

**TITLE: EAST EUROPEAN CONSTITUTIONAL REVIEW
WINTER 1995**

**AUTHOR: STEPHEN HOLMES, EDITOR in CHIEF
UNIVERSITY OF CHICAGO LAW SCHOOL**

**THE NATIONAL COUNCIL
FOR SOVIET AND EAST EUROPEAN
RESEARCH**

TITLE VIII PROGRAM

1755 Massachusetts Avenue, N.W.
Washington, D.C. 20036

NCSEER NOTE

The quarterly journal East European Constitutional Review, is published by the Center for the Study of Constitutionalism in Eastern Europe at the University of Chicago Law School, and has been delivered by the Editor in Chief to the Council under contract 808-05 for reproduction and supplementary distribution to its readers who are not on the Center's subscription list. Readers who already receive a copy directly from the Center are requested to notify the Council (202)387-0168.

PROJECT INFORMATION:

CONTRACTOR:University of Chicago

PRINCIPAL INVESTIGATOR:Stephen Holmes

COUNCIL CONTRACT NUMBER:808-05

DATE:February 1, 1995

COPYRIGHT INFORMATION

Individual researchers retain the copyright on work products derived from research funded by Council Contract. The Council and the U.S. Government have the right to duplicate written reports and other materials submitted under Council Contract and to distribute such copies within the Council and U.S. Government for their own use, and to draw upon such reports and materials for their own studies; but the Council and U.S. Government do not have the right to distribute, or make such reports and materials available, outside the Council or U.S. Government without the written consent of the authors, except as may be required under the provisions of the Freedom of Information Act 5 U.S.C. 552, or other applicable law.

** The work leading to this report was supported in part by contract funds provided by the National Council for Soviet and East European Research, made available by the U. S. Department of State under Title VIII (the Soviet-Eastern European Research and Training Act of 1983). The analysis and interpretations contained in the report are those of the author.*

East European Constitutional Review

Volume 4, Number 1

Winter 1995

DEPARTMENTS

- 2 **Constitution Watch**
Country-by-country updates on constitutional politics in Eastern Europe and the ex-USSR.
- 36 **Special Reports**
Jon Elster on the velvet divorce; Interview with Bronislaw Geremek; Vadim Sobakin and Boris Strashun respond to Sergy Pashin; Venelin I. Ganev on the minority parties in Bulgaria; and Edward Walker on Russian federalism.
- 81 **Constitutional Review**
Shlomo Avineri on J.F. Brown's *Hopes and Shadows*.
- 87 **From the Center**
Conferences in Chicago, Ekaterinburg and Moscow, Russian language Review and acknowledgment of support.
- 88 **To the Center**
Skopje or Macedonia?

FEATURE

RIGHTS AFTER COMMUNISM

- 61 **Introduction** *Cass R. Sunstein*
- 63 **The Ombudsman and Basic Rights** *Ewa Letowska*
The first ombudswoman in Poland explains how constitutional rights have started to shape the political landscape.
- 66 **Women's Rights in Eastern Europe** *Kim Lane Schepple*
A pyrrhic victory for women's equality in Eastern Europe.
- 70 **Constitutional Rights in Russian Public Opinion** *Inga Mikhailovskata*
How well do Russians understand their rights?
- 77 **Trial by Jury and the Rights of the Accused in Russia** *Stephen Thaman*
Presumption of innocence and the privilege against self-incrimination.

Country-by-country updates on constitutional politics in Eastern Europe

Constitution Watch

Albania

During the final months of 1994, Albanians attempted to approve a draft constitution and organize a referendum for its ratification.

In September, the Constitutional Commission met to change the composition of its working group, naming to its ranks the prime minister, the minister of justice, the chairman of the Constitutional Court, the legal advisor to the president, one MP from the opposition Socialist Party, and one expert. Except for the latter, these members were taking part in the working group for the first time. The opposition stated that the disproportionate representation of the governing Democratic Party (DP) violated the established rule that the working group would consist only of specialists. The token SP representative stopped attending the working group's meetings after the first few sessions.

The primary task of the new working group was to resolve disagreements that had arisen in the Constitutional Commission over the status and competence of the Constitutional Court, the making of constitutional amendments, and the manner of approving the new constitution. Relying principally on existing laws, the working group worked quickly to draw up a new draft constitution. The working group presented its draft to the Constitutional Commission, which, on September 29, voted to approve it, without making any changes.

The draft was criticized because, among other things, it did not assure a genuine separation of powers. It gave broad powers to the president, but did not establish an independent and strong judiciary. The president's influence on the newly formed working group of the Constitutional Commission as well as on the High Council of Justice (of which the president is chairman) was clearly reflected in the draft.

According to Art. 16.2 of the "Constitutional Laws of the Republic of Albania," Parliament may adopt a new constitution only with an absolute two-thirds majority voting in favor. Given that the president's ruling DP does not control the votes required to adopt the draft, it was unlikely that Parliament would adopt a constitution conferring so much power on the president. During a press conference, therefore, President Sali

Berisha declared that the Commission's draft had to be approved by a constituent assembly, composed of an equal number of MPs and members of District Councils.

All opposition parties, including the parties that had once been in coalition with the DP, called the president's proposal a violation of the currently valid "Constitutional Laws of the Republic of Albania." Members of the opposition and jurists concurred that the president's procedure for adopting the draft could be set in motion only if Parliament, by a two-thirds vote of all deputies, first relinquished its right to approve the constitution and then transferred the right to a constituent assembly. Furthermore, the opposition stated that a constituent assembly must be directly elected by the people. They claimed that the inclusion of District Council members in the assembly contravened international practice. In addition, they stated that the views of Council members no longer reflect those of the electorate, given the political changes that have occurred since the July 1992 elections. This was considered equally true of Parliament, which was elected in March 1992 and cannot speak for the new groups and political interests that have arisen during the past three years.

Facing mounting opposition, Berisha offered a second procedure for adopting the constitution: direct voting by the people through referendum. He called this the "most democratic" way of adopting the constitution. According to Art. 28.3 of the constitutional law, the president may propose referenda, but the decision to hold one is reserved for Parliament. Relying on the argument that Parliament had not relinquished its right to approve the Constitution, the opposition reiterated that the president's by-passing of Parliament violated existing constitutional law.

Despite criticism from the opposition, the president was determined to hold a referendum on the draft, and proposed a new draft "Law on Referenda" to Parliament. The opposition argued that Art. 5 of the draft law (which states that only the president has the right to propose referenda) was unconstitutional because the right must be shared: "the legislative initiative belongs to the president, the Council of Ministers, and every deputy" (Art. 23 of the "Constitutional Laws of the Republic of Albania"). The president's proposed law would

strip the legislative initiative away from all but the president. Nevertheless, Art. 5 of the draft law was approved by a majority vote, which prompted the opposition to pick up and leave the session, alleging that the DP majority had in effect amended the constitutional law through ordinary legislation. The remaining 37 articles of the draft law were approved on October 6. The voting, however, had been conducted in the absence of a quorum, as the opposition had walked out on the vote. Berisha nevertheless promulgated the "Law on Referenda" the following day and the law was published in the *Official Journal*. On October 11, the president announced that a popular referendum would be held on November 6 to approve the draft constitution.

The opposition mounted a slash-and-burn attack on the president's violations of the constitutional law. They characterized the president's by-passing of Parliament not only as a violation of constitutional law, but also a usurpation of legislative authority. They added to their criticism of the president by pointing to the economic crisis created in Albania as a result of the implementation of DP's radical reform and privatization policies. Without analyzing the content of the draft, the opposition characterized it as a presidentialist constitution with a weak judiciary unable to protect rights.

The president defended both the referendum and the draft constitution. Accompanied by members of the DP leadership and government ministers, he toured the country to promote his plan.

The Socialist Party (SP) and the Social Democratic Party (SDP) petitioned the Constitutional Court to review the constitutionality of the decision to hold a referendum for the direct approval of a draft constitution. They also asked the Constitutional Court to annul the "Law on Referenda," on the grounds that it was approved in the absence of a quorum (only 63 deputies were present, while 71 are required for a quorum).

The chairman of the Constitutional Court usually designates a member of the Court to study a question presented and to set the date for its adjudication. But, the chairman took no such action on the opposition's petition. Shortly before the November referendum, three members of the Constitutional Court, considering the inaction of the chairman incompatible with the proper behavior and responsibility of the Court, submitted their resignations.

When put to a vote, the draft constitution failed by a considerable margin. Eighty percent of the population participated in the referendum, and only 41 percent of the participants voted in favor of the draft.

Due to the dramatic failure of the referendum, unity in the ranks of the DP began to flag. DP deputies are now divided between those who support the president and those who oppose him. A day after the referendum results were announced, the chairman of the DP stated that the vote against the draft constitution should serve as a lesson for the DP, spurring it to make necessary improvements in its future

activities. Among other things, he indicated that the fight against corruption would be one of the principal areas to which the DP and the government would now direct their attention.

Several newspapers have suggested that, by focusing on a fight against corruption, the president is looking to settle old scores with his opponents. Recently, the president has sought to attack the former minister of finance, Genc Ruli, and the former minister for problems of local government, Rexhep Uka (both DP deputies), for allegedly taking part in a corruption scheme regarding the sale of a stockpile of wood from walnut trees that had been blocked by the financial police pending verification of documents. The general prosecutor requested that Parliament lift the immunity of these deputies so that further investigation could be conducted. Part of the DP parliamentary group blocked this request, arguing that the evidence presented against the two deputies was insufficient for stripping them of immunity. At a press conference, the former minister of finance explained that he had already been investigated twice on these charges, and in both cases the matter had been closed because no evidence of corruption had been found.

The split in the DP was also reflected in the "Borzi" case, (referring to Zed Borzi, chairman of the Court of Cassation, Albania's highest ordinary court), which has a direct bearing on the highly sensitive issue of judicial independence. At the end of December, the general prosecutor asked Parliament to lift the immunity of the chairman of the Court of Cassation in connection with an order of the latter to release from prison a Greek citizen conducting business in Tirana (according to Art. 6, para. 4 of Chapter VI of the constitutional laws, "a judge of the Court of Cassation may be removed from his office only on the basis of a reasoned decision of the People's Assembly when proved that he has committed a serious crime, specified by law, or when he is mentally disabled"). The Greek citizen had been charged by the prosecutor with possession of drugs (unprocessed leaves of *canabis sativa*) and placed under house arrest. The district court of Tirana sentenced him to four years in jail. The Court of Appeal affirmed the district court's verdict. He then appealed to the Court of Cassation, which found many violations of investigative procedure by both the police and the office of the prosecution, casting doubt on the veracity of the facts contained in the file. The three-judge panel of the Court of Cassation decided to reverse the lower courts' decisions and to return the case to the office of the investigator for further inquiry.

The chairman of the Court of Cassation sent a summary of the Court's decision and an order releasing the defendant to the prison authorities. In its decision, the Court had not specifically addressed whether the defendant should be released while additional investigations were being conducted. Thus, when requesting that Chairman Borzi's immunity be lifted, the general prosecutor referred to the order as illegal and accused him of abuse of office. Parliament refused this request,

asking the general prosecutor to present additional documents and explanations at a suitable later date. Simultaneously, several members of the ruling Democratic Party asked the Constitutional Court to interpret the right of Parliament to strip judges of the Court of Cassation of their immunity.

Many newspapers named the president as the source of this attack on the chairman of the Court of Cassation. The friction between the chairman and the president surfaced most clearly during the campaign for adopting the constitution by referendum. In a television program discussing the draft, the chairman of the Court of Cassation criticized several of the constitution's provisions regarding the judiciary and asked that they be improved. No changes were made, however. The chairman of the Court of Cassation also criticized the president's conduct during the referendum campaign, claiming that the president was not permitting the people to decide freely. He also criticized the overwhelming politicization of the whole process.

On January 13, six judges of the Court, in a letter sent to and read in its entirety on Albanian television, characterized the chairman's release of the Greek citizen as illegal and contrary to procedural regulations in force. The chairman responded with a press conference the next day, attacking these judges and others who had criticized him. Meanwhile, the Court's decision regarding the case initiated by members of DP was finally announced on January 19: the Court confirmed that Parliament may lift Borzi's immunity.

The case of the five individuals of Greek descent, representatives of the "Omonia" organization, who were convicted last September on espionage and weapons charges (see *EECR* Volume 3, No. 3/4, Summer/Fall 1994), has made its way through the appellate process and is now pending before the Court of Cassation. In October, the Court of Appeals affirmed the convictions by the District Court of Tirana, but reduced the sentences slightly. A general amnesty and sentence-reduction law enacted in commemoration of the fiftieth anniversary of Albania's liberation at the end of WWII further reduced the sentences by one-fourth, and one of the prisoners has already been released. A hearing of this case by the Court of Cassation has been scheduled for February 8, with the panel to include the chairman. It is widely believed that the case brought against the chairman was designed to intimidate him and to prevent him from finding the defendants in this case innocent or granting them a new trial.

While it was expected that, by way of amnesty, a number of leaders of the prior regime would be released (including Fatos Nano, the chairman of the SP), this did not occur. The opposition SP indicated that the amnesty had failed to bring about the broad national reconciliation that Albania has desperately needed since 1991, when the democratic movement began.

Several trials concerning corruption and financial scandals involving prominent political officials began last quarter. Of particular importance is the "Arsidi" case. Nicolas Arsidi,

a French businessman, was named an advisor to the Albanian government in 1991 for matters related to foreign debt. He was entrusted with \$1.6 million, which has since disappeared. A number of Albanian State Bank officers, including its governor general, were arrested in 1993 in connection with this case, and their trial is now proceeding in the District Court of Tirana. The trial has thus far revealed that many politicians and other high officials knew about the transaction with Arsidi. The trial is expected to continue at least until mid-February.

On the legislative front, at long last, a new civil code was enacted in Albania on November 1. Seminars have been organized in several cities in the country, with the participation of judges, lawyers, and others who have a role in its implementation, to explain its content. During the first session of 1995, Parliament will consider a number of other important codes, such as the Criminal Code, the Code of Criminal Procedure, and the Labor Code. Some jurists have suggested that the approval of these codes should not commence until after the approval of the new constitution. The first session, opening on January 16, began with a discussion of the constitution, but it is difficult to say at this point what Parliament's priorities will be.

Belarus

The developing crisis over presidential power is the preeminent feature of the current constitutional process in Belarus. Already beset by economic failure, Belarus is now witnessing increased friction between president and Parliament, as well as a crackdown on mass media critical of the president. In other developments, the Constitutional Court handed down its first decisions, and the Supreme Soviet (Parliament) started its final session and set the date for the next parliamentary elections.

During the first 100 days of Alexander Lukashenka's presidency, an anticrisis program was proposed by a heterogeneous group of experts. The program envisaged the reduction of the monthly inflation rate—from 50 percent in August to ten percent by the end of the year—a reduction of the state deficit, an increase in industrial output, and price liberalization. This market-oriented program contrasted sharply with Lukashenka's earlier electoral promises. Although many criticized the anticrisis program as being inconsistent, Parliament approved it, without, however, granting the president the additional implementing powers for which he had asked.

No sooner was it launched than the program suffered a powerful blow from its "father." The liberalization of prices had barely begun when Lukashenka, returning from a two week stay in Russia where he had received medical treatment, fiercely demanded that prices be lowered. In a television address to the nation, he declared that those guilty of allowing price increases not only face dismissal from their posts, but also arrest. Although prices of milk and bread were temporarily

lowered, the president's action also caused the IMF to delay its \$308 million loan to Belarus.

Other program targets, such as cutting inflation, stabilizing the Belarusian currency, and limiting the decrease in industrial output, have not been fully achieved. Despite Lukashenka's pro-Russian position, Gazprom cut gas supplies to Belarus several times, demanding payment for past services. General deterioration in state-owned industries continues and agriculture remains unreformed.

The president introduced amendments, later adopted by Parliament, to the "Law on Self-Government." According to this proposal, the primary level of soviets—in villages, settlements, small towns, and rayons within cities—should be abolished. A local administration should replace these soviets and their executive bodies. Powers of representative and executive bodies in the provinces should be separated. These two bodies used to be headed by one person. Now the position of soviet chairman and chairman of the executive committee should be separate. In order to form, as he put it, a presidential power hierarchy, the president received the right to appoint the latter group of officials directly.

On the initiative of 85 deputies, however, the Constitutional Court reviewed the proposal and ruled that abolishing the primary level of representative power was unconstitutional. The president then accused the Constitutional Court of meddling in politics. The tension, however, did not last. The primary soviets were reestablished, and the president's right to nominate governors and mayors was confirmed. Having no team of his own, Lukashenka appointed former figures of the communist nomenklatura to the new positions.

Parliament rejected Lukashenka's candidate for chairman of the Constitutional Court. Professor Valery Tsihinya, a former Communist Party secretary and minister of justice, is now acting chairman. The Court handed down a number of rulings on outdated legislation that did not conform to the new Constitution. It curbed Lukashenka's attempt to bring under his direct control all state and parliamentary property, and it agreed to consider a number of appeals regarding other presidential decrees. Having demonstrated a certain independence, the Constitutional Court is now becoming an influential actor in Belarusian politics.

At its sixteenth and final session, the Supreme Soviet adopted a number of legislative acts, including laws on elections, on political parties, and on the status of deputies. The "Law on Deputies" guarantees such lavish privileges to acting and former members of Parliament that it has triggered criticism from both the president and the democratic opposition. The deputies set the date for the next parliamentary elections for May 14, 1995. Attempts to introduce a mixed proportional-majoritarian electoral system failed. Two hundred sixty deputies must be elected by a direct vote of 50 percent plus one of all registered voters in a constituency. Given the population's general political apathy and its wan-

ing confidence in any and every authority, this requirement, according to the head of the Central Election Commission, Alexander Abramovich, may delay the opening session of the new Parliament until September 1995, or perhaps beyond.

The end of the year witnessed a growing number of political scandals. At the beginning of December, the Belarusian KGB strutted its stuff. Two Turkish diplomats were accused of espionage and expelled from the country. The Procuracy issued a warning to two Belarusian journalists who had allegedly attempted to hand off classified economic information to the diplomats. (Belarus still has no law on state secrets.) Ankara froze diplomatic relations with Minsk and canceled all pending negotiations and visits. The KGB also accused unnamed Polish citizens of espionage; the charge was repeatedly denied by the Polish Embassy.

Deputy Prime Minister Viktor Hanchar, an intellectual instrumental in Lukashenka's election, resigned, criticizing the president for failure in leadership. He then accused Lukashenka's close aides of manipulating the president and of exploiting their positions for personal advantage. Hanchar also charged the president with accepting illegal campaign contributions.

In the second half of December, a member of the parliamentary opposition, Syarhei Antonchyk, delivered a report to Parliament on corruption in the president's administration and the government. The report caused a political storm. Two top presidential aides and the minister of defense announced their resignations. Lukashenka did not accept these resignations and launched a violent counterattack against the mass media. When the daily *Sovetskaya Belorussiya* attempted to publish the report, Lukashenka ordered it to refrain from doing so. The newspaper substituted blank columns for the report. The next day, three popular dailies, *Sovetskaya Belorussiya*, *Zvyazda*, and *Respublika* were similarly published with blank columns: the most popular, *Narodnaya Hazeta*, failed to come out. All copies of the independent weekly *Gazeta Andrey Klimova*, which managed to print the report, were seized. More than a week later, another independent weekly, *Svaboda*, printed the report outside the country and smuggled 100,000 copies into Belarus.

The Supreme Soviet adopted a resolution calling for the president to punish those guilty of introducing censorship, and the Procuracy started its investigation. Parliamentarians also voted to remove the head of the Belarusian National Television and Radio Company, Ryhor Kisel, from office for biased coverage of parliamentary sessions. The final decision regarding his removal, however, rests with the president.

In his televised address to the nation on the first day after Christmas, Lukashenka accused Parliament and particularly the opposition of undermining stability and aggravating the country's economic crisis. Referring to the proposed 1995 state budget, he warned that extraordinary measures would be used unless the Supreme Soviet reconvened before

the end of the year to vote on the budget. The Supreme Soviet reconvened on December 29 and approved the budget on the first reading.

The first week of the new year saw the dismissal of Ihar Asinsky, editor-in-chief of *Sovetskaya Belorussiya*, on charges of financial abuse. The editor of the daily *Respublika*, Mikalay Kernoha, was also fired. The Belarus Publishing House, the largest state owned publishing facility in Minsk, canceled its contracts for printing four independent newspapers critical of the president. All of these developments promise a hot political winter.

Bulgaria

Since September, governing institutions have been strained by three simultaneous developments that have also stirred up intense public controversy: efforts to encroach upon the independence of the judiciary, appointments to the Constitutional Court, and attempts by Parliament to amend the Constitution.

The stage was set for the first development by the Act on the Judicial System, passed by the National Assembly in July 1994. This law was a centerpiece in the Bulgarian Socialist Party's (BSP) strategy. Since the beginning of 1993, when this Communist Party successor entered the governing majority, the BSP has persistently tried to pass a bill on the judiciary. Once passed, the law was simultaneously submitted to the Constitutional Court by three state authorities on different grounds. The attorney general argued that the enactment of the law violates clause 4 of the "Transitional and Concluding Provisions of the Constitution" ("the organization of the judicial branch of government established by the Constitution shall come into force following the passage of new structural and procedural laws within the term established by Paragraph 3 of Clause 2" [a year from the Constitution's coming into force]). The president challenged Art. 16 (1) of the bill—which established rather stringent eligibility requirements for members of the Supreme Judicial Council (a constitutionally established organ for the self-government of the judiciary)—and paras. 8 and 11 of the final and concluding provisions, which allowed for the dismissal of judges, prosecutors, and members of the Supreme Judicial Council, who do not have at least five years experience as judges and/or prosecutors (that is, who did not serve in those positions under the communist regime). Sixty MPs appealed seven articles and four paragraphs of the bill, the most essential of which was Art. 22, violating the constitutionally defined five-year mandate of the Supreme Judicial Council and the Supreme Court (see *EECR*, Bulgaria Update, Vol. 3, No. 3/4, Summer/Fall 1994).

On August 11, the Court denied the appeal of the attorney general by a tie vote of six to six and, as a result, the act came into effect. The paradox of this decision is that the new court system was created prior to the adoption of pro-

cedural laws specifying how courts should function. Consequently, Bulgaria now has two parallel court systems: the old courts, which were officially abolished, but nevertheless continue to operate on the basis of existing procedural laws, and the new courts, which were officially established but cannot function until a new procedural code is adopted. It is not immediately clear what the consequences of this confusing situation will be and how the problems it creates will be resolved.

On September 15, the Court denied part of the appeal of the president, but still declared unconstitutional para. 8 and 11 of the final and concluding provisions of the law. As a result, the new eligibility requirements will not have retroactive force and hence cannot be used as a basis for dismissing judges, prosecutors, and members of the Supreme Judicial Council. In effect, this decision bars parliamentary majorities from indirectly removing troublesome members of the judiciary by tinkering with eligibility requirements.

On September 30, the Court declared unconstitutional four articles and one paragraph of the law, while the rest of the deputies' appeal was overruled. The substantial result of this third decision was that Parliament was denied the power to remove judges "if they violate the ethical and professional rules of the profession." Thus Parliament's opportunities to interfere with appointments to the Supreme Judicial Council were curtailed, and the five-year mandate of the Supreme Judicial Council and the Supreme Court was reaffirmed.

Trying to counteract the September 15 Court decision, the communist-dominated Parliament quickly elected new members to the Supreme Judicial Council, on the grounds that the decision of the Constitutional Court was not yet published in the *State Gazette* and thus not legally enacted. This irregular re-election of members of the Supreme Judicial Council by Parliament was immediately submitted to the Court by the attorney general, by the president, and by 50 MPs. On November 8, the Court almost unanimously declared the September 16 parliamentary decision unconstitutional. Once again, therefore, the independence of the judiciary was affirmed and an attempt by the legislative majority to exercise direct influence over the judiciary was averted.

The second controversy dominating Bulgarian politics during recent months was related to the Constitutional Court itself. According to the Constitution, each member of the Court is appointed for a mandate of nine years; four of 12 justices are to be replaced in a staggered fashion every three years. Which justices were to serve only three or six years was to be determined by lot. The appointment of four new justices to the Court at the end of 1994 was viewed as a potentially critical event because over the past three years it had become clear that, in regard to some crucial issues, six justices supported the policies of the ex-Communist Party, whereas the other six leaned towards the opposition. The result of the lot-drawing was as follows: one justice appointed by the presi-

dent, one justice elected by the Supreme Court, and two justices elected by Parliament had to be replaced.

The president's choice was Georgi Markov, an anticommunist lawyer who was entangled in a prolonged conflict with the current leadership of the Union of Democratic Forces (UDF). Feeling threatened by the passage of the "Act on Judicial System," the Supreme Court elected Ivan Grigorov, chairman of the Supreme Court, also known for his anticommunist sentiments. Parliament delayed its decision because the governing majority (the BSP, the Movement for Rights and Freedoms [MRF], and centrist oriented split-offs) could not reach an agreement. On October 11, when it became obvious that no party was in a position to form a new cabinet and that, as a consequence, Parliament would be dissolved, the MPs of the UDF, the MRF, and Democratic Alternative for the Republic (DAR, a newly formed coalition of centrist oriented split-offs from the UDF and the BSP) struck a deal. The MRF declared that it was ready to support UDF and DAR candidates in exchange for their support of the proposed amendments to the Constitution. After the two other parties agreed, a vote took place and DAR candidate Todor Todorov was elected. During the vote for a second Justice, however, DAR withdrew its support for the UDF candidate, Dimitr Gotchev. Although the final outcome went in Gotchev's favor, this move effectively ruled out any possibility for cooperation between DAR and its partners. As a result of the induction of four noncommunist justices, the previous "equilibrium" has been replaced by a preponderance of justices unlikely to respond to political pressure from the BSP.

The third important political development could best be described as a chain of events sparked by the cabinet crises that started on September 2 with Prime Minister Liuben Berov's unexpected resignation. The resignation was accepted on September 8, by 219 of 240 MPs. Though dramatic, the cabinet crisis did not last long. In less than two weeks, the BSP and UDF refused to accept a mandate to nominate a prime minister. (The procedure could have taken more than five weeks.) Shortly thereafter, Dimitar Ludzhev, leader of one of the smaller fractions, failed to muster the necessary majority. This failure in effect brought about the dissolution of Parliament.

The prospect of dissolution, in turn, gave rise to a somewhat hectic bargaining process which revolved around several important issues: the date for new elections, the electoral law, and possible amendments to the Constitution. BSP's major concern was that, after the dissolution of Parliament, the president and a caretaker government appointed by him would rule the country without parliamentary supervision. Thus, the separation of powers would not be maintained in the intervening period. Therefore, the BSP offered an amendment stipulating that parliamentary control over the caretaker government should be guaranteed, and that one-fifth of the deputies of the dismissed Parliament should have the power to demand that it be reconvened. Reluctant to tinker with the Constitution, the UDF proposed only a minor

amendment: the deputies' mandates, and thus immunity, would be preserved during the interim, and the president would be obliged to convene Parliament should he decide to declare a state of emergency.

The rules governing a fast-track amendment procedure (by three-fourths of the deputies in three successive ballots on three separate days) were specified, and procedural regulations to that effect were passed expeditiously on September 15. Voting on the constitutional amendment was held on October 14 and the votes were split (79 for the UDF version and 153 for the BSP variant). Neither of the proposals won the required three-fourths majority. MRF then tried to suggest a compromise formula to several UDF supporters: one-fifth of the deputies would have the right to reconvene Parliament, but no parliamentary control would be granted over the caretaker government. Since this arrangement contradicted the regulations for fast-track amendments (all alternative texts were to be proposed within 24 hours after the first vote), the suggested version was not approved. The effort to amend the Constitution came to naught.

The third group to receive a mandate was barely able to form a cabinet without the support of either BSP or UDF. The two big parliamentary parties were obviously aiming at pre-term elections, while the small centrist groupings, formed by UDF and BSP split-offs, were trying to postpone the elections and thus increase their chances for entering the next Parliament. The first attempt by the centrists to strike a bargain came on the electoral law issue. The BSP wanted to replace the existing proportional system with a mixed one, thus increasing the BSP's own chances to win an absolute majority in the next Parliament. The centrists were ready to make a trade-off (delayed elections in exchange for a mixed electoral formula), but the first priority of the BSP (an amendment to the Constitution that would further limit the powers of the president) was unacceptable to Dimitr Ludjev, the favorite centrist candidate for prime minister. The next attempt was initiated by the MRF. Threatened by investigations for embezzlement and corruption, MRF members struck a deal with the UDF and the centrist groupings. They asked for support for a constitutional amendment that would preserve deputies' immunity without limiting the powers of the president. In exchange, as mentioned, they offered to support the UDF and DAR candidates for the Constitutional Court. The procedure for constitutional amendment was pursued and a first vote on the constitutional amendment took place on October 6 (180 votes in favor, while only 160 were needed). Within three days, the deputies had to propose a concrete text of the amendment. The two versions proposed were rather divergent. Meanwhile, on October 12, Parliament rejected the cabinet of Dimitr Ludjev, and on October 18, President Zhelev dismissed Parliament and scheduled new elections for December 18.

Curiously enough, the pre-election strategies of the UDF and the BSP overlapped. Both aimed at maximizing their rep-

resentation in the future Parliament by restricting the chances of the small centrist parties to enter the assembly. The MRF supported this strategy in so far as its leaders were certain that their supporters would never opt for either of the two dominant parties. Therefore, the representatives of the three parties were able to form an unbeatable majority in the Central Electoral Committee, an administrative body authorized to interpret and specify the provisions of the electoral law. When allotting the four basic ballot colors, the Committee clearly discriminated against DAR, a coalition of social democrats, liberals, and ecologists, refusing to give it the color green. (Green was awarded instead to a pro-nationalist coalition supported by the BSP.) The most arbitrary decision of the Electoral Committee concerned national radio and television access. Only BSP, UDF, and MRF were given the right to participate in public discussions. The right of the other three parliamentary parties, formed by split-offs from the major parties, was denied, leaving them no access to the state media. Questions about the constitutionality of these decisions were raised, but any appeal to the Constitutional Court would have delayed the elections and therefore was deemed to violate the Constitution.

The pre-term general elections had two important consequences. First, the BSP won a clear majority—125 seats. Second, a bipolar party model (the BSP vs. the radical anti-communist opposition UDF, with the Turkish MRF in a swing-vote position) was replaced by a five party Parliament including two parties with more centrist platforms: the Popular Union (a coalition of the Democratic and Agrarian parties) and the Bulgarian Business Bloc.

Czech Republic

The issue of minority rights has been at the forefront of recent events. More specifically, the citizenship law was a principal source of controversy this fall. The Constitutional Court

upheld the law in September, rejecting a petition by a group of 46 opposition deputies objecting to several provisions, including one that requires Slovak applicants for Czech citizenship to prove the lack of a criminal record for five years preceding their application. This provision has been called the "Gypsy clause" because of its selective impact on the Republic's Romany population, many of whom were born on Czech territory, possess Slovak citizenship, and have criminal records, mostly as a result of engaging in petty theft. The governing coalition parties defended the law, and President Vaclav Havel has said that its problems are "a matter of practice rather than law." International organizations, however, have continued to criticize the law. Representatives of the Council of Europe, the European Union, the United States Congress' Helsinki Committee, and the Conference on Security and Cooperation in Europe have all urged that the law be changed.

In early November, the Coexistence political movement criticized the law on local elections, claiming that it discrimi-

ates against minorities by violating their constitutional right to use ballot lists and print election announcements in their native languages. The Ministry of the Interior responded that the law was constitutional because Czech was the Republic's official language. Financial concerns, moreover, do not permit the printing of multilingual election documents. In 1990, Coexistence had convinced the government to print election texts in Polish for some north Moravian districts. Similar attempts in 1992, however, were unsuccessful.

In early November, Parliament passed a law entitling victims of Nazi persecution to compensation of 2300 crowns (\$100) for each month they were imprisoned or detained. The law explicitly states that such payments should not prevent further compensation from the German government which, as the successor state to the Third Reich, is responsible for Nazi actions. In December, however, the Czech Federation of Jewish Communities criticized the government's program for restituting Jewish property seized during World War II and the Communist era, saying Jewish groups had to plead with the government before it finally acted to promulgate the law.

The Constitutional Court has repeatedly postponed consideration of the Dreithaler case (see *EECR*, Czech Republic Update, Vol. 3, No. 3/4, Summer/Fall 1994). Dreithaler, a Sudeten German, and his lawyer had appealed to the Constitutional Court for the restoration of his property and a nullification of the Benes Decrees. The Court was supposed to announce its decision in September 1994. At last report, a decision will be handed down in January 1995.

Although the Constitutional Court received 1200 petitions in 1994, it handed down only 59 decisions. Cases involving individual rights and security, including both social welfare and public safety, have attracted especial attention. The Court held against an opposition petition for a ban on night-time work by pregnant women and mothers of children less than one year old, ruling that such work was legal under the Constitution, the Charter of Fundamental Rights and Freedoms, and international agreements. The Court did not consider legally applicable the 1990 revised convention of the International Labor Organization, which forbids women to work at night. The Court further reasoned that denying women the right to schedule their own work would be discriminatory.

On December 21, the Czech Association of Trade Unions called a 15-minute general strike to protest changes in the retirement benefits law contemplated by the Klaus government. The strike call was largely ignored. The government wants to increase the retirement age, currently 60 for men and 56 for women, by two years over the next ten years. It argues that demographic developments, that is, low birth-rates, make it impossible to maintain the present retirement age. Trade unions argue that the policy is misguided because Czechs have a shorter life expectancy than people living in highly industrialized countries.

On October 13, the Constitutional Court ruled in favor of a petition to strike down paragraphs 55 and 74 of the criminal code. The laws will remain in force until March 1, 1995.

at which time Parliament is to revise the paragraphs. One of the targeted sections concerns anonymous testimony, an amendment passed in the autumn of 1993 in response to the soaring crime rate. This provision forbids the publication of grounds for arrest in cases where witnesses seek protection through anonymity. The Court accepted Left Bloc representative Jaroslav Ortman's argument that this and the paragraph restricting complaints against prolonged detention violated the Charter of Fundamental Rights and Freedoms and infringed on the rights of the accused.

Though the overall crime rate in the Republic fell in 1994, the first drop since the end of Communism, the number of racially motivated crimes increased. For example, rates of murder, rape, robbery, car theft, and pickpocketing in Prague all declined in the first eleven months of 1994 compared to the same period in 1993. In October, however, the Ministry of the Interior announced that the number of racial attacks in the country had risen from 55 cases, in all of 1993, to 94 cases in only the first seven months of 1994. The Ministry stated that there was no need to take special measures or to increase the penalties for racially motivated crimes, but it announced that such cases will in the future be prosecuted not only under the relevant criminal statutes, but also under laws that prohibit fostering repressive movements and encouraging national and racial hatred. In September, a Prague court sentenced Josef Tomas, who was convicted of promoting racial hatred and defaming the Czech nation, to seven months suspended imprisonment. In 1992, Tomas had published anti-Semitic materials in a journal which he edited. In December, reflecting the continuing problems in relations with the Romanies, a court in Pisek sentenced two skinheads to a mere year in prison for deliberately causing a Gypsy to drown. A poll taken in the same month revealed that nearly half of all Czechs would like stricter laws to be applied to the Romanies than to the rest of the population.

Right-wing extremist violence broke out sporadically in the autumn. Members of the AR-CRP (Republican party) disrupted a memorial service at the former Nazi camp at Terezin. The party also staged a demonstration in Prague on October 28, the anniversary of the founding of the First Czechoslovak Republic in 1918, symbolizing its continued objection to the split-up of Czechoslovakia. The demonstration ended in clashes between Republican skinheads and anarchists from the Antifascist League. The police intervened, but the violence resulted in several injuries and arrests, including serious injuries to TV NOVA reporter Marek Vitek. This disturbance prompted Liberal National Socialist Party president Pavel Hirs to call on Premier Vaclav Klaus to disband the AR-CRP. Hirs claimed that the party "continually threatens the democratic order in the Czech Republic." Klaus refused to petition the Court for such an order, stating that, although he did not like the Republicans, the Czechs had lived too long under a repressive government to outlaw a political movement.

Concerns about excessive use of force by the police continue. On October 13, German motorist Markus Rankel

died in a Prague hospital as a result of wounds received during a clash with the police on October 9. He is the second German to have been shot dead this fall by the police in connection with traffic and parking violations. The police maintained that Rankel was shot accidentally, but some reports suggested otherwise. Investigations into the matter cleared the police from any wrongdoing. Investigators concluded amazingly that the standard-issue guns used by Czech police have defective triggers that may sometimes cause accidental shootings.

