 66.2 states that “deputies and senators are at the service of the people in exercising their mandate.” The same article declares that “any imperative mandate is null.” In the context of Romanian politics, this provision has been interpreted very broadly and has therefore led to some instability in the composition of parties and parliamentary groups, since shifting from one club to another is not uncommon. Moreover, the problem of defection poses important questions regarding membership and continuity in the work of committees. The problem of defection is exacerbated by parliamentary rules that do nothing to discourage defection from one’s parliamentary group.

In fact, the majority party has been able to elicit many defections. Given the opportunities
of serving in the cabinet—a consequence of the compatibility rules—some opposition parliamentarians are willing to forget or deny their campaign promises and simply enroll in the majority. Thus, even though the electoral law requires candidates to specify their party allegiance for purposes of the ballot, once elected, deputies justify defection by pointing to Art. 66. The National Liberal Party (NLP) attempted to solve this problem by proposing an amendment to the electoral law such that any defection of a deputy would be grounds for recall from the legislature. The majority, benefiting from defections, successfully blocked this amendment. The opposition has, on other occasions, complained about the pressure which the majority puts on deputies to defect, but to no avail. Finally, the opposition parties have begun to engage in the same practice.

Unable to attract majority deputies, each of the minority parties preys on the other.

Given Romania's one-party past and the lack of development of its political parties, the majority's activities, encouraged by lax compatibility rules and the absence of any mechanisms for enforcing party discipline, may eventually prove dangerous. The majority's control of the executive branch, because of its access to resources and control over privatization, may also turn out to be crucial, not only for gradually disarming the parliamentary opposition, but also for neutralizing Parliament itself. One symptom of such a trend might be an almost casual refusal of the executive branch to respond to constitutionally proper committee requests.

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Belarus

Alexander Lukashuk

The current Supreme Soviet (Parliament) of Belarus is the most stubbornly enduring of all present-day East and Central European legislative bodies. While political turbulence has caused any number of shifts in parliamentary composition in most of the new democracies in Eastern Europe, Belarus’s Supreme Soviet remains virtually unchanged. Elected under strict communist control in February 1990, it survived the 1991 communist coup in Moscow, successfully averted a referendum on early elections in 1992, broke its pledge to relinquish its powers in early 1994, and remains unfazed by the prospect of parliamentary elections scheduled for May 14. Parliament’s seeming nonchalance masks an ongoing struggle by the communist majority to maintain its political grip at any cost. Parliament’s inability to follow a routinized procedure, its flagrant violations of its own rules, and its shameless trail of broken promises has undermined the assembly’s reputation as a democratic institution. The present Supreme Soviet may rightfully be called the major inspiration of popular antiparliamentarism in Belarus.

For a surprisingly prescient description of the current Parliament, one might refer to the 1975 edition of the Belarusian Soviet encyclopedia which, under the heading “Parliament,” states:

“Parliament is progressively falling under the control of the government, which in fact exercises not only executive but also legislative functions; the government possesses legislative initiative, whereas Parliament only approves new laws. Parliament’s power to supervise and call to account is neutralized by the government.” “A deputy is regarded as the representative of a nation, not of a constituency, and is therefore independent of the voters.” “Parliament creates an illusion of popular representation but, in reality, only serves to sanction decisions by the executive.” Indeed, the key word for understanding the legislative branch in postcommunist Belarus is “illusion.”

The illusory nature of Parliament is clearly visible in the behavior of its members. According to a certain vice speaker, the major obstacle to adopting the new March 1994 Constitution was the inability to assemble a quorum, as several meetings had to be canceled because a majority of deputies simply did not show up. Although deputies were often caught red-handed voting for absentee colleagues, no one was ever punished and voting results have never been reviewed. In order to avoid a precedent for premature resignation of deputies from the Supreme Soviet, moreover, the majority voted to preserve the powers of a deputy who adopted foreign citizenship and emigrated from Belarus—his own application to resign notwithstanding. But, the Supreme Soviet’s proclivity to self-preservation is perhaps best epitomized by its latest ruling: its five-year term will henceforth commence not on election day (as was envisioned in the old constitution) but on the day it holds its opening session. This interpretation automatically prolongs the legislative term by three to five months, depending on the scheduling of new elections.

The soviet-era Parliament was strongly committed to preserving the regime and protecting the interests of the Communist ruling elite. The postcommunist Parliament has kept this venerable tradition alive. The Supreme Soviet managed a painless transition for the ruling elite from communism to postcommunism: power was converted into property. Deputies took great care to protect their personal interests: many obtained free
apartments, bought cars and consumer goods at reduced prices, and received food parcels in times of scarcity (1990-1991).

Another source of antiparliamentarism is mass psychology. Under socialism, people became accustomed to the notion that official rhetoric represented nothing more than ritual. Decisions were made in secret somewhere else by somebody else. The classical parliamentary idea stipulates that a balance be struck between freedom and authority, anarchy and dictatorship. In Belarus, people have experienced neither freedom nor responsibility. They are still not free. The most salient features of today's Belarusian society are the public's limited social experience and extremely low political consciousness. Far from having helped educate and inform its constituency, Parliament has only caused more disinterest. According to numerous polls, voters in Belarus neither rely on nor respect the present Parliament as an institution. This—neither a militarized industry nor an unreformed agriculture—is the principal legacy of the totalitarian past. It was this legacy of antiparliamentarism that secured Alexander Lukashenka, a flamboyant populist, his landslide victory in the first presidential elections of July 1994.

The four seasons of the Supreme Soviet
The Supreme Soviet has passed through four distinct political seasons. The first, from February 1990 to August 1991, was characterized by the Communist Party's total control. The majority occupied all key positions in Parliament and carried out policies dictated by the Party. The previous Supreme Soviet had adopted an electoral law at its last session in late 1989, which established a slightly amended majoritarian system. The law stipulated that, out of a total of 360 deputies, 310 were to be elected by direct elections in constituencies. The remaining 50 seats were reserved for the representatives of four "public" organizations (veterans of war and labor representatives received 29 seats; invalids, the deaf and the blind received the remaining 21). This quota system effectively reserved 50 seats for the Communist Party, since the Party maintained strict control over the organizations in question. The only democratic opposition movement, the Belarusian Popular Front (BPF), was pronounced illegal before elections were held. Despite these and other obstructions, democratic candidates managed to land about 12 percent of the seats. But the biased electoral laws were nevertheless effective: 80 percent of the deputies in the Supreme Soviet represent the communist nomenklatura, appointed by the Communist Party. The rest of the seats were taken by independent candidates.

The second period—which began after the failed coup in August 1991 and lasted until the end of the same year—was a period of democratic revenge. Chairman Mikalaj Dzemjantsej lost his position because he supported the communist coup. The new chairman of the Supreme Soviet, Stanislav Shushkevich, together with Boris Yeltsin and Leonid Kravchuk, signed the USSR's death sentence in Belavezhskaja Pushcha and ratified the CIS treaty. The legalization of the anticommunist opposition in 1990 had produced an explosive effect. Democrats, of course, rejoiced and saw the future through rose-tinted glasses. Though minuscule in number, the opposition forced the bewildered majority to ban the Communist Party, abolish communist state symbols, introduce historically national symbols, and proclaim Belarusian sovereignty. After the coup attempt, the communists renamed themselves, surviving as the "Belarus Group."

The third season was a slow but steady communist restoration lasting from the end of 1991 to July 1994. Led by Premier Vyachaslau Kebich, the majority banned the referendum on early elections, re-legalized the Communist Party, attempted to backtrack on national independence and restore the Soviet Union in some form. The democratic speaker, Stanislav Shushkevich, lost his office to a former regional police chief, Myacheslau Hryb. The communists formed a single party group, a united majority that was able effortlessly to restore its own power. The BPF organized a Democratic Club and, depending on the issue, could count on the votes of up to 70 deputies. But the democratic euphoria of the previous season dissipated as soon as the real distribution of votes became clear. Still, the very presence of an organized opposition has had a decisive effect on the Supreme Soviet's work.
A totalitarian government can function effectively only under conditions of total secrecy; publicity is fatal. And even though the opposition has no vote, it does have a voice. It is only because of this benign publicity effect that one may occasionally use the word "parliament" when speaking about the Belarusian legislative body.