On October 26, Stanislav Novotny became the third police director to be dismissed since the office was established four years ago. Minister of the Interior Jan Ruml announced that the main reason for Novotny's discharge was his attempt to create an "independent" Ministry of Police. Novotny had made sweeping personnel changes that had been criticized by some coalition members of Parliament and by the opposition. Novotny's firing was strongly denounced by Czech anti-Communists, as he was one of the last remaining Czech dissidents to serve in such a high position, and was generally considered incorruptible. The 1994 decrease in crime rates has been attributed to Novotny's personnel changes, especially to his firing of the allegedly corrupt Prague police chief, Pavel Hofman, who is said to have ties with the Helbig brothers (see below).

Conflict between government branches and politicians continued. Although a bill proposing the deletion of the Senate provisions from the Constitution was defeated in the House of Deputies in September, plans for finally convening the Senate have yet to yield any results. In his traditional New Year's address, President Havel urged the political parties represented in Parliament, and the Assembly of Deputies as an institution, to "fulfill" their constitutional mandate by passing the electoral law needed for convening the Senate. He also underscored the importance of territorial reform so that "larger self-administrative units" may be established (see *EECR*, Czech Republic Update, Vol. 3 No. 3/4, Summer/Fall 1994).

A proposal by President Havel to deliver a State of the Nation address to Parliament sparked a debate over defining the powers of the different branches of government. After Havel announced his planned speech, Premier Klaus objected that the Czech system does not provide for regular speeches by the president to Parliament. The Constitution, however, affords the President the right to address Parliament at will (Art. 64.1). Unlike Havel, Klaus has been reluctant to address the deputies. In response to repeated opposition requests, however, Klaus finally agreed on October 31 to address Parliament on his government's record. He did so at the beginning of the budget debate.

On December 21, Havel returned two bills passed by Parliament. One bill was the new regulation on administrative fees, to which the president objected because it subjected even humanitarian and charitable organizations to such fees. The other bill provided new licensing rules for architects.

The Assembly, however, overrode the President in both cases during a hastily summoned session between Christmas and New Year's Day.

Controversy over the extent of constitutional immunity for parliamentary deputies broke out in the wake of Ladislav Blazek's traffic violation on November 22. A CDP deputy who was allegedly driving while intoxicated, Blazek refused to submit to a breathalyzer test, citing parliamentary immunity. Anna Roschova, fellow CDP member and chair of the Parliamentary Immunity Committee, condemned Blazek's behavior and proposed an amendment that would prevent parliamentary immunity from covering personal misdemeanors.

Several political scandals have also received public attention in the past few months. In September, Pavel Safr, editor of a Prague newspaper critical of the government, accused CDP leaders Vaclav Klaus and Petr Cermak of ordering his removal. Both men denied the charges. But a former Klaus advisor publicly resigned from Klaus's party, stating that he was opposed to the party's interference in media affairs, suggesting the charges were credible.

In October, Cermak was cited for failing to report, as parliamentary deputies must, the receipt of all gifts with a value exceeding 500 crowns (\$22). Cermak had used, free of charge, a Mercedes Benz automobile provided by Helbig, a German-owned Mercedes Benz dealership, and he had neglected to declare this perk on his tax return. While still federal minister of the interior in 1992, Cermak placed lucrative orders for limousines with the Helbig dealership. The case is controversial because both Bavarian and Czech authorities have issued arrest warrants for the Helbig brothers, owners of the dealership, on charges of tax fraud. Cermak has defended himself from conflict of interest charges by insisting that he would recuse himself from the parliamentary debate on the case and not attempt to influence the assembly's decision in this matter should it ever come up. In response to this controversy, at the CDP congress in December, Libor Novak replaced Cermak as executive deputy chairman.

In the biggest scandal, the Director of the Coupon Privatization Center, Jaroslav Lizner, was arrested on October 31, and charged with corruption for accepting a bribe of over 8 million crowns (\$300,000) in connection with the privatization of the Klatovy Dairy. The affair has cast a pall over the second wave of coupon privatization and threatens to harm international perceptions of the integrity of the Czech economic transformation. Klaus, however, boasts that the privatization program has been "a huge success," although he admits that the Lizner scandal was "very unpleasant." In a poll taken in December, 40 percent of respondents believed the voucher privatization program had been harmed by the scandal.

The results of polls conducted by STEM show that unending scandals are beginning to affect the popularity of individual politicians. Between July and October, Antonin Baudys's popularity fell 18 percent, and Petr Cermak's, 10

percent. Other politicians who have suffered in public opinion polls include Health Minister Ludek Rubas (because of irregularities related to the privatization of the Na Homolce hospital in Prague) and Minister of Agriculture Josef Lux (because of discontent with an agricultural policy widely held to favor cooperative farms and to oppose honoring restitution claims).

The government will soon submit to Parliament new bills dealing with non-profit organizations and money laundering. The bill on non-profit organizations will require such organizations to spend money left over at the end of the year on official activities, will exempt them from certain taxes, and will grant them partial income tax relief. The bill on money laundering would require financial institutions to report unusual transactions to the Ministry of Finance.

On January 13, Deputy Prime Minister and CDA chair Jan Kalvoda charged at a press conference that the BIS (Czech counterintelligence service) was spying on political parties represented in Parliament, thus violating the law. The charges were denied by Stanislav Devaty, the (provisional) BIS director. Though he did not produce hard evidence to prove the charges, Kalvoda stated he would forward some circumstantial evidence to the relevant parliamentary committee. Shortly thereafter, CDU-CPP chair Josef Lux raised similar charges.

The two parties represented by Kalvoda and Lux have been in the spotlight for several weeks in connection with loans they received from dubious banks. The CDA was able to repay its Kc 52-million election campaign debt with the help of Antonin Moravec (now under arrest), the director of the Credit and Industrial Bank, and a member of the Association of Christian Entrepreneurs. The Lux party had also received loans from this bank. Moravec was involved in privatization projects involving real estate in areas where Soviet occupation forces had been stationed. Thus, the Czech intelligence services might naturally have been interested in him, as CDP deputy Tomas Fejfar has also admitted. Kalvoda and Lux's charges have been widely interpreted as attempts to divert public attention away from the parties' financial irregularities. The matter has been referred to the Defense and Security Committee of Parliament.

These charges have put a strain on the governing coalition seventeen months before the next general elections. The four parties in the cabinet met on January 16 to discuss the charges; it seems however, that the coalition is not under a serious threat, after all. The coalition partners seem to have decided that it is in their best interests to remain united.

The Czech Association of Trade Unions began discussions with some political parties, particularly with the CDU-CPP, about nominating candidates for Parliament from union ranks. Union Chairman Richard Falbr announced that the unions would like to see between six to eight union members in Parliament. The Civic Democratic Alliance (CDA) is also considering offering places to union representatives, and even Civic Democratic Party (CDP) leaders have agreed to offer places to union representatives who are also members of the

party. CDA president Jan Kalvoda, however, does not think that his party will field union candidates, and he also believes it unlikely that the unions will form their own political party.

Independent candidates (running individually and in associations) gained roughly half of all municipal council seats in local elections held on November 18 and 19. The CDU-CPP gained 12.4 percent of the seats, the largest share of any party. Premier Klaus's CDP gained the largest share of the popular vote (28.7 percent), but only 11 percent of the seats.

Estonia

During the autumn, Estonia's political life was in a state of limbo, in part because the nation's attention was diverted to the "Estonia" ferry disaster, but primarily as a result of a six-week effort to replace the two-year old right-of-center government of Prime Minister Mart Laar, dismissed by Parliament in late September. The November appointment of former Environment Minister Andres Tarand to head a non-partisan interim government allowed the country's main political parties to gear up for the scheduled March 1995 parliamentary elections. The continuing territorial dispute with Russia, another outstanding political issue, was kept in the public eye by a high-profile visit from President Boris Yeltsin to the Estonian-Russian frontier. Movement on this and other questions, however, is unlikely until after the March elections and after a new government takes office.

Having steadily lost support in the Estonian Riigikogu (Parliament), Prime Minister Laar was finally ousted on September 26, by a 60 to 27 vote of no-confidence. Defections from Laar's own Pro Patria party during the summer had already left the government in an untenable position. Events came to a head in early September, when both of Laar's moderate coalition partners, the Social Democrats and the Rural Center Party, called on him to resign. Their principal complaint concerned Laar's suspicious handling of the sale of more than 2.2 billion Russian rubles withdrawn from circulation after the country introduced its own currency, the kroon, in June 1992. The Laar government had consigned the sale in October 1992 to a Finnish-owned company, Maag Oy, known to have close contacts with Laar's Pro Patria party. The sale of 1.46 billion rubles by Maag later reaped some \$1.9 million for the government. But to whom the rubles were sold and what commission Maag received from the deal remain unknown. Pointing to the absence of a written contract with Maag, opposition politicians also claimed that the rubles were worth much more than \$1.9 million and that the state had been defrauded. Although the Estonian State Controller has initiated an investigation, it is still unclear what charges, if any, will be brought.

The calls for Laar to step down, however, were not immediately heeded, as leaders of the various parliamentary factions could not agree on a suitable replacement for the 34-year old prime minister. Once the no-confidence vote was finally initi-

ated by the Royalist faction, however, it passed handily. The selection of a new candidate for prime minister, however, did not follow. While opposition members of the Center Party pushed for a grand coalition to rule the country before the elections, the right-wing parties sensed they could patch together a new coalition, still strongly committed to market reforms, but without Mart Laar at its head. After consultations with President Lennart Meri, they finally settled on Siim Kallas, chairman of the Estonian Central Bank, as Laar's successor. Kallas's successful role in promoting the country's currency transition, as well as his reputation for tight monetary policies, had earned him popularity as a strong manager.

In an address to Parliament on October 13, Kallas pledged to continue Estonia's promarket reforms, which had produced a remarkable turnaround in the economy since 1992. Perhaps sensing that Kallas might be too strong a prime minister in the run-up to the March parliamentary elections, many factions refused to support him. The final Riigikogu vote went against him, 40 to 55. The failure of Kallas's nomination prompted the opposition to call for early elections. However, President Meri soon nominated Andres Tarand, environment minister under the Laar government, as a new candidate. Tarand was viewed as sufficiently neutral for the prime ministership. A member of no party, he promised to make no major changes in the cabinet line-up, and to refrain from undertaking any controversial initiatives in the remaining five-months. After reaching an agreement with the previous government's main coalition partners in the Riigikogu, Tarand won a 63-1 vote of confidence on October 27.

With the government now in place, Estonia's main political parties proceeded to mobilize in earnest for the coming elections. Although his failed bid to become prime minister was a political setback, Siim Kallas launched his own political party, the Reform Party. This promarket party, based on a group of business leaders known as the Taxpayers' Union, soon received a merger offer from the small Liberal Democratic Party. Former Prime Minister Mart Laar's Pro Patria Party signed up for an electoral coalition with Kallas, which the National Independence Party also seemed ready to join. This new grouping represents a reconstitution, under a different leader, of the old right-of-center block that won the 1992 elections.

In the center, former Prime Minister Tiit Vahi's Coalition Party was still leading in public opinion polls. Former President Arnold Ruutel, who had led the country to independence in 1990-1992, was also staging a comeback, forming his own rural party in late September and promising an electoral coalition with Vahi. Another figure to emerge was Soviet-era Prime Minister Indrek Toome. His prospects dimmed suddenly however, when he was arrested on November 28 for attempting to bribe a police official in Tallinn.

In sum, the entire governmental crisis of autumn 1994 appears to have been caused by anxious pre-electoral jockey-

ing for advantage. Because party coalitions akin to those of 1992 have begun to form, however, there are now grounds for hope that Estonia's party system is finally settling down.

Many political decisions are on hold until a new government can take office in March. Estonia's relations with Russia remain vexing. On November 23, Russian President Boris Yeltsin made a highly publicized visit to the Estonian-Russian frontier at Kunichina Gora (southeast Estonia), where he rejected Estonia's claim to some 2000 square kilometers of territory ceded to Russia in 1944 under pressure from Stalin. After three years of being criticized for slow-motion troop withdrawals from the Baltic states, Russia is now attempting to turn the tables by raising the border issue, sensing that David will eventually have to compromise with Goliath. At a time when Estonia was in no position to negotiate (given the government turmoil), Yeltsin could afford an audacious trip to the border to boost his domestic image as well as to accuse Estonia of being the trouble-maker. Officials in Tallinn responded with a statement that the trip did not help improve the two countries' relations; but they did not pursue the matter further.

Because of the political turmoil, almost no major constitutional controversies were addressed during this period. The one exception was the debate over whether certain provisions of the defense law vetoed by President Meri on November 16 were constitutional. In this case, Meri questioned an article in a defense law giving peacetime command of the army to the government and not to the head of state. According to the Constitution, the president has the right to refuse to sign laws with which he disagrees, and to send them back to the legislature for review. (Article 107 of the Constitution states that the president may refuse to promulgate a law within 14 days of receiving it, but his veto may be overridden by a simple majority of the Riigikogu.) The law, however, had already been vetoed once by Meri in October and had now been passed a second time by the Riigikogu. Members of Parliament argued that, in order to deal with natural disasters or threats to internal security, the government should have operational command of the army. Thus, Meri, as required by the Constitution, referred the dispute to the National Court, which has the final say on Constitutional matters. Since 1992, President Meri has vetoed some 17 of 351 laws passed by the Riigikogu.

In its final decision on this case (issued on December 21), the Court declared the law unconstitutional. First, concerning President Meri's claim that the law did not accord him full command of the defense forces in times of crisis (as is provided by Art. 78 of the Constitution), the Court stated that, when commanding the armed forces for military activity during peace time, the government cannot constitutionally "by-pass" the supreme commander of the armed forces (i.e., the president). At the same time, the Court continued, the government is in charge of executing foreign and domestic policy and, to the extent that the use of the armed forces is always a political

decision, such decisions cannot "by-pass" the government. Ultimately it seems, the Constitution points in different directions on this issue. The Court, therefore, decided to rule in favor of both sides, supporting the president on the letter of the Constitution and the government on the practical question. Some kind of *modus vivendi* may be worked out over time on this issue. Otherwise, further intervention by the Court will be required.

The Court had other reasons for striking down the law, for it also objected to a provision regulating the use of the armed forces during crises in peace time. Specifically, the law mentions such possible crises as natural disasters, an outbreak of infectious disease, the liquidation of armed terrorist groupings, or situations requiring the "safeguarding of internal state security." In the Constitution, use of the military in the latter two situations is permitted if a state of emergency is declared. The Court asked whether the other two situations would also justify the use of the military when states of emergency are declared. Here, the Court then raised the issue of civil rights protection and how it might be affected by enlarged government powers during a state of emergency. Given the absence of any law governing the scope of states of emergency and their relationship to civil rights, the Court objected to the defense law's providing for the possibility of a state of emergency in cases of natural disasters and outbreaks of infectious diseases.

Another decision issued on December 21 concerned a government decree from July 1992 and a parliamentary law from May 1993 on former Soviet military property. In July 1992, the government established new conditions for transactions concerning former Soviet military property in Estonia. Subsequent controversy however, led the Riigikogu in May 1993 to cancel all deals, rental agreements, and contracts concluded for use of that property. The Tallinn District Court on October 19, 1994 struck down both the objectionable parts of the decree and the law in its entirety as a violation of property rights and the right of people to use the property at their disposal. Regarding both the decree and the law, the lower court stated that the government and Parliament had retroactively changed the terms of property ownership, something that only courts could legally do. The Constitutional Court then ruled that the parliamentary law was unconstitutional, for it retroactively changed and therefore violated property rights. The government decree, by contrast, was declared constitutional because, the Court reasoned, the Estonian state is the owner of all former Soviet military property, and therefore the government has the right to parcel out such property as it sees fit.

It is unclear what practical effect this ruling will have on particular deals that have been closed concerning former Soviet military property. This ruling specifically addressed the particular way in which the property issue was handled and how Parliament may have slightly overstepped its bounds. The property issue has been politically controversial because it has been widely reported that many Russian businessmen cut

all kinds of shady deals for the rental and use of Soviet military property before the army decamped in 1994.

In the meantime, Estonia's constitutional structure received harsh assessment from the country's legal chancellor, Eerik-Juhan Truuvali, in an annual report to Parliament in October. The legal chancellor, who is responsible for giving preliminary constitutional rulings on legislative proposals, said that many laws, rights and procedures prescribed by the Constitution (adopted in 1992) have yet to be fully spelled out or enacted. In particular, he mentioned procedures for bringing criminal charges against the president or government and statutes regulating the declaration of martial law. Truuvali called the situation one of growing "legal nihilism" and urged legislators to pay more attention to international legal standards in their work.

Hungary

On December 11, 43 percent of the electorate went to the polls to vote in local elections. In all, 2896 mayoralities and 15,441 municipal and regional council positions were filled. Turnout was up three percent from 1990, when local office holders were last selected. As a result of the modification of the "Act on Local Elections," both mayors and representatives of the city councils were elected directly. This has resulted in a political configuration where most mayors must govern with opposition municipal councils. At present, many mayors and local councils are working to forge relatively formal, lasting agreements to serve as a framework for governing. Absent cooperation between parties at the local level, effective local government may prove difficult because many local operations require the consent of both mayor and council. For example, at present, many municipalities are in the process of selecting a deputy mayor. This requires the nomination of a candidate by the mayor and approval by the council.

The most publicly visible candidate in the local elections was undoubtedly incumbent Budapest mayor Gabor Demszky. An outspoken and well known figure in the democratic opposition, Demszky is an important member of the Alliance of Free Democrats (AFD). Until dual office-holding was temporarily outlawed in Hungary, Demszky served both as a member of Parliament and as mayor of the capital.

The resounding winners in the local elections were the independent candidates. Independents won 15,000 offices, including 2,573 mayoralities. The Hungarian Social Party (HSP) won 1,614 seats with 107 mayors. With only 608 offices and 55 mayoralities, the Alliance of Free Democrats (AFD) relinquished some of the considerable influence it won at the local level in 1990.

The Hungarian Democratic Forum (HDF), together with the Christian Democrats (CD) and Free Democrats (FD), combined to gain a significant voice at the local level with a mayor in each of the 22 local districts. The Small Holders Party (SHP), in combination with the Hungarian

Truth and Life Party (HTLP), were quite successful as well, building a coalition that gave them seven seats on the 66-member Budapest City Council.

Minority group local elections were also held in more than 650 localities, establishing 300 minority governments. (For a discussion of the national minority law of 1993, see *EECR, Hungary Update*, Vol. 2, No. 3, Summer 1993.) The lasting influence of these electoral districts remains in question because the Constitutional Court has yet to rule on the constitutionality of electoral districts where only minority-group members may cast ballots.

The run-up to local elections brought one of the most divisive issues of the quarter to Parliament. One of the first acts of the new Socialist-Free Democrat (HSP-AFD) super-coalition was the modification of the rules governing local elections (Act 62, 1994). The electoral formula was altered to provide for single-round, direct election to all local offices, including mayors, and municipal and local councils. Under the previous formula, offices were filled in multiple rounds where mayors were elected by the local councils and local councils were elected by electoral delegations. Opposition members bitterly opposed alteration of the formula, arguing that the September 30 amendment to the electoral rules unfairly came into effect during the campaign for the December 11 local elections. Only coalition MPs voted on the act and many members of the opposition walked out of the chamber while ballots were being cast.

The issue of local office-holding also made its way onto the docket of the Constitutional Court when the Court reviewed the compatibility rules contained in Act 62 (1994). Act 62 modifies the "Law on Conflict-of-Interest Regulation of Mayors" to allow a member of Parliament simultaneously to hold mayoral office. In this case, petitioner asked the Court to find unconstitutional those provisions allowing mayors to be members of Parliament (55/1994. [XL10]). The Court declined and held that an individual could be both mayor and MP. This is the second time that the Court has reviewed the compatibility rules contained in the conflict-of-interest regulation. Prior to Act 62, the regulation barred mayors from Parliament. In 1990, the Court held that the prohibition on simultaneous office-holding was not unconstitutional. With these two cases, the Court has now effectively left the compatibility issue to parliamentary discretion.

Two significant, and much less controversial, amendments to Art. 32 of the Constitution were passed during the fall session. First, Act 74 decreased the number of justices who will sit on the Constitutional Court from 15 to 11 (Act 74, 1994, modifying Art. 32/A of the Constitution). While many commentators had thought that the Court's size would be increased, the reduction was supported by all six parties in Parliament and no negative ballots were cast, although there were many abstentions. By this self-denying amendment, the governing coalition forfeited an opportunity to fill four of six seats presently vacant on the Court.

Nominations to the remaining two vacant seats have not yet been submitted to Parliament. Act 74 was accompanied by an analogous alteration (Act 78, 1994) of the "Act on the Constitutional Court" (1989).

Also receiving the general support of the six parties was an amendment to Art. 32/B of the Constitution. The Constitution originally established a multimember body to act as Ombudsman for the protection of national and ethnic minority rights. Act 73 of the fall session eliminated this requirement, opening the door for the appointment of a single individual as chief advocate for minority protection. Neither of the two ombudsman offices mandated by Act 32/B of the Constitution have ever been filled. President Arpad Goncz submitted nominations for the positions to the last Parliament, but none received the two-thirds majority support required for appointment. Pursuant to this modification, the "Act on the Ombudsman" (1993) was also modified (Act 75, 1994).

The Constitutional Court ruled last quarter on two laws regulating employee conduct. In the first, the Court held that Art. 66.1 of the "Act on Cooperatives" (Act 1, 1992) violated Art. 8 and Art. 70.C of the Constitution. The provision in question prohibited members and employees of cooperatives from forming separate trade unions. The Court found the interests of members of cooperatives to diverge from the interests of employees, and held that the provision conflicted with Art. 70.C, which allows an individual "to establish an organization with others for protecting his economic and social interests" (52/1994 [CL1]).

In the second employee-related case, the Court held that Art. 39/2 of the "Act on Public Servants" (Act 33, 1992) did not violate the Constitution by regulating the private behavior of public employees. The Court found that, in cases where there is a "public function" to the regulation or a compelling public interest, the state may regulate *extra officio* conduct of its employees. Limitations may nevertheless not violate fundamental constitutional rights. The Court reserved for itself the right to determine whether a regulation is proportional to the public function or the claimed compelling state interest being served, and whether particular actions by public servants outside their public office actually damage the interest of the public office directly and significantly (56/1994, [XL10]).

In a case brought to the Court by 92 members of Parliament, the Court held that certain provisions of the "Act on the Budget" (Act 111, 1993, budget for 1994) violated the constitutional independence of Hungarian Television and Radio. By placing the media budget within the purview of the prime minister, Act 111 provided that the budget could be amended by an appointed member of the cabinet. The Court found that this statute violated the guarantees of media independence that the Court had established in earlier case law. The Court conveyed its understanding that the state media would, in any case, be indirectly controlled by the government through the budgetary process. Because Parliament had failed to pass a media law specifically outlining how state media

independence shall be protected, the Court could not be certain that the specified budgetary process would not lead to unconstitutional interference. The Court also recognized that, if Parliament establishes mechanisms guaranteeing state media independence, the constitutionality of the budgetary configuration of media institutions may be subject to a new examination. The Court did not set forth any specific proposals outlining how the Hungarian Television and Radio should be positioned in the budgetary process. Rather, it made clear that the constitutionality of any budget arrangement would depend on safeguards of independence offered to the state media by a future law. The Court published this opinion in October, two months before the end of the budgetary year (47/1994, [X.21]).

Latvia

After the breakdown of the Latvia's Way-Farmers' Union (LW-FU) and the subsequent resignation of Prime Minister Valdis Birkavs's government last summer, interparty negotiations to form a government coalition went on throughout autumn. Latvia's Way (LW), which holds 34 seats in the 100-member Saeima (Parliament), was in the best position to cobble together a governing coalition, but ultimately refused to make the necessary concessions to the weaker parties. On September 12, Maris Gailis (President Guntis Ulmanis's LW candidate for prime minister) proposed a group of ministers to replace the Birkavs government. The list confirmed that a shaky coalition had been formed between the LW and the Political Association of Economists (PAE). It was composed predominantly of members of the LW party, with only three representatives from the PAE and two renegades from FU—who were promptly warned by their party that they must choose between joining the government or retaining their membership in FU.

On September 15, in the face of mounting opposition to the LW-PAE coalition, Parliament held a vote to approve an interim government for the second time. Persuaded by President Ulmanis's threats to dissolve Parliament and call pre-term elections if a new government was not approved, Parliament finally accepted Gailis's proposed cabinet, but only by a small margin (49 to 33). The interim government will be in power until October 1995, when the next national elections will be held.

Fearing a pattern of LW-PAE legislative victories, four of seven Saeima factions formed the National Bloc (NB). The Latvian National Independence Movement (LNIM), the Christian Democratic Union (CDU) and the Fatherland and Freedom Party (FFP) joined the FU to consolidate the opposition in this way. As chairman, the NB chose Andrejs Krastins (Ulmanis's first prime minister candidate whose proposed cabinet failed to win parliamentary approval last August). Although each faction

within the NB intends to submit separate party lists in the upcoming elections, the bloc has already formed a "shadow cabinet" ready to replace the interim government after the October elections.

Although the "Law on Citizenship" was finally passed last summer, the controversy surrounding Russian-Latvian relations seems far from over. January will determine the fate of over 300,000 stateless residents, since the new citizenship law will take effect on January 1, and February 1 is the expiry of Russia's offer to grant automatic citizenship to citizens of the former Soviet Union. Pressure was put on Parliament to fill in the legislative gaps left by the citizenship law, which, for example, does not define the legal status of non-citizens residing in Latvia. Emboldened by its newly formed bloc, the opposition presented its first draft law, meant to bar unnaturalized former USSR citizens, who arrived in the country between June 17, 1940 and July 1, 1992, from gaining permanent resident status in Latvia. Because residency is a prerequisite for citizenship, this prohibition would effectively bar the possibility of this group from ever gaining citizenship. The draft was quickly rejected by the LW-PAE, which apparently values international approval over nationalist goals.

A second, more liberal draft was presented by the legal committee of Parliament. This draft law grants permanent resident status to all former citizens of the USSR who arrived between 1940 and 1992, and guarantees them all social, employment and property rights currently enjoyed by Latvian citizens. It also grants permanent resident status to veterans of the Russian military. The draft passed its first reading by a 49 to 23 vote. (The draft must pass three readings in Parliament before it is adopted.)

In July, several new rules were added to the "Rules of Order of the Saeima," which came into effect on September 1. Bills may now be submitted to Parliament by the president, a minister, parliamentary commissions, or by a group of at least five deputies. Although Art. 81 of the Constitution states that the government may pass legislation while Parliament is not in session, the new rules indicate that, at the next parliamentary session, the law must be reconsidered by Parliament and, if rejected after one reading, may no longer be enforced. The new rules also define the requirements for the creation of parliamentary factions and blocs. Factions can be created by at least four deputies belonging to the same political party, while a bloc may be formed by five independent MPs or deputies belonging to separate factions.

The new rules state that deputies—who must quit the assembly if appointed to ministerial positions—may automatically return to their parliamentary seat when they leave the cabinet. During their temporary absence from Parliament, candidates from their party list will replace them. The rules also declare the office of parliamentary deputy incompatible with any other public or private office. Deputies may, however, continue to work on farms, in schools, or at scientific institutions. According to the new

rules, they must also submit a biannual income declaration to the Mandate and Application Committee.

In addition, the new rules state that a deputy's mandate may now be revoked if he fails to attend at least half of all Saeima sessions, or if he does not have sufficient knowledge of the Latvian language. The new language requirement initiated a spiral of controversies. Ten deputies at risk of losing their mandates were required to submit a statement declaring their level of Latvian proficiency to the Mandate and Application Committee. The most vocal opposition to this new requirement came from Joachim Seigerist (a German-Latvian), who accused Parliament of violating international democratic norms. Having evaluated Seigerist's proficiency of the language, the committee recommended that he be expelled from Parliament. Backed by the LW faction, Seigerist succeeded in bringing this issue to a vote in the Saeima. LW arguments that the new rule was unconstitutional and undemocratic persuaded parliamentarians to vote against Seigerist's expulsion, and his mandate was not revoked.

In November, Seigerist again made headlines as the co-founder of a new political movement, the Christian Socially Conservative Popular Movement (CSCPM). During the party's first meeting, Seigerist vowed to improve living conditions (especially those of pensioners), curb organized crime and government corruption, rid the government of communists and KGB agents, and establish a small professional Latvian army. Due to Seigerist's record (he was convicted in Germany for hate crimes against Gypsies) and the CSCPM slogan "Latvia above everything," the movement has been accused by opponents of having fascist tendencies. In addition to Seigerist's party, other new political parties were formed in anticipation of the October elections. One of the parties that received much attention in the press was "Saimnieks" (Master) whose leaders are a collection of former government officials such as previous Minister of Interior Ziedonis Ceveris and former Latvian Communist Party boss Ivars Kezlers. Saimnieks stressed fighting crime as its top priority.

On September 8, the Latvian Communist Union was not allowed to register as a public organization with the Ministry of Justice, which accused the union of being an "anti-state organization." Later in September, the City Council of Riga passed a resolution banning "foreign mass media" considered to threaten Latvian national security. The press ban is aimed at the many Russian language papers sold in the city, for example: *Zavtra* (Tomorrow), *Rech* (Speech), *Nashe Otechestvo* (Our Fatherland), or *Sovetskaya Rossiya*. Members of the National Latvian Independence Movement (LNIM) initiated this resolution, and hoped to pass a similar law at the national level in Parliament. Minister of State Reform Vita Terauda, however, vetoed the resolution on the grounds that the Council's activity was illegal. Riga officials nevertheless managed to confiscate some of the targeted newspapers on the grounds that the sellers could not produce the required trade permits.

Lustration has also been an important issue since the spring, when several ministers and parliamentary deputies

were accused of KGB collaboration. Georgs Andrejevs admitted making reports to the KGB. As required by section 21 of the electoral law, he resigned from his post as foreign minister and parliamentary deputy. The remaining four suspended deputies had their cases brought to court. On November 4, one of the accused, Edvins Enkens (LW), was acquitted by the Latgale District Court, and his parliamentary mandate was renewed. Another two were acquitted later that month: Aivars Kreituss (Democratic Party) on November 16 and Roberts Milbergs (Fatherland and Freedom Party) on November 22. During these trials, former KGB agents retracted earlier testimony against the accused. Kreituss's problems may not yet be over, however, since his acquittal is being appealed by the prosecutor.

Although no criminal charges can be brought against anyone solely for their association with the KGB, Deputy Prosecutor General Uldis Strelis announced in September his commitment to bring to trial former KGB collaborators who actively participated in genocide and murder, especially those who worked with Alfons Noviks (former head of the KGB in Latvia).

Lithuania

Having survived several votes of no-confidence last summer, the government, led by the Lithuanian Democratic Labor Party (LDLP), exploited the party's dominant position in the Seimas (Parliament) by proposing several constitutional amendments. Headed by Prime Minister Adolfas Slezevicius, the LDLP holds an absolute majority of 72 seats (of 141) in the legislature. All proposed amendments must be considered in two readings, with a three month interval, and both votes must be supported by at least a two-thirds majority (or 94 MPs).

In the two years since its adoption, attempts have been made to amend the Constitution, including the introduction of a provision legalizing the sale of land to foreigners in October 1993, but none has succeeded in gaining sufficient support in Parliament. The immutability of the Constitution, thus far, is due in part to a rule that, during the first year after adoption of the Constitution, support by three-fifths of Parliament would be needed to propose constitutional revisions for parliamentary debate. Today, amendment proposals must be initiated by at least one-fourth (36) of the 141-seat assembly.

On August 31, the government approved a draft amendment to section 47 of the Constitution that would allow foreign citizens and foreign countries to own land in Lithuania. Existing legislation only allows foreigners to rent land for up to 99 years. In a news conference held September 7, Justinas Karosas, the chairman of the LDLP parliamentary faction, stated that the issue of land ownership by foreigners would have to be debated again, even though the Seimas voted down an identical bill only last year. The ban on the sale of land to foreign citizens is considered one of the principal barriers to foreign

investment in the country. When land ownership was voted on last year, only three members of the LDLP faction voted against or abstained, while members of the Social Democratic Party and Homeland Union (Conservatives of Lithuania) voted against it, or did not participate in the vote at all, arguing that the sale of land to foreigners would pose a security risk.

The LDLP has voiced its intention to propose two other constitutional amendments—on the term of office for municipal councils and on the reduction of seats in Parliament. Plans include prolongation of the term of office for local councils up to three or four years. According to Art. 119 of the Constitution, municipal officers are presently elected for two-year terms. Proponents of this proposal argue that the existing term is too short for incumbents to obtain adequate experience in local offices, and that a longer period would enhance continuity of political activity at the local level.

With the amendment on the reduction of parliamentary seats (affecting Art. 55 of the Constitution), the LDLP intends to shrink the number of Seimas members from 141 to 79, the same number that sat in the pre-war Seimas. The LDLP leadership argues that diminishing the number of legislators would permit Parliament to perform its functions in a more constructive and efficient way. The LDLP has also attempted to sell this idea to the public as a self-sacrificing spending cut.

The governing party admits that conditions for passing constitutional amendments may not be as good as they seem. Proposed amendments must be supported not only by the centrist forces, the Polish faction and non-affiliated MPs, but by the right-wing parties as well. In fact, they require a broad consensus across the whole political spectrum. A number of politicians on Parliament's extreme left wing ritually proclaim that they will never "sell out Lithuania," while extreme rightists often block any and every proposal offered by the LDLP government. If Parliament rejects the proposed amendments, a new discussion can be initiated only next year (Art. 148).

The LDLP is already scanning the horizon for alternative ways to advance its interests. Following the example of the opposition, which brought its pet issues to the public in a referendum last August, the LDLP has not ruled out the possibility of staging a nationwide referendum on its proposed constitutional amendments if they are rejected by Parliament.

Having passed the new "Law on the Seimas Ombudsmen" on December 8, the assembly unanimously approved the appointment of five ombudsmen whose task it will be to investigate complaints lodged by individuals against state and local officials. According to Art. 73 of the Constitution, an ombudsman has the right to ask the court to dismiss an official on the basis of incriminating information presented to the ombudsman. Algirdas Taminskas, one of the newly appointed ombudsmen, was chosen to head the ombudsmen's office. The ombudsmen were the last element needed to complete the so-called "constitutional pyramid of power."

A number of important amendments to the codes of criminal and civil procedure and reforming the judicial sys-

tem were passed by the Seimas. In November, a "Law on Courts" was adopted by the Seimas to help revamp the country's legal system. Before the reforms, the Supreme Court functioned as an appellate court and tried all socially significant cases, including the Vytas Lingys murder trial. Several new tiers were added to the judicial hierarchy in an effort to relieve the courts' overburdened dockets. New district courts were formed as well as a Court of Appeals, which is further divided into civil and criminal departments. The Supreme Court will now review practices of the lower courts and determine legal precedents, which will be published in a Supreme Court Bulletin. The decisions of the Court will be analyzed by its Senate, which will meet in quarterly sessions.

These reforms of the judicial system were followed by new judicial appointments. The Ministry of Justice and the president were responsible for appointments of new lower court judges, while the Seimas appointed the 15 new Supreme Court judges. President Algirdas Brazauskas nominated Pranas Kuris for the chairmanship of the Supreme Court. Kuris previously served as Lithuania's ambassador to Belgium and is currently a member of the European Human Rights Court. On December 20, he was elected chairman of the Supreme Court by Parliament, although the opposition did not participate in the vote. The new appointees began their activity on January 1, when the new judicial laws came into effect.

Crime control and corruption became a high priority in the country during the final months of 1994. On September 2, responding to deep social disappointment at the failure of the August referendum (a large part of which was devoted to strengthening crime control), President Brazauskas and Prime Minister Slezevicius signed a decree to establish a commission for the struggle against economic crimes. The 11-member commission, headed by Interior Minister Romasis Vaitiekunas, includes officials from Interior, Finance and Economic Ministries, the State Security Department, Customs Department, the Prosecutor General's Office, and the border police. The decree stated that the commission's decisions are binding on all state officials and state-run enterprises. According to the decree, the committee's activities will be directed primarily against illicit privatization, smuggling unlicensed products, tax evasion, and corruption. While the interdepartmental commission reported to the president on December 15 and received presidential praise for combating economic crimes, the precise activities of the commission are difficult to discern, and it seems that this body functions mainly as a coordinating institution.