The adoption of the new Constitution in March 1994 and the election of the first president in July 1994 marked the beginning of the most recent phase in the career of the present Supreme Soviet. This last period is characterized by the stupefaction of the majority, whose candidate for president, Kebich, lost to Lukashenka. Quasipolitical organizations sponsored by the former government also collapsed. In September, for the first time in four years, members of the majority gathered for a final session of the Supreme Soviet only to discover that no one intended to instruct them about what to do. With the help of the Constitutional Court, Parliament suddenly turned its attention to rescuing the Constitution from the clutches of an authoritarian president.

Legislation
After the Soviet Union broke up and Belarus proclaimed its independence, the new republic was in need of its own legislation, at least theoretically. In practice, however, the country's reform-averse leadership did not want new legislation any more than it wanted a new financial system or guarded frontiers. (Belarus still lacks both of these and must continue to be satisfied with a quasi-currency and quasi-borders).

From May 1990 to September 1994, the assembly adopted 1371 legislative acts, including the new Constitution. The previous Supreme Soviet, conversely, had adopted only 168 laws and decrees in the course of five years. However, this fantastic surge in productivity does not reflect a rise in technical competence or efficiency. As Shushkevich put it: "Very often, I was struck by the impression that a majority of the deputies simply did not understand what was being discussed. The majority either followed the recommendations of the government or some other speaker respected by them."

When the opinions of communist leaders differ and they can not offer a single clear recommendation, voting becomes grotesque. Nowhere was this more apparent than when the presidency was debated in 1993. Asked to set general guidelines for the Constitutional Commission, 147 deputies voted in favor of a strong president/head of administration, 101 votes were cast for a weak president, and 130 votes were cast against the very introduction of this office. At the time, there were 288 deputies present, which means that up to 90 befuddled deputies voted for two, or perhaps even three, incompatible concepts simultaneously.

It is hardly surprising, then, that many legislative acts are amendments, changes, and corrections of Parliament's own hastily drafted and ill-considered decisions. The new laws, in any case, are very often nothing more than phantasms. Not only do they not work, they were never meant to work. For example, a law on bankruptcy was solemnly adopted, but it has never been applied because there is no such animal as a bankrupt enterprise in a still state-owned economy.

Admittedly, a few counter examples can be cited. Some laws underwent careful scrutiny by international experts and are genuinely well written. But, if a law does not work, it is a sham no matter how sincere or professional were its original authors. The law on Chernobyl (Belarus absorbed 70 percent of the radioactive pollution from the 1986 accident) was widely discussed and unanimously supported by the deputies, but it does not work because the state budget lacks funds to put it into effect. The law regulating exit from the country cannot be implemented because there are no new passports. Something similar can be said about many provisions in the new Constitution itself.

Many citizens of Belarus, including the deputies, look askance at Parliament. They do not take seriously the laws it adopts. Indeed, very few people consider Parliament's laws to be binding.

Rulers of the Supreme Soviet
It is remarkable how a 300-member assembly, meeting in biannual sessions, can manage so thoroughly to ignore its constituency. Moreover, Parliament's ability to act as a representative body is further eroded by the wide range of powers granted to the
assembly's leaders. For four of the five years of its term, the current Parliament was bound by the old communist Constitution of 1978. In line with that document, Parliament was not even a professional body, since a majority of deputies continued to work in their Communist Party offices or serve in the army or the KGB. Only the chairman and his deputies, and the heads of standing committees and their deputies and secretaries (about 20 percent of the members) worked in the Supreme Soviet on a regular basis. As a result, some deputies turned out to be more equal than others, having a greater number of legal rights than their colleagues.

The most privileged deputies remain the members of the Presidium. In soviet political history, this organ was imbued with a very special, almost mystical, significance. Being elected to the Presidium of an ordinary Communist Party meeting provided a major boost to any career; failure to get elected might well be the harbinger of the end of a career or even death. The Presidium of the Supreme Soviet was a traditional soviet-style body. It consisted of a chairman, vice chairmen and heads of parliamentary committees. According to the 1978 Constitution, the Presidium was a permanently functioning body with a wide range of legislative, judicial, executive and administrative powers. Among its many powers, the Presidium had the right to call parliamentary and local elections, supervise compliance with the Constitution, change internal boundaries and divide territories into districts and provinces, annul decrees and resolutions of the Council of Ministers, bestow pardons, grant Belarusian citizenship, and ratify or renounce international treaties. The Presidium was empowered to exercise all of these functions on a permanent basis. No approval by the deputies was required. Moreover, between sessions, the Presidium could, with subsequent ratification at the next session, amend legislation, confirm internal boundary changes and form new territories and provinces, establish and abolish ministries and state committees, and appoint or dismiss members of the Council of Ministers. With such massive powers and only biannual parliamentary sessions, the Presidium was vastly more important than the marginalized Supreme Soviet.