The public paid much more attention to the sensational Vytas Lingys murder trial. Vytas Lingys, a journalist and one of the founders of *Respublika*, was shot dead at the entrance to his apartment building in Vilnius on October 12, 1993. The murder is thought to have been carried out in revenge for his articles on law and public order issues. After intense investigations, four people, known to be members of the organized

crime group "Vilnius Brigade," were detained and accused of the murder: Igor Akhremov, Boris Bobicenko, Boris Dekanidze, and Viacheslav Slavitsky. The trial, which started on October 5 and was described as "the trial of the century," was generally considered to be a turning point in the country's fight against organized crime.

The chairman of the Supreme Court appointed the three judges for the trial in accord with a newly passed amendment to the Lithuanian Penal Code which stipulates that cases of exceptional importance—especially those concerning organized crime—are to be heard by three judges instead of one. An eight-volume file was presented by the prosecution, and the case was considered to be one of the most difficult in the country's history. Nevertheless, the trial did not last long—a decision was announced within a month. Igor Akhremov told the court that he shot Vytas Lingys on direct orders from Boris Dekanidze, the alleged leader of the Vilnius Brigade. Dekanidze, the principal defendant, categorically denied his own guilt. The court sentenced Dekanidze to death, Akhremov to life imprisonment, and the other two to jail terms of 12 and 15 years.

Generally, the public welcomed these verdicts. On the other hand, doubts about the motives of the witnesses began to surface. A couple of weeks following the decision, the chairman of the Supreme Court, Mindaugas Losys, appointed a judge to review the death sentence of the alleged criminal boss. Rumors of a threat to avenge Dekanidze's eventual execution by launching a terrorist attack on the Ignalina Nuclear Power Plant began circulating. The effect of such crude blackmail on the Lithuanian judiciary was unclear (the plant was shut down in any case). In a press conference, Dekanidze's father stated that he "[would] take any permissible or impermissible measures to prove [his] son's innocence, but [he would] not blow up Ignalina." Dekanidze's lawyers have petitioned the president to commute the sentence and the case is currently being reviewed. The name of the judge selected to review the court's decision will not be revealed so as to avoid possible public pressure. The whole procedure is expected to take at least a month. The Lithuanian Penal Code still includes the death penalty and, in 1994, five executions were carried out in Lithuania.

A heated debate surrounding the appointment of the new prosecutor general took place in the Seimas. On September 27, the assembly approved the amended version of the prosecutor's office law, which was proposed by the president. Brazauskas had returned an earlier version of the law, arguing that the prosecutor general must be appointed by Parliament, but that candidates must first receive a recommendation from the president. After negotiations, Parliament consented to the president's formula.

The candidates for the post of prosecutor general raised further disagreements and debates. The president's first nominee was Justinas Vasiliauskas, head of the Interior Ministry's Investigation Department. The candidate failed

to win approval on November 29 by a vote of 58 to 56. While Vasiliauskas received more votes, he fell short of the requisite 71. During earlier parliamentary discussions, the opposition unanimously resisted the proposed appointment, claiming, among other things, that it was unacceptable to nominate a close relative of Prime Minister Slezevicius to this important position.

Parliament Vice Chairman Egidijus Bickauskas, one of the most popular politicians in Lithuania, was later offered the position by the president. But after consultations with his party, the Center Union (CU), he refused the job, perhaps signaling higher political aspirations. Finally, on December 21, Vladas Nikitinas, one of the three judges at the Lingys murder trial and chief judge of the District Court in Vilnius, was confirmed as prosecutor general.

After the adoption of a package of laws on local government, (including the "Law on Self-Government," a law on local elections and a law on administrative subdivisions), a date for local elections was set by Parliament. Municipal elections will be held on March 25, 1995. At that time, the package of laws on local government will enter into force.

The national budget for 1995 was approved by the Seimas on December 15, in a 56 to 41 vote, with 10 abstentions. All opposition parties expressed their disagreement with the draft budget for 1995. The planned budget deficit is 1.9 percent of the GDP. According to Lithuania's economic policy memorandum, which has been approved by the International Monetary Fund (IMF), the maximum permissible budget deficit must not exceed two percent of GDP. Prime Minister Adolfas Slezevicius stated, on December 15, that the government will seek to make the budget socially oriented. Therefore, he said, next year's expenditures on health care, education, culture, courts, and law enforcement will be larger than in 1994. The most significant increase went to law enforcement, from 11.7 percent in 1994 to 17.5 percent in 1995.

Poland

In the last quarter of 1994, political debates in the country centered around the related problems of constitution making and defining the scope of presidential powers.

Article 1 of the Constitutional Act of April 23, 1992 ("On the rules and procedures for preparing and passing the Constitution of the Republic of Poland") provides that the constitution must first pass in the National Assembly (joint Sejm and Senate) and then be submitted to a referendum. This law also provides that the procedures to be followed by the National Assembly in passing the constitution are to be defined in by-laws drafted by the Assembly itself. The National Assembly passed the relevant by-laws on September 22, 1994.

According to these by-laws, the first reading of draft constitutions involves presentation of the drafts, submission of questions by members of the National Assembly and respons-

es by the drafters, and finally a debate on the general principles section of each draft. During the debate, each of the 460 members of the National Assembly may address the assembly twice, first for ten and then for five minutes.

The first parliamentary reading of the seven submitted constitutional drafts took place on September 22, 1994, with 60 deputies speaking in the debate. Except for those who actually spoke, few other National Assembly members even attended the session. After a two-day debate, all seven drafts were sent to the Constitutional Commission, which was charged with working out a single draft for further consideration.

For the second reading, the Constitutional Act states that the Constitutional Commission must present a uniform text of the basic law to which parliamentarians may propose amendments. Adopting an amendment requires a two-thirds majority vote of the Assembly with at least half of the members present (the same requirement holds for adopting the constitution). If the new draft is not passed, it is sent back to the Constitutional Commission for further revision, after which it is again debated in the Assembly. This procedure continues until a basic law can be passed by the required two-thirds majority. If a draft is finally passed, it is then sent to the president. If the president amends it within 60 days, a third reading must take place. Presidential amendments also require adoption by a two-thirds majority vote of the Assembly. Only after this multi-staged process has been completed may the president call a national referendum to ratify the constitution.

According to the Constitutional Act, the Sejm must debate fundamental issues concerning the political system outlined in the basic law. To this end, the Constitutional Commission prepared a series of eight constitutional problems, divided into three categories, and presented it to the Sejm on October 11, 1994.

The first cluster of problems concerned the political system of the Republic. On this issue, the Constitutional Commission posed the following questions. First, should the constitution be based on a system of checks and balances? If so, how should it be organized? Second, should Parliament be unicameral or bicameral? Third, what is the role and legal status of local governments and of self-governing professional and worker's organizations? Fourth, how should church-state relations be regulated?

The second group of questions addressed the relationship between social rights and the socio-economic system. The Constitutional Commission raised the following questions for discussion: First, are social rights to be entrenched as constitutional rights, or should they be formulated only as important goals of state policy? Second, should social rights be constitutional or only statutory? Third, should social and economic rights, as well as the leading principles of the economic policy, appear in the section enumerating the general principles of the constitution, or, in the Charter of Human Rights and Freedoms?

Under the third category, the Constitutional Commission asked the Sejm to examine problems concerning the sources of

law, which includes specifying the relationship of international law to domestic law.

According to the schedule proposed by Aleksander Kwasniewski, chairman of the Constitutional Commission and Union of the Democratic Left (UDL) deputy, preparation of the constitution for its second reading should have ended in December 1994. This schedule allots January and February of 1995 for work on amendments submitted by the National Assembly, and March 1995 for the Constitutional Commission to work on amendments submitted by the president. According to this plan, a constitutional referendum would be held in June, at the latest. Due to the upcoming presidential elections and the presidential campaign, however, some politicians believe that strict compliance with this schedule is highly improbable. By January 25, the editorial subcommittee will have the preliminary text of the constitution ready. For certain provisions of the constitution, there will be a number of alternative proposals, among which the Constitutional Committee must make a final choice. At the session planned for January 25-27, Kwasniewski intends to avoid the question of whether Parliament should be unicameral or bicameral, and to ask for a choice between parliamentary, chancellor and semi-presidential forms of government.

The first round of debates over the constitutional problems raised by the Commission took place on October 21, 1994. The debate itself did not result in any binding decisions or resolutions, in large part because the by-laws governing the preparation and adoption of the constitution are unclear about the legal implications of the debate and the procedures through which resolutions are to be adopted. Following a proposal by the Presidium of the Sejm, members of the Constitutional Commission received a transcript of the session and were asked to consider the motions submitted by the deputies as guidelines for further work on the constitution.

In the meantime, opposition to the new constitution has been growing, even before the final draft has been prepared. Among the adversaries of the process are right-wing groups, the Solidarity Labor Union, the president, and the Catholic Church, all of whom have suggested that they may urge the nation not to accept whatever draft constitution is eventually adopted by the National Assembly. Even the deputies of the Constitutional Commission themselves admit that "one way or another the constitutional referendum will be the occasion for a great confrontation among the country's political forces."

In a pastoral letter dated October 23, 1994, the Polish Episcopate stated that the constitution must acknowledge and protect "the presence of the sacred sphere in the life of man." It also demanded that the constitution guarantee protection of human life from the moment of conception and asked for constitutional guarantees for the rights to natural death and to religious instruction in the schools. The letter also addressed the constitutional implications of the ratification of the concordat between Poland and the Vatican. It emphasized that the Church should be autonomous and independent, but that it

would cooperate with the State. In a commentary on the letter, Bishop Tadeusz Pieronek stated that "the Church would not negate the democratic constitution" but warned that "the Sejm is not the highest power. There is also the nation, which has the right to speak in a constitutional referendum. So the Sejm must take into account that its decisions concerning the constitution will be subject to a nationwide evaluation." In other words, the bishop hopes to pressure the Sejm to accommodate the Church.

On October 27, President Lech Walesa appealed to the nation to support a constitution only if it provides for a presidential system. "I ask you for a vote in favor of the presidential system of government," he said, "I do not ask it for myself, but for the future president, whoever he may be." Only in a presidential system, according to Walesa, will the president be able to "assist and protect the political equilibrium and impede factional desires." The president made it clear in his appeal that if presidential powers were limited in the proposed constitution, he would campaign against it. Moreover, when asked if he planned to dissolve Parliament, Walesa vowed not to violate the law but added that "we have good laws and still better lawyers, so the impossible often becomes possible." The Little Constitution offers no legal grounds for the president to dissolve Parliament in the current session.

On September 23, the president formally dismissed Marek Markiewicz and Maciej Iłowiecki, members of the National Radio and Television Council, for having violated the "Law on Radio and Television," which, according to Art. 7.6 point 4, provides grounds for dismissing a member of the Council. The violation was related to granting POLSAT a license to broadcast television programs nationwide (see *EECR, Poland Update*, Vol. 3, Nos. 2,3, and 4).

In its decision of September 22, the Supreme Administrative Court addressed complaints raised about the action of the Council. The Court confirmed the legality of the creation of the National Radio and Television Council, its procedural rules, and the license it had granted to POLSAT. The court, however, struck down the grant of additional frequencies that had enabled POLSAT, as was originally promised, to broadcast nationally. President Walesa relied on this ruling to dismiss the two Council members. The president's decision to sack Markiewicz and Iłowiecki, however, was severely criticized by deputies of both the ruling Polish Peasant Movement (PPM)-Union of Democratic Left (UDL) coalition and the opposition Freedom Union (FU).

On November 10, Walesa dismissed Minister of Defense Piotr Kołodziejczyk after a formal request by Prime Minister Waldemar Pawlak. The saga of the removal of the minister from his post, known as the "Drawsko case," began on September 30, when the Polish military held its annual briefing in Drawsko Pomorskie. Both Walesa (the supreme commander of the armed forces) and Minister of Defense Kołodziejczyk were present. The briefing itself, and the criticism of the minister of defense by other high-ranking military

officials prompted Walesa to ask for Kolodziejczyk's resignation. The president in fact reproached the minister for failing to reform the military. The minister, in turn, rebuffed the president. The Sejm National Defense Commission tried to resolve the conflict by creating a subcommission to investigate the activity of officers during the Drawsko briefing. It was rumored that, during the briefing, officers renounced their vow of obedience to the defense minister.

The commission questioned both the civil cadre of the defense ministry and the high-ranking officers present at the briefing. The deputies, however were unable to question General Slawoj Leszek Glodz, the bishop and highest ranking chaplain in the Polish military. He informed the commission that he was unable to testify because of his "particular position" at the meeting. He had participated as a presidential guest. The investigating deputies established that, although high-ranking military officials did collectively criticize the minister, they did not formally renounce their obedience to him. These officers did, however, discuss the minister's dismissal, and they even deliberated on possible successors. In the deputies' view, the conflict in the Ministry of Defense was caused by a months-long dispute about the scope of presidential power over the military. The Commission further found that the president had attempted to take control of the military. It concluded, therefore, that Kolodziejczyk should remain as minister of defense.

The Commission's conclusions, particularly those concerning Kolodziejczyk, were disregarded by both the president and the prime minister, and Kolodziejczyk was dismissed. In December, Pawlak proposed that Professor Longin Pastusiak, a deputy chairman of the Parliamentary Caucus of the Postcommunist Alliance of the Democratic Left, become the minister of defense. This proposal was rejected outright by Walesa, on the grounds that Pastusiak has always been one of the most radical critics of the US and NATO among Polish political scientists. Pawlak withdrew Pastusiak's candidacy on January 18. The president and the prime minister have yet to agree on a candidate. (According to the Little Constitution the new ministerial appointments are to be made "by the president on the motion of the prime minister," which means that the consent of both is needed for an appointment.) The conflict between Walesa and Pawlak has now erupted into an open war, with the president publicly accusing Pawlak of incompetence.

After the dismissal of Markiewicz and Ilowiecki and the prime minister's motion to dismiss Kolodziejczyk, the Sejm appealed to Walesa to abstain from actions that might exacerbate the political situation. In the appeal, deputies asserted the following: "Polish democracy is threatened. The president's actions, which violate the principles of the military's political neutrality and the independence of the National Radio and Television Council, are destabilizing the constitutional order. The Sejm of the Republic of Poland does not accept decisions executed in violation of the law and it expects the president, as

a guardian of the constitution, to cease actions that may lead to a state crisis." The Sejm, on October 12, passed this appeal by a vote of 305 to 18, with 22 abstentions. In a short but heated debate, the representatives of the Non-Party Bloc to Support Reform (NPBSR) and the Confederation for an Independent Poland (CIP) opposed the appeal. Some of the members of the PPM abstained. In reaction, a spokesman for the president, on October 13, asked the Sejm to withdraw its statement, arguing that it violated the separation of powers, because the determination of whether a law has been violated falls exclusively within the competence of the judiciary.

On November 26, the Sejm received a report on the "clean hands" operation of prosecutor general Włodzimierz Cimoszewicz. The operation investigated the violations of the June 5, 1992 act on "Limiting the Right of Persons Holding Public Office to Engage in Economic Activity," the so-called anticorruption law (*Journal of Laws*, No. 56/274). Cimoszewicz's own multiple-office holding, ironically, is an issue. He is both Minister of Justice and Prosecutor General. In addition, he is a vice prime minister and a deputy in the Sejm. He thus simultaneously holds positions in two branches of government, the executive and legislative.

Cimoszewicz interprets the anticorruption law to prohibit high-ranking public officials from sitting on the supervisory boards of companies while holding public office. Cimoszewicz compiled a list of officials whom he considers to have violated the law. Foreign Minister Andrzej Olechowski, whose name was included on this list, submitted his resignation on October 27. Olechowski argued, however, that the minister of justice did not have the right to prepare such a list on the basis of his own highly controversial interpretation of the statute, as under rule-of-law principles, only courts may render authoritative interpretation of the law.

Responding to Olechowski's petition, on January 12, 1995, the Constitutional Tribunal ruled that state officials should not accept second salaries when they are designated to represent the state treasury in joint stock companies. The Tribunal determined, however, that officials who were paid before the ruling had acted in good faith and that the ruling should not apply retroactively. Although Olechowski claimed that this ruling vindicated him, he decided to resign anyway, citing a growing conflict with the prime minister over the direction of Polish foreign policy. The dismissal was accepted by Pawlak and Walesa. Thus Poland presently has neither a minister of defense nor of foreign affairs.

Romania

Economic and penal reform were at the center of the legislative agenda this quarter. Under the threat of losing \$700 million in IMF loans, the Senate passed a 120-provision bankruptcy code in a record three hours. Until recently, the bill had been blocked for nearly two years by the Party for Social Democracy in Romania (PSDR). The code must now

pass the lower house before becoming law. Law no. 52/1994 "On the Securities and Stock Exchange," passed in October, paves the way for open trading. Yet, with no budget, no headquarters, and no staff, the Romanian bourse is not scheduled to open until February at the earliest.

Despite pressure from President Ion Iliescu and pleas by Prime Minister Nicolae Vacaroiu, an emergency bill radically to expand the privatization of state enterprises has yet to be enacted by Parliament. Prepared by the cabinet during summer break, the bill to accelerate the privatization process was submitted to Parliament at the beginning of the fall session. To expedite the sell-off, a list of 3000 state-owned companies to be privatized in the near future was published by the National Agency for Privatization.

The preliminary debates on the draft privatization law produced serious conflicts between the majority party, the PSDR, and its allies, the Greater Romania Party (GRP) and Romanian National Unity Party (RNUP). It is not yet clear why, but the RNUP, which cooperates in the government and has led the Senate commission for economic reform and privatization, suspended discussion of the draft privatization law submitted by the government, and instead initiated a totally different bill. Only after Iliescu addressed Parliament and rallied support for the acceleration of privatization did the Senate begin to debate the draft law presented by the cabinet and ministry of reform.

Parliament is now struggling to reform the Penal Code, which has remained untouched since the rule of Nicolae Ceausescu. Some of the draconian provisions of the Code, surprisingly enough, rather than being mollified, have been made more stringent. For instance, the punishment for "offenses against the authorities and nation" increased from 1 to 3 years in prison to 1 to 5 years. Other harsh proposals with widespread support in Parliament include establishing longer prison sentences for journalists who slander state officials, and banning the use of non-Romanian flags and the singing of non-Romanian national anthems. The last proposal was defeated by a slim margin of 24 votes.

The most controversial revision to the Penal Code was an amendment to Art. 200 attempting to outlaw homosexuality. In the lower house, the opposition as well as the members of pro-government coalition voted in favor of 1 to 5 year prison terms for individuals "who have sexual relations with persons of the same sex." Caught between pressure from Iliescu to adopt liberal Western European standards on the one side and public demonstrations by Orthodox seminary students to preserve conservative values on the other, the Senate voted to amend the provision so that it now outlaws sexual intercourse between persons of the same sex only if it is carried out in public or in a manner troubling to public order. Less controversial was Parliament's criminalization of tax evasion.

Despite the snail's pace of Penal Code revision, Romania continued to sign-on to several European charters. On September 30, Parliament passed law no. 80, ratifying

the European Convention for Prevention of Torture and of Inhuman Punishment or Treatment, Protocols no. 1 and no. 2, and the Convention on Child Protection and on Cooperation Concerning International Adoption of Children, no. 84. In September, the Chamber of Deputies decided to take formal notice of, but not to adopt, resolution no. 1003 (1993) and resolution no. 1215 (1993), of the European Council regarding ethics in journalism.

Parliament continues to fail to take measures to curb official corruption, considered by many commentators to be Romania's most troubling problem. The government claims it has done everything possible to stem corruption in the administration, including arresting 14,000 Romanian civil servants and investigating another 81,000. While the police are vetting low and mid-level administrative officials, several members of Vacaroiu's cabinet have been conspicuously acquitted of graft. Perhaps most notable is Viorel Hrebenciuc, the government's secretary general, who was declared not guilty of stealing several million lei that had been allocated for the relief of flood-stricken villagers. In September, two reports were submitted to Parliament by a commission established in 1993 to investigate specific accusations lodged by former Finance Police Chief Gheorghe Florica and to make other general recommendations to Parliament. The drafts were debated in joint session, but no legislative resolution was adopted.

For the first time since Ceausescu's downfall, the Ministry of Justice requested that Parliament start procedures for lifting a deputy's immunity. The charges were based on a provision of the Penal Code that prohibits "offenses against the authority of the nation." The accused deputy was a member of the opposition Liberal Party '93 (LP '93). The Parliament rejected the government's demand for the suspension of immunity apparently because it feared setting a dangerous precedent.

President Iliescu addressed Parliament for the first time on September 13, 1994 pursuant to Constitution Art. 88. His speech was delayed for more than an hour due to heated arguments over whether the president's message would be debated in Parliament. Eventually, the parliamentary majority decided that no debate would be held, and the president was able to deliver his address. He focused on four main issues: promoting a mass privatization program, halting corruption, foreign policy, and strengthening the rule of law.

Parliament has made several appointments this quarter. Pursuant to Art. 62.2 of the Constitution, both houses of Parliament appointed their respective standing committees to administer the 1994-95 session. The Senate elected the following new standing committee members: vice presidents Ion Solcanu (Party of the Social Democracy of Romania, PSDR), Valer Suiian (Romanian National Unity Party RNUP), Radu Vasile (National Peasant Christian Democratic Party, NP-CDP) and Dan Vasiliu (Democratic Party, DP); secretaries Mihai Matetovici (PSDR), Sorin Vornicu-Nechifor (DP), Gabor Kozsokar (Hungarians

Democratic Union of Romania, HDUR) and Corneliu Vadim Tudor (Greater Romania Party, GRP); and ushers Constantin Sava (PSDR) and Emil Negrutiu (Party of Civic Alliance, PCA). According to Art. 61.2 of the Constitution, Oliviu Gherman (PSDR) will maintain his position as Senate speaker for the entire four-year term.

The Chamber of Deputies also elected its new standing committee: vice presidents Dan Martian (PSDR), Ion Ratiu (NP-CDP), Radu Berceanu (DP) and Ioan Gavra (RNUP); secretaries Ovidiu Petrescu (PSDR), Borbely Laszlo (HDUR), Emil Putin (PSDR) and Mircea Musat (GRP); ushers Emil Stoica (PSDR), Ioan Muresan (NP-CDP), Gheorghe Raducanu (National Minorities Group, representative of the gypsies) and Christian Radulescu (DP). Adrian Nastase (PSDR) maintains his position as president of the chamber of deputies.

In joint sessions, Parliament elected Valer Dorneanu (former liaison between cabinet and Parliament) as president of the newly established Legislative Council which, according to Art. 79.1 of the Constitution, coordinates the legislative activities of the Senate and the Chamber of Deputies. The Legislative Council was behind on business before it even started work. Art. 150.2 provides that "the Legislative Council shall, within 12 months from the effective date of the law on its organization, examine the compliance of legislation with this Constitution and shall accordingly advance proposals to Parliament or to the cabinet, as the case may be." Law no. 73, "On the Legislative Council," entered into force on November 5, 1994, over twelve months after the establishment of the Legislative Council.

On October 5, Parliament, in joint session, elected the remaining two members of the Superior Council of Magistrature, which resumed its activities on October 27, 1994. According to Art. 133 of the Constitution, the Superior Council of Magistrature nominates judges and public prosecutors for appointment by the president. The first Superior Council of Magistrature was elected in 1992, after law no. 92/1992, "On the Judicial System," was enacted. In the summer of 1993, after the courts of appeal were created, the Superior Council of Magistrature ended its session. The process of electing a new Superior Council of Magistrature was delayed because of competing interpretations of the legal provisions regarding election of candidates by the courts. Because of the delay in electing the new Superior Council of Magistrature, the August 13, 1994 deadline for appointing irremovable judges (more than 1000) to first level and county courts has not been met, as provided for by Art. 129.2 of Law no. 92/1992, "On the Judicial System."

Under the provisions of the Constitution and of the law "On Judicial System," the Superior Council of Magistrature is not formally subordinated to any other body. Nevertheless, because the Superior Council of Magistrature consists of judges and prosecutors elected for a term of four years by the Parliament in joint session, its composition naturally reflects

the political composition of Parliament. Since re-election of the members is not forbidden, their independence can be indirectly restricted by Parliament.

Moreover, all those whom the Council appoints to the bench remain in jeopardy of being dismissed by the minister of justice. In the summer of 1993, former Minister of Justice Petre Ninosu, PSDR member, replaced Judge Corneliu Turianu. As president of the Bucharest court, Turianu had accepted on his docket an opposition claim against President Iliescu's candidature in the September 1992 elections. Currently, the only judges protected from government removal are the members of the 15 newly-established courts of appeal and the members of the Supreme Court of Justice. Pursuant to Constitution Art. 124, members of the Supreme Court are appointed to six-year terms during which they may not be removed.

Following the death of Valeriu Bogdanescu, Chief Justice of the Supreme Court, the Superior Council of Magistrature nominated three persons for the position. From this group, Iliescu chose Gheorghe Uglean as the new Chief Justice, who was sworn in on December 29.

In December, conflicts between various factions within the opposition coalition, the Democratic Convention of Romania (DCR), have continued to break out. For example, DCR Chief, Emil Constantinescu, threatened to suspend the Social Democratic Party (SDP) for 30 days in October 1994, after its leadership severely criticized the activity of the DCR. Also, other conflicts were triggered by the LP '93's veto, preventing re-entrance of the National Liberal Party into the opposition coalition. Surprisingly, this veto was followed by a December 11 agreement between the Liberal Party '93 (LP '93), the National Liberal Party, Quintu's wing, (NLP[Q]), the Civic Alliance Party (CAP), and the National Liberal Party-Democratic Convention (NLP-DC), stating the four liberal parties' intention to merge in the near future. The National Council of the Democratic Convention finally decided on December 20 to accept the re-entrance of the National Liberal Party into the Democratic Convention.

On December 14, the Constitutional Court held that "Parliamentary Law for the Approval of Government Ordinance no. 50" (August 1992) violated Art. 49 of the Constitution. Article 49 provides that the exercise of rights or freedoms may be restricted only "if necessary to defend national security, public order, health, public morals, the right and freedoms of citizens, the investigation of a crime, or to prevent the consequences of a natural disaster." Ordinance no. 50 established a border-crossing toll in order to generate funds for social protection programs. The Court determined that the purpose of the toll did not justify restrictions on the freedom of movement guaranteed by Art. 25 of the Constitution.

Confirming persisting rumors, Bishop Laszlo Tokes (honorary president of HDUR and prominent personality active in the irruption of the Timisoara Revolt in December 1989) admitted during a public event that he had been a col-

laborator and informant of the "Securitate" (the former secret police) during the communist regime. This revelation has led to conflict within the HDUR between supporters and adversaries of Bishop Tokes.

The National Confederation of the Free Trade Unions of Romania—*Brotherhood*—splintered after its executive president, Miron Mitrea, decided to join the ruling party, PSDR, of which he became a vice president in November 1994. Consequently, a new confederation, the Confederation of Democratic Trade Unions of Romania, was created and has forged a close relationship with the Democratic Convention of Romania.

Russia

On December 11, the day before Russia's scantily celebrated "Constitution Day," Moscow dispatched ill-prepared troops to crush the secessionist movement in Chechnya and, in the words of a presidential spokesman, "ensure that the Constitution is respected throughout the territory of the Federation." This rhetorical justification for a momentous, and perhaps disastrous, political decision, however hollow it rings to outsiders, is probably representative of the Kremlin's basic attitude towards the new Constitution.

The clumsy invasion of Chechnya was decided in perfect secrecy by the politically unaccountable "Security Council," which is now the most powerful body, elected or unelected, in the Russian state. The constitutional crippling of the legislature made it possible for the executive branch to begin the war by virtual fiat. The Chechnya debacle, in any case, culminated a stormy autumn of partisan squabbles, economic crisis, and mounting scandals. Following a relatively peaceful summer, the political season opened on October 4, with an encouraging news conference at which President Boris Yeltsin reaffirmed his commitments both to continue reforms "at least until the presidential elections" and to hold these elections on schedule (June 6, 1996). The president acknowledged that personnel changes would be made in the executive branch, but that Viktor Chernomyrdin had his support and would stay. A surprising revelation was that opposition representatives would probably be included in the government.

Subsequently, the president unilaterally imposed substantial changes in Chernomyrdin's cabinet. The series of dismissals, promotions, demotions, and replacements in the government seemed difficult to interpret, though they showed that the president, not the prime minister, was in charge. Some observers, perhaps presciently, discerned in the upheaval a move away from the democrats. This may be what Yeltsin's press secretary, Vyacheslav Kostikov, was referring to when he remarked in October that "a fight is going on over the president as a democrat." Kostikov was among those who submitted his resignation this fall.

The first to be ousted were economic policy makers. Following the collapse of the ruble on "Black Tuesday,"

October 11, Yeltsin dismissed by decree acting Finance Minister Sergei Dubinin. (The collapse of the ruble began when currency traders, realizing the central bank had stopped supporting the ruble, began a selling frenzy. The crisis was made worse by the fact that currency speculators can buy and sell in any amount and the exchanges have no mechanisms to halt trading when such events occur.) Andrei Vavilov, Dubinin's former first deputy, was named acting minister. On October 14, Viktor Gerashchenko, the seemingly all-powerful chairman of the central bank, offered his resignation to the president, who then, by decree, dismissed him. (Article 103 of the Constitution empowers the Duma, with the recommendation of the president, to appoint and dismiss the bank chairman.) The Duma initially declined to approve this dismissal, postponing the decision until at least October 19. But the president simply appointed an acting chairman, Tatyana Paramonova (former deputy head) on October 18. She was not confirmed by the Duma later in November, but went right on performing her duties anyway. Thus the Duma's power to check and balance the executive by a strategic use of the appointment power, has proved illusory in practice. Reportedly, the Duma voted against Paramonova only because it had not yet approved the removal of Gerashchenko, and it prized the right of removal as one of its few "checks" on presidential actions. On January 12, the president again called on the Duma to confirm Gerashchenko's removal and to re-examine the question of Paramonova's confirmation. There is only one major exception to the rule that the assembly's paper powers to reject Kremlin appointees is ineffective because the president's candidates simply assume office on an "acting" basis. This exception is the Constitutional Court. But by defeating several of the president's judicial nominees, as described below, the upper chamber has effectively prevented the Court from beginning to function. This postponement is not necessarily a sign that the separation of powers is working well or that the legislature can prevent Yeltsin from getting what he wants. (The executive has much more to lose than the legislature from a functioning Constitutional Court.) On January 12, acting General Procurator Alexei Illushenko, who also continues to exercise his office despite the Federation Council's refusal to confirm his nomination, opened a criminal investigation into the events of Black Tuesday.

At the end of October, facing a vote of no-confidence in the Duma, Yeltsin made a strategic appointment to split the communist-agrarian opposition vote. He named Alexander Nazarchuk, a member of the Agrarian Party, as the new agriculture minister. In exchange for this portfolio, the Agrarians promised not to vote against the Chernomyrdin government. The government then survived a vote of no-confidence on October 27.

Because of the need for an absolute majority, abstentions counted as votes in favor of the government. This technicality, largely incomprehensible to the public, is the only reason the government survived. Astonishingly, only 54 deputies out of

450 voted in favor of the cabinet. Such a pitiful showing reveals how far away Russia remains from a parliamentary system in which an effective government can emerge from the elected assembly and formulate policies that receive support from a stable majority of deputies.

Under the Constitution, the government would not have been dismissed even had the vote gone against it. According to Art. 117.3, a vote of no-confidence must first be passed with an absolute majority of all deputies. The president then "has the right to have the government resign." If, within three months after a vote of no-confidence, the Duma passes a second no-confidence vote on the same government, the president must then, and only then, choose between dismissing the government and dissolving the Duma.

On November 3, Yeltsin signed another decree, this time dismissing Viktor Krunya, director for Control of Hard Currency and Export (a ministerial rank), for his role in "Black Tuesday," the one-day, 27 percent decline in the value of the ruble. The increasingly powerful Security Council issued a report the same day, claiming that the central bank, the economics and finance ministries, as well as several commercial banks, were responsible for the ruble's precipitous collapse. The report also stated that the financial crisis had placed Russia's national security at risk. The following day, apparently turning his back on his former reformist allies, the president appointed Vladimir Pankov finance minister. Accused of bribe taking, Pankov had recently spent five months in Lefortovo prison before charges against him were dropped. Alexander Shokin, economics minister and deputy prime minister, resigned when he learned of this appointment.

To the bafflement of onlookers hoping to discover a coherent strategy behind the shake-up, the president then raised super-reformer Anatoly Chubais, former head of the State Property Committee (SPC), to the post of first deputy prime minister in charge of the entire economy. This "promotion" appeared to elevate Chubais to the highest levels of government, alongside Oleg Soskovets, first deputy prime minister, and Chernomyrdin. As the only remaining reformer from the 1991 team, however, Chubais is an increasingly isolated figure, and it is unlikely that he alone has sufficient authority to effect change. Cynical commentators say that he was simply kicked upstairs. As soon as he had switched positions, he was shocked to discover the new head of the SPC, Vladimir Polevanov, brazenly subverting previous reforms. Since December, Polevanov has been trying to renationalize "wrongly privatized" industries and even to cut off personal contacts between the SPC staff and western economic advisors, for what he termed "state security reasons." Chubais appealed to the prime minister to gain control over Polevanov, but Chernomyrdin's own power is limited and the new (anti)privatization minister remained defiant.

On November 8, the day of Chubais's "promotion," Yevgeny Yasin (former Kremlin staff economist) was named

economics minister. This move completed the most thorough government shake-up since 1991. All of the main economic posts had changed hands in one month.

The country is being run, to the extent that it is being run at all, by the Security Council and not by the government. The Security Council was created by presidential decree in June 1992. Although the body was even then under the president, the Supreme Soviet was in part involved in its functions. It was also limited in its jurisdiction by the old Constitution. Under the current Constitution, the Security Council's existence, but not its functions or internal procedures, are defined by Chapter 4, Art. 83/g: "the president of the Russian Federation . . . composes and heads the Security Council of the Russian Federation, whose status is defined by federal law." Russia's most powerful gremium bears a striking resemblance to the communist-era Politburo because it deliberates in secret, has voting and nonvoting members, its jurisdiction is potentially unlimited, and it is wholly unaccountable for its decisions. According to the June 1992 presidential decree, the Council has its own apparatus and can "demand any necessary information from all state authorities." Moreover, it has the power to "coordinate the ministries to implement [its] federal programs and decisions." The fact that the body is directly subordinate to the president and that its decisions can easily be transformed into presidential decrees, that its meetings are confidential, and that the government cannot oversee its budget, all add to its real and potential power. Officially, the Council has 12 members, five of whom are permanent voting members. Actually, membership depends on the president's mood or the maneuverings of his inner circle. The permanent members include Yeltsin, Prime Minister Chernomyrdin, and secretary of the Council, Oleg Lobov. Duma Speaker Ivan Rybkin and Federation Council Speaker Vladimir Shumeiko were appointed as permanent members in January. The current, nonpermanent members include: Defense Minister Pavel Grachev, Interior Minister Viktor Yerin, head of the Federal Counterintelligence Service Sergei Stepashin, head of Foreign Intelligence Yevgeni Primakov, commander of border security Andrei Nikolayev, Minister of Emergency Situations Sergei Shoygov, vice prime minister in charge of nationalities, Nikolai Yegorov, Foreign Minister Andrei Kozyrev, vice prime minister Sergei Shakrai, and Finance Minister Vladimir Pankov. When the *EECR* contacted the press service of the Security Council on January 23, the press service responded that it was not certain of the membership in the Security Council.

On October 31, the minister of justice, Yuri Kalmykov resigned. In December, when the president formally relieved him of his duties, Kalmykov disclosed, at a press conference, two reasons for his resignation: he disagreed with the Security Council's decision to use force in Chechnya and he believed the president's circle of advisors had started behaving, in his words, like the Communist Party Politburo, a secret body with final say on all issues and wholly unaccountable for its

decisions. According to Radio Liberty, Kalmykov also said that, for all practical purposes, the functions of the Ministry of Justice had been usurped by the president's "ill-reputed" State Legal Administration (SLA). Responsibilities of the two bodies have confusingly overlapped for a few years, since SLA was first created when the Ministry of Justice bureaucracy was viewed as insufficiently progressive to implement in the radical reforms of the early 1990s.

On January 5, the president named Valentin Kovalyov as the new minister of justice. Kovalyov, a deputy and vice chairman of the Duma, is the first member of the government drawn from the Communist parliamentary fraction. As soon as he was appointed, the Communist Party voted to expel him from its ranks. The communists have systematically declined to enter the government, so long as it continues its "present disastrous course" of market reforms. A few days prior to his appointment, Kovalyov was also named chairman of a temporary presidential Committee for the Observance of Human Rights in Chechnya. On his return from the Mozdok, the Russian military headquarters in Chechnya, Kovalyov stated at a press conference that there were no violations of human rights in Chechnya. (Kovalyov's name confusingly reminds the listening public of Sergei Kovalev, the human rights advocate and chairman of another Presidential Human Rights Commission, who spent weeks in Grozny and delivered less comforting news.) The next day Yeltsin signed the decree naming Valentin Kovalyov minister of justice. A week later, on January 13, Kovalyov, again in his capacity as chairman of the temporary committee, returned from another quick trip to Chechnya and announced that, despite subversive rumors, no massive human rights violations had occurred there.

Presidential appointments requiring parliamentary approval (such as the chairmanship of the Central Bank), continued to provoke shadow boxing between the branches. In October, for the second time in six months, the acting general procurator, Alexei Illushenko, was rejected by the Federation Council by a vote of 76 to 72. Vladimir Shumeiko, speaker of the upper house, commented after the vote that Illushenko could go on serving as acting general procurator "so long as he wants" until another candidate is approved by the Council. The Constitution does not stipulate when the president must nominate another candidate, and there is no restriction on the number of times the same candidate may be proposed. A press release by the president's office on the day the Federation Council voted down Illushenko stated that the upper chamber's previous consideration of him (April 1994) had not been objective because of a "lack of knowledge about Illushenko" and was due to the politically charged atmosphere surrounding the former general procurator. Many members, however, asserted that they had refused to approve Illushenko because they know him all too well. His participation in a presidential commission on corruption, which used forged documents to

inculpate then Vice President Alexei Rutskoi, may have permanently spoiled Illushenko's chances with many members of the upper house.

In the midst of the controversy over the cabinet reshuffle, the process of seating a full Constitutional Court began in early October. This process remains embarrassingly unfinished. The Court is still short one justice as the *EECR* goes to press. According to the Constitution (Art. 128), the president is authorized to nominate justices who must then be confirmed by the Federation Council. The "Law on the Constitutional Court," signed by the president on July 21, 1994, requires all justices to be approved within 30 days after the law comes into force (Part 5, Article 2). But the deadline came and went and no procedure was in place for dealing with a failure to comply. The appointments process has taken so inordinately long for several reasons: the Federation Council went on a two-month summer holiday immediately after the adoption of the law, they met only infrequently to consider this issue, the number of empty seats on the Court was relatively large, the president's nominees appeared partisan, and it is not clear whether the president really wants an active Court that might call the constitutionality of his decrees into question. Political pressure to fill the remaining vacancy has increased since the Chechnya crisis began, but so far to no effect.

The president first submitted his recommendations for the remaining seats on the Court on October 6, opening day of Parliament. He nominated six candidates for the six vacancies. Three of the six were approved, after intense questioning. Special scrutiny was reserved for candidates' views about the constitutionality of presidential decree No. 1400 of September 21, 1993, dissolving the former Supreme Soviet. Two of the three candidates were not from Moscow, an apparent sop tossed to the senators, who represent the far-flung regions and many of whom bitterly resent any sign of a Moscow-centered appointments policy. The judges elected were Vladimir Yaroslavtsev, Doctor of Law and formerly City Court Judge in St. Petersburg. He is one of the few candidates who was also recommended by the Russian Council of Judges. Of the justices, he has the most practical experience. Indeed, he is the only one who has actually served as a judge. But senators interviewed in the press reported that they preferred Yaroslavtsev principally because he was not from Moscow. The other non-Muscovite elected was Olga Khokhryakova, a legal scholar and labor law specialist from Ekaterinburg. Vladimir Tumanov, a widely respected constitutional law specialist and scholar, was also approved. He is rumored to be a leading candidate for the chairman's post. But age may be a problem, or perhaps a strategic advantage, in this respect, since by law he will be forced to retire in two years.

In November, the president again proposed five candidates, including two of those already rejected in the previous round. But the Federation Council approved only Yuri Danilov, former vice-chairman for the Government

Committee on Anti-Monopoly Policy and Support for New Economic Structures.

On December 6, the Kremlin nominated two candidates, both with the rank of General, for the remaining two slots. But the refractory Federation Council approved only Vladimir Strekozov, deputy director of the Military Academy of Economics, Finance and Law of the Russian Armed Forces. Strekozov apparently impressed the senators with his independent thinking. When asked by Alexei Manannikov: "can the minister of defense himself, without the sanction of the commander-in-chief, send Russian planes to bomb Russian cities?" (a clear reference to the situation in Chechnya), Strekozov answered that "according to current law, no one has this right in principle." He added that the Duma was now considering a draft law "to strengthen the right of the president to use the armed forces" within Russia, but that no such law was as yet on the books.

Sergei Vitsin was rejected, reportedly for his support of the president's attack on the White House in October 1993. One seat remains to be filled on the Court. On January 22, Robert Tsivilyov, from the president's administration, was nominated a second time. He missed the first nomination in the Federation Council by four votes, but he lost the second nomination by a larger margin, receiving only 61 of 176 votes. Some MPs were persuaded that the Constitution does not allow repeat candidates. This was the opinion of the Federation Council's Committee on Constitutional Legislation, which recommended that Tsivilyov not be approved. "The Committee thinks that the renomination violates the procedure for nominating candidates and the Constitution does not provide for renominations," said Elena Mizulina, deputy chair of the Committee.

Controversy remains lively about what constitutes a quorum and how many judges must be sitting for the Court to begin work. Both the Constitution (Art. 125) and the "Law on the Constitutional Court" (Art. 4) state that the Court is made up of 19 judges. The Law goes on to say that a minimum working quorum is "three-quarters of the full number of justices," that is, 13. However, Art. 2 of the "Transitional Provisions" of Sec. 5 of the Law also states that the "full complement of justices of the Constitutional Court of the Russian Federation must be in place no later than 30 days after the law comes into force." Art. 3 of the same section, stipulates that the chairman, vice chairman, and the Court secretary "can be elected" and "the Court Chambers created" only after the full Court is in place.

Some of the already appointed justices are known to oppose beginning work until a full court is elected. When asked why, they reply that the president and the Federation Council would be less likely to fill the remaining positions once the Court started working. This happened with the previous Court, making it appear publicly as an amputated or unfinished body, with questionable legitimacy. Under the current law, the consequences would be even more serious, preventing the Court from

electing a chairman and creating court chambers, thereby seriously obstructing its practical work.

The executive was plagued during the fall by increasing problems within the military. The press, and to a lesser extent the public, was outraged in mid-October when Dmitry Kholodov, a young Moscow crime reporter, was killed by a bomb planted in a briefcase he received on a tip that apparently came from a Federal Counterintelligence Service (FCS, the former KGB) agent. Kholodov had been promised that the briefcase contained documents linking military brass from the Western Army Group (East Germany) with flagrant corruption. Leading newspaper editors and journalists blamed the crime on the FCS and high military figures, including Colonel General Marvei Burlakov, former commander of the Western Army Group and first deputy defense minister. The minister of defense himself, Pavel Grachev, was also implicated. Referring to the bombing, Grachev commented nonchalantly that if his own "special forces had done such a crude job," he "would have kicked them out." He also suggested, offhandedly, that Kholodov had blown himself up.

In the aftermath of the killing, Yeltsin dismissed Burlakov, accusing him of corruption during his tenure in Germany. Grachev had urged Yeltsin to make Burlakov a deputy minister, and continued to support the general. On January 12, the Military Chamber of the Supreme Court found one of Burlakov's former subordinates Nikolai Seliverstov, former first deputy commander of the Sixteenth Air Force (in the Western Army Group), guilty of receiving money from a German company for its use of a Russian airfield. He was sentenced to five years imprisonment (suspended to two years probation) and ordered to pay the government 64 million rubles. Indirectly, Seliverstov's conviction and Burlakov's dismissal weakened the position of Grachev. The embattled defense minister's failure to carry out the president's order to oust the popular Lieutenant General Alexander Lebed, commander of the Fourteenth Army in Moldova, is another sign of both Grachev's personal weakness and a pervasive uncertainty about the chain of command. Even the president's national security advisor, Yuri Baturin, has now called for Grachev's ouster. Since the spring, Baturin has been urging the appointment of a more innovative and professional leader to orchestrate comprehensive military reforms. It is unclear if Grachev now has sufficient time or influence effectively to defend the interests of the military or the defense industry, especially against the belt-tightening budget proposed by the finance ministry and the failures in Chechnya.

A related controversy concerns the president's personal guard or Security Service, headed by Major General Alexander Korzhakov, a former KGB major who has doubled as Yeltsin's bodyguard and sidekick since 1985. Korzhakov's praetorian guards are reputed to number between 1500 and 20,000 men. Yeltsin apparently credits Korzhakov with successfully organizing the October 1993 attack on Parliament. Soon after that crisis, Yeltsin detached the Security Service

from the former KGB, making it an independent strike force. Aside from rumors of Korzhakov's unrivaled influence on the president, two recent events have brought his constitutionally questionable authority to public attention.

On November 30, Korzhakov wrote a letter urging Prime Minister Chernomyrdin to cancel the planned oil export liberalizations, a reform agreed upon with the World Bank in return for a \$600 million loan, along with a \$6 billion IMF credit. From the text, and given Korzhakov's limited experience in such complex economic transactions, it is likely that this letter was actually written by parties financially interested in keeping the current export quota system unchanged. Korzhakov's letter said such reforms were "absolutely impermissible," occasionally using the word "we," and thereby suggesting that he was speaking for the president. While other voices from within the cabinet also argued against the removal of the quotas, Korzhakov's letter showed that the decision had not yet been made. Right up to the January 1 deadline, it was widely assumed that the oil export liberalization would not be carried out. At the last moment, it was announced that the World Bank agreement was in force.

The anomalous but expanding role of Korzhakov was again revealed when, on December 2, a group of armed and masked men surrounded the Moscow mayor's office building, which also houses the headquarters of Most Bank, a leading Russian bank. These paramilitary forces, in conspicuously unmarked uniforms, ordered the bodyguards of Most Bank president, Vladimir Gusinsky, to lie face down in the snow, where they were kicked and beaten. The mystery was solved several days later when it was announced that the masked men came from the president's personal guard. It is rumored that the attack was a shot across the bow, delivered in response to Gusinsky's open support for Mayor Yuri Luzhkov's presidential ambitions. The official reason offered was that Gusinsky's car had gotten illegally entangled with a presidential motorcade earlier in the day.

General Korzhakov's name has also been linked to the mysterious arrest on December 20 of the notorious Moscow lawyer, Dmitry Yakubovsky, held without charge in St. Petersburg under the president's "Anti-Organized Crime Decree" (No. 1226, June 14, 1994). This law is being used as the basis for holding Yakubovsky without accusation for more than the constitutionally sanctioned time limit. Yakubovsky, who was given free rein by Yeltsin to investigate corruption in 1993, is now a "victim of Korzhakov's war against Luzhkov," according to Yakubovsky's lawyer, Genrikh Padva.

On October 24, Yeltsin extended the right to citizenship to citizens who had left Russia before the adoption of the "Law on Citizenship" (February 1992) as well as to those living in the republics of the former Soviet Union. The newspaper *Sevodayna* reported on January 13, that the chief of the Agency for Citizenship Issues of the Presidential Administration, Abdulkh Mikitaev, stated that the Duma would adopt an amendment to the law, extending the deadline for registration

to February 6, 2000. Mikitaev reportedly said that deputies in the Duma "indisputably support the amendment, and it should be adopted in the next week."

Parliament began its fall session with an impossibly overcrowded docket of 222 draft laws, all submitted during the parliamentary vacation. Legislators then shortened the list to 59 bills the week before the Duma met. It was clear from the session's first day that the deputies would be more thoroughly occupied with political antics staged by Vladimir Zhirinovskiy's Liberal Democratic Party (LDP) representatives than with passing much-needed legislation in the newly refurbished Duma on Manezh square. Speaker Ivan Rybkin said that priority treatment was to be accorded to bills on local government, taxation, and other banking matters. Most of these laws have already passed a first or second reading but, by the end of the fall session, none of them, nor any other important laws for that matter (on parliamentary and presidential elections, on the second stage of privatization, the new criminal code, or the 1995 budget), were given final approval. Some were not considered seriously at all.

On the opening day of the Duma session, Rybkin, paraphrasing Yeltsin, said that it would be "no sin" if representatives of other parliamentary factions joined the government. Communist Party (CP) leader and Duma deputy Gennady Zyuganov promptly announced that his party would "never join such a disgraceful government." Later in the week, Zhirinovskiy swaggered that the LDP would not participate either. On October 7, he added that the LDP would boycott parliamentary sessions due to political persecution directed against him personally by the administration. The boycott threatened seriously to disrupt the work of the Duma, as the communists, agrarians and other smaller factions at first announced that they would support the walkout.

At a press conference later in the day, however, Zyuganov reversed the CP's stand and announced that it would not participate in the boycott. But with abysmally low attendance the norm, the walkout of LDP's 63 Duma deputies threatened the ability of the 450-member chamber to reach a quorum. Legislative non-achievement seems to be the trademark of this assembly. Of the twelve federal constitutional laws necessary for final implementation of the new Constitution, for instance, only one had been passed by the end of the fall session, the "Law on the Constitutional Court."

At the fall session, the lower house considered the "Law on the Human Rights Commissioner," which had previously passed on its first reading, but had failed to garner the two-thirds majority required in its second and third readings. Rampant absenteeism, and the reluctance of opposition deputies to have temporary Human Rights Commissioner Sergei Kovalyov elected officially to this post, may explain the assembly's failure to pass this particular law. Kovalyov now serves on an acting basis and only on the sufferance of the President. No major amendments or changes to the law itself have been proposed. Kovalyov's heightened visibility

during his trips to Chechnya, where he was monitoring the army's brutal attacks on civilians, may further reduce the chances of the law being passed with him as commissioner (ombudsman). The communists apparently envy the attention Kovalyov received during the Chechnya crisis and, like others in the opposition, they still resent his defense of basic rights during the October 1993 events. In any case, Kovalyov is now seen by all sides as an increasingly politicized figure, almost a successor to Andrei Sakharov, and he may well have now become an unsuitable candidate for the post of human rights commissioner.

The draft budget consumed much of the Duma's attention this fall. It was considered 13 different times from its initial presentation in October to its first-reading acceptance on December 24. Reformist deputies obstructed its passage on the first reading in an attempt to reverse concessions made to conservatives. Finally, a costly provision inserted by the agrarians was removed and the budget passed. A separate law was passed on the same day to cover government spending on a provisional basis for the first quarter of 1995. The final 1995 budget will probably not be approved until the spring.

The Duma passed, on its first reading, a highly controversial draft law expanding the power of the Federal Counterintelligence Service (FCS), the successor to the KGB. The provisions allowing the agency to eavesdrop without a court order "in cases of threats to the security to the Russian Federation" appear to violate Art. 23.2 of the Constitution. ("Everyone has the right to secrecy of correspondence, telephone conversations and telegraph, and other communications. Restriction of this right is permitted only on the basis of a court decision.") FCS Director Sergei Stepashin told the deputies, with no apparent irony, that the law was needed to provide a legal basis for parliamentary control over the agency's operations. Originally, democratic factions had planned to oppose the bill, but a zany outburst by Zhirinovskiy calling the FCS "an affiliate of the CIA" and Stepashin "an agent" of the Israeli intelligence service, provoked democratic factions into supporting the law. At the end of November, a decree by the president restored to the FCS the investigative power denied to it since December 1993.

On November 18, the Federation Council passed a law creating the Accounting Chamber to inspect government finances. Article 101 of the Constitution states that this Chamber is responsible "for the monitoring of the implementation of the federal budget." Its form and procedures are left up to the Federal Assembly. Senator Yuri Boldyrev, a strong supporter of the law, said that, according to constitutional norms, Parliament has no power to oversee the executive: "The President does what he thinks necessary, and no one in the country can say how the government should spend its money. The only monitoring body foreseen in the Constitution is the Accounting Chamber."

The new law legalizes governmental scrutiny of any recipient of federal funds or anyone utilizing federal prop-

erty. The Accounting Chamber's six main functions include: verification of timely implementation of the expenditure and revenue provisions of the budget and extra-budgetary funds; assessment of the reasonableness of these provisions; investigation of the results of expenditures; expert advice on appropriation legislation; verification of the lawful and timely transfer of funds from the central bank and other institutions; and analysis of deviations from anticipated plans. The president's amendments, added at the second reading of the bill, addressed what Yeltsin's advisors apparently saw as an overly broad reading of Art. 101. The administration wanted to exclude from the Accounting Chamber review power over extra-budgetary funds. The Duma disregarded this amendment and sent the law, with wide powers intact, to the Federation Council for approval. Speaker Shumeiko argued fervently against the law and on behalf of the administration. Presently, the Accounting Chamber has no means to enforce its decisions. Such mechanisms must be created according to Art. 13 of the law. The president, of course, may still veto the law.

On December 7, the Duma voted to reject the president's proposal that December 12 be declared a holiday to celebrate the anniversary of the adoption of the new Russian Constitution. The following day, Yeltsin signed a decree unilaterally declaring December 12 a holiday, continuing a Soviet tradition of having a Constitution Day.

On December 16, the Duma overwhelmingly passed on a first reading a draft law regulating the 1996 presidential election. The draft that was provisionally adopted is similar to the law actually employed in the 1991 presidential elections. Among the wholly new provisions is a requirement that candidates collect two million signatures to register and appear on the ballot. In addition, no more than seven percent of the signatories favoring a given candidate may come from any single region. Another change is that candidates must raise their own campaign funds from private sources. (In 1991, candidates received from the state small and equal subsidies to finance their campaigns.) The new law limits the amount of money a candidate may raise, but the government will pay the candidate's travel expenses via public transportation and provide a kind of unemployment benefit if he or she takes a leave of absence from his or her job to campaign.

Interim elections took place in November for a seat made vacant by the first of two murders of Duma deputies in 1994. Sergei Mavrodi, creator of the financial pyramid MMM, was elected with the support of only a tiny fraction of the electorate in his constituency. Election rules for deputies were originally formulated by Viktor Shenis for the election law of 1993. Shenis decided that individual races for Duma seats should be decided on the majority principle, requiring a minimum of 50 percent plus one vote for victory, with a second round if there was no clear winner. But the Kremlin opted for a plurality formula, instead, deciding that the front runner is

elected, no matter how few votes he receives, so long as 25 percent of the registered voters turn out.

The result for Mavrodi, under these rules, was that, with 12 candidates and a 30 percent turnout, he was elected with only eight percent of the vote. In a district containing an estimated 36,000 MMM shareholders, he received about 40,000 votes. Taking constituency services to a novel extreme, Mavrodi promised his shareholders that he would pay them what they were owed if he were elected. Upon winning, however, he reneged on this promise, announcing that he had run only to get out of prison and that he would spend most of his time working on his businesses because he was not a politician. He disarmingly stated: "Honestly speaking, I do not think I will be attending the Duma very often." His decision to run was purely a business decision, he explained, and a way to get out of jail. He added that "any normal person would have done the same thing." In fact, he has not attended the Duma because the lower house has refused to seat him, and his immunity from prosecution for tax fraud is now in doubt.

Media criticism of the brutal invasion and destruction of a nearly defenseless Grozny has been truly impressive. But the relative lack of censorship so far has been due more to the administrative decomposition of the Russian state than to the sincere devotion of public officials to the constitutional principle of press freedom. Since the outbreak of fighting in Chechnya, in fact the press has been subjected to a growing though poorly organized campaign of intimidation. In June, a panel was created by the State Press Committee to determine monthly which newspapers would receive money from the government. The president's own press secretary is a member of the panel. Members of the panel have confided that they are under direct pressure to fund those periodicals preferred by the country's highest officials. A law relating to the mass media, "On Information, Systematization of Information and the Defense of Information," was adopted by the Duma on November 23. The law has been criticized vigorously as a threat to the independence of the press, radio, and television, because it encourages monopoly control of all information. A similar draft law, "On Legal Information," would have a similar chilling effect on the flow of legal information. One such law "On State Support of the Mass Media" was adopted by the Duma, but then rejected on December 9 by the Federation Council.

In December, the Duma passed another draft law, "On Advertisement," on its first and preliminary reading. This law, if finally adopted, would have a significant impact on the elections slated for 1995 and 1996. On December 28, *Izvestiya* published a list of ways in which this law could chill the press and, along with it, the reforms. Article 28 provides for the creation of a "specially authorized panel" for monitoring mass media compliance with legislation on advertising. The panel would be appointed by the President, but no organizational or procedural details are set forth in the law. *Izvestiya* warns ominously that "someone is striving to give

control over advertising to a bureaucratic monster." With troubling vagueness, the draft law states that advertisements must be "dignified," a quality that obviously leaves broad and easily abusable discretion to those who are empowered to identify violations. The Duma will probably return to this draft law early in the first session of 1995.

On October 6, in a closed door session with the president's regional representatives, Sergei Filatov, the head of Yeltsin's administration, discussed the lamentable and perhaps unpatriotic failure of the regional media to convince the population of the correctness of presidential and governmental policies. It was agreed that government newspapers should be subsidized. Later that day, it was reported on Russian TV that "in view of the upcoming elections," participants at the meeting decided to transfer control over the media's financial resources from the governors' representatives to the president's.

On November 10, Yeltsin vetoed a media law passed by a two-thirds Duma vote. The law would have prohibited state authorities from sponsoring newspapers or journals other than simple information bulletins. The government and the president's administration publish two daily national newspapers—*Rossiskaya gazeta* and *Rossiskie vesti*. During the Chechnya crisis, *Rossiskaya gazeta* has grown increasingly partisan attacking Yeltsin's critics, including Sergei Kovalyov, among others.

Because the President elected not to declare a state of emergency in Chechnya, no legal restrictions apply to journalists reporting from the theater of the conflict. However, the administration has reacted angrily to reports of troop movements and casualties. It apparently sees an accurate death toll of Russian soldiers as an intolerable threat to the morale of the country and perhaps even to the outcome of the war. As a result, the president, or the boyars around him, have created an official press office for laundering information about the conflict and have also placed military censors in the field. According to the chairman of the State Press Committee (SPC), Sergei Gryzunov, "If a newspaper checks its information, then I have no problem with its publishing what it learns from independent sources" (December 1). The SPC is responsible for distributing state subsidies to selected media and implementing state policies on the press. Official statements on the development of the war have been frequently found untrue by foreign journalists on the scene.

More confusion and panic was unleashed on Friday January 13, when ITAR-TASS issued a statement that, according to presidential decree, the privately founded NTV television station and another station would be "reorganized" and placed under the direct control of the government. Official confirmation was not forthcoming, but the rumor was widely repeated in the media. NTV broadcasts one of Russia's most respected television news programs, and its reports increasingly contradict the sometimes stiffly official bulletins from the government channel (in particular channel 1, *Ostankino*) on the Chechnya crisis. On the day of the

ITAR-TASS announcement. Zhirinovskiy demanded in the Duma that the president revoke the license of NTV for "anti-Russian" broadcasts. Nothing further is known about the fate of NTV as we go to press.

Amazingly, the only parliamentary leaders offering support for the Kremlin's Chechnya policy are Vladimir Zhirinovskiy (LDP) and Alexander Barkashov, head of the openly racist Movement for Russian National Unity (MRNU). The rise of a military-authoritarian police state is predicted by some leading politicians such as Yegor Gaidar and journalists at *Izvestiya*. Others assert a Pinochet-style government has already come to power. The Security Council is functioning as a kind of extra-constitutional junta, and its power appears wholly uncontrolled. Who exactly is responsible for what is extremely difficult to determine.

Slovakia

Constitutional and political developments in the fall included two elections (national and local) and the country's first referendum. The creation of the new National Council (Parliament) and the formation of a new government generated several intractable disagreements that were brought to the Constitutional Court. The evaluation of almost any political proposal for "constitutionality" or "unconstitutionality" has become part and parcel of everyday public discourse.

National elections (conducted according to a proportional system with national party lists) took place on September 30 and October 1. Seven leading political groups emerged: three coalitions, two parties providing a common party list for another political group, and two single parties. Meciar's Movement for a Democratic Slovakia (MDS), in a coalition with the Peasant Party (PP), gained 34.96 percent of the vote (61 seats of 150), the Common Choice (CC), a coalition of four parties led by the Party of the Democratic Left (PDL), received 10.40 percent (18 seats), the Hungarian Coalition (HC), which is made up of three Hungarian parties (Coexistence, Hungarian Christian-Democratic Movement [HC-DM], and the Hungarian Civic Party [HCP]) won 10.18 percent (17 seats), the Christian Democratic Movement (CDM) of Jan Carnogursky won 10.08 percent (17 seats), the Democratic Union (DU) of Prime Minister Jozef Moravcik gained 8.57 percent (15 seats), Jan Luptak's Association of Workers in Slovakia (AWS) obtained 7.34 percent (13 seats), and, finally, the Slovak National Party (SNP) of Jan Slota just squeaked past the threshold with 5.40 percent (nine seats). The 1994 pre-term elections, in short, produced an even more fragmented Parliament than before. Deputies of 15 political parties are now represented in the assembly. Moreover, the success of parties showing little interest in cooperating with the government, namely the MDS and the AWS (a parliamentary newcomer), further

complicated the formation of a new government supported by a parliamentary majority.

Before the first session of the National Council a series of coalition talks took place. The main controversial issues in the first round between the MDS and the CDM and CC (PDL) concerned the political stand of the prospective coalition vis à vis President Michal Kovac (who, according to Art. 106 of the Constitution may be dismissed by a three-fifths majority of the National Assembly "if he engages in activities directed against the sovereignty and territorial integrity of the Slovak Republic, or in activities directed towards eliminating the democratic constitutional system of the Slovak Republic"), as well as other politically motivated changes to the constitutional system announced by the MDS. By mid-October, the CDM withdrew from coalition talks with the MDS, squelching any hopes for a broad coalition. In the course of coalition talks a major problem in Slovak politics became clearly identifiable—the existence of ethnic political parties. Even after experiencing support from the Hungarian parties during last six months of the previous government, the PDL, CDM, and DU did not accept the HC as a coalition partner. The only clear partnership that emerged from negotiations was between the MDS and the SNP. In the second round of coalition talks, a main topic of discussion was the formation of new parliamentary committees.

A constitutional question was raised in the second round by MDS, SNP, and AWS. According to the Constitution, a government member cannot simultaneously hold a seat in Parliament. Because a new cabinet had not yet been formed, this incompatibility rule posed a problem for members of Premier Moravcik's government, 15 of whom had been newly elected as parliamentary deputies. President Kovac invited substitutes to attend Parliament's opening session on November 3 to take the place of current government members, but Parliament Chairman Ivan Gasparovic (MDS) argued that the issue was not under presidential jurisdiction, falling instead under the chairman's prerogative.

Leaders of the Hungarian Coalition made several attempts to form a cabinet comprised of the current ruling parties and the Hungarians, claiming that such a cabinet might be formed with the support of AWS. By the end of October they stopped the coalition talks, accusing CC, CDM, and DU of not inviting representatives of HC to an October 22 meeting. As Peter Weiss, one of the prominent leaders of Common Choice, pointed out, the formation of a government with the participation of Hungarian parties is "unrealistic" in view of the electoral results and the differences between the political programs of the two coalitions.

On November 3, Parliament held its first session. Eventually, the speaker allowed Kovac's substitutes for cabinet members to participate, although he again emphasized that such decisions were outside the president's jurisdiction. In a secret ballot, Gasparovic was reelected to the post of parliamentary chairman, receiving 104 votes in the 150-member assembly. It was agreed that four vice chairmanships would be

created, and Augustin Marian Huska (MDS) along with Jan Luptak, chairman of the AWS, won handily. Voting on the remaining two vice chairmen was postponed after the other candidates failed to win sufficient votes. At the end of the session, Moravcik's cabinet resigned, but remained in office until the formation of a new government, in accordance with Art. 117 of the Constitution.

Immediately following the opening session, a second session began, lasting late into the night. Deputies began debating the controversial issue of parliamentary committee membership. The current "Act on Legislature Procedures" (an amended version of the old communist rules) does not determine whether a proportional or majoritarian system must be used for composing parliamentary committees. The question of how leadership positions in the committees are to be distributed figured prominently in the coalition talks following the elections. Up to that moment, the unwritten rule was that chairmanships as well as committee assignments should be distributed among parliamentary factions on a proportional basis. PDL, DM, DU, and HC all made it clear that they preferred this practice to continue. During the second session, however, MDS member Olga Keltosova put forward several proposals which in effect abandoned the principle of proportional representation and established a purely majoritarian system. The new governing coalition (MDS, SNP, and AWS), therefore, now has a majority on all committees and all vice speaker positions.

Protesting the fact that committee make up does not correlate with the distribution of political power in Parliament, members of CDM, DU, CC, and HC walked out of the session, calling the arrangement unconstitutional. The session nevertheless continued with 84 deputies. Miroslav Kocnar (AWS), elected as the chairman of the Mandate and Immunity Committee, reported that the validity of the mandates of all deputies and substitutes had been verified. Even so, committee members from the MDS initiated the creation of a temporary commission to examine whether DU deputies had been elected in accord with the law. Support from AWS allowed MDS and SNP to dismiss Interior Minister Ladislav Pittner and Privatization Minister Milan Janicina, despite the fact that they had already resigned. Members of the board of Slovak Radio and Television were dismissed and replacements were appointed. Members of the Presidium and supervisory board of the National Property Fund were also replaced. Direct sale privatization projects, approved by the Moravcik cabinet after September 6, were canceled and amendments to the privatization law were passed. The chairman and vice chairman of the supreme auditing office were recalled and a new supervisory commission designed to oversee the Slovak Intelligence Service was approved and placed under the leadership of MDS deputy Ivan Lexa. Attorney General Vojtech Bacho was also replaced.

This "parliamentary night" of November 3 was followed by a new episode in the mandate controversy.

Earlier in the year, MDS and SNP had questioned the eligibility of DU cabinet members to run in the elections. Then, responding to the MDS petition, DU had lodged a complaint with the Court on October 14, demanding an examination of MDS's alleged violation of the election law. State-run television had broadcast the party's interpretation of Meciar's inability to vote on the first day of the elections. The Constitutional Court, on October 27, dismissed both complaints. The latest development of the mandate controversy portends further complications: a five-member commission set up by Parliament's Mandate and Immunity Committee ruled, on November 22, that DU did not have the 10,000 signatures required to participate in this fall's parliamentary elections. The commission, established at the initiative of MDS, was composed of four MDS members and one member of SNP.

On November 9, President Kovac returned several controversial laws passed by Parliament. One concerned the controversial cancellation of all direct sale privatization projects approved by the Moravcik government since September 6. The other was an amendment to the privatization law, transferring authority over privatization from the government to the National Property Fund. The Moravcik government's request that Kovac also reject the no-confidence votes on Privatization Minister Milan Janicina and Interior Minister Ladislav Pittner prompted Kovac to ask the Constitutional Court to review the matter. Kovac accepted Parliament's decision to dismiss Attorney General Vojtech Bacho and, later, after several days of hesitation, approved the new MDS candidate, Ludovit Hudek.

Outgoing Premier Moravcik said that many of the decisions made by Parliament during its first two sessions were "unconstitutional." He argued that given the government's resignation, Parliament cannot dismiss only two ministers. He also criticized the amendment to the privatization law, arguing that the shift of competencies from the government to the National Property Fund deprives the Council of Ministers of its constitutionally delegated powers, thereby violating Art. 119.d of the Constitution which provides that the government shall decide "on principal measures to be taken to implement the economic and social programs of the Slovak Republic." Moreover he asserted that the cancellation of privatization projects passed by Moravcik's government since September 6 was unconstitutional because, according to the Constitution, "expropriation or restriction on property rights shall be imposed only to the extent legally justified for the protection of the public interest and shall be justly compensated." (Art.20.4).

In addition to the issues brought to the Court because of the "political agendas" of the MPs, the Constitutional Court dealt with the "Act on National Health Insurance," (No. 3/1993) declaring, on October 19, that it was in part unconstitutional because it created a discriminatory health care system. The Court struck down the decisions of seven municipi-

palties that tried to reappropriate, as municipal property, land used by the Slovak Army.

Slovakia's first referendum took place on October 22. A total of 93.64 percent of participants replied "yes" and 3.97 percent "no" to the referendum question: "Do you agree that a law should be passed on revealing the sources of money used to purchase privatized state property?" But, according to official figures, only 773,624 of 3,874,407 eligible voters (or 19.96 percent) participated, thus rendering the referendum invalid. (According to Art. 98 of the Constitution, "the results of a referendum shall be valid provided that an absolute majority of the eligible voters have participated and the issue has been decided by an absolute majority of votes.") Moreover, Parliament had already passed a law on this issue in August, so governmental parties argued that there was no need to hold a referendum.

For the third time in seven weeks, on November 18-19, Slovak citizens were called to the polls for local elections. Local election results showed that independents won 28.48 percent of the mayoral seats, followed by PDL with 17.87 percent, MDS with 15.88 percent, CDM with 14.77 percent, and Coexistence with 4.66 percent. Like the national elections, MDS received most of its support in rural villages.

Slovenia

Local elections were held in December for 147 mayoralities and municipal councils. Independent candidates won 29 of 147 mayoralities. Among government parties, the Liberal Democracy Party (LDP) took 23 mayoral offices, including Ljubljana and three other urban municipalities. The territory now governed by LDP mayors is inhabited by 28 percent of the electorate. The Slovenian Christian Democratic Party (SCDP), the LDP's coalition partner, won 21 mayoralities, and the United List of Social Democrats (ULSD) took two. Members of the opposition Slovenian People's Party (SPP) won 27 mayoralities, all in rural municipalities. The Social Democrats (SDP) won 18 municipalities. Several mayors won their office with the support of two or more parties, including two with joint LDP/SCDP support. The SCDP and LDP each won roughly 20 percent of the contested municipal council seats.

Preparation for local elections began last spring and remained at the center of the political agenda throughout the fall. In early October, three bills paving the way for the December elections passed through the National Assembly. The "Law on National Minorities" in Slovenia outlines the status and competencies of minority representative bodies. The law creates self-governing, national communities that are distinct from local councils and have competence over laws and local regulations affecting the "special rights" of national minorities (outlined in Art. 64 of the Constitution). The law was popular with both the Italian and Hungarian ethnic minorities. Hungarian

Foreign Minister Zoltan Gal expressed approval of the legislation in his October visit to Slovenia.

The "Law on Local Government" determined the borders of the municipalities and established the local electoral formula. Mayors are directly elected by a majority vote. Multiple rounds are called when necessary, and the second round is a run-off between the two candidates who receive the highest number of votes in the first round. Voters cast their ballots for individual candidates.

In municipalities where councils have fewer than 12 members, the same formula is used as in mayoral elections. The municipality is divided into constituencies where individual candidates compete for one seat. No individual may run in more than one constituency. Winners must receive a majority of the ballots cast and multiple rounds are held when necessary. Members of the Hungarian, Italian, and Gypsy communities also vote for representatives pursuant to this majoritarian regime. Municipalities with councils of twelve seats or greater, use a PR system and voters choose between party lists.

While the electoral regime contained in the "Law on Local Government" was widely accepted, the districting envisioned in the "Law on the Formation of Municipalities and their Boundaries" was a source of controversy. Members of the ULSD voted against the bill arguing that the new districts did not represent the wishes of the electorate as expressed in a general referendum last spring. Citizens of some villages did not want to be combined into municipalities with certain other villages. Ciril Ribicic, ULSD parliamentarian and chairman of the Commission on Local Government, resigned following the law's passage.

After the bill was passed by the National Assembly, the State Council vetoed it on the first reading. Many deputies argued that the law was hastily drafted, leading to unequal constituency magnitude and even the simultaneous inclusion of some villages in two different municipalities. After several technical amendments, the State Council passed the law by a slender one vote margin.

In addition, the government and several members of the State Council expressed concern about the inclusion into the electoral regime of four villages in the Istrian region on the disputed border between Slovenia and Croatia. Croatia requested a formal interpretation of the law. In an effort to avoid conflict, the government proposed that the villages of Buzini, Skodelin, Skrile, and Mlini be excluded from the law on grounds that while the law governed the association of villages, these communities were only hamlets. The State Chamber rejected this proposal. The four villages remained included in the Piran municipality, but three of four were temporarily exempted from the law, until the Slovenian-Croatian border dispute is settled.

Slovenian's Istrian region is also a source of continuing controversy with Italy. Istria was ceded to Italy by Austria at the end of WWI and passed to Yugoslavia at the end of WWII. At that time, roughly 350,000 Italians evacuated the

region. Many who had then left now seek restitution of property they left behind. Slovenians fear the worst, that the Italian right-wing will press for renegotiation of the Osimo Treaty, signed by Italy and Yugoslavia in 1975, confirming the present borders.