Speakers were even more important than the Presidium. The KGB reported directly to the speaker. He could solve many political as well as technical problems on his own. The influence of the three successive chairmen of the present Parliament varied depending on their relationship to the majority, but even the most professional chairman, Stanislau Shushkevich, was known to abuse his powers and bend or bypass parliamentary procedures.

The real powers of the official rulers of the Supreme Soviet depended on changing political circumstances and personalities more than on formal rules. In general, since 1991, the authority of the speaker and the Presidium has been fading with every passing year. The powers of the speaker and the Presidium were limited by the democratic opposition and by the assembly's sessions, which began to drag on for months. Deputies used their right of access to Presidium meetings and, even though they had no decisive voice in the making of the Presidium's edicts, the threat of publicity and further discussions in plenary legislative sessions did influence decision making.

There also exists an intermediate body between the deputies and the Presidium, the Consultative Council, designed to play the role of a sort of inner auxiliary parliament. This body was to be composed of deputies who worked in Parliament on a permanent basis and it was to convene twice a week, between sessions, to discuss draft bills submitted by the standing committees, and either to recommend their passage or not. This institution did no particular harm and ultimately died of natural causes.

The Provisional House Rules

The majority's self-understanding is actually quite simple. Inasmuch as they are the highest legislative authority in the republic, all their decisions are legal. One reason the parliamentary majority has been a relatively successful player in the political game is that it changes the rules of the game whenever it wants. The Provisional House Rules were
adopted at the first session of the Parliament on May 31, 1991. In September 1991, the charter was amended as often as twice a week and, during the first two years, it underwent a total of seven changes. It is no wonder that many deputies regard parliamentary procedure as a negligible constraint.

No law regulates the work of the Belarusian Parliament. According to the agenda of the last session, such a law was to be discussed. No draft for such a law was prepared, however, making it difficult to follow the procedures established in the Provisional House Rules for the consideration of a draft bill.

Although often ignored, the existing Provisional House Rules do in fact lay down the procedure for adopting laws. A draft bill is to be referred for consideration to the Presidium, along with a description of its basic purpose. The bill’s place in the legal system should be specified and social, economic and other possible benefits of implementation should be explained. In certain instances, the Provisional House Rules also require financial estimates to accompany the drafts. If the Presidium accepts a draft for consideration, it refers it to the responsible standing committee and to the committee on legislation. Standing committees, in turn, form preparatory committees which consider drafts independently or with help from experts. Alternative drafts and private-member amendments are considered at the same time. Committees are free to seek the expertise of any person, body or institution.

In Spring 1990, deputies formed 21 standing committees and a number of ad-hoc ones. Each deputy may work in his or her choice of any two standing committees. (Former parliamentary member Alexander Lukashenka was an exception: he joined no committee.) Candidates for committee chairmanships were chosen by the Communist Party, most of the chairmen being former party secretaries. The Committee on Rehabilitation of Victims of Political Repression was chaired by a police general who started his professional career at the KGB in Stalin’s times and had commanded the dispersion of demonstrators at the graves of victims of repression only a few months before. No women deputies were nominated. Even the Committee on Advancement of Women’s Affairs, Family Protection, Maternity and Child Development was chaired by a man. Noncommunist candidates received only five chairmanships.

Committees are assigned two functions: drafting laws and monitoring the government in their area. Since kolkhoz managers and party secretaries sorely lack familiarity with the legal terms and norms necessary for drafting legislation, 80 percent of draft bills are initiated and prepared by the government rather than by parliamentary committees. In most cases, standing committees copy and present drafts without amendments. For this reason, not much can be said about the controlling functions of the standing committees. About 70 percent of parliamentary deputies also work in the executive branch and are subordinated to the very ministers and other bureaucrats whom they are supposed to oversee. Some heads of committees and their deputies have left their jobs in Parliament and assumed positions as deputy ministers or government advisors. The head of the Planning and Budgetary Finance Committee, Rastislau Unuchka, founded a private bank and became its chairman. Parliament, however, voted to keep him in office. For about a year, this multifaceted deputy supervised the state budget and controlled the National Bank and the Ministry of Finance while simultaneously managing his own bank.

Ad-hoc committees tried to play watchdog to the government, but with little success. Very often, deputies who also sat on investigative committees (these deputies were invariably democratically-inclined) were deprived of information and access to executive meetings, and were unable to publicize their findings. But the work of three ad-hoc committees in particular did attract a great deal of publicity. The first of these, elected at the opening session, dealt with illegal privileges for the nomenklatura. Parliament was briefed on the committee’s report but decided to take no action. The second ad-hoc committee investigated activities of Belarusian officials during the attempted communist coup in August 1991. Its report was also buried by the communist majority. But a third, the so-called “anti-corruption” committee, was effective in
two major ways. First, the majority used the committee's report to oust the democratically-oriented speaker, Stanislau Shushkevich; secondly, the committee chairman, Alexander Lukashenka, gained wide-spread popularity and later defeated Vyachaslau Kebich in the presidential race. (The second outcome, of course, was less welcome to the majority than the first.)

A preparatory committee reports the results of its discussion to a standing committee. The latter considers the draft again in the presence of its author. If the author agrees with the changes and amendments proposed by the standing committee, they are included in the draft; if not, such amendments are considered separately by a plenary session of Parliament. The same procedure is used to settle conflicts between different standing committees.

In order to place a draft bill on the agenda, standing committees must submit it to the Presidium or to the Consultative Council at least one month before the session. The final decision on whether to place the draft on the agenda is taken during the session. This decision is very often politically motivated. For example, the Committee on Mass Media proposed its draft on the media four times and, each time, the majority refused to consider it. Today, Belarus is the only former soviet republic in which the old USSR law on the press is still in effect.

The Provisional House Rules lay down a special procedure for considering the state budget and basic economic and social programs. The Council of Ministers must submit drafts of all such bills two months prior to the session. The standing committees then consider them and submit their conclusions to the Committee on Economic Reform, the Committee on Economic Self-Government, and the Committee on the Sovereignty of the Republic. Conclusions are submitted to the Committee on Planning and Budgetary Finance one month before the session. Deputies are supposed to receive all such documents ten days before the session. These deadlines, however, were missed more often than not. As a rule, moreover, deputies received one-sided information. From a strictly professional or technical point of view, Parliament is much weaker than the government. Deputies have no analytical and research services of their own and, in many cases, have to be satisfied with what the government is willing to let them know.

The Supreme Soviet in transition

The new Constitution adopted in March 1994, describes the new role and powers of the Supreme Soviet. (The majority rejected the proposed historic names “Soim” or “Rada” for the legislature, preserving the name “Supreme Soviet,” which was introduced by the communists in Russia at the beginning of the century. The majority did this despite the linguistic anomaly: “soviet” is a Russian import. The Belarusian word for “council” is “rada.”)

Parliament has now been declared the highest representative and sole legislative organ of state power in Belarus. The new Constitution stipulates that a deputy shall exercise his or her authority in Parliament on a professional basis or, as he or she desires, without taking leave from other industrial, financial or administrative activities. Only MPs working in Parliament full time are paid by Parliament. Since its last session (which started in September 1994), Parliament has been working on a permanent basis. Some deputies have already moved onto the parliamentary payroll.

After the May elections, the new Parliament will consist of 260 deputies (100 fewer than at present). The Constitution provides that any citizen of Belarus who is eligible to vote and who has attained the age of 21 may be a deputy. (The age limit for former Supreme Soviet deputies was 18, identical to the age of suffrage.) The new rules on “incompatibility” mean that ministers and judges are now disqualified from serving as deputies, as is any person appointed to office by the president.

The term of office for both Parliament and the president has been set at five years. (In the view of some observers, this term is too long for the turbulent transition period, guaranteeing that the assembly will drift out of touch with the electorate.) The new Parliament can be dissolved neither by presidential decree nor by a popular referendum. It can only commit suicide, that is dissolve
itself by the agreement of no less than two-thirds of the elected deputies.