The Italian government presented a series of proposals to Slovenians in the fall of 1994 known as the Aquileia Document. Italy offered to support Slovenia's associate membership in the European Union (EU) in exchange for the right of first purchase on property in the Istrian region. The Slovenian government rejected Italy's demands. In early November, Italy blocked Slovenia's bid for associate membership in the EU, explaining that the issue of Istria needed to be resolved prior to any accession agreement. Prime Minister Janz Drnovsek expressed his regret that Italy would question the validity of the internationally binding Osimo Treaty. Drnovsek suggested that a national referendum on the Italian demands should be held, and said he would request that a special expert group be appointed by the EU to outline possible solutions to the Italian-Slovenian controversy.

In a strange turnabout in December, Italian Prime Minister Silvio Berlusconi assured Prime Minister Drnovsek that he would actively support Slovenia on its way to EU associate membership. He also conveyed his hope that future negotiations between the two countries would improve bilateral relations.

In an opinion poll conducted in late November, 40 percent of Slovenians stated their conviction that Slovenia should maintain "an adamant and unyielding attitude toward Italy." But, 65 percent believed that Slovenia would eventually settle its problems with Italy.

Relations among the parties of the governing coalition have worsened since the resignation of foreign minister and SCDP chief Lojze Peterle last September. When Joze Skoljc (LDP) was elected president of the National Assembly, Peterle left his post because of "fundamental political differences" between the two. The coalition government, formed after the 1993 elections, consists of the SCDP, the Liberal Democracy for Slovenia Party (LDSP), and the United List of Social Democrats (ULSD).

On December 30, the SCDP and LDSP met to discuss the further functioning of the ruling coalition. Drnovsek sent a letter to Peterle stating that the candidacy of the current state secretary, Peter Vencelj, to the post of foreign minister was unacceptable. Drnovsek explained that he stood by the decision to propose to Parliament a candidate with an expert background and without party affiliations. Peterle responded that the coalition agreement gives the post to the SCDP.

Peterle has threatened more than once to withdraw his party from the coalition. In the National Assembly, composed of 90 deputies, the LDSP has 30 seats, the SCDP 15, and the ULSD 14. A ULSD-LDSP coalition would control only 44 seats and would, therefore, be able to form only a minority government. Zinago Jelincic's opposition Slovene National

Party (SNP), with four deputies, has made overtures suggesting they might be willing to join such a coalition.

The National Assembly passed the "Law on National Defense" on December 20. Article 43 of the law incorporates the constitutional provision making the president commander-in-chief of the defense forces (Art. 102). Pursuant to the law, the defense minister is to inform the president of the combat readiness of the armed forces, the securing of accommodation, and protocol affairs. President Milan Kucan hoped that the law would clearly grant him power over the military program. Instead, the minister of defense, whose appointment is approved by the National Assembly, was given broad supervisory powers over the military. This controversy highlights the tensions within the executive branch.

Recently, pursuant to Art. 118 of the Constitution, 12 deputies submitted an interpellation claiming that Defense Minister Jelko Kacin was politicizing the army. The deputies alleged that officers' training includes political questioning, and that pressure is exerted regarding the political ideas and orientation of the cadets and other employees in the Ministry of Defense. The only proof the signatories offered for their accusations was a videotape of an officer's training session. The interpellation has no legal status, although it does influence the agenda of the National Assembly. Kacin responded to the interpellation by claiming that it was not written by the deputies who signed it but, instead, by Janez Jansa, the former minister of defense and chairman of the SDP. Jansa was indeed the first to announce the interpellation and he did so at an SDP party meeting.

Discussions in Geneva over the division of assets of the former Yugoslavia continue with little success. The Banditor Commission, appointed by the United Nations to resolve property disputes among the governments of the former Yugoslavia, concluded that all the states that emerged from the Socialist Federal Republic of Yugoslavia (SFRY) are successor states and that all are entitled to consideration in the division of assets of the former republic. The Federal Republic of Yugoslavia, headed by the Serbian delegation, claims that it alone is the authentic successor to the SFRY. The question of who should assume responsibility for old debts is also at issue.

Several judicial appointments have been made in the last few weeks. After extensive debate, the National Assembly managed to elect 53 judges to unlimited terms. Only the deputies from the government parties cast their votes. Several members of the opposition walked out of the chamber, or observed the proceedings from the balcony. Widely-accepted standards for assessing judicial qualifications have not yet developed and the process remains highly politicized.

On December 12, the National Assembly confirmed eight members of the Accounting Court and appointed

Vojko Antoncic as its chairman. The Court will commence work later this year.

Ukraine

By the end of the year, the country had yet to elect all of the deputies to its 450-member Verkhovna Rada (Parliament). Following the latest—the eleventh in 1994—round of repeat elections in November, 47 seats remained unfilled. The delay was occasioned by an electoral law passed in 1993 that requires a winning candidate to obtain 50 percent of the vote with a 50 percent turnout of eligible voters to validate the election. Even so, the head of the National Election Commission, Ivan Yemets, declared that there would now be a respite from elections for some time. Parliament will not get its full complement of deputies until 1995, even though general elections were held in March 1994.

With the ebbing of the public's enthusiasm for elections, and with a new president in place, politicians once again have turned their attention to constitutional matters. A new, fourth official draft of the constitution had been published in October 1993, but was quickly shelved due to the failure of Parliament and then-President Leonid Kravchuk to agree on its implementation. Unlike in Russia, the constitution was not submitted to voters in a referendum at the time of the national parliamentary elections. At the opening of the fall 1994 session of Parliament, its speaker, Oleksandr Moroz, announced that yet another version of the constitution would have to be drawn up soon and would have to be approved no later than the end of the year so as to be in place not later than May or June. Following deliberation, Parliament directed its Standing Commission of Legal Policy to establish a Constitutional Commission consisting of 40 persons: the speaker, president, 15 MPs, 15 appointees of the president, seven representatives of the judicial branch, and one person from the Crimean Parliament. Moroz expressed his belief that the final say in the document's drafting should go to experts in constitutional law rather than to representatives of political parties.

On October 12, the Presidium, Parliament's directing body, approved a list of persons for the Constitutional Commission and submitted it for confirmation. The composition of this drafting committee was finally adopted on November 10, in slightly amended form. Co-chaired by President Leonid Kuchma and Speaker Moroz, its secretary is now Albert Korneyev. Fifteen members represented Parliament, and 15 the president; two each came from the Supreme Court, Arbitration Court, and Procuracy, and one a piece came from the Crimean Parliament and the Constitutional Court. The Commission held its first meeting on November 28, already very close to the year's-end deadline set forth earlier.

At the Constitutional Commission's inaugural meeting, President Kuchma stressed the urgency of adopting a new constitution lest power remain contested and political instability

should result. He called further delay in this task a political mistake for which he, the Commission, and Parliament would be held responsible. In view of earlier difficulties in expediting this task, and perhaps inspired by the Polish example, the president shortly thereafter issued the draft of what was immediately labeled a "Little Constitution."

Formally titled "On State Power and Local Self-Government in Ukraine," Kuchma's draft would establish a strong president, a subordinate prime minister, a relatively weak Parliament, and local administrations popularly elected but ultimately accountable to the president. If adopted, this highly presidentialist "constitutional law" (a novel category not seen previously) would amend the existing 1978 Constitution and would remain in effect until the adoption of a full version of the country's first postcommunist constitution. Presumably taking a page from Yeltsin's book, the draft law flew in the face of the four previous constitutional drafts which had progressively etiolated the president's powers to merely symbolic status while augmenting those of Parliament.

Kuchma's "Little Constitution" would leave Parliament with the exclusive power to pass laws, but would place initiative and control of government firmly in the hands of the president. For instance, Parliament would get to approve the president's nominations for the Constitutional Court, the heads of the Supreme and Higher Arbitration Courts, and the procurator general, but the president alone would appoint the prime minister and the cabinet. Parliament's only control over the government would be a vote of no-confidence in the cabinet or its program which would be followed by its resignation. The president could dissolve Parliament if it failed on two successive occasions to pass the government's program and voted no confidence in the cabinet, or if it failed to approve the budget within a period of three months. Impeachment of the president by Parliament would be possible, as well as an override of his veto of legislation.

The prime minister would not be a powerful head of government as in parliamentary systems, but would work for and under the active direction of the president. The president would not only appoint all cabinet members and all other central administrators; he would also have responsibility for the organization, reorganization, and liquidation of all executive departments and agencies. The budget would first be approved by the president, and would then be presented by the prime minister for Parliament's adoption. In spite of the draft's giving prominence to "local self-government," it says clearly that the competence of such bodies would be determined by the president.

Like previous draft constitutions, the new presidentialist draft pays lip service to the notion of separation of powers, yet its provisions repeatedly violate this principle. For instance, the right of legislative initiative was given to, among many others, the Constitutional, Supreme, and Arbitration Courts, as well as to the procurator general. On the other hand, legislative and executive bodies would be

allowed to trespass on the judicial function, as when Parliament could veto presidential edicts thought to be unconstitutional, and the president could do the same with acts of the cabinet and the entire administrative hierarchy. As before, the president could suspend local councils' decisions if they contravened the constitution.

The autonomy of Crimea would be reined in by the draft constitutional law, its entire institutional structure, and jurisdiction being determined by Ukraine's constitution. In case of conflict between the laws of Crimea and those of Ukraine, the latter would prevail. The relationship with Crimea would not be federal. To centralize power, Parliament, in November, rescinded more than 40 laws previously passed by the autonomous republic and thought to be separatist and at odds

with the existing Ukrainian Constitution. Meanwhile, in Crimea itself, the political infighting between president, presidium, and the republic's Parliament continued with Parliament's opening in early December.

There is certain to be conflict over Kuchma's "Little Constitution," with especially strong opposition from Parliament and the local governments and notables, backed up by the ever-vocal communist and socialist proponents of "power to the people." The new Parliament has also turned its attention to appointing judges to the Constitutional Court, on which a law was passed in June 1992. As of this writing, however, no appointments have been made, even though a seat on the Constitutional Commission was reserved for one of its members.

These reports have been written by the CSCEE's affiliates and the staff of the EECR: Cyrus Amir-Mokri, Ania Budziak, Milos Calda, Alicia Cozine, Elena Foley, Venelin I. Ganey, Nida Gelazis, Andrea Gibson, Bohdan Harasymiw, Kathleen Imholz, Filip Klavins, Rumyana Kolarova, Andrei Kortunov, Krenar Loloci, Christian Lucky, Alexander Lukashuk, Darina Malova, Lucian Mihai, Elzbeita Morawska, Agnes Munkasci, Vello Petrai, Julius Rakickas, Peter Roodick, Andrzej Rzeplinski, Dwight Semler, Raymond Slaidins, Tanya Smith, Elena Stefoi-Sava, and Gintaras Steponavicius.

Special Reports

Explaining the breakup of the Czechoslovak Federation

Consenting Adults or the Sorcerer's Apprentice?

Jon Elster

Many explanations have been offered for the breakup of Czechoslovakia in 1992, and many of them rely on analogies with the breakup of the Yugoslav and Soviet federations. Some have appealed to long-standing national conflicts between Czechs and Slovaks, paralleling those between Serbs and Croats. In *The Short Twentieth Century*, Eric Hobsbawm writes that "the separatist nationalism of the crisis decades plainly fed on...collective egoism. The pressure for breaking up Yugoslavia came from 'European' Slovenia and Croatia; and for splitting Czechoslovakia from the vociferously 'Western' Czech Republic." I disagree with these accounts. Below, I survey and evaluate six different explanations that have been put forward to account for the breakup.

A two member federation is inherently unstable

It is very hard if not impossible to identify durable federations with only two member republics. Norway and Sweden between 1814 and 1905 do not count, because the two countries had very few common matters to regulate. Belgium does not count, because the Belgian federation has three members counting Brussels. It is not difficult to see why a stable federation needs at least three members. Suppose that in a two-state federation, the two states are of roughly equal size. This yields a potential for endless

deadlock and struggle. Suppose on the contrary that one state is substantially larger than the other. If the federal structure is organized on the parity principle, the larger state will resent it. If it is organized on the proportionality principle, the smaller will resent it. On any of these three assumptions, a two-member federation is permanently vulnerable. An external shock can easily make it unravel; and sooner or later a shock will occur that does make it unravel.

This argument may also be presented the other way around. With three or more member states, there is the possibility of shifting alliances and coalitions, so that all states will get their way some of the time. Note that this argument presupposes a sufficient number of cross-cutting interests, so that different coalitions among members are formed on different issues. If that condition does not hold, we are in reality back to the two-state case. This observation explains the failure of an idea discussed in Czechoslovak political circles in 1991-1992, viz., to create a three-state federation of Bohemia, Moravia, and Slovakia. There was even talk of creating a total of five or seven republics. The idea came to nothing, probably because it was clear that on all important issues these smaller republics would align themselves so as to reconstitute the Czech-Slovak divide. Moravia and Slovakia, for instance, had hardly any substantive interests in common.

II. Long-standing hostility between Czechs and Slovaks caused the federation to break up

As noted above, some argue that, given the cultural and political animosity between the two peoples, a divorce was inevitable. It is true that after talking to Czechs and Slovaks and reading the literature on "the national question" in Czechoslovakia, one can easily write down a long list of mutual recriminations and resentments. During the First Republic, the Slovaks resented the fact that they were badly under-represented in the administration and in the army. The Czechs resented the fact that they were subsidizing Slovak development and, perhaps even more, that the Slovaks failed to be properly grateful for the assistance. The Slovaks, needless to say, perceived this attitude as patronizing and condescending. More generally, the Slovaks resented what they perceived, not inaccurately, to be a Czech perception of Slovaks as crude, backward, and uncultured. For their part, they perceived the "sophisticated" Czech mode of life as a threat to religion and "family values."

Later, Czech resentment was nurtured by the fact that, on two successive occasions, the Slovaks were perceived as allying themselves with the oppressor. During WWII, the Slovaks created a fascist state that collaborated closely with Nazi Germany. After 1968, they were rewarded by the Communist Party for their relative moderation during the Prague Spring. In the first case, the Czechs felt that they suffered more than the Slovaks; in the second, that the Slovaks, through their participation in the apparatus of repression, were actually instruments of their suffering. Moreover, the Czechs felt that these episodes were not simply a thing of the past. The celebration of the wartime state showed that the Slovaks had not overcome their fascist leanings; also, the greater Slovak resistance to "lustration" (exposure of officials and informers from the Communist period) showed that they did not really want to leave Communism behind.

Yet these cultural clichés need to be approached with caution. The question is whether such attitudes were widespread and, especially, whether the resentments were deeply felt. It would be easy to come up with a similar list characterizing relations between Yankees and Southerners, but nobody

would argue that secession is imminent or inevitable in the United States. So far as I can see, there is little or no evidence of visceral hatred between the Czech and Slovak peoples. I was told, although I have no data to support the claim, that Czech-Slovak intermarriage is quite common. The "velvet divorce" itself was remarkably peaceful. In a poll from April 1994, Slovaks ranked the Czech Republic in first place as "the state or group of states with which your country should align itself most closely." Czechs ranked Slovakia third, after the European Union and Germany. Although it is tempting to extrapolate from the role of ethnic conflicts in the breakup of the Yugoslav federation that similar forces must have been at work in Czechoslovakia, the inference would almost certainly be fallacious.

III. The breakdown of other communist federations created a model for the dissolution of Czechoslovakia

To see how this explanation differs from the preceding one, we may compare two models.



Model A represents the idea of a common causal mechanism in the breakdown of the Soviet, Yugoslav, and Czechoslovak federations. According to one common variant of this model, Communism had ruthlessly suppressed any expression of cultural,

ethnic, linguistic, or religious conflicts. As soon as "the lid came off," the accumulated tensions, inevitably exploded, leading to the fragmentation of the artificially created federations. While this picture may be valid for parts of the USSR, notably the Baltic states, I do not believe it holds for Yugoslavia, where clever manipulation by opportunistic leaders counts for much more than age-old ethnic hatreds. I feel even more confident that the picture does not apply to Czechoslovakia.

Model B suggests that when the Soviet and Yugoslav federations started to disintegrate, for whatever reasons, ideas of dividing Czechoslovakia emerged that would not otherwise have gained currency. Once separation became conceivable, it soon became inevitable. External events may have lent consistence and plausibility to ideas that might otherwise have been dismissed as pipe dreams. The independence of the Baltic states had a profound impact on the political elite in Slovakia. Also, the idea of a "state treaty" between the Czech and Slovak republics was perceived as analogous to the "Union of Independent States" in the former USSR.

IV. Separation was everyone's second preference

This explanation aims at dissolving the apparent paradox of a separation that takes place even though only a small minority in each republic preferred it over an arrangement that would allow the country to remain united. One might, of course, argue that separation was carried out by prime ministers Klaus and Meciar against the wishes of their populations. Yet there is overwhelming evidence that these leaders are very sensitive to popular moods, and in any case they do not seem to have suffered electorally from their initiative. To this one might respond that counter-separatist preferences were not very intense, i.e., that voters simply did not care enough about the issue to punish their leaders for going against their wishes. It is true that by 1992 most people cared more about how the economy was doing than about the survival of the federation and that there was a general lack of civic participation. Hence the leaders could push the separation through without encountering much resis-

tance. (*Why* the leaders would want to do that is the topic of the next two explanations.)

Although plausible, these arguments can be supplemented by an appeal to popular preferences. While the opinion polls are unreliable, they suggest a pattern of the following sort. On the Czech side, the best alternative was a strong federation with, or preferably without, subsidies to the Slovaks. The next best alternative was separation, whereas the worst was to have a loose confederation in which they would have to subsidize the Slovaks. The Slovaks ranked the alternatives in exactly the opposite order. When there is an option that is everybody's second preference, there is a tendency for that option to be realized. Marx observed that when there is a struggle between two royal contenders, the only solution they can agree on may be a republican form of government. When ex-colonial nations with tribal divisions have to choose an official language, the language of the former colonial power may be the least divisive solution. Because this second-best principle does not take account of the intensity of preferences, it cannot be asserted as an invariable rule, but it does offer a convenient focal point in situations where the possibility of misrepresenting one's preferences makes it hard to communicate their intensity with much credibility.

V. The country split over the issue of market reforms

According to this explanation, the Czechs wanted separation in order to speed up market reforms and the Slovaks wanted separation in order to slow them down. The first part of the argument, as stated by Jan Obrman, goes as follows. After the 1992 elections, the "distribution of seats between right-of-center parties and left-of-center and nationalist parties in the Federal Assembly would make the rapid pace of economic reform nearly untenable in the medium to long term. Because economic reform is Klaus's first priority, it is undoubtedly in his interest to abandon the deadlocked federal center by initiating Czechoslovakia's disintegration." The second part of the argument asserts that Slovaks welcomed separation as a means of insulating themselves from the hardship of market

reform; or, perhaps more accurately, that Meciar could play on fears of hardships to justify the breakup. As in other postcommunist countries, resistance to reform may have been due to myopia and to a lack of understanding that, in the long run, prosperity depended on reform.

The two parts of the argument are obviously in some tension. For both to be true, the pace of reform, in a united post-1992 Czechoslovakia, would have to be slow enough to frustrate the Czechs and fast enough to frustrate the Slovaks. My impression is that there is more to the second part of the argument than to the first. At this point, we may note that the 1968 Federal Constitution gave veto power to the Czechs no less than to the Slovaks. Because Klaus could easily muster the required number of votes in the Czech section of the upper house of the Federal Assembly, the impressive reforms achieved in 1990-1992 were, for all practical purposes, irreversible. The question is obviously whether there were further, indispensable reforms that had to be carried out and that would have been blocked by the Slovaks in the Federal Assembly. Although it is hard to know what Klaus thought at the time, the most plausible answer, judging from what he did later, is that he could have pursued his policies within the federation. No major institutional reforms have yet been carried out in the Czech Republic. In fact, its remarkably low rate of unemployment is due mainly to the slow and cautious pace of reform and to the delay in the restructuring and dismantling of inefficient enterprises.

VI. The Czechs did not want to continue subsidizing the Slovaks

According to this explanation, the country broke up because the Czechs were increasingly fed up with the combination of Slovak demands for Czech subsidies and Slovak nationalism. A typical report is the following. "On September 19 [1991], Czech PM Petr Pithart said that the Czech government would propose that the system whereby the Czech Republic subsidizes the economically weaker Slovak republic be abandoned in 1992. He emphasized that 'helping a weaker partner' would

have been continued to be accepted by the Czech side as a matter of course, but that such assistance was becoming impractical [sic] as calls for independence intensified in Czechoslovakia." (*Report on Eastern Europe*, November 10, 1991.) Psychologically, the situation was perceived as similar to that of a parent whose rebellious child repeatedly comes home to ask for money, trying to have her cake and eat it too.

There can be no doubt that such ideas played a role on the Czech side. For Klaus himself, the Slovaks as a permanent irritant may have been more salient than the Slovaks as an obstacle to reform. The Slovak side of the question is more complicated. The initial impetus to separation did, after all, come from the Slovaks who, if the Czech perception is correct, had the most to lose from it. It is not unknown for the more prosperous region of a country to opt for secession, but Slovakia presents the opposite picture, a "reverse Katanga." Why did they insist on this (allegedly) self-destructive course?

The obvious explanation is that they were threatening secession in order to increase their share both of power and of the federal budget. But this answer raises two further questions. First, what would the Czechs have to lose by secession? One response is that for most practical purposes, Prague represented Czechoslovakia on the international scene. The prestige and bargaining power of a country being linked to its size, a Czech republic would count for less than a Czechoslovak federation. The Czechs, in fact, wanted to speak both for themselves and for the Slovaks (an attitude, by the way, that particularly infuriated the Slovaks). Another response (further discussed below) is that the Czechs might even lose in material terms.

Second, how could the Slovak threat be made credible? After all, the threat "Your money or my life!" is not one that is frequently heard on the streets. (It might be made successfully, though, by the rebellious child mentioned above.) One general reply to this question is that if a negotiator can, with some plausibility, rephrase the threat as a warning, he may get away with it. (Another reply, relying on perceptions of fairness, is considered below.) If a trade union leader tells the manager that he will be

unable to control his members unless they get what he demands, this is formally a warning rather than a threat. Although the manager may suspect that the leader can in fact influence his members, he also has to take account of the possibility that the latter may in fact be as intransigent as the leader makes them out to be. Specifically, the leader may have deliberately raised the expectations of his members in order to be able to say, truthfully, that he cannot control them. Similar strategies may be exploited by a nationalist leader, referring with regret to separatist elements that need to be bought off with influence or money.

Some denied, however, the premise that the Czechs subsidized Slovakia. In an opinion poll from September 1991, both Czech and Slovak citizens agreed (about two-thirds of the respondents in each republic) on the normative statement that "One republic ought not to have to pay for the other." When asked the factual question whether "the present system favors Czechs," only 12 percent of the Czechs agreed as against 67 percent of the Slovaks. The Slovaks, in fact, believed that they were being exploited by the Czechs rather than the other way around. Now exploitation and subsidization are not the same thing. Subsidies are a zero-sum operation: the subsidizer loses what the subsidized gains. In exploitation, by contrast, both parties can gain compared to a situation in which they do not interact at all. The situation is exploitative if the division of gains from cooperation is, in some appropriate sense, unfair and unjust.

Although there are Slovaks who say that their country was a net subsidizer of the Czech lands, this claim appears implausible. The question of an unfair division of the gains from federation is more complicated. An ironical aspect of this issue is that many Slovaks now complain of being saddled with unproductive industries that were bestowed on them as a favor after 1968. A related aspect is the often-made claim that Slovakia suffered because of the idealistic decision of Havel and his foreign minister, Jiri Dienstbier, to trim down the Slovak arms industry, so as not to appear as a provider of weapons to international terrorists. Also, Slovaks regularly claim that all foreign investment passed

through Prague and that the Czechs were unwilling to share it with the Slovaks.

If it turned out, on balance, that the Czechs gained a lot and the Slovaks only a little by Czech-Slovak economic cooperation, the Slovaks would have a strong case. So far as I know, the calculation has not been made. My guess is that, if it were made, this is not how it would come out. Conceivably, the Czechs might even appear as net losers, in the sense that their subsidies to Slovakia would exceed their gains from cooperation. But the actual numbers are irrelevant for the explanatory issues that concern me here and in which only perceptions and beliefs matter. My strong conjecture is that all Czechs believed that Slovaks gained from the federation and that most Czechs believed that they would be better off without the Slovaks. I also conjecture that many Slovaks thought they were being unfairly treated, but that only a few thought they would actually be better off on their own.

Now, if you believe you are being exploited, you will first try to change the terms of trade. If that effort fails, you may want to bring the exploitative relationship to an end, even if that will imply a loss in material terms. If the exploitation is seen as compounded by patronizing and condescending attitudes, your willingness to absorb a loss will be even greater. If you can persuade your opponent that you are willing to take a loss for the sake of maintaining self-respect, you may not have to take the loss (assuming he has something to lose) because your threat of secession now becomes credible. Whether you can persuade him without actually carrying out the threat is a different matter. A trade union leader might not hesitate to call a strike that would hurt his members, if he thought the sacrifice might provide credibility in later negotiations. A country, by contrast, cannot break up more than once: the credibility obtained by secession would have no further use.

Overall assessment

The putative explanations I have surveyed are obviously quite different. Partly they operate at different levels, and partly they appeal to different kinds of mechanisms and motivations. They are all compat-

ible with each other, and I believe that most of them do in fact have a purchase on events.

Explanations I. and II. are structural, aiming at identifying ultimate background causes, rather than triggering factors. I have argued that the first is valid, the second probably less so.

Explanations III. and IV. appeal to the proximate cognitions and motives that facilitated the breakup. The observation of other dissolving federations provided a cognitive model. The pattern of popular preferences may explain the lack of resistance to aggressive leadership initiatives.

Explanations V. and VI. aim at accounting for those initiatives which served as triggering causes of

the breakup. I believe that the most valid parts of these explanations are Slovak resistance to the fast pace of economic reform and Czech resistance to subsidizing Slovakia.

Obviously, the play of personalities also mattered: Havel's disregard of tactical matters, Meciar's brinksmanship and pride, and Klaus's single-minded obsession with markets. Although perhaps the most important factors, they are also the most intangible ones.

(A longer and more fully documented version of this article is forthcoming in *Archives Européennes de Sociologie*.)

An argument against popular ratification and for chancellor democracy

Bronislaw Geremek on Constitution-making in Poland

Wiktor Osiatynski

On November 10, 1994, Bronislaw Geremek, who currently chairs the Foreign Affairs Committee of the Sejm, met with Professor Wiktor Osiatynski, co-director of the University of Chicago Law School's Center for the Study of Constitutionalism in Eastern Europe.

Wiktor Osiatynski: Will Poland finally manage to pass a new constitution?

Bronislaw Geremek: The adoption of a constitution is possible, but it requires stepping outside the legislatively defined procedures for passing a constitution. The adoption of a constitution presupposes the creation of a certain state of political agreement that would minimize matters that are currently sources of political conflict.

WO: Do you mean that the constitution should be a product of compromise?

BG: No. I do not think that the content of the constitution itself should reflect compromise. The compromise should be worked out before the drafting of the constitution. The circumstances from which the constitution arises must embody a compromise. Even the best constitutional text will not guarantee that a constitution is ultimately accepted. The political will of the principal political actors is also required.

WO: On what does this political will depend?

BG: It certainly depends more on the organization of the political scene than on the written content of the constitution. The political calendar is an equally important element. At this time, neither factor favors the adoption of a constitution. I have in mind, above all, the presidential election, due next fall, and the next parliamentary elections, which should be held in another three years. Of course, the president hints that he will search for a way to hold parliamentary elections earlier. Presidential elections could ease the passage of a constitution only if

they are devoid of conflict. But the possibility of presidential elections, or any elections for that matter, without conflict, is very slight. This is the political environment in which the constitution must develop.

WO: What you have in mind, if I understand you correctly, is a general agreement not to use the constitutional drafting process as a tool in political infighting. What else belongs to the external circumstances of a constitution?

BG: Anything that can produce extraparliamentary sources of tension. I am thinking of trade unions, for example, which may turn out to be motors of destabilization or even destruction. In order for this not to occur, trade unions must gain something from the process. One option is to make a pact with the trade unions. It's risky because in such pacts trade unions usually gain excessive rights. This would adversely influence economic performance and make economic reforms more difficult. But perhaps we could manage to stabilize the situation by giving similar privileges to employers groups.

WO: Should the rights of trade unions and employers be written into the constitution?

BG: No. They should be formulated in a separate pact which should belong to the external political context, facilitating the adoption of the constitution.

WO: Let's suppose that a favorable political context exists. Do you see a possibility of agreement on the content of the constitution?

BG: Of course. After all, there are only a few areas of disagreement. Ultimately, the problems can be reduced to two: first, relations with the church, including the controversial problem of abortion and the protection of the fetus and, second, presidential powers. The remaining problems are not too difficult.

WO: What about social rights? The various constitutional drafts handle social rights in very different ways.

BG: Even now it is possible to give a rhetorical answer to the social demands inscribed in the draft bill of rights and freedoms proposed by the president in 1992 and repeated now in the constitutional draft. Social rights can be divided into enforceable rights that every citizen may claim in court and the social tasks of the state.

WO: How can one enforce the fulfillment of these state purposes?

BG: The tasks of the state should be carried out by all organs of the state, but above all by Parliament. Parliament creates the government, evaluates it, and passes the budget. The social tasks of the state belong to this sphere.

WO: Does this mean that the carrying out of state tasks would not be monitored by the Constitutional Tribunal?

BG: The Constitutional Tribunal supervises only the constitutionality of state actions. But the Tribunal should not be in a position to order the state to take actions for which Parliament does not have the economic resources. We should distinguish purely juridical articles of the constitution actively protected by the Constitutional Tribunal from the tasks of the state. In the realization of the latter, the role of the Tribunal should be more modest.

WO: So two difficult problems remain: relations with the Church and presidential powers.

BG: I believe that a possibility for agreement exists even on those issues, if only a favorable political context could be brought about.

WO: Has such a context existed at any time since 1989?

BG: Yes, twice. A constitution could have been passed at the very beginning, on the wave of enthusiasm that accompanied the fall of communism. At that time, we introduced far-reaching changes to the old constitution, not foreseeing that the national consensus of 1989 would crumble so soon. Afterwards, the political calendar acted against a constitution. Since 1989, Poland has had elections every year. The only year without elections was 1992.

WO: That is the year when the so-called "little constitution" was passed.

BG: Yes, but this solution turned out to be only a modest success.

WO: During the years 1989-91 you were the head of the parliamentary Constitutional Commission. Now you are negotiating the conditions for making an extra-constitutional compromise. Have you learned anything new about the process of adopting a constitution?

BG: The first important lesson I learned was that compromise should not shape the actual drafting of the constitution, but that it should be an aspect of the general political conditions, preceding the constitution-making process. Further, I am now convinced that a constitution should be passed when conflicts are at a minimum and the chances for agreement are greatest. Previously, I thought that it was more important for the constitution to be adopted through the broadest social process.

WO: Do you mean popular ratification in a referendum?

BG: Yes. Somehow personally I feel responsible for this mode of ratification because I was the first to bring up the idea. When I made the suggestion, however, Parliament, which had prepared the constitution, did not have sufficient social legitimacy. That Parliament was formed by of a contract, not by fully democratic elections. So, I believed that holding a referendum would confer legitimacy on the constitution. Incidentally, I was looking to the example of Spain. In one way or another, I thought that a constitution should be ratified through broad participation of both the political elite and the masses, and that the making of the constitution should be a lesson in democratic constitutionalism for our society. Now I realize that other people, and not politicians, should be concerned with administering lessons.

WO: Did personal and political experience influence your perception of the content of the constitution, especially in the realm of the organization of power?

BG: My personal experience is limited to having participated in the governmental coalition and in the opposition movement. I have never been a minister, and although in 1990, for ten days, I myself attempted to form a government, nevertheless, for

all practical purposes, I have always remained an outside observer. My political experience during the last five years has convinced me that the most important matter is to build and maintain a strong governmental power. I now support the chancellor model of government.

WO: Such a solution is not proposed by any of the constitutional drafts.

BG: This is true, although the draft of the Freedom Union comes close to such a formula. The failure to reach this formula is due to an inability to forge a compromise between the parliamentary and presidential systems. The chancellor model of government seems the best solution because it assumes strong parliamentary control and, through it, control by society over the executive branch. Yet, it also insulates the economy from political quarrels. When we started to work on the constitution, my main concern was to ensure society's control over the executive, that is, to strengthen Parliament. After all, I was a democrat and I had experienced a totalitarian system. It came naturally to me to think that the most important thing was to place limits on power, and not to strengthen government or ensure its effectiveness. Hence, my preoccupation with Parliament, referenda and the entire set of mechanisms for encouraging the participation of society in government. I was programmed with an aversion to and mistrust of authority. During recent years, through observation and participation, the most important lesson I have learned is that the chancellor form of government is the most appropriate.

WO: What about Parliament and its functioning?

BG: Everything I have learned about Parliament has been wholly new to me, as I knew nothing about its functioning and never thought I would have to know anything about it. Perhaps the most important thing I have learned is that Parliament should pass the budget and should not afterwards be able to change its decision on this matter. I have two reasons for this conclusion: potential economic harm and a potential violation of the separation of powers principle, a blurring of the division between the legislative and executive powers.

WO: Does this mean that the Constitutional

Tribunal should make no decisions having budgetary consequences?

BG: Yes. I mentioned this when we discussed the rights of the individual and the social tasks of the state. In budgetary matters, decisions belong to Parliament.

WO: To the Parliament or to the Sejm? At the Round Table Talks you agreed to establish a freely elected Senate. Today several constitutional drafts do away with Senate. How would you respond?

BG: At the Round Table Talks the most important thing was the possibility of holding the first, wholly free elections for any organ of power whatsoever. We agreed on the Senate, and rightly so, even though it later set off a definite chain of political events. And if you ask me to commit myself on the Senate as a politician, I respond that I defend bicameralism.

WO: Is this because any attempt to do away with the Senate threatens to cause excessive political conflict?

BG: Partly so, but also because of practical considerations. In a young democracy such as ours, given the very hasty lawmaking process, we need an additional moment of reflection. This moment occurs when we consider the amendments introduced by the Senate.

WO: If I ask you as a political historian?

BG: Then I would reply that insufficient reasons exist for creating a second chamber elected in the same way as the first in a country which lacks a federal system and has no need for one. I understand that Italians, surveying alternative models of state organization in their current constitutional crisis, see two bicameral models from which they may choose, namely, the French model of centralized power, and the German federal model. I understand that the more reasonable politicians definitely speak in favor of the German model. But in the Polish context, there is no basis for either federalism or regionalism. Thus it is difficult to find any sensible role for the Senate.

WO: And if the Senate would have been the chamber representing business interests and local government? For instance, if the representatives of local government at the provincial level would sit in the

Senate? This would also encourage the development of local government up to the provincial level.

BG: Such a solution is closer to my way of thinking. I would even add the possibility of including some other group or corporate interests; for instance, employer groups and trade unions, so as to avoid creating any three-party committees. The representatives of cooperatives could also find their place in such a Senate. Moreover, a large part of the nation lives in diaspora, émigrés too could be represented in the Senate.

WO: What should the constitutional rights of the second chamber be under such a scheme?

BG: This is a very difficult question indeed. If the Senate were representative of corporate bodies, local governments, and Poles living abroad, it could not exercise the legislative power it exercises now. Rather, in that case, it should, be limited to an opinion-shaping role. Perhaps it would be worthwhile to link such chamber more closely with the president's prerogatives. For instance, it might have the right to appeal to the president. Following this logic, it might also be possible for the president to call a referendum with the consent of the Senate.

WO: How would you compare the three Parliaments in which you sat after 1989?

BG: The first was the least democratic and, paradoxically, the one that worked most efficiently for democracy. That first Parliament had a sense of original sin and therefore functioned differently. The current Parliament, which is the third, was created on the basis of a new electoral law which included an electoral threshold. The five percent cut-off was part of a plan to stabilize the political scene, and even though my own political camp paid for it in the elections, I do not regret it. The second Parliament of 1991-1993 was unable to create a stable government. When it came to the number of coalitions, Hanna Suchocka's government made it into the Guinness book of world records. Such "unnatural" governments are dangerous. Therefore, I believe that the attempt to stabilize the political situation, by introducing an electoral threshold, was the right move, though it came at our expense.

WO: Did the Democratic Union realize at the time that it voted for this rule that it might turn out to be destructive for itself?

BG: The threshold wasn't destructive for the Union itself. The Union itself didn't lose because of it. It only lost a potential coalition partner. But, at the time, no one could foresee that elections would take place immediately after the electoral law was passed. Therefore, the parties had no time to adapt their organizational strategies to the five percent threshold. It affected the Right, which could not manage to piece itself together, as well as the Democratic Union, which did not have enough time to forge an alliance with the Liberals, which would have been natural.

WO: After more than a year with the new post-communist/farmer coalition in place, do you now believe that the stabilization of Parliament and government is paying off?

BG: The current Parliament is certainly not as fragmented as the previous one. But when I watch the economic policy of modernization being threatened, I have growing doubts as to the effectiveness of this new method of choosing Parliament.

WO: But perhaps this Parliament will at least be able to adopt a constitution?

BG: It is possible. But I am far from sure. Parliament could accept a draft of the constitution, but that would not guarantee its passage in a national referendum. Final adoption would presuppose all the elements of social and political consensus about which we spoke at the beginning of our conversation. And such a consensus might be difficult to achieve, especially given the unfavorable political calendar.

WO: Do you think that the calendar will ever be more favorable?

BG: Yes. The best moment to pass a constitution is the period immediately after presidential elections or right after parliamentary elections. Such a period does not last long, however. Therefore, it is crucial to have already prepared a constitutional draft covering the principle points on which the main political actors agree. If we begin anew after each election, we will certainly not have a new constitution anytime soon.

Defending the Russian Constitutional Court Act

Boris Strashun and Vadim Sobakin

The Constitution and the "Law on the Constitutional Court" define the jurisdiction of the Constitutional Court. The Court may consider only normative acts issued by the highest organs of the polity. Both, the content of these acts and motives for appealing to the Court will depend largely on political considerations. Under the new law, however, the Constitutional Court resolves exclusively legal issues.

Sergey Pashin ("A Second Edition of the Constitutional Court," *EECR*, Vol. 3, No. 3/4, Summer/Fall 1994) criticizes the appointments process for Constitutional Court justices. But such appointments were *already* highly political under the old law. The legislature selected the justices from a list of nominees submitted by its chairman, who, in turn, was obliged to follow the assembly's decision. During the 1991 elections of judges, parliamentary committees compiled the initial candidate lists from nominations made by political groups. The chairman of the Supreme Soviet was not a participant in this process.

By contrast, the new law stipulates that candidates for the Court shall be nominated by the president of the Russian Federation, that is, by someone independent of Parliament, on whom Parliament cannot impose its own candidates, and whose candidates Parliament cannot unilaterally remove from the voting lists.

Pashin further criticizes the new law for failing to establish a fully competitive procedure for making Constitutional Court appointments. As is the case with other judges, Constitutional Court justices are to be recommended by a qualified college of judges. But once again, there is nothing unique or innovative about the new law here. The Constitution provides the same procedure for

appointing members of the Supreme Court and the Highest Court of Arbitrage.

Pashin alleges that the Federation Council's right to terminate the powers of judges "in some cases," a right which putatively increases the dependence of the judiciary on the regional elite, is another defect of the new law. But the law provides for termination in only two cases: when the procedure for appointing justices has been violated and when a justice has engaged in unworthy behavior that undermines his authority. (Art. 18 "Termination of the Powers of Russian Federation Constitutional Court Justices." Paragraph 1: The powers of Russian Constitutional Court Justices are terminated as a result of: (1) "the violation of the procedure governing their appointment." (6.) "the commission by the justice of an act that brings the honor and dignity of justices into disrepute." Paragraph 4: "The termination of the powers of a Russian Federation Constitutional Court justice on the grounds given in point 1 of the first paragraph of this article is effected by the Federation Council on the basis of a submission from the Russian Federation Constitutional Court." Paragraph 5: "The termination of the powers of a Russian Constitutional Court Justice on the grounds given in point 6 is effected by the Federation Council on the basis of a submission from the Court adopted by no less than two-thirds majority of all justices.") Such cases will rarely, if ever, come up. Furthermore, the Federation Council may threaten to terminate the powers of a judge only if approached by the Court itself. As a result, Pashin's contention that the Court will be increasingly dependent on regional elites is base-

less. If anything, the new law provides additional guarantees for protecting judicial independence by precluding other powers from exerting partisan control over the justices' careers.

Pashin complains that, by contrast to the previous law, the new law does not allow the Court to hear citizen complaints about unconstitutional application or interpretation of laws. The previous law, however, limited the Court's jurisdiction to reviewing those normative acts upon which unconstitutional applications were based. In the Russian judicial system, courts of general jurisdiction, including the Supreme Court, have jurisdiction over unconstitutional application of laws by law enforcement authorities. Thus, the new law and the Constitution simply eliminate an unnecessary overlap in the jurisdiction of the highest judicial bodies. They do not deprive citizens of their right to complain about unconstitutional applications of the law.

The new law considerably broadens human-rights protection by permitting citizens to petition the Constitutional Court directly. Furthermore, no longer are the Constitutional Court's decisions concerning law enforcement practice binding only in the particular case before the Court. If the Court finds a law unconstitutional, the decision will apply to other relevant cases. Thus, the Court's judgments are of general applicability. Finally, under the previous law, only final judgments of lower courts could be appealed. Now, appeals to the Court are possible before final judgment in the lower courts.

Pashin suggests that such appeals may prolong certain human rights violations. In cases of detention, Pashin argues, suspending investigative proceedings and waiting for the Court to pass judgment will harm plaintiffs. For during the usually lengthy period it takes for the Court to decide cases, plaintiffs will remain in prison. In these cases, even a finding of unconstitutionality, Pashin argues, is an inadequate remedy. But his analysis is once again misleading. To begin with, law enforcement agencies are not obliged to suspend proceedings, though they have the power to do so. Consequently, a complaint to the Constitutional Court does not prolong detention when investigating officials do not suspend their investigation. Furthermore, terms

of detention, set by the law, may expire, permitting detainees to be released before the Court hands down its judgement.

Pashin is also mistaken in suggesting that the new law encourages lower courts to refer immediately to the Constitutional Court when constitutional doubts arise. Such appeals are possible only after the lower court concludes that a law is unconstitutional. (Article 101: "When examining a case at any level and concluding that the law applied or due to be applied in the said case does not correspond to the Constitution, a court asks the Constitutional Court to verify the constitutionality of the law in question." Article 102: "A court's request is admissible if the law is applied, or due to be applied, in the court's opinion, in the specific case under consideration.") In such cases, it makes sense to suspend proceedings until the Constitutional Court passes judgment. This protocol is not in the least suggestive of a lack of trust in the judges' ability to apply a constitutional norm. Nor does it impede the application of the Constitution to ordinary cases. It only means that the Constitutional Court alone may issue binding and final judgments of constitutionality. We believe that the authors of the first on the Constitutional Court draft law (of whom Pashin is one) share this opinion. In his address to the Supreme Soviet during deliberations on the law, he stressed that a law is annulled only when the Constitutional Court determines its unconstitutionality.

That the Constitutional Court has final say on the constitutionality of laws, Pashin claims, makes judges unaccountable for their decisions. To remedy this perceived evil, Pashin proposes making the judicial community and its organs serve as a check on the Constitutional Court, the justices being responsible to them. Pashin suggests that no harm would be done by making the justices just as responsible as ordinary judges for unjust decisions. But Pashin's reasoning is unsound. His proposal would create a vicious circle in which every judicial body would have to be checked by yet another. In every constitutional system, there must be one institution that is recognized as the final interpreter of the Constitution. In the Russian Federation, this body is the Constitutional Court. Allowing other courts to

declare decisions of the Constitutional Court "unjust" can lead only to confusion.

Neither the Constitution nor the "Law on the Court" supports Pashin's gloomy prognosis of an increased politicization of the Constitutional Court. On the contrary, both documents provide safeguards against political influence on the Court. The "Law on the Court" further insures popular access to the Court, makes the Court the final arbiter of constitutionality, gives the Court the competence to resolve disputes between state organs, and introduces sufficient internal checks on judicial misbehavior by the members of the Court itself. (Paragraph 1: The powers of Russian Federation Constitutional Court's justices are terminated as a result of: 7. "the continuation by the justice, despite warnings by the Constitutional Court, of occupations or actions incompatible with his position." (8.) "failure by the justice to take part in sessions, or failure to vote more than twice in succession without a valid reason." Paragraph 3: "Russian Federation Constitutional Court justices are terminated following a ruling of the Court, which is sent to

the president and the Federation Council and represents official notification of a vacancy.") The "collegiality" principle will ensure responsible judicial decision making. Any concerns about delay will be addressed by the division of the Court into two chambers, as this reorganization will encourage promptness and efficiency.

In a sense, Pashin is justified in his concern. Cynics will always characterize the Court as political and spy partisan political considerations behind its every decision. Pashin himself is guilty of this attitude, one that ultimately portrays the Court as a political lackey. The political climate in Russia today, of course, is less than optimal, but this does not mean that the justices cannot learn from the past. To the extent that rules and procedures can make a difference, the "Law on the Constitutional Court" provides the means for immunizing the Court from partisan politics.

Boris Strashun and Vadim Sobakin are advisors to the Russian Constitutional Court.

The Mysterious Politics of Bulgaria's "Movement for Rights and Freedoms"

Venelin I. Ganev

With the resignation of Bulgarian Prime Minister Liuben Berov (September 2, 1994), an unprecedented episode in recent East European history came to a close: Berov's government was the first to have been officially formed by the mandate of an ethnic minority party, the Movement for Rights and Freedoms (MRF), a political formation dominated almost entirely by ethnic Turks. This event suggests the need to re-think the role of ethnic parties in Eastern Europe. Such an endeavor is all the more necessary since one of the few points of agreement among analysts is that ethnic minority parties are destined to perform an important and even decisive function in the working of the region's fledgling democratic systems. Almost in every country these parties have emerged as active and influential political actors. "Ethnic politics," or the effort to mediate the relationship between the minority and the dominant majority, is, and will remain, the principle arena in which these parties act.

I will assume throughout that the primary political goal of ethnic minority parties (and of the MRF in particular) is to achieve some measure of integration (compatible with a degree of autonomy) into the political and social systems of the respective countries. Yet, I would like also to explore some political problems that ethnic minority parties face qua parties, that is, recurrent problems they have to resolve, but that are not reducible to "ethnic politics." These problems do not lend themselves to an interpretation framed exclusively in terms of ethnic tensions, since their structural, functional, and political characteristics warrant their inclusion into a separate category, relatively

distinct from that of "ethnic politics." It is from that vantage point that I will try to analyze certain failures of the MRF.

The situation of the Turkish community in Bulgaria improved rapidly after the collapse of Todor Zhivkov's regime in 1989. The majority of Bulgarians, disgusted by the communist onslaught against the Muslims in the 1980s, were eager to support a policy of ethnic reconciliation. Efforts by various nationalistic groups (including the Bulgarian Socialist Party [BSP], the party of the ex-communists) to unleash ethnic hatred were conspicuously unsuccessful. As J. F. Brown remarks in *Hopes and Shadows*, one may "take any other country in the Warsaw pact, plus Yugoslavia and Albania, and the Turks in Bulgaria are markedly better off than any of the minorities here" (p.110).

The MRF emerged in early 1990 as a political organization of the Bulgarian Turks. Led by the ambitious and energetic Ahmed Dogan, it promptly established itself on the political scene and, after the Constitutional Court denied the request of the BSP to declare MRF an unconstitutional "ethnic party" (decision No. 4/92), became an important factor in Bulgarian politics. The key role of the party was made possible by the results of the 1991 parliamentary elections—the Union of Democratic Forces (UDF) received 110 seats, BSP 106, and MRF, the remaining 24. Initially, the MRF sided with the UDF, enabling MRF to pass important legislation restoring the property of Turks forced out of Bulgaria in 1989. Later on, relations between the two coalition partners deteriorated and, in October 1992, MRF joined forces with the excommunists, rejecting a confidence vote requested by Philip Dimitrov, the

UDF prime minister. Moreover, MRF made it clear in subsequent negotiations that it would not support another government dominated by the UDF. The task of forming a cabinet was therefore entrusted to the excommunists, the second-largest party. Their candidate for prime minister, however, turned out to hold dual citizenship (French as well as Bulgarian) which rendered him ineligible for the post. Thus, in accordance with the procedure established by Art. 99, para. 3 of the Constitution, the mandate was passed on to the MRF, the third party in Parliament, which shortly thereafter nominated Liuben Berov, a presidential advisor whose closeness to President Zhelev was his principal political asset. MRF persuaded BSP to support Berov's candidacy, producing an unexpected alliance between representatives of the Turkish minority and the very party that had subjected the Turks to ruthless coercion and brutally forced thousands of them out of the country. It was an alliance that helped Berov rule the country for 21 months (more than any other prime minister since 1989) and to survive six consecutive no-confidence votes initiated by UDF.

It would perhaps be foolhardy to say that Berov's government was a government of the MRF. Communications between the prime minister, an ethnic Bulgarian, and the leaders of the Movement were not particularly active. The MRF had only one representative in the cabinet (Evgeni Matinchev, an ethnic Bulgarian member of the MRF parliamentary faction), and, overall, the government's strategy was to project an image of a government of experts standing above party politics, determined to support programs designed by independent-minded technocrats, instead of following party platforms. Yet, MRF clearly enjoyed a privileged position. Matinchev was appointed first deputy prime minister and, during the periods when Berov was hospitalized, effectively ran the government. MRF practically exercised control over appointments of high-ranking officials in the executive branch (including ministers, deputy ministers, and deputy directors of the national bank) and could presumably exert influence over the Council of Ministers by introducing various programs and submitting draft legislation. In other

words, although MRF was not in a position to control directly the activities of the executive branch, it had the potential to achieve some of its own political goals and had leverage over the policies of Berov's government.

In retrospect, therefore, it is quite striking that the MRF was unwilling, or unable, to take advantage of its privileged position. Not a single program geared towards alleviating the serious economic and social problems of the Turkish minority was implemented during Berov's tenure. The standard of living of Bulgarian Muslims continued to plummet and the exodus to Turkey, this time spurred by economic pressures, resumed with unforeseen intensity. Land reforms designed to help landless Turkish peasants were never launched. The problems plaguing tobacco growers (tobacco cultivation is the sole source of income for a great many Bulgarian Turks) remain as acute and intractable as ever. In addition, the MRF, known for its inner discipline and smoothly functioning apparatus, became wracked by inner tensions, with opposition to Dogan's autocratic leadership growing. The parliamentary faction split and one of its most active members, Mehmed Hodzha, began a grass roots campaign with an eye to organizing an alternative Turkish party to challenge MRF's monopoly over the political allegiance of the Turkish minority. Journalists from the MRF's newspaper went on strike, dissent within the party was rampant, and disillusionment spread among an electorate formerly cohesive and active. Overall, the MRF leadership found itself increasingly alienated both from its constituents, who were stunned by the unwillingness, or inability, of their leaders to deliver on their electoral promises, and from potential political allies, who were unlikely to forget that MRF was an obedient and submissive partner of the ex-communists.

A better understanding of the events that occurred when MRF was in a position to exercise a share of political power might help us anticipate some of the potentially recurring questions ethnic minority parties throughout the region will have to address in the future. Here are five problems that MRF failed to resolve. They are of

theoretical and practical import for wider political processes in Eastern Europe.

Lack of a coherent coalition strategy

MRF did not have a clearly defined or well articulated strategy for coalition building. Of course, a clear-cut policy in this respect is hardly to be expected from any of the political actors in Eastern Europe. But ethnic minority parties, such as MRF, are particularly pressed in this respect, and they stand to lose enormously if they do not succeed, as they cannot accomplish any political goal without support from political partners. Furthermore, unlike other parties, which are relatively unconstrained by long-term considerations and therefore prone to opportunistic moves, ethnic minority parties have a fairly clear and tangible long-term objective. Simply put, their principal aim is to alleviate tensions between the minority they represent and the majority in their country. Can short-term benefits serve as a justification for "pragmatic" political behavior if they are bought at the price of compromising this strategic objective?

Why did MRF break with UDF and ally with BSP? Not even the most astute political analysts in Bulgaria and abroad were able to understand the opaque argument Dogan concocted to explain why his party acted as it did. Certainly, the MRF might have had some legitimate complaints about its one-time partner. But ambiguous and obscure remarks about "the rise of blue fascism" (blue is the party color of the UDF) and "the need for a decisive turn to the left" in a country in which 85 percent of the property is still in state hands were not sufficient to enlighten the public about the rationale behind MRF's behavior. Likewise, MRF's working partnership with BSP was not principled. In effect, both parties preferred to bury their heads in the sand, even going so far as to maintain that such a coalition did not exist. The failure to ground the cooperation on mutually recognized principles worked against the interests of MRF and benefited the BSP. Once assured that MRF "pragmatism" really meant unwavering support for Berov's government, the ex-communists felt free to pursue their nationalistic policies. BSP rab-

blousers routinely condemned the resurgence of "Turkish nationalism," stirred up nationalistic feelings by invoking "the threat from rising Islamic fundamentalism," and held sensationalist press-conferences in order to warn the Bulgarian public that "alien terrorists coming from a neighboring country" were stock-piling weapons in Muslim-populated areas.

Inability to assume responsibilities in the executive branch

For some reason, MRF found itself unprepared for exercising executive power and promoting the interests of its constituents. Perhaps the exercise of executive power requires peculiar political skills its leaders had failed to cultivate. Over the past several years, of course, many ethnic parties have mastered the parliamentary game. They are persistent in their demands, both in Parliament and on the international level, and capable of waging well-publicized parliamentary battles over particular constitutional provisions or legislative texts. And they have become quite skilled in the give-and-take that accompanies voting in a context of constantly shifting majorities. The exercise of executive power, however, presents a different set of challenges.

Why did the MRF prove incapable of designing and implementing practical programs aimed at improving the welfare of its constituents? For one thing, MRF found itself bereft of cadres who knew how to set in motion the state apparatus or to utilize the opportunities that accompany access to bureaucratic machinery. In addition, the leadership of the Movement failed to state its policies in practical terms and to implement its economic and social objectives. On a more theoretical level, ethnic politicians, especially those who represent relatively poor minorities, seem to have difficulty in finding economic solutions to the problems that beset their constituents *because their economic programs rarely go beyond demanding redistribution of income through taxation and especially subsidization*. No efforts were made to stimulate market behavior and to create an incipient class of entrepreneurs within their own

ethnic group. As a result, the ethnic minority continues to feel lost in the vertigos of economic liberalization.

A narrow focus

Another strategic weakness of MRF is that its political program fails to address a variety of issues that are extremely important for all post-totalitarian societies. It is only natural that an ethnic party would put ethnic issues at the top of its agenda, just as a business party is expected to single out economic issues and a peasant party to concentrate on the problems of agriculture. *But this narrow focus results in the virtual exclusion of the ethnic party from a whole range of important public discussions.* Privatization, restitution, financial reform, the process of European integration, and crime—all these problems are lamentably neglected not only in the programs of ethnic parties in Eastern Europe, but also in their everyday political behavior. Hollow declarations and vacuous statements such as “we support reform,” and “we welcome market-oriented policies” hardly conceal MRF’s deafening silence in the policy debates about the most acute problems of post-communist Bulgaria. Therefore, single-issue politics may explain why ethnic minority parties sometimes appear as second-rate participants in public life. The problem is not only that they represent a discrete and insular minority looked upon with suspicion, but also that they have nothing substantive to offer to an increasingly disillusioned and apathetic public. The relative marginalization of ethnic minority parties cannot be attributed solely to the bigotry of ethnocentric majorities. The utter failure of these parties to meaningfully address a whole range of burning questions also plays a role.

Lack of internal democracy

The MRF was unable to bridge the gap between its rank-and-file members and the leadership, a problem which became all the more acute when the leadership suddenly acquired a measure of control over state resources while, at the same time, refusing to publicly account for its actions.

The problem of democratic accountability is by no means peculiar to ethnic parties. But surely these parties differ from nonethnic parties in at least two respects. First, if the respective minority is relatively backward economically (as is the case with Turks in Bulgaria, Albanians in Macedonia, and gypsies virtually everywhere), the chances for a relatively well educated coterie to seize control of the party is measurably increased. Second, this elite can successfully use scare tactics, brandishing the “threat from the majority” to whip its constituents into submission and to stall whatever criticisms they might have. Under such conditions, ethnic leaders are, in effect, given a free hand to shape and pursue policies in virtual secrecy. This lack of democratic accountability helps explain why the MRF leaders functioned, for the most part, as a semi-secluded lobby, making decisions in secret, neglecting to provide a rationale for their actions. Not surprisingly, the patience of the electorate has its limits. Distressed by rumors of the lavish life-style of their leaders (Dogan himself spent over one million leva for his wedding and bought a condominium for more than 1.1 million leva even though his official monthly salary is slightly below 20,000 leva), the supporters of the Movement began to defect en masse to Hodzha’s newly organized party.

No coordination with other ethnic groups

The MRF displayed a callous neglect for the problems of other minorities (first of all, the gypsy minority) in Bulgaria. Far from being atypical, this attitude seems widespread among ethnic parties throughout Eastern Europe. Because they are exclusively concerned with solving the problems of “their” minorities, minority leaders fail to adopt a principled approach to solve the “minority problem” in general. Explanations for such behavior are not difficult to find. For one thing, the budgetary crisis frequently turns the process of political bargaining for the redistribution of state resources into a zero-sum game. But competition over budgetary allocations is only part of the story. For some reason, parties like MRF often display a clear preference for ad hoc solutions and piecemeal programs. They do

not make much effort to translate those liberal principles that might regulate the relationship between ethnic minorities and majorities into economic *programs*, such as affirmative action, that would benefit all minorities regardless of their political clout. In this case, MRF made no effort to establish institutions that might help alleviate minority problems in the future (such as departments in certain ministries, committees in organs for local government, or working groups attached to the Council of Ministers). This lack of attention to institution-building is prejudicial to the weaker minorities and tends to perpetuate the poverty of certain groups who find themselves losers in the democratic process and, at the same time, are unable to invoke well-established principles to legitimate their demands or use state institutions to channel their grievances. On the other hand, reliance on ad hoc deals not based on constitutional principles subverts one of the major goals of constitutional politics in Eastern Europe, namely public education. Unable to grasp the rationale of "the deals," citizens from

the majority and the minority alike are apt to become cynical and lose faith in the democratic process.

These observations suggest that ethnic minority parties like MRF still must learn how to operate democratically in a post-totalitarian setting. They will have to acknowledge and respect certain political constraints imposed upon them by the political environment. They will have to master the necessary political skills to design and implement policies beneficial to their constituents, and steer the bureaucratic state mechanism in a direction they deem desirable. Finally, they must learn how to articulate clearly the basic liberal-democratic principles—such as protection of constitutional rights, democratic representation, openness of decision-making, and publicity of political discussion—that undergird democratic forms of communal life and democratic political institutions. Only a sustained effort to transform behind-the-scenes maneuvering into publicly intelligible political negotiations can help ethnic minority parties establish themselves as effective political actors in post-totalitarian democracies.

A defense of the federalism provisions in the December 12 Constitution**Designing Center-Region Relations in the new Russia***Edward W. Walker*

According to official results, 58.4 percent of those voting in the December 12, 1993 referendum approved the Constitution. Fifty-four percent of the eligible voters are said to have participated. Despite considerable controversy over the reliability of these figures (some have argued that less than 50 percent of the electorate took part, a result which would have rendered the referendum invalid), Russia's new Constitution came into force on December 24, 1993.

Prior to its adoption, the draft Constitution was harshly criticized by many Russian and Western observers. Rather than contributing to political stabilization, it was argued, the new Constitution would perpetuate the acute political problems Russia experienced in 1991-1993. Not only would executive-legislative relations remain contentious, but the crisis in relations between the federal government and the 89 *subekty* (subjects of the federation) would intensify.

With the benefit of hindsight, these criticisms seem excessive. Prior to the Chechen crisis, at least, a precarious political stabilization seemed to have taken hold in Russia, despite the electoral success of Vladimir Zhirinovskiy and other antidemocratic and quasidemocratic forces in the December parliamentary vote. Most important of all, relations between Moscow and the majority of local governments in the regions and republics had improved. Indeed, Yeltsin and his advisors were claiming that the principal political achievement of the past year has been the consolidation of Russia's territorial integrity. Some of the credit, however, should go to the intelligently drafted federalism provisions in the new Constitution.

There is no denying, of course, that intergovernmental relations have been and remain troubled.

Recently signed "treaties" between Moscow on the one hand, and Tatarstan and Bashkortostan on the other, risk serving as a precedent, tempting other *subekty* to demand equal treatment. Trade barriers are springing up between regions within Russia. Many of the constitutions and charters of the regions and republics contradict provisions in the federal Constitution. Even more problematic is the effort to work out an effective system of fiscal federalism. And finally, there is the very tense political situation in the North Caucasus and, above all, the bloodshed in Chechnya.

Nevertheless, my thesis is that, while these problems were and remain very serious, they are not the result of poorly designed federalism provisions in the Constitution. This is above all true in the case of Chechnya. The deployment of federal troops was a political decision by Yeltsin and the Security Council, signaling a breakdown, not a further realization of the "regional policy" that federal authorities had previously followed. Earlier, Yeltsin and his advisors had articulated a policy of granting considerable autonomy to the republics particularly and making special arrangements with individual republics, such as Tatarstan, within the broad and flexible framework established by the Constitution. Most importantly, they had repeatedly stated that force would never be used to solve Russia's federation problems. With regard to Chechnya, the Kremlin apparently hoped that the willingness to make concessions that it had demonstrated in negotiating bilateral agreements with Tatarstan and Bashkortostan would induce Chechnya to negotiate a similar agreement. Why Yeltsin's inner circle ultimately decided to support the Chechen opposition aggressively and to attempt to remove

Dudayev by massive force remains unclear. But the invasion was not a logical or necessary result of the new Constitution.

To the extent that the Chechen crisis raises doubts about the Constitution, these doubts center on the right of the president to introduce a state of emergency without declaring one and to dispatch troops into a region that is defined constitutionally as part of Russian territory. While the conflict in Chechnya may throw doubts on Yeltsin's grasp of the military and political situation, it does nothing to discredit the federalism provisions in the Constitution. Moreover, no constitution, no matter how well-designed, could resolve the problems caused by Russia's sheer immensity and crazy-quilt demographic composition. True, constitutions matter only if, and to the extent that, their provisions are adhered to by political authorities. But, it remains worthwhile to examine the structure of federalism set forth in Russia's new Constitution, even if words on paper seldom govern political behavior, in times of crisis.

Roughly speaking, four charges have been leveled at the federalism provisions in Russia's new Constitution: (1) the federal government is afforded excessive powers; (2) the republics, the regions, or both are granted excessive powers; (3) the federalism provisions in the new Constitution are vague or contradictory; and (4) the new Constitution should not have preserved the current configuration of Russia's internal borders.

Excessive powers for the federal government

The blunt assertion that the new Russian Constitution establishes a unitary state is simply false. In the first place, even in the West, no universal agreement exists on what a "federation" is. A rather standard definition, however, would be that it is a type of state where a national government and territorially-defined, sub-federal governments have constitutionally protected and distinct powers (even where a "constitution" is unwritten or traditional, as in Britain). In practice, the distinction between unitary and federal states, like the distinction between federal and confederal states, is not sharp. There are many constitutionally unitary

states that in practice look very much like federal states—consider, for example, China today, which in many respects shares the same intergovernmental division of powers and problems as Russia and which, in many respects, is more decentralized than the US. Enormous variations also exist among federations: the types of powers assigned to federal and sub-federal units, the number of constituent units, the principle upon which the constituent units are defined, and so on, may all be different.

If the Russian Constitution survives and, in the long run, successfully constrains political behavior, the state it establishes will qualify as federal by almost any definition. Article 1 asserts that "the Russian Federation/Russia is a democratic and federal state based on the rule of law, with a republican form of government;" Art. 5.1 states that the Federation "is comprised of republics, kraia, oblasts, federal cities, autonomous oblasts, and autonomous okrugs—the subjects of the Russian Federation;" and Art. 5.3 states that the federal structure of Russia is based on a "division of competencies and powers between the organs of state power of the Russian Federation and organs of state power of the subjects of the federation." Chapter 3 goes on to define the different competencies and powers of federal and regional governments. Article 71 gives the federal government jurisdiction over, *inter alia*, federal organs of power; its own social, economic, cultural, and ecological policies; foreign policy; and questions of war and peace. Article 72 delineates powers assigned to joint jurisdiction. Finally, Art. 73 commits to a residual principle similar to the 10th Amendment in the US Constitution. Article 73 specifies that all powers not specifically assigned to the federal government or to joint jurisdiction rest with the subekty, which "possess full state authority." This is in turn supported by Art. 76.4, which grants the subekty powers of independent legislation.

Neither does the removal of the language on republics as "sovereign states" compromise Russia's federal status. The new Constitution does not explicitly deny that its constituent units are "sovereign." But neither does it define what "sovereign" would mean had the term been used. Indirectly,

however, the Constitution recognizes the sovereignty (or autonomy) of the subekty in areas of their own competence, even if it does not use the term. Again, Art. 73 states that the subekty have "full state authority" on matters other than those listed in Art. 71 and Art. 72. Article 76.4 gives the subjects the power of independent legislation on matters within their jurisdiction, and Art. 76.6 states that if there is a contradiction between federal law and the law of a subekt on matters within the latter's jurisdiction, the law of the subekt prevails.

The Constitution, however, does put to rest, at least legally, some of the more critical political implications of the "sovereignty" debate of 1990-93. This debate was not merely a quarrel over abstract notions of constitutional theory. Rather, the term had acquired a particular meaning in Russian political discourse with very important practical consequences. At stake was whether republics would have a unilateral right of secession (unilateral in the sense that there would be no need for approval either by the federal legislature or by a federation-wide referendum) and whether republican constitutions and laws would have priority over the federal Constitution and federal laws.

In my view, a legal resolution of these controversies was proper and necessary. The new Constitution does this. With regard to the priority of the federal Constitution, Art. 4.1 states that the "sovereignty of the Russian Federation extends to the entirety of this territory," while Art. 4.2 states that the federal Constitution and federal laws have *verkhoventsvo* (supremacy) throughout the territory of the Russian Federation. This latter provision is reinforced by Art. 15.1, which stipulates that "laws and other legal acts adopted in the Russian Federation may not contradict the Constitution of the Russian Federation." Finally, Art. 1 of Section II states that in the event of any *nesootvestviia* (inconsistencies) with the Federation Treaty or bilateral treaties between Moscow and the subekty, the federal Constitution prevails.

As for secession, no provision deals directly with the issue. However, Art. 4.3 guarantees the *tselostnost* (integrity) and inviolability of the territory of the Russian Federation, while Art. 65 lists all 89

subekty, including Chechnya. (Admittedly Chechnya has participated in no Russian election since 1991, and the December 12, 1993 referendum was not even held in the republic.) Article 16.2 states that other provisions of the Constitution may not violate those found in Chapter 1 ("Foundations of the Constitutional System"), which includes Art. 4.3, and amendments to Chapter 1 require the convening of a constitutional assembly.

The claim that the Constitution renders moot the March 1992 Federation Treaty is incorrect. Article 11.3 and Art. 1 in Section II make clear that the Federation Treaty is still in force to the extent that it does not contradict the Constitution. I am unable to identify any obvious contradictions. The language on the division of powers is similar to that of the March 1992 treaty with republics, and while there are differences, there are no clear contradictions. For example, the Federation Treaty, unlike the Constitution, specifies that a state of emergency, in most circumstances, must be approved by republic legislatures. But this provision of the Treaty is not contradicted by the Constitution. Rather, the issue is passed over in silence and left to federal constitutional law.

On the other hand, Art. 3.3 of the Federation Treaty with the republics may cause difficulties. It states, that "the land, mineral wealth, water, and fauna and flora are the *dostoianie/sobstvennost* (possessions/property) of the peoples who live on the territory of the respective republics," a claim that is repeated in many of the republics' declarations of state sovereignty and constitutions. The Constitution, on the other hand, states in Art. 72.1c that "questions of *vladenie* (proprietorship), *polzovanie* (use) and *pasporiazhenie* (disposal) of the land, sub-soil resources, water, and other natural resources" fall under the joint jurisdiction of the federal government and the subekty. However, Art. 3.3 in the Federation Treaty goes on to state, "Questions of *vladenie* (proprietorship), the use and distribution of land, mineral wealth, water, and other natural resources are regulated by the fundamental laws of the Russian Federation and the laws of the republics.... The status of federal natural resources will be defined by mutual agreement between federal organs of state power of the

Russian Federation and the organs of the state power of the republics." This language is quite open-ended and undermines the passage in the Treaty assigning ownership to the republics. But, most importantly, even if such contradictions can be found, Art. 1.2 of the Constitution makes it clear that the Constitution takes precedence.

The treaty with Tatarstan (February 1994) does not violate the Constitution. Again, Art. 11.3 of the Constitution stipulates that the federal government may enter into bilateral treaties with the subekty. In the text of the treaty with Tatarstan, Moscow managed to convince Kazan to omit language describing Tatarstan as "sovereign." The February treaty does not describe Tatarstan as a subject of international law, as Kazan had urged. Finally, Tatarstan agreed to abandon its insistence on a "single track" fiscal system in which Kazan would collect all taxes on its territory and turn over whatever amount it saw fit to the federal government. Instead, it agreed to abide by a tax system established by federal law, as provided for in Art. 72.1h of the Constitution. Finally, if the new Constitutional Court ultimately rules that the treaty with Tatarstan violates the Constitution, Art. 1.2 para. 4 of the Constitution states clearly that the Constitution takes precedence.

Admittedly, Art. 77.2, with its references to "a unified system of executive power" on matters within the jurisdiction of the federal government, is a cause for concern. It may be that this language is intended to establish a system of "administrative federalism," like that found in Germany, where local executive bodies and their administrations implement federal programs. But, if the language is taken to mean that the administrative bodies of executive power of the subekty have dual accountability, both to their own regional councils of ministers and to the heads of the administration as well as to the federal prime minister and cabinet, it is difficult to imagine how this system could work effectively in practice. And the language would represent an even greater threat if the federal government used it to influence appointments to local administrative bodies.

Indeed, the autonomy of regional administrations and the system of fiscal federalism, are the central issues in the current tug-of-war between the fed-

eral government and the subekty. Yeltsin and his advisors (both hardliners and reformists) are clearly reluctant to accept the political autonomy of areas where forces unresponsive to Moscow are in power, and Yeltsin clearly wants to retain the power to appoint local heads of administration. Article 77, however, states that the structure of government in the subekty is determined in accord with the foundations of the constitutional system (e.g., electoral democracy and separation of powers) by the subekty themselves, albeit in accordance with "general principles" established by federal law. This provision, in effect, guarantees the subekty the right to choose their own leaders. A federal law on the matter has yet to be adopted, however, and Yeltsin is preparing a decree that may preserve or expand his interference in local government. How the new Constitutional Court rules on this question, as it surely will have to do, will be crucial in defining the kind of federalism that ultimately emerges in Russia.

Finally, a word is in order on constitutional protections for ethnic minorities. On paper, at least, there are many such protections. These include extensive individual rights such as equality before the law regardless of race, nationality, or language (Art. 19); the right to use one's native language and to create the conditions for its study and development (Art. 26, Art. 68); and respect for the rights of "small indigenous peoples" in accord with the norms and principles of international law (Art. 69).

Excessive powers for the subekty

Clearly, the right of the subekty to negotiate bilateral agreements with Moscow was deliberately included in the Constitution so as to permit the possibility of an "asymmetrical federation," if necessary. Under normal circumstances, ad hoc bilateral agreements between federal and regional governments are less than optimal. Deals with the subekty that are not based on publicly stated principles and that are not transparent in their terms or consequences are, in principle, a bad idea. They will inevitably generate resentment towards the real or perceived special privileges granted to individual sub-federal governments. And this resentment will be particularly acute where privileges are granted to

sub-federal governments with the greatest political leverage, rather than on the basis of need, as has been the case in Russia.

There may be circumstances, however, where it is wiser to leave open the possibility of negotiated "political" solutions to existing disagreements. The attempt to arrive at a final and decisive "legal" solution through a well-defined and just regime, while desirable in the long run, may not be possible in the short run. Trying to arrive at such a solution prematurely may even cause important participants (e.g., Tatarstan) to defect. As Yeltsin advisor Emil Pain, whose influence may now be on the wane, once put it, "Anyone who today takes a position of legal dogmatism, insisting on a tough line with respect to the republics, is objectively promoting the rebirth of separatism." (This lesson was apparently lost on the hardliners in the Security Council.)