Although deputies theoretically supported the new division of power, they parted with their previous rights rather grudgingly. In comparison to the old Constitution, the new charter significantly limits the powers of the chairman and the Presidium. The chairman chairs sessions, supervises the preparation of questions to be considered, and directs the work of the parliamentary bureaucracy. The Presidium, composed of a chairman, two vice-chairmen and other deputies, sets the agenda of parliamentary sessions. Without specifying the number or character of standing committees, the Constitution stipulates that Parliament is to elect the standing committees and other bodies for legislative drafting, preliminary consideration, and preparation of questions within parliamentary jurisdiction, and to supervise the implementation of laws.

It is obvious that Parliament has usurped some of the powers formally assigned to the Constitutional Court and the executive, even if the article of the Constitution describing the rights of the assembly ends with the following vague sentence: “The Supreme Soviet may decide other questions in accord with the Constitution.”

Strictly speaking, the future has arrived (the Constitution has been in effect since March 1994). Belarusian legislators, however, prefer loose rather than strict schedules. The Supreme Soviet still uses the Provisional House Rules as a guidebook. According to the Constitution, new procedures shall be determined by standing orders of the Supreme Soviet and by other legislative instruments. The new assembly to be elected in May will have to determine if Belarus is to accept or reject its future.

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Workshop in St. Petersburg
The Ford Foundation supported a seminar on the future of the Russian Constitution, organized by the Moscow branch of the Center and held in St. Petersburg on March 23-24. Participants in the workshop, besides a diverse group of lawyers, judges, procurators, professors, and politicians from the St. Petersburg area included Gadis Gadzhiev, Stephen Holmes, Andrei Kortunov, Marie Mendras, and Inga Mikailovskaya.

Moscow Roundtable
The Legal Program of the Moscow Center, the Open Society Institute, and the MacArthur Foundation supported a roundtable on the Russian Electoral Law. At the meeting held on January 28, 1995, two problems were discussed: the problem of legislative regulation of elections and the system of electoral laws for federal offices. The meeting included Michail Arutuinov, Vladimir Chetvernin, Gadis Gadzhiev, Oleg Kayunov, Leonid Kirichenko, Michail Krasnov, Anatoly Kovler, Vladimir Lisenko, A. Lyubimov, Leonid Mamut, Inga Mikhailovskaya, Vladimir Nikitin, Alexey Postnikov, Victor Sheynis, Alexey Sobyanin, Yuriy Vedeneyev, Vladimir Vinogradov and Boris Zolotukhin.

Budapest Conference
The Center will sponsor a conference in Budapest to be held on June 18-19, 1995, on the cost of rights. The conference is meant to launch a three-year comparative research project, sponsored by the National Council for Soviet and East European Research, organized by the Center and directed by Stephen Holmes and Andras Sajo, on the way drastic budget constraints and general impecuniousness, on the one hand, and administrative incompetence, disorganization and corruption, on the other hand, present massive though not necessarily insurmountable obstacles to the institutionalization of basic rights in postcommunist societies. Judge Richard Posner will be the keynote speaker.

Conference in Dorygny/Lausanne, Switzerland
On April 10-12, 1995, in conjunction with the Center, the Swiss Institute of Comparative Law (Director, Professor Pierre Widmer) and the Forum Europe (of the University of Lausanne, represented by Professor Roland Biebert) sponsored a European cologneum titled, L'espace constitutionnel Européen. The colloquium was held in French, German, and English. Topics discussed included: the necessary functions of a constitution, the elements of a constitution, constitutional guarantees, procedures for amending a constitution, and a common constitution for Europe. A general question that emerged during the conference concerned whether there was one form of European constitutionalism developing on the continent or whether different countries have distinct and unique conceptions of constitutionalism. One of the liveliest debates took place between Robert Badinter, president of the French Constitutional Court, and Joseph Weiler, professor of law, Harvard University, over their conflicting notions of French and American constitutionalism. The Center sponsored the participation in the conference of Leszek Garlicki, Gabor Halmai, Ewa Letowska, Wiktor Osiatynski, and Dwight Semler.

Parliament Articles
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