But some of Yeltsin's reform-minded advisors, at least, were persuaded by the argument. As stated in a paper on regional strategy written in late 1993 by three key presidential advisors on nationality affairs, "The Russian Federation must be reborn on a federal basis, but not all at once. Rather, it should be done in *poetapno* (stages)." As the paper makes clear, the new Constitution establishes a general federation framework that consists of five fundamental *zaprety* (bans): (1) secession; (2) unilateral changes in the status of a subekt; (3) the transformation of administrative borders into state borders—that is, obstacles to freedom of movement within Russia; (4) nondemocratic forms of government within the Federation; (5) and the supremacy of the federal Constitution and federal law. Operating within these general parameters, federal authorities will be in a position to negotiate, if necessary, with individual subekty (such as Tatarstan) on taxation, ownership of state assets, the distribution of earnings from natural resource exports, and so on. In the long run, however, the goal is to eliminate distinctions between ethnic and nonethnic members of the federation and to arrive at a general formula for regulating intergovernmental relations. In short, influenced by the example of the post-Franco transition to democracy in Spain, Yeltsin and his less bellicose advisors seemed to have concluded that flexibility

and a willingness to gradually work out the details of a new federal order was the wiser course. Given our present state of knowledge we cannot yet say, with any degree of confidence, what led the Kremlin to abandon negotiation for force.

Indeterminacy and contradictory provisions

That the exact division of powers between central and regional governments is not yet entirely clear is not necessarily a fatal criticism of the December 1993 Constitution. Vagueness contributes to flexibility, and flexibility may be a good thing. Moreover, indeterminacy of competencies is inevitable. In the US, for example, an enormous gap exists between the competencies assigned to the federal government in the Constitution and the reach of current federal legislation. As many commentators have noted, under the Supreme Court's broad reading of the Commerce Clause and the doctrine of implied powers, the Court has effectively opened all areas of law to federal regulation.

The specifics of the division of powers in modern federations, in any case, are extremely complicated. Indeed, they are far more complicated than even close readings of constitutional texts would suggest. Moreover, the tendency has been, particularly in the US case, for restrictions on the scope of federal legislation to shrink over time. The inevitable fate of constitutional courts, wherever they exist, is to wrestle with these problems and to arrive at coherent legal rulings that accommodate both the principles embodied in the constitution and changes in economic, social, and political environments.

In the Russian case, this will certainly be an important challenge for the new Constitutional Court. It is possible that the Court will adhere to a simple preemption doctrine, which will make the federal government particularly powerful. But, the Court may try to arrive at a more subtle and balanced legal principle.

As for the failure of the Russian Constitution to resolve the country's intergovernmental fiscal problems, relevant provisions leave open how those problems are to be resolved. As noted earlier, Art. 71.1h and 72.1i suggest that virtually any system of

taxation would be constitutional so long as it does not undermine the competencies of either the federal government or the subekty.

It would have surely been a mistake to entrench a particular tax system or revenue sharing regime in the Constitution. Attempting to do so would have made the Constitution even more controversial and its adoption more problematic. Even the inclusion of very general language about the duty of the federal government to counter inter-regional inequality, as we find in the German Basic Law, would probably have caused more political trouble than it was worth. It would also have committed the federal government to a goal it could not have effectively pursued given the existing pattern of federal subsidies, not to mention political difficulties with republics such as Tatarstan and Sakha (Yakutya). Again, it was probably wiser to leave this still very problematic issue to negotiation and future legislation.

Finally, no obvious contradiction can be discerned between the language of Art. 5.4 on the equality of the subekty "in relations with the federal bodies of state power" and the actual powers assigned the subekty in Chapter 3. The additional rights afforded the republics (that is, the right to a constitution or the right to their own state language) do not involve "relations with the federal bodies of state power." Neither do the articles on jurisdiction (Art. 71, Art. 72, and Art. 73) distinguish between the subekty. What is granted to one is granted to all. And, the subekty have equal representation in the Federation Council—two members each (Art. 95.2).

The preservation of Russia's internal borders

The Constitution preserves Russia's inherited administrative borders, and it also confirms that 32 of the subekty are ethnically-defined. It is also probable, as many of the critics of the Constitution in Russia contend, that this institutional recognition will help entrench ethnic identities and complicate politics in the new Russia. And it may be true that, in the long run, the country would be better off if its internal borders had been redrawn. What seems very dubious, however, given the acute political problems Russia was already facing in 1993, is that

the drafters of the new Constitution would have been wise to redraw those borders.

Doing so would have been vigorously opposed by local elites in the republics and the regions, many of whom would have lost their positions. Indeed, very early in the debate over the new Constitution, it was widely recognized, even by most champions of "civic-territorial" (as opposed to "ethnic") federalism, that the political problems raised by such an enormous redistricting project would have been insurmountable. Attempting to change Russia's inherited internal borders would have dangerously raised the stakes in an already serious conflict between the federal government and the subekty.

It is debatable whether eliminating ethnically-defined administrative units and reducing the number of subekty would have substantially lessened the threat to Russia's territorial integrity. Ethnic minorities would have become extremely alarmed and resentful. Moreover, the political leverage of any one of, say, ten gubernias would have been much greater than the political leverage of any of the 89, highly diverse, constituent units of the current federation, making challenges to the center all the more credible.

Stephen Holmes and Cass Sunstein have argued persuasively that regimes in transition are wise to build flexibility into their constitutions. On the one hand, there is a need to entrench the rule of law and democracy. On the other hand, the rapidly changing environment and high political stakes make it dangerous to establish rules that are too fixed. Doing so makes politics more of a zero-sum game.

Normally, building flexibility into a constitution means making the amendment process relatively easy. Hence the solution to the dilemma, as Holmes and Sunstein argue, is to make different parts of constitutions in democratizing regimes, particularly those that speak to fundamental principles, more difficult to amend than others. In part, this is the solution taken in the Russian Constitution. As noted earlier, amending Chapters 1, 2, and 9 requires convening a constitutional assembly, while Amending Chapters 3-8 is less burdensome. Reacting against the experi-

ence with the pre-December 1993 constitution, where the amending power rested entirely with the Congress of Peoples' Deputies, the framers made it difficult to amend Chapters 3-8 as well. Thus Art. 136 specifies that amendments to Chapters 3-8 require approval not only by at least three-fourths of the Members of the Council of the Federation and two-thirds of the Deputies of the State Duma, but also by two-thirds of the legislatures of the subekty.

What is unusual about the federation provisions in the Russian Constitution, then, is that flexibility is built into the document in ways other than the amendment process. Within the limits of the general framework established by the "five bans," a great deal is left open to negotiations between the

federal government and the subekty. Put differently, a decision was made to allow the specifics of Russia's new federation to be determined gradually, by political means, and ad hoc negotiations, and not by a rigid, legal instrument with rules set in stone. This built-in openness to negotiation will create both difficulties and opportunities in the future. It certainly can not be blamed for Yeltsin's Chechnya adventure. But no constitutional arrangement, in the almost unintelligible political situation in Russia today, can guarantee the intelligent use of discretionary executive power.

Edward W. Walker is Executive Director of the Berkeley-Stanford Program in Soviet and Post-Soviet Studies at the University of California at Berkeley.

Constitutionally Mandated Federal Constitutional Laws

| ARTICLE OF THE RUSSIAN CONSTITUTION | NAME OF THE LAW |
|--|---|
| 56.1 | Law on the State of Emergency |
| 65.2 | Law on the Order of Creating New Subjects of the Russian Federation |
| 66.5 | Law on the Change of the Statute of Subjects of the Russian Federation |
| 70.1 | Law on the Flag, State Arms and National Anthem of the Russian Federation |
| 84.v | Law on Referendum |
| 87.3 | Law on the Regime of Martial Law |
| 103.d | Law on the Ombudsman |
| 114.2 | Law on the Government |
| 118.3 | Law on the Court System |
| 128.3 | Law on the Constitutional Court |
| 128.3 | Law on the Supreme Court |
| 128.3 | Law on the Highest Arbitrage Court |
| 128.3 | Law on Federal Courts |
| 135.2 | Law on the Constitutional Assembly |

The only constitutional law which has been adopted by the assembly is the Law on the Constitutional Court.

FEATURE:

Rights After Communism

Introduction

Cass R. Sunstein

Contrary to the suggestion in much Western political thought, rights do not fall from the sky. They depend for their existence on public institutions. They cost money, perhaps a great deal of money. (This is true not only for social and economic rights but for so-called negative rights as well; government cannot protect property and life itself without resources.) Rights will not exist without a rights-bearing culture, that is, a culture in which ordinary people are at least sometimes willing to take serious personal risks by challenging powerful people by insisting that rights are at stake. The protection of rights will require government to act in both public and private spheres, sometimes within the family itself (as, for example, in the prevention of domestic violence).

These are the principal lessons that emerge from the following essays on rights after Communism. Ewa Letowska shows that the activity of the ombudsman—a potentially crucial actor in Eastern Europe—has been necessary to ensure that rights on paper actually mean something in the real world. Ombudsman action was required in Poland to establish that a woman could not be refused employment because the job of engine driver was “too hard for her”; ombudsman action was also necessary to upset

a conviction of a professor who had criticized a particular decision of the minister of education as reminiscent of “socialist pathology.” (The prosecution itself certainly deserved that appellation even if the decision at issue did not.) Kim Lane Scheppele shows that paper guarantees of sex equality can coexist with extensive sex discrimination and inequality. Consider the fact that in Poland, 90 occupations are closed to women by law, and that no laws in Eastern Europe ban sexual harassment. Russia has created extensive constitutional protections for the accused and committed those protections to paper; but the Supreme Court of Russia has held that the privilege against self-incrimination is sufficiently protected if the defendant is told that he has a right to give a statement of confession (on the astonishing theory that this statement implicitly conveys the right *not* to give such a statement).

Inga Mikhailovskaia's important empirical study shows, among many other things, that the right to religious liberty and the right to receive and distribute information are ranked as “important” or “very important” by less than half of respondents, whereas the right to social security is so ranked by nearly 96 percent. This finding has many possible implications. Certainly it is reason-

able to say that the finding suggests what will happen in the future: The rights people actually have will likely have some connection with the rights that they want. But we might react as well by insisting that the responses are disturbing, since the category of rights, and especially of constitutional rights, need not be coextensive with the category of important human interests. Rights are, among other things, *pragmatic instruments whose acknowledgment in law is designed to accomplish concrete social tasks*. To say that there ought not to be a legal right to (for example) environmental quality is not to disparage environmental protection; so too with the right to fair compensation for one's labor; so too with the right to equal pay for equal work. The acknowledgment of these things as rights may not accomplish anything in the world; rights of this sort may not realistically be subject to protection through courts or through other public channels. We do not disparage such interests if we refuse to recognize them as rights, or if we reserve the category of legal rights to human interests whose protection as rights will actually do some good for human beings.

There is a final point. One of Mikhailovskaia's questions opposes individual rights to the interests of the state, and asks whether the former can be

abridged because of the latter. But many rights actually serve collective interests, by making it possible to have and maintain a certain kind of society with a certain sort of culture. Consider here the legal philosopher Joseph Raz's striking suggestion: "If I were to choose between living in a society which enjoys freedom of expression, but not having the right myself, or enjoying the right in a society which does not have it, I would have no hesitation in judging that my own personal interest is better served by the first option." *Rights and Individual Well-Being*, in *Ethics in the Public Domain* 39 (1994). Part of the reason for a system of free speech is not to protect the individual speaker, but to allow processes of public deliberation and discussion that serve public goals by, for example, constraining governmental power and making just and effective outcomes more likely.

This point—often ignored in the West as well as the East—suggests that many rights deserve to exist because of their consequences for society in general. A point of this kind permeates the essays that follow. It helps account for the need for real-world institutions safeguarding constitutional guarantees, and for the more than occasional difficulty of obtaining such institutions in view of the complex psychology of rights.

The Ombudsman and Basic Rights

Ewa Letowska

On January 1, 1988, Poland established the office of ombudsman. The ombudsman is appointed by Parliament and is accountable to it. To qualify for the position, the candidate must be a citizen of Poland, have knowledge of the law (being a lawyer, however, is not a prerequisite), and have a good reputation. The position of ombudsman is incompatible with any other public office or function. The ombudsman is appointed for four years (not coterminous with the parliamentary term), and may be reappointed only once. The ombudsman enjoys legal immunity and acts independently of other state institutions. She can be removed only for causes enumerated in the Ombudsman Act.

The ombudsman's competence is broad and includes all cases where civil rights and liberties are infringed by state administrative authorities. The ombudsman may examine cases that fall within the judiciary's competence, but may not interfere with judicial proceedings once they have begun. She may institute actions before the Constitutional Tribunal and the Highest Administrative Court, and she may lodge an extraordinary appeal to the Supreme Court against any final judicial decision. She acts either upon request of a petitioning party or *sua sponte*.

The ombudsman may ask that disciplinary proceedings be instituted against public officials, regardless of their institutional affiliation or rank. For example, the army, the prison system, and the internal affairs department are all subject to the ombudsman's review.

The ombudsman was introduced to Poland toward the end of the communist era, after the establishment of the Highest Administrative Court (1980), the Tribunal of State (1982), and the Constitutional Tribunal (1985) (all of which were also created to protect civil rights). Creation of the

office was, in effect, one more concession by the collapsing regime. By establishing these institutions, the communists clearly aimed to improve their credibility and image at home and abroad.

Poland's ombudsman's office is modeled after the Scandinavian version which was vigorously promoted by Polish scholars acquainted with West European institutions. Communist officials, largely ignorant of the nature of this institution, agreed to establish ombudsman without realizing the potential consequences. The communists probably assumed that the ombudsman would submit to their wishes. To this end, the government chose a female scholar with no political affiliation and no political experience. Yet, as in several earlier cases—namely, the creation of the Highest Administrative Court and the Constitutional Tribunal—the ombudsman proved to be a surprise that the regime could hardly welcome. Every ombudsman who properly performs her duties serves as a check upon government abuse, and, consequently, may prove bothersome even to popularly elected authorities.

In short, the ombudsman was established in Poland as a result of the relative weak and short-sighted communist regime. Later, the institution was able to endure and even consolidate because the new regime was similarly weak and unable to appreciate the impact of the office on state authority. By the time this was discovered by the government, the office was already well-established and widely-supported, thus dooming any attempt even to diminish its status or authority.

In the future, however, establishing new offices of ombudsman may turn out to be extremely difficult. The Polish example may well have taught other countries that the ombudsman may turn out to be a threat to otherwise unchecked authorities. Thus, other countries in transition,

even if they establish homonymous positions, might be tempted to deprive them of many of the powers the Polish ombudsman enjoys. Political culture may yet be another barrier to establishing such offices. The less a society is concerned with rule of law principles and the separation of powers, the less likely it is to demand or successfully institutionalize an ombudsman.

As shown by the statistics of the Constitutional Tribunal, among the institutions empowered to submit petitions to it, the ombudsman has been the most active. The ombudsman has also been active in defending human rights and rule of law principles before other Courts and agencies. The office has pushed Polish courts to apply international human rights standards, as articulated in various international covenants, in their decisions.

Aside from defending individuals and their rights, the ombudsman's other function is to educate the public and state officials. For example, the ombudsman offers instruction to the public on the rule of law and runs a workshop on the principles of civil society. Of particular importance are the ombudsman's replies to letters she receives, especially those concerning cases she declines. In such instances, the ombudsman attempts to explain clearly why the case was not taken. The ombudsman also tries to teach the principles of the rule of law and human rights to government administrators. In this respect, the Polish ombudsman's role is more difficult than that of her Western counterparts. The Western administrative tradition is more sophisticated and efficient. In Central and Eastern Europe, however, bureaucracies can be ignorant of even basic principles of government and administration. Thus, the ombudsman must not only teach the values of public-spiritedness, but sometimes also the rudiments of administration.

The ombudsman promoted the rule of law and defended human rights before courts and the Constitutional Tribunal by appealing to international standards on human rights protection. This approach contrasts with the usual outlook of the Polish judiciary, which has traditionally adhered to narrow formalism ("bureaucratic legalism") and legal positivism. The ombudsman, instead, advocat-

ed an approach that relies on settled international precedents in legal decisionmaking. In this connection, the ombudsman singled out the decisions of the Human Rights Commission and the Strasbourg Tribunal as models of what is required of legal administration. Given the difference in approaches, it is not surprising that the ombudsman's ideas were not always welcome in legal circles.

To illustrate the activities of the Polish ombudsman in the area of human rights, I will give some examples from 1989-1991, a critical period for the office not only because it had just been established, but because it had to make the political establishment sensitive to the need for respecting human rights. In all cases, the ombudsman invoked the Covenant on Civil and Political Rights and the European Convention.

In case RPO 31319/89/III, the ombudsman and the public prosecutor's office clashed over the meaning of "equality." Referring to Art. 2 of the Covenant, the ombudsman argued that any form of discrimination could in principle be challenged as violating equality. The prosecutor adopted, however, a narrow conception of equality. The public prosecutor's reasoning was partly based on the Polish Constitution, which enumerates specific instances in which discrimination will be considered facially invalid.

Case RPO 43271/89/I involved discrimination against women. By law, women may work as engine-drivers in Poland. Ms. X, a qualified engine-driver, was refused employment based on her gender. Defending the refusal to employ, the minister of communication stated that "it is for her own good" that she was not hired because "the job is too hard for her." The case was settled as a result of the ombudsman's action.

Relying on the "right to freedom" recognized by Art. 9 of the Covenant, the ombudsman challenged the public prosecutor's practice of *ex post* legal justification of detentions in cases where individuals had been arrested without a valid warrant and had been jailed for several days. (RPO 62417/90/IX, 66342/90/IX, 59831/90/IX).

Case RPO 54929/90/I involved a similar problem, where an indigent had been held in a mental hospital for four years without legal cause.

In case RPO 14283/89/IX, the ombudsman relied on Art. 10 of the Covenant (providing for

humane treatment of prisoners) to challenge humiliating ways of searching female prisoners, and violating their human dignity. The search for cigarettes, now banned in prisons, proceeded by forcing a woman to undress, lean forward, and part her buttocks.

The ombudsman used Art. 17 of the Covenant (recognizing the protection of privacy) in successfully intervening to prevent police from forcing hotels to supply them with lists of their guests (RPO 40893/89/I).

Article 19 (safeguarding the right to one's own opinions) was successfully invoked by the ombudsman to settle the case of a teacher who had challenged the legality of the duty to attend May Day celebrations (RPO 1553/89/I). Further, in case RPO 24284/88/I, questioning the powers of the censorship office, the ombudsman invoked the "right to information." Case RPO 55056/90/I presented a difficult problem related to balancing privacy rights and the freedom of expression. Before the Supreme Court, the ombudsman challenged a professor's conviction for insulting the minister of education. At a meeting of the scientific board, the professor had referred to a decision of the minister of education as "restoring the spirit of the darkest times, the spirit of socialist pathology." The issue was how far a citizen could go in criticizing politicians before being guilty of libel. The ombudsman argued that conviction in this case would chill criticism of public officials. According to the ombudsman, a politician should be prepared for sharp and even unfounded criticism of his actions. In her appeal, the ombudsman argued that the privacy concerns of a politician should not take precedence over freedom of speech, as the latter is an essential component of any democratic state and politicians must be prepared to tolerate more criticism than ordinary citizens. The Court held in favor of the professor.

Article 23 (recognizing the right to marriage) provided the grounds for the ombudsman's successful intervention in case RPO 54931/90/IX, which resulted in quashing a ban on a prisoner's marriage.

In case RPO 72741/91/I, a citizen complained that a draft regulation on the rights of minorities infringed on majority rights. Relying on Art. 27

(providing for respect for minority rights), the ombudsman disagreed. The ombudsman elaborated as follows: "In principle, the rights of persons who cultivate their ethnic or linguistic identity have to be protected as it often happens that majorities prevail over minorities. The latter have the right to preserve their cultural, linguistic, or educational separateness. This approach follows both from laws that bind Poland (Human Rights Covenants, international agreements) and from the Constitution."

This author finds it hard to appraise the extent to which her plans and efforts towards promoting human rights and the rule of law in Poland actually yielded the desired results. On this point, I would rather quote a German author who stated that "the Polish ombudsman was a factor conducive to creating a new culture of fundamental rights and law. Relying on concrete cases and on reasoning in plain publicistic terms, she created the basis for a practical dogmatics of fundamental rights.... The way the ombudsman did it, having at her disposal only the brief text of the Constitution, where civil rights have been regulated most superficially, was to adduce the general principles of law borrowed from the Western doctrine of human rights.... The ombudsman addressed her pronouncements, complaints, and opinions to the courts, Constitutional Tribunal, and administrative agencies. She also widely informed the press about her actions and their rationale. By doing this, the Polish ombudsman contributed to the consolidation of the belief that human rights have to be known and included in the work of courts, tribunals, and the administration; and that citizens may invoke those rights when seeking protection. That human rights more and more perceptibly shape the thinking and actions of the Polish establishment today, is largely due to the efforts of the Polish ombudsman." (Georg Jaster, *Der polische Beauftragte für Bürgerrechte*, Baden-Baden: Nomos Verlagsgesellschaft, 1994, pp. 113-114, 144-145).

Ewa Letowska is Professor of Law at the Institute of Law Studies, and a member of the Polish Helsinki Committee. In 1988-1992, she served as the first Polish parliamentary ombudsman.

Women's Rights in Eastern Europe

Kim Lane Scheppele

Most of the new constitutions of Eastern Europe contain broad language proclaiming the equality of men and women. "The Republic of Hungary shall ensure the equality of men and women in regard to all civil, political, economic, social and cultural rights" (Hungarian Constitution, Art. 66.1). "Men and women have equal rights and equal freedoms and equal opportunities to use them" (Russian Federation Constitution, Art. 19.3). The constitutions of Albania (Art. 11), Bulgaria (Art. 6.2), Slovakia (Art. 12.2), and Lithuania (Art. 29), in what is now standard language for the region, declare citizens equal before the law regardless of sex. The Constitution of Romania is even more specific, stating that "Women will receive the same pay as men for equal work" (Art. 38.4).

Many of these same constitutions also provide special protections or benefits for women. The basic laws of Hungary (Art. 66.2), Slovakia (Art. 38), and the Russian Federation (Art. 38) guarantee special protection for women during pregnancy. Hungary (Art. 66.3) and Slovakia (Art. 30) also ensure the special protection of women in the workplace.

Inspecting these documents alone, one might infer that Eastern European women have achieved stunning victories in their struggle for human rights. The daily lives of East European women, however, tell a different story. Indeed, the economic and social dislocations of the "transition" have had a disproportionate impact on women. Consider the following examples.

Almost everywhere in the region, unemployment among women is substantially higher than among men. One report in the *Financial Times* estimates that 70 percent of Russia's unemployed are women. And when they can find work, women earn less than their male counterparts, even in coun-

tries with laws mandating equal pay for equal work. Work often remains sex segregated throughout Eastern Europe. In Poland, for example, more than 90 occupations are *legally* closed to women. In many countries, newspaper employment ads are routinely labeled "male" and "female," and the ads for women sometimes feature code words like "available" or "open-minded" to signal that successful applicants must be sexually available to their superiors. No laws prohibit sexual harassment.

In the war in former Yugoslavia, women are singled out for rape and sexual torture as part of the program of ethnic cleansing.

Statistics are difficult to obtain, but it appears that the rate of domestic violence against women is increasing from already high levels. Eastern Europe's disturbing domestic violence problem should not be surprising, given the increase in, and seriousness of, economic uncertainty, overcrowded housing conditions, and alcoholism (all of which are strongly associated with domestic violence). In Zagreb, Belgrade, and Budapest, telephone hotline centers for abused women report large numbers of calls, but have inadequate safe havens and provide meager services.

With the collapse of Eastern European economies, countless numbers of women from the region are being lured to the West by promises of work, only to find themselves sold into prostitution. Trapped without legal documentation, these women become virtual slaves in the comparatively lush economies of the West.

Although all of these issues are pressing, the most acute and highly publicized political battle concerning women's issues is the struggle over abortion rights. Opposition to abortion carries great symbolic significance in the postcommunist

world. Politicians use it both to demonstrate their opposition to the old regimes, and to express nationalistic concerns about population decline and ethnic demise. Public debate over the abortion question has been dominated by the arguments of the Catholic Church and the nationalists. Little attention has been given to the interests of women.

Not all countries in Eastern Europe, however, have restricted women's reproductive rights. In Romania and Bulgaria, where pronationalist policies resulted in severe restrictions on abortion before the revolutions of 1989, the new governments quickly made abortions available in the early months of pregnancy for virtually any reason. Having recently experienced the horrible effects of mandatory childbirth, these countries seem unwilling, for the time being, to reconsider restricting abortion rights.

Abortion was the favored method of birth control in most of Eastern Europe during state-socialist times. Official statistics estimate that, on average, a Russian woman would have eight abortions in her lifetime, with some having had more than 20. The figures in the rest of Eastern Europe were also very high by international standards. Birth control was unreliable and often unavailable, sex education was nearly absent, and the health care system provided abortions free of charge (though bribes were expected and anesthesia was not included without extra payments). Most countries in the region maintained the more dangerous and painful curette method (in which the uterus is scraped with a small knife to remove the fetal tissue) long after the safer vacuum aspiration method was used in the West. So abortion was still the primary way women controlled their fertility. By restricting abortion, then, current governments are not simply limiting the availability of the main method of fertility control for women. In some places, at least, opposition to abortion is now coded as opposition to the godless regimes of state socialism. The implication is that women seeking abortions have been and are doing something wrong.

Poland's struggle with the abortion issue, for example, has taken on constitutional proportions. A deadlock over which abortion provision is to be included is one of the principal obstacles to agreement on the final text of the constitution. The

Catholic Church has energetically pursued the abortion issue since 1989. It finally succeeded in getting a restrictive law through Parliament in March 1993. To do so, it had to head off a popular referendum that undoubtedly would have maintained legal access to abortions. Under the new law, however, legal abortions are limited to cases in which a pregnant woman's life or health is seriously threatened, in which the fetus is severely and incurably deformed, or in which the pregnancy results from rape or incest that was promptly reported to the police. In the first year after the enactment of Poland's new abortion law, the official number of abortions decreased from several hundred thousand to less than 800.

In Summer 1994, the new postcommunist parliamentary majority, elected in part on the promise that they would liberalize the abortion law, voted to allow abortions also in cases where the woman faced financial difficulties or family hardship. Realizing that this would mean that abortion would become widely available once again, President Lech Walesa refused to sign the law in September 1994, and the Sejm fell 42 votes short of overriding the veto. Poland's restrictive abortion law remains in force.

Polish women are trying to adapt to the new situation partly through "abortion tourism," traveling abroad to seek abortions, a practice that has become common since 1993. Newspaper ads discretely publicize one-day trips to Kaliningrad for women who need *special* care. For a fee, many Polish physicians apparently perform secret abortions in their offices for their regular patients. In the first year after passage of the restrictive law on abortion, 53 criminal investigations of physicians suspected of performing illegal abortions were initiated. Although there were no convictions under the new law, at least three women have died from illegal abortions since the new law came into effect. The rate of miscarriages, attributed by many to abortions started but not finished inside hospitals, has increased suddenly.

Restrictive abortion laws are being considered elsewhere in Eastern Europe. In Slovakia, a new law has been discussed, though one has yet to materialize. In Russia, a revision of the family law, proposed in 1993, provided that the state "recognizes a child's right to life" and proposed that men and women have

"equal rights in deciding all issues of family life, including family planning." Feminists objected to the law on the grounds that these provisions could be used to ban abortions. During the political crisis of Fall 1993, the bill was overshadowed by events and has not been discussed since. In Lithuania and in the Czech Republic, the call from Catholic quarters for restricting abortion occasionally threatens to bring the issue into the legislature.

Hungary's adoption of a restrictive abortion law was not initiated in Parliament. A small group of Catholic, academic lawyers from Miskolc filed a petition with the Constitutional Court almost as soon as the Court opened for business on January 1, 1990. They claimed that Hungary's abortion law violated the rights of the fetus. Hungary's law looked more restrictive than most European laws at the time, requiring a committee to judge whether the abortion should proceed in any case, except where the pregnant woman was over 35 or already had more than two children. Though such abortion committees had previously refused many abortion requests, by 1989, they generally allowed, in all but a few cases, abortions sought on grounds that the woman faced a crisis or socio-economic hardship. There was no major public outcry for changing the law, but because the Constitutional Court must respond to all challenges to abstract legal norms brought to its attention, the Court found itself wrestling with the abortion issue in the opening months of its operation. Once groups interested in the issue heard that the Court was deciding the abortion question, they quickly filed petitions hoping to persuade the Court to find legalized abortion consistent with the Constitution.

In its major decision in the abortion case, 64/1991 (XII17), the Court struck down the existing abortion law, which was composed of regulations promulgated by the health ministry, not statutes enacted by Parliament. The Court ruled that, because abortion implicated so many fundamental human rights, it had to be governed by statute, not by administrative regulation. Considering the question of the legal status of the fetus, the Court said that it could not decide such a matter by constitutional interpretation. Instead, the Court stated that the solution had to be devised by the elected legislature. The

Court, however, curtailed the legislature's broad discretion over fashioning an abortion law by stating that the legislature could neither find the fetus a legal person equal to the pregnant woman (thereby preventing the lawmakers from finding that the fetus is nearly always able to outweigh a woman's interests), nor could the legislature find that the fetus was entitled to no legal protection whatsoever.

The Hungarian Parliament was then confronted with the task of passing a new abortion law, which it did, after much debate, in 1992. The new law allows abortions under a set of enumerated circumstances, including if the woman certifies that she is in crisis. A woman, however, must wait three days for the abortion and she must undergo counseling that provides information about contraception, and about the methods and risks of abortion. Since the law went into effect in early 1993, abortions have declined by 22 percent.

Rather than inferring that the lower abortion rate is a direct result of the new law, we should note that the abortion rate throughout the post-1989 world continues to decline even in places where there are no new legal restrictions. Abortions in Russia have declined from 4.4 million per year in 1988 to 2.9 million in 1993. The Czech abortion rate dropped a 23 percent in 1993 alone. In all these places, the most significant new feature of abortion regulation is not added restrictions, but added fees. Now that they have become expensive, the frequency of abortions has subsided. Apparently, women in Eastern Europe are discovering that birth control, now more widely available and cheaper than abortions, is the more rational strategy for controlling fertility.

Excluding the abortion debate, very little has been said in constitutional circles, anywhere in the region, about the interpretation of women's rights in the new constitutions. The difficulties women face, and the unequal opportunity they confront, remain unaddressed.

The Hungarian Court has ventured briefly into this territory. In a decision with scant reasoning to explain its conclusion, the Court considered the constitutionality of social security regulations that allowed women, but not men, to collect permanent

widow's pensions when their spouses died (10/1990). In his petition to the Court, a poor, widowed father of three claimed that the government's decision to deny him a pension was unconstitutional under Art. 66 of the Hungarian Constitution (recognizing the promise of full equality between men and women). Equality, he argued, required men to receive the same benefits from the government as women. In the short opinion, a unanimous Court agreed that the laws were discriminatory on their face. As in other constitutional systems, the first fight for gender equality in Hungary was won by a man.

Four years later, and in a decidedly different case, the Hungarian Court again confronted the question of gender equality. This time, however, the setting was the military, where gender equality arguments have always been difficult to make. Again the Court was responding to a petition from a man who claimed that women received benefits exclusively and unfairly (as women are not compelled to serve in the military). The Court, without explaining its reasons, stated that the law represented acceptable "positive discrimination" against women. In its jurisprudence, the Hungarian Court has elaborated a conception of "positive discrimination" to permit legislative distinctions that lead to greater equality in the long term (see the Court's decision in 9/1990). Though it did not explain why excluding women from military ranks constitutes "positive discrimination," or how

exclusion would lead to greater equality in the long-term, the Court left open the possibility that the constitutionality of distinctions benefiting women may be upheld in the future.

Last June, an East-West Legal Committee convened in Budapest, with representatives from 12 countries in the region, and supporters from the US and Western Europe in attendance. After several days of intense sessions, the Committee came up with a list of legal problems that needed urgent attention. In addition to the items that would show up on any catalogue of women's issues in the West—such as reproductive rights, economic inequality, and domestic violence—the East European women listed police corruption, environmental problems, limited access to information, losses in social services, a lack of affordable housing, and the absence of the rule of law as issues that particularly affect women. As the voices of women from the region begins to be heard in constitutional and legal debates in Eastern Europe, the agenda of women's rights, and perhaps of legal reform generally, will change.

Kim Lane Scheppelle is Arthur F. Thurnau Associate Professor of Political Science and Public Policy and Adjunct Associate Professor of Law at the University of Michigan. She is currently doing research in Budapest on a grant from the American National Science Foundation to study the development of constitutional consciousness and the Constitutional Court in Hungary.

Constitutional Rights in Russian Public Opinion

Inga B. Mikhailovskaia

Among the social aspects of the constitutional process, one of the most important is public consciousness of the value of the personal rights and freedoms set forth in the basic law. If citizens are not aware of their fundamental rights, and of the procedures available for protecting them, the realization of constitutional norms will depend exclusively on the functioning of state agencies. The public's understanding of the value of constitutional rights depends on the way people see their day-to-day interests and needs. Interpretations of the latter, in turn, depend to a large extent on expectations about the relationship between the individual and the state, and about the distribution of rights and responsibilities between the two. The relationship between the individual and the state can be understood as either paternalistic or reciprocal. Various conceptions are available, of course, ranging from the individual's total dependence on the state ("an individual has only those rights that the state deems necessary to confer upon him") to the individual's complete autonomy and lack of any responsibility toward the state. Of course, the interests and needs

of people are also determined, to a large extent, by the objective conditions of their existence which, in a country like Russia, vary significantly from region to region.

The public opinion survey which provides the basis for this article was prompted by the current lack of reliable information, either about the population's perception of the value of personal rights and freedoms inscribed in the Constitution, or about the degree to which these rights have been internalized.

The opinions of 5103 individuals, residing in ten regions of Russia, were investigated using a sampling survey. (This volume of aggregate sample allows one to extend the collected data onto the general aggregate with a reliable probability, $P=0.997$ and precision [maximum allowable error] $D=0.05$. Yevgeni Kuzminskii and Yuri Mazayev sampled the calculations and conducted the survey.) Principles of selection were complex. First, regions representing the chief socio-economic, geopolitical, and socio-cultural zones were chosen: the Far East (Primorskii krai), Siberia (Omsk and Irkutsk oblasts), the Urals (Sverdlovsk oblast), Volga-Vyatsk region (Udmurtia), Povolzhye (Nizhni-Novgorod oblast), the Central region (Tula and Moscow oblasts), Southern Russia (Krasnodar krai), and the Northwest (Leningrad oblast). Each region was represented by the administrative center of the oblast (krai, republic), a smaller city or a town, and two or three rural communities. Within each region, the sample was constructed by a quota-proportional system that classified the population by major social and demographic indicators: place of residence (urban or rural), gender, age, education, and social status. Random sampling was used in the final stage.

Table I shows the controlling socio-demographic parameters of the sample, which enable one to evaluate its qualitative characteristics. The primary sociological data was collected through a

TABLE I

| Socio-demographic parameters | Population parameters (Russia in its entirety) | Aggregate sample statistics |
|------------------------------|--|-----------------------------|
| Place of residence: | | |
| Urban | 73% | 77% |
| Rural | 27% | 23% |
| Gender: | | |
| Male | 47% | 52% |
| Female | 53% | 48% |
| Age: | | |
| 18-20 years | — | 11% |
| 21-40 years | 63% | 46% |
| 41-60 years | 26% | 34% |
| Over 60 | 10% | 9% |

mass survey of the population along with a standardized personal interview based on a specially developed questionnaire. The questionnaire consists of several question clusters. Cluster I allows one to receive information about the importance of the issue of human rights, the treatment of rights as a value of social life, and to discover the lexical ordering of particular rights and freedoms guaranteed by the Constitution. Cluster II allows one to evaluate the condition of human rights, and to discover people's feelings about the various aspects of this issue. Cluster III is designed to evaluate the peculiarities of how respondents internalize and understand rights and freedoms in their day-to-day lives. Cluster IV provides information on the violation of personal rights and freedoms, and people's readiness to defend them in various ways. Cluster V includes the social and demographic characteristics of the respondents, allowing one to conduct various types of sociological analyses of the information.

The investigation was conducted in August-September 1994. The main results of the investigation may be summarized as follows. The survey identified the nature and relative gravity of the problems troubling Russians today (each respondent could list no more than three problems):

- drastic increase of criminal activity 67.2 %
- irregularity of wage/salary payments 41.5 %
- arbitrariness of bureaucrats 37.2 %
- material deprivation 29.1 %
- unemployment 26.9 %
- poor living conditions 26.1 %
- lawlessness of the police 20.5 %
- other 14 %

In spite of the fact that the problem of increasing criminal activity ranked first, responses to the question: "What, in your opinion, is the most important thing for a human being?" produced a somewhat different hierarchy of values (see Table II).

In answering this question, the respondents were asked to indicate no more than one goal. As one can see from the above table, material well-being is accorded the highest importance. Only about a quarter of all respondents ranked the problem of personal security first.

To account for the obvious discrepancy between Tables I and II, we need to analyze the respondents' attitudes towards the personal rights and freedoms inscribed in the Constitution.

Respondents were asked to rank the constitutional guarantees of personal rights and freedoms

| | Nature of Response | Percentage of total responses |
|---|---|-------------------------------|
| 1 | Material well-being | 43.0 % |
| 2 | Confidence in one's personal security | 24.9 % |
| 3 | Possibility to actualize one's talents | 16.4 % |
| 4 | Possibility to defend one's rights | 11.8 % |
| 5 | Possibility to openly express one's opinion | 2.6 % |
| 6 | Other | 1.4 % |

| Nature of the right provided for by the Constitution of the Russian Federation | Percentage of respondents who ranked this right as "very important" or "important" |
|---|--|
| The right to legal protection | 95.8 % |
| The right to social security (health care, maternity care, pension, free education, etc.) | 95.8 % |
| The right to personal immunity and inviolability of one's property | 95.4 % |
| The right to fair compensation for one's labor | 89.1 % |
| Protection from arbitrary job dismissal | 69.6 % |
| The right to free choice of place of residence | 63.3 % |
| The right to private property | 54.0 % |
| The right to receive and distribute information | 49.3 % |
| The right to have any or no religious beliefs | 30.3 % |
| The right to participate in the activities of any political party, movement, etc. | 22.5 % |

according to their relative importance. The results can be seen in Table III.

From Table III, we can infer that respondents view socio-economic rights and the right to be protected from battery and theft as two equally important problems.

The hierarchical ordering of constitutionally guaranteed rights and freedoms tracks, first of all, the degree of public dissatisfaction with the protection of a particular right. At the same time, one should not harbor any illusions about the overwhelming importance which respondents ascribe to the right to legal protection. Evidence for widespread skepticism on this matter is found in the distribution of responses to a question regarding the social purpose of the judiciary, in which respondents were asked whether condemning an innocent person or letting a gen-

| Nature of responses | Percentage of total responses |
|--|-------------------------------|
| An innocent person wrongly accused | 36.8 % |
| A criminal unpunished | 49.0 % |
| Have difficulty answering the question | 14.2 % |

uine criminal go unpunished poses a greater danger to society (Table IV).

This striking result reflects the prevailing perception of the court as a punitive body primarily aimed at fighting crime. The response to this ques-

tion proved to be a rather reliable indicator of the general legal orientation of the respondent. (I will return to this point below.) Secondly, practicing jurists (judges, prosecutors, attorneys, and investigators) were asked an analogous question during the monitoring of the first phases of the new Russian institution of trial by jury. Out of 400 respondents, 79 percent considered condemning an innocent person a greater threat to society, while 18 percent stated that acquittal of the guilty was worse. Five percent had difficulty answering the question. Thus, about one-fifth of practicing jurists give priority to the repressive functions of the judicial system.

Respondents were also asked to express their agreement or disagreement with a series of statements reflecting various perceptions of the relationship between the individual and the state. The distribution of responses is presented in Table V.

These responses register the respondents' overwhelming agreement with statements of an antipaternalistic nature. While this pattern should not cause any illusions about the real willingness of people to take responsibility for their own lives, it does reflect a relatively widespread sense of the value of personal rights and freedoms. At the same time, one should note both the significant number of respondents who found it difficult to answer this question and a certain incoherence in the beliefs of those who

| Nature of the statement | Agree | Disagree | Have difficulty responding |
|---|--------|----------|----------------------------|
| A good and tranquil life depends not on the number of rights but on the extent of state care. | 53.8 % | 27.2 % | 19.0 % |
| Only a free citizen with full rights can be a useful and responsible member of society, contributing to its prosperity. | 76.3 % | 7.7 % | 16.0 % |
| Human rights are not an aim in themselves; they can be restricted if the interests of the state so requires. | 32.1 % | 38.8 % | 29.1 % |
| The most important thing in life is to feel oneself a free being, not a slave of the state. | 78.5 % | 5.6 % | 15.9 % |

| Period of history | Percentage of responses |
|--------------------------|-------------------------|
| Before 1917 | 5.9 % |
| 1917 to 1924 | 0.7 % |
| 1924 to 1953 | 1.0 % |
| 1953 to 1964 | 3.4 % |
| 1964 to 1985 | 13.5 % |
| 1985 to 1991 | 4.7 % |
| 1991 to present | 5.9 % |
| There was no such period | 68.1 % |

knew how to respond (a fraction of respondents expressed simultaneous agreement with inconsistent statements).

When asked to evaluate the existing human rights situation in the country, 23 percent of respondents noted a change for the better and 33 percent for the worse. Twenty-two percent felt that the situation with human rights has not changed significantly, while 20 percent found it difficult to respond to the question.

At the same time, 31.5 percent of respondents mentioned the presence of freedom of speech in the country, 16 percent called attention to the open discussion of cases of human rights' violations, ten percent pointed out an increased accessibility of legal protection and about the same percentage remarked on the new possibility of turning for help to nongovernmental organizations.

It is interesting to note that only seven percent of the respondents perceived the inclusion of personal rights and freedoms in the Constitution as a positive change. To gain a more concrete sense of the respondents' picture of the current human rights situation, the investigators posed the question: "During which period in our country's history were human rights most effectively observed?"

The distribution of answers received is summa-

rized in Table VI. This distribution of responses allows us to formulate several theses. First, nostalgic sentiments for either pre-revolutionary Russia or the years of Lenin's and Stalin's rule have little popular support. Second, the relatively high appraisal of the period known as "stagnation" reflects the public's paternalistic conception of the relationship between the state and the individual. And, finally, these responses attest to the population's clear understanding of the socio-economic aspects of human rights.

The investigation also detected significant variations concerning the desired extent of different personal rights and freedoms.

For instance, regarding the right to work: 22 percent of the respondents think that the state needs to require everybody to work; 37 percent believe that the state should provide all those who want to work with a job; 24.2 percent think that the state has that responsibility only if the individual is unable to find a job on his own; while 13 percent believe that individuals should find jobs themselves. Forty-two percent of respondents think that certain categories of workers should not have the right to strike, while 35 percent consider that everybody should have that right.

Respondents' opinions also diverge when it comes to placing limitations on the freedom of the mass media (Table VII). Concerning the freedom to travel—one of the most acute issues—41 percent of the respondents favored preserving the *propiska* system in certain cities, while 46 percent favored the repeal of any limitations on the freedom to choose one's place of residence.

Finally, on the issue of the right to form political parties and other associations, 57.2 percent of the respondents favored the individual's right to belong to any nonviolent organization, even if it opposes the government. At the same time, 19 percent believe that the activity of organizations with an

| Nature of responses | Percentage of responses |
|--|-------------------------|
| Mass media should reflect all points of view | 56.4 % |
| Mass media should reflect only the view points beneficial to society | 31.1 % |
| Have difficulty answering the question | 12.5 % |

antigovernmental orientation must be outlawed. The remaining 23.9 percent had difficulty formulating a position on this issue.

One should note that the respondents who considered condemning an innocent person more dangerous to society than acquitting a guilty individual, interpret personal rights and freedoms in a manner that corresponds more closely to international conventions. Compared to the others, ten percent more of this group think that the mass media should reflect all points of view, 12 percent fewer advocate every citizen's responsibility to work, ten percent more oppose the propiska system and so forth.

Although only 15 to 20 percent of respondents had difficulty answering questions regarding the general situation of human rights in Russia today, almost half (43 percent) could not answer the following specific question: "Have your rights been violated over the past three years?" Thirty percent indicated that their rights had been violated, while 26.5 percent answered that they had not been.

Needless to say, if people do not know whether their rights have been violated, their responses to a question about what actions they would take in the event of a violation should be treated as purely verbal reactions. Hence, the investigators posed a question about what actions were actually taken when the respondent was aware of a rights violation.

The distribution of responses to these questions are reflected in Table VIII. The data summarized in this table is indicative of several trends. First, more than half of those respondents who felt that their

rights had been violated took no steps to defend them, though only 12 percent desired to behave in this manner. This gap suggests that the individual's perception of his own helplessness in the face of the state machine, is widespread in public consciousness, and that the rights inscribed in the Constitution are considered purely declarative. The objective conditions that contribute to this state of public consciousness undoubtedly include imperfect legislative provisions for the enforcement of personal rights and freedoms and well publicized defects in the functioning of the whole law enforcement system.

Second, although more than one-third of the respondents wanted to appeal to a court, only 12.8 percent actually sought out this venue (4.7 percent appealed to a prosecutor). The secondary role of the court as a mechanism for remedying rights violations can be explained not only by a lack of confidence in the rights-protecting function of the judiciary, but also by a lack of development of the administrative infrastructure and the funding of judicial bodies, overloaded dockets, and so forth.

Third, although current legislation still delegates to individuals the responsibility to report all violations of the law to the prosecutor's office, only 4.7 percent of our respondents actually appealed to this office, indicating the insignificant role it plays in protecting citizens' rights.

Fourth, according to the data collected, 9.5 percent of those whose rights were violated appealed to the police. An accurate interpretation of this result would require knowledge of the particular violations. Only

TABLE VIII

| To whom does the respondent prefer to appeal when his or her rights are violated | Percent of contemplated appeals | Percent of actual appeals |
|--|---------------------------------|---------------------------|
| Deputy of a regional representative body | 7.4 % | 3.7 % |
| Deputy of Parliament | 2.6 % | 0 |
| Local executive bodies (including police) | 10.8 % | 17.6 % |
| The government | 5.0 % | 0 |
| The court (including an appeal to a prosecutor) | 38.7 % | 17.5 % |
| Mass media | 22.2 % | 4.9 % |
| Human rights organizations | 16.2 % | 3.0 % |
| Organizations that sponsor actions of protest | 6.2 % | 0.3 % |
| Other | 1.6 % | 4.0 % |
| Would not/did not appeal anywhere | 12.0 % | 53.0 % |

TABLE IX

| Personal rights and freedoms ranked as "important" and "very important" | Percentage of responses by region | | | | | | | | | |
|---|-----------------------------------|-------------|----------|-------------|-----------------|----------------|------------------|-------------------|----------------|------------|
| | Moscow oblast | Tula oblast | Udmurtia | Omsk oblast | Nizhni Novgorod | Krasnodar krai | Leningrad oblast | Sverdlovsk oblast | Irkutsk oblast | Primorskii |
| The right to private property | 45.8% | 54.2% | 50.6% | 45.2% | 49.4% | 46.2% | 71.3% | 57.6% | 61.4% | 59.8% |
| Freedom of conscience | 56.1% | 53.0% | 61.1% | 54.0% | 52.6% | 54.5% | 63.4% | 62.4% | 53.0% | 54.0% |
| Freedom of speech | 37.6% | 28.3% | 37.3% | 40.4% | 37.6% | 34.5% | 45.1% | 39.3% | 39.2% | 43.0% |
| Freedom of travel | 67.5% | 55.8% | 59.1% | 57.2% | 54.4% | 79.1% | 73.0% | 61.1% | 72.6% | 47.4% |
| Right to legal protection | 95.7% | 92.7% | 95.8% | 92.4% | 96.8% | 99.2% | 96.6% | 95.6% | 93.0% | 99.6% |
| Right to free association | 24.2% | 14.3% | 20.5% | 22.0% | 23.8% | 29.9% | 32.4% | 26.3% | 24.8% | 13.4% |
| Right to receive and distribute information | 48.4% | 48.1% | 48.8% | 39.7% | 55.0% | 47.5% | 61.0% | 51.9% | 46.4% | 46.0% |

then could it be determined whether violations fell within the police's jurisdiction. This assessment could not be made because only 374 (24 percent) of the total 1537 respondents who claimed that their rights had been violated in the past three years could specify the particular rights which had been violated. Moreover, 78 percent of the 374 indicated violations of socio-economic rights, while only 6.4 percent specified rights violations that lay within the jurisdiction of the police.

These data should be handled very carefully, of course, due to the respondents' lack of a clear understanding of either their legal rights or the mechanism of their enforcement.

The investigation detected unmistakable regional discrepancies in the legal consciousness of the public.

For instance, 39 percent of the respondents residing in the Moscow oblast considered an unpunished criminal more dangerous for society than a wrongly condemned innocent man, while in the Omsk oblast this figure rises to 62 percent. In the Sverdlovsk oblast, 34.7 percent of respondents consider the opportunity to fully actualize one's talents as the most important thing for a human being, while only 11 percent of respondents in Tula oblast share that opinion. On the other hand, 26.8 percent of respondents in Omsk oblast consider certainty about their personal security most important, while only 13.7 percent of Sverdlovsk oblast's residents gave this response. Forty-four percent of the respondents from the Primorskii krai claimed that their rights had been violated in the

TABLE X

| Nature of the response | Age group | | | |
|---|-----------|-------|-------|---------|
| | Under 20 | 21-40 | 41-60 | over 60 |
| The right to private property is "important" and "very important" | 70.2% | 61.0% | 40.8% | 37.7% |
| It is more dangerous for the society to condemn the innocent | 40.2% | 41.0% | 32.1% | 29.3% |
| The situation with human rights has improved | 32.8% | 25.5% | 18.9% | 14.6% |
| Mass media should reflect all points of view | 61.9% | 62.4% | 51.4% | 38.7% |
| People should actively defend their rights | 20.6% | 15.5% | 11.2% | 7.4% |
| Human rights were never protected in our country | 71.4% | 69.0% | 67.6% | 60.9% |

TABLE XI

| Nature of response | Social Group | | | | | | | |
|---|--------------|----------|---------------------------------|-----------------------------------|---------------|----------|------------------------|----------|
| | Workers | Peasants | Civil Servants no higher ed. | Civil Servants with higher ed. | Entrepreneurs | Students | Retirees homemakers | Military |
| The right to private property is "important" and "very important" | 44.8% | 56.1% | 54.8% | 51.0% | 88.7% | 70.3% | 41.1% | 59.9% |
| It is more dangerous for our society to condemn the innocent | 30.5% | 26.6% | 38.2% | 41.4% | 46.7% | 49.5% | 30.3% | 38.7% |
| The situation with human rights has improved | 21.2% | 15.5% | 19.7% | 25.6% | 37.4% | 27.9% | 15.5% | 35.3% |
| Mass media should reflect all points of view | 53.6% | 35.3% | 59.6% | 65.1% | 72.8% | 58.6% | 43.4% | 64.4% |
| People should actively defend their rights | 10.6% | 11.5% | 13.5% | 14.9% | 22.5% | 22.0% | 10.0% | 13.6% |
| Human rights were never protected in our country | 65.5% | 65.0% | 76.8% | 66.6% | 64.2%* | 73.2% | 64.2% | 67.2% |

* 16.2 percent of entrepreneurs characterized the post-1991 period as the most beneficial to human rights.

past three years, while only 12 percent of Krasnodar krai residents gave the same response. At the same time, it is relatively hard to uncover a pattern in the distribution of responses from the residents of a particular region, or to evaluate varying degrees of public consciousness of the value of personal rights and freedoms. The Leningrad oblast, where the democratic tendencies of the public are expressed most consistently, is an exception (Table IX). Certain peculiarities, in some cases quite significant, were detected in the distribution of answers across age and social groups. The limitations of this article do not allow a detailed analysis of this stratification. However, I shall illustrate the variations in rights consciousness among different strata of the population using several examples (Tables X and XI).

Conclusions

The Russian public generally interprets the personal rights and freedoms inscribed in the Constitution through the prism of paternalistic habits and expectations.

The hierarchical ranking of constitutional rights and freedoms that exists in public consciousness is, in

general, inversely related to the population's level of satisfaction with their realization. The less a need is satisfied, the more importance is ascribed to the right that guarantees the satisfaction of that need. This pattern determines not only the priority that Russians attribute to socio-economic rights but also the lack of apparent logical coherence in the respondents' answers to certain questions.

The social significance of personal rights and freedoms has not yet been understood by broad segments of the population. At the same time, variations in the distribution of responses among age and social groups suggest that young people, as well as individuals participating in the private sector of the economy, are more devoted than average citizens to democratic principles.

Finally, one might suggest that regional variations in the distribution of answers are determined, to a large extent, by the socio-demographic structure of the population. But this proposition can be spelled out and corroborated only when additional information is available.

Inga Mikhailovskaia is Professor and Board Member, the Russian-American Human Rights Group (non-government).

Trial by Jury and the Constitutional Rights of the Accused in Russia

Stephen C. Thaman

For several years, the new Russia has been attempting to correct the severe injustices characteristic of the old Soviet criminal justice system. Recent amendments to the Russian Law on Court Organization, the Code of Criminal Procedure, the Criminal Code, and the Code on Administrative Infractions guarantee rights that had not been protected before, including the presumption of innocence and the privilege against self-incrimination. The formal and, to a limited extent, actual introduction of these rights is occurring in the context of a general move from the inquisitorial to the adversarial system of justice. Although these reforms provide protection for the criminally accused, both the substance and the application of the law fall short of desired and required levels of protection. One of the principal reasons for these shortcomings is the legacy of the old Communist legal system in the new laws.

The Soviet system and the move toward reform

The Soviet criminal justice system was notorious for routinely violating the rights of the criminally accused as articulated in the United Nations Pact on Civil and Political Rights, ratified by the USSR in 1973. The investigative process, in particular, was subject to abuse. Coerced confessions and falsification of evidence were commonplace. Criminal suspects had virtually no remedy against methods employed by criminal investigators. The right to counsel was usually available only at the conclusion of the preliminary investigation.

Courts were incapable of correcting these abuses. To begin with, the decisions of the police, investigators, and prosecutors, which more often than not infringed on rights theoretically protected by the Soviet constitution as well as by laws and international covenants, were completely beyond the reach of the courts. Furthermore, investigators covered for the

illegal actions of the police. Prosecutors would then use the results of illegal investigations in preparing indictments presented to courts. Equally important, judges were biased in favor of the prosecutor. The judges' lack of independence—their jobs depended on their relationship with local Communist Party committees—was yet another reason for the notorious inability of courts to correct abuses.

The "people's assessors," created by the Bolsheviks to replace the 12-person jury, that had been introduced in the great judicial reforms of Alexander II in 1864, were never able to check the actions of judges or prevent the abuses of investigators. Theoretically possessing rights and powers equal to those of a judge, the people's assessors decided questions of law and fact in consultation with the professional judge. The people's assessors were commonly known as "noddors," because they virtually always agreed with the judge in their rulings. Perhaps they were so cooperative because they were selected from social organizations and workers' collectives previously controlled by the Communist Party, or perhaps because they were intimidated by judges or simply deferred to them out of respect.

Acquittals were almost unheard of. When evidence was insufficient to convict the defendant on the main charge, a court might nevertheless find the defendant guilty of some lesser crime. In the absence of evidence to convict, courts could also remand a case to the investigators for "supplementary investigation." Although a case might be quickly discontinued in such instances, there was no guarantee. Returning a case for "supplementary investigation" allowed investigators to manufacture evidence and offered them another opportunity to convict the defendant.

In 1988-89, Mikhail Gorbachev pushed for reforms to address these problems. He called for reintroducing jury trials, adopting an adversarial

criminal procedure, and enacting the presumption of innocence. These principles, along with the right to counsel during preliminary investigations, were included in the "Principles of the Law on Court Organization of the USSR and the Union Republics," enacted by the Supreme Soviet of the USSR in 1989.

As the Soviet Union was collapsing, the Supreme Soviet of the RSFSR on October 21, 1991, nearly unanimously approved the "Concept of Judicial Reform," a blueprint for reforming the Soviet criminal justice system. Hoping to steer Russia "back within the fold of world civilization," the authors of the Concept sought to bring the Constitution and laws of the Russian Federation into line with the requirements of international human rights conventions. To this end, they proposed establishing judicial control over all acts of police, investigators, and prosecutors that intrude upon constitutionally protected rights of citizens. They also suggested introducing the adversary procedure, recognizing the presumption of innocence and the right against self-incrimination, eliminating all accusatory functions of the judge, and reintroducing trial by jury.

The movement toward reform was given a further boost by the 1992 incorporation of the Declaration of Rights, first into the Brezhnev-era Constitution of the RSFSR and then into the new Constitution of the Russian Federation, enacted by referendum on December 12, 1993. Both documents affirmed the following rights of the accused, outlined in the Concept of Judicial Reform: the presumption of innocence (Art. 65, 1978 Const. RSFSR; Art. 49, Const. RF); the right to remain silent (Art. 67, 1978 Const. RSFSR; Art. 51, Const. RF); an exclusionary rule for illegally gathered evidence (Art. 65, 1978 Const. RSFSR, Art. 50, Const. RF); the right to counsel upon arrest, detention or initiation of criminal proceedings (Art. 67-1 of 1978 Const. RSFSR; Art. 48 of Const. RF. On May 23, 1992, this provision was enacted into the Code of Criminal Procedure [CCP] as sec. 47); the right to adversary procedure (Art. 168, 1978 Const. RSFSR; Art. 123 Const. RF); and the right to trial by jury (Art. 164, 1978 Const. RSFSR; Arts. 47, 123

Const. RF). The new constitution also stipulates that a death sentence may be imposed only in cases where the defendant has a right to a jury trial (Art. 20, Const. RF).

The Law of July 16, 1993 ("On the introduction of changes and amendments to the Law of the RSFSR on Court Organization of the RSFSR, the Code of Criminal Procedure of the RSFSR, the Criminal Code of the RSFSR and the Code of the RSFSR on Administrative Infractions No. 33, 1313, 2238-2264, August 19, 1993), which reintroduced jury trials in Russia, incorporated the following important constitutional principles into the CCP: the principle of adversary procedure (Sec. 429, para. 1), the presumption of innocence (Sec. 451, the judge is obligated to instruct jurors about the presumption of innocence in summation), the privilege against self-incrimination (Sec. 446, the judge is required to advise a defendant of the right to give or withhold testimony; Sec. 451, duty of the judge to instruct jurors in summation that failure of the defendant to testify is not evidence of guilt), and the exclusion of evidence gathered in violation of the law (Sec. 69, para. 3). With the gradual inclusion of this important cluster of constitutional rights in legislation, Russian lawmakers have signaled their desire to turn from the traditional Continental European inquisitorial form of criminal procedure to the adversarial or accusatorial systems which has its roots in the Anglo-American legal tradition.

Adversary procedure and "supplementary investigations"

The jury law of July 16, 1993, defines "adversary procedure" as follows: "The preliminary hearing and the jury trial are governed by the principle of adversariness. Equal rights are guaranteed to the parties, for whom the judge, maintaining objectivity and impartiality, creates the necessary conditions of a thorough and complete investigation of the facts of the case" (Sec. 429, para. 1). This law represents a conscious departure from the inquisitorial system where the judge acts as prosecutor and attempts to "ascertain the truth." The new law strips the judge of all accusatorial functions related to charging, dismissing, returning a case for sup-

plementary investigation, and conducting the prosecution of cases. Now the parties carry the burden of convincing the trier of fact to decide in their favor.

The new law also purports to give the people's assessors added authority. A court with people's assessors can, on its own motion, return a case for supplementary investigation (Sec. 221, para. 2), carry on the prosecution of a case either when a prosecutor moves to dismiss for insufficient evidence (see Sec. 259, which assigns the question of dismissal exclusively to the court) or when he fails to show up for the trial (Sec. 251, para.1), and even press new charges at trial, if the evidence warrants it (Sec. 255).

Although a judge may no longer, on his own motion, remand a case for a supplementary investigation, the law permits parties to do so during trial if new evidence is found (Sec. 429 para. 3). If an "aggrieved party" objects to the motion for dismissal, however, the judge may not dismiss. (Sec. 430, para. 2, the "aggrieved party," or *poterpevshiy*, possesses nearly as many procedural rights as a defendant. In murder cases, the "aggrieved party" is usually a relative of the deceased.)

The exception recognizing the rights of the aggrieved party may cause problems reminiscent of the injustices characteristic of the old Soviet system. This was illustrated in the second Moscow Regional Court jury trial. Three juveniles were charged with the aggravated murder of an alcoholic invalid. During the preliminary investigation, and at trial, the prosecution relied on the confession, later retracted, of one of the juveniles. No other evidence corroborated the confession. The self-incriminated juvenile testified at trial that he had confessed because he was beaten and because authorities promised to release him if he confessed. Two alcoholic witnesses claimed they had seen the victim the day after he was allegedly killed by the defendants, and the day before his body was found. This testimony conflicted with their earlier statements, during the preliminary investigation.

After taking evidence, the prosecutor moved to dismiss the case. In the absence of corroboration, he stated the confession of the juvenile was insufficient

to prove guilt (see Sec. 77). In addition, the prosecutor had doubts about the guilt of the defendants.

The murdered man's spouse, the "aggrieved party," opposed dismissal, however. Though she had no first hand knowledge of the circumstances of her husband's death, she asked that the case be returned for supplementary investigation. Over the objections of the prosecution and the defense, the judge returned the case to the investigator on grounds that new evidence, i.e., the contradictory statements of the alcoholics about when they had last seen the victim, had surfaced at trial. The judge then discharged the jury.

Arguably, the "aggrieved party's" ability to compel "supplementary investigation" threatens the integrity of the criminal justice system. It subjects judge and jury to the emotions of a person probably unfamiliar with the law and its processes. More importantly, resorting to supplementary investigations is destructive of the presumption of innocence. In this sense, Russia's new law represents no improvement over an inquisitorial system that presumes the guilt of a defendant and gives law enforcement authorities repeated chances to prove that which is presumed: the defendant's guilt. The injustice of this practice is clear when one considers what eventually happened in this case. Although no new evidence was found during the "supplementary investigation" (18 months had passed since the murder), the case, championed by a new prosecutor, came back for trial before a new judge. Confessions suppressed by the first trial judge were admitted into evidence in the second trial and the two alcoholic witnesses changed their testimony. The defendants were all convicted.

The privilege against self-incrimination

The new law helps secure an accused's privilege against self-incrimination, guaranteed by Art. 51 of the Constitution. For example, it provides for the exclusion of evidence gathered in violation of the CCP or the Constitution, such as forced confessions, at both the preliminary hearing (Sec. 432 CCP) and at trial (the judge has the duty to exclude illegally seized evidence at trial, Sec. 435, para. 3, CCP). In many recent jury trials, defendants have successfully

invoked provisions of the new law coupled with the privilege against self-incrimination guaranteed by Art. 51 of the Constitution and the right to counsel to prevent the introduction of pretrial statements into evidence.

The Russian Supreme Court, however, cast doubt on the future of such exclusions when it reversed an acquittal following a jury verdict of not guilty in a double murder case in the Altay Territorial Court. The trial judge had excluded all of the defendant's statements at the preliminary investigation on grounds that the defendant had not been informed of his privilege against self-incrimination. The Supreme Court, however, held that it is enough to advise a criminal suspect or defendant of his right to give a statement (Sec. 46, 52 CCP), for this implicitly conveys the right not to give a statement. Much of the law seems to support the Supreme Court holding. Provisions declaring the rights of the accused and suspects (Sec. 46, 52 CCP), and those governing the questioning of the accused at preliminary investigation (Sec. 150 CCP), are silent on a suspect's privilege against self-incrimination. Instead, they emphasize the right to provide "explanations" or "statements." When a person is questioned as a "witness," as many of the defendants in the Altay Territorial Court had initially been, he is advised of his duty to give a statement and of the penalties for perjury if he does not tell the truth (Sec. 158, CCP).

In the conventional Russian criminal case, defendants and witnesses are first asked by the judge to tell in narrative form all they know about the case. They are then questioned, primarily by the judge, though the parties may also submit questions to clarify aspects not covered in the judge's examination. In jury cases, the parties question the witnesses first, and the judge and jurors are given an opportunity to fill in any gaps afterwards (Sec. 446/3,4 CCP). In the first jury cases after the reforms, questioning usually began with a narrative by the defendant or witness. Some judges, however, have, from the beginning, turned the questioning over to the proponent of the evidence, and they

only rarely use their right to question witnesses. Gradually, judges are learning to conduct trials in an adversarial, rather than inquisitorial manner.

The problem of supplementary investigations might also appear in the self-incrimination context. If a judge finds at a preliminary hearing that a confession was obtained by coercion and no significant corroborative evidence existed, the judge could and should suppress the confession and dismiss the case for lack of evidence connecting the defendant to the commission of the crime (Sec. 433/1 CCP 1993, 221/5, 234, 208/2 CCP). This seems especially necessary. Because most cases in Russia go to trial anywhere from nine to 18 months after the crime, it will be impossible to gather additional physical evidence. But, as it stands, a judge could cite the same "substantial violation of the criminal procedure law by the investigative organs" and the "incompleteness of the investigation" (Sec. 433/1 CCP 1993, 221/2, 232/1,2 CCP) to return the case to the investigators who had violated the law. Thus, Russian lawyers often prefer to base their arguments to the jury on critical pieces of evidence gathered in violation of the law, rather than risk either having the case returned for further investigation or having a verdict of not guilty reversed, as happened in the sixth jury trial in the Altay Territorial Court.

Providing for rights against self-incrimination, turning to adversarial procedures, and reintroducing trial by jury are preliminary steps in reforming the Russian criminal justice system. Introducing a new model of criminal investigation and trial was necessary for eliminating the abuses of the previous system. The reforms, however, have not completely cured the criminal justice system of its ills. The new laws preserve elements of the previous criminal justice system, such as "supplementary investigation," that can be, and are, used to undermine the purpose of the new system. Parliament, which is now considering a new code of criminal procedure, should bear these difficulties in mind as it seeks to expand the protections for the criminally accused.

Constitutional Review

Hopes and Shadows: Eastern Europe After Communism

By J.F. Brown

(Duke University Press, 1994)

Reviewed by Shlomo Avineri

The unexpected and rapid developments over the last few years in Eastern Europe seem to have borne out Ecclesiastes's wise warning (12:12): "And further, my son, be admonished: of making books there is no end." Rapid triumphalist salvos like Francis Fukuyama's blowing the horn of the "End of History" have not only been belied by events, but also raise serious doubts about the author's own understanding of contemporary history. Even more cautious and experienced experts like Zbigniew Brzezinski have been proved demonstrably wrong. In his *Anatomy of Failure*, Brzezinski himself failed to realize as late as 1989 how fundamentally flawed and weak was the Soviet edifice. Scholarly articles seem overtaken by events, even while they await publication, and it is now obvious that it is still premature to expect a grand and overarching systematization of postcommunist reality. On the economic side, much serious analysis—as against intelligent guesswork and inspired analysis—is gravely hampered, especially when it comes to the former Soviet Union, by the blatant unreliability of statistical data, be they communist or postcommunist. And the success of such feats of high journalism as David Remnick's *Lenin's Tomb* or Misha Glenny's *The Return of History* cannot be an adequate substitute for social science analysis, much as such writing is sometimes preferable to what appear as jejune abstractions or mere wishful thinking, coming from some quarters of the professions.

J.F. Brown, whose previous books on Eastern Europe have always been most informative and helpful, has now come out with perhaps the best

summary of developments in postcommunist Eastern Europe (excluding, however, the former Soviet Union). It is a balanced and judicious marshaling of developments, combined with a sure feeling for the specifics of each country and confident handling of a mass of information and analysis. While Brown eschews grand prognostication, in each case he suggests where, according to his understanding, developments will or may lead. All this is done in a style both felicitous and transparent without being facile.

As the book's title suggests, Brown's analysis is inspired by a kind of realistic approach which can make distinctions without losing its grip on the general picture. He follows the obvious historical distinction between East Central Europe (i.e., the Visegrad Four, perhaps minus Slovakia) and South Eastern Europe (i.e., the Balkans), but even here he does not fall into Manichaean polarization. He shows, for example, that despite its general internal cohesion, its smooth transition to democracy and a relatively successful economic reform program, Hungary may yet become the focal point of a whole series of crises arising from its policy vis à vis the Hungarian minorities in practically all its postcommunist neighboring countries, the legacy of the Antall government's problematic handling of control over the media and the fact that its economic performance is fraught with considerable problems. (The recent victory of the Hungarian Socialist Party bears out some aspects of this analysis.) By contrast, Bulgaria, while obviously "Balkan," and burdened with a crippled economy, a strong and well-

entrenched party of former communists and a serious minority problem, may, despite all this, have better prospects for developing many characteristics of a liberal democracy so lacking among its immediate "Balkan" neighbors.

The book follows a coherent internal structure, which greatly facilitates the presentation of both narrative and argument. After addressing the general problem of transition in Eastern Europe, Brown has two chapters in which he goes through a country-by-country account, then devotes a chapter each to the economy and to problems of nationalism (also, more or less, country-by-country), deals with Yugoslavia in a separate chapter and rounds this out by a look at the outside world's (i.e., US and Russian) attitudes and policies towards the region. He ends with a concluding chapter aptly titled "Precarious But Not Pre-Doomed." Even such a meticulous structure cannot avoid some overlap and repetition, but in most cases this is enriching, as it offers more than one way of looking at the evolution of a given country.

Brown's enormous erudition (which, as his copious notes show, includes acquaintance both with theoretical writings about transitions and with the most current newspaper analyses in English, German and French) is however never lost in the details. One never loses sight of the country or problem discussed, and the subject matter always remains Eastern Europe, and not theories about Eastern Europe or the latest sectarian squabble in the political science community.

Two major themes run through the book: one has to do with Brown's understanding of the major characteristics of postcommunist development, and the other is his attempt to identify potential flash-points in the future. They are subtly connected.

With regard to the first theme, Brown ably underlines that, while in practically all of Eastern Europe there appeared in the mid and late 1980s an almost universal consensus about the need to dismantle communism, there was little articulated consensus about the direction those societies were supposed to move: hence also the rapid disintegration of the anticommunist consensus epitomized in Solidarity in Poland or the Civic Forum in

Czechoslovakia. Beyond the general rejection of Soviet-style communism, thinking about alternatives was usually limited to pious slogans (democracy, freedom, market economy, and so forth). Lacking in most cases was an elaborate understanding that each of these desiderata required a complex network of sustaining institutions and patterns of societal behavior. As Brown succinctly remarks, an open society needs "experience, institutions, procedures, the rule of law, civil society and civic vigilance...without which it becomes a dangerous place...an open sewer into which pours the historical and human detritus of national hatreds; anti-Semitism; dictatorship; populism; sham parliamentary life or none at all; lawlessness, intolerance, Orwellian newspeak and porno culture" (p. 10).

It is for this reason that Brown is also somewhat skeptical whether there is much relevance in trying to learn from the Iberian or Latin American transitions: there, after all, dictatorships were mostly "political," private property and an (albeit incipient) market economy existed, the dictatorship was indigenous and not foreign-imposed, and there hardly existed national or ethnic problems across state borders. And, for better or worse, the Church and religious observance were not suppressed and in most cases were in cahoots with the dictators.

It is the need for a total, and not merely "political" transformation that makes Eastern European transitions so unique and difficult. It is the total crumbling of what was not only a form of government but a whole *Lebenswelt* that creates a void, and it is this void that is being filled with resurrected memories of nationalism and religion. Nothing of the sort has even remote analogies to the Spanish or Latin American experiences, nor was the daily livelihood of masses of people affected by the demise of Franco or the colonels in Greece or Argentina. To Brown there is, of course, nothing "primordial" in nationalism—or in religion. But faced with the debris of their collective and individual existence, people reach out to these alternative anchors of identity, consolation and salvation that, while persecuted under communism, have never been wholly extirpated. In some cases, they were instrumentalized by communism itself—as was nationalism by

Ceausescu or anti-Semitism in the intra-party struggles in Poland. It is in this sense that Brown sees a "return to history" in postcommunist societies, that the political discourse is in many cases returning to the precommunist discourse, not that developments are "repeating" themselves.

Brown is also very good at bringing out the double role of religion in this context, its private and public aspect. In postcommunist Eastern Europe, religion can offer not only spiritual solace to the individual perplexed and disoriented by the collapse of his familiar surrounding certainties. In the Eastern European context, religion is almost invariably connected to national memories, and the Church is a powerful means for the recovery of the collective past.

This persistence of history is a guiding theme of Brown's book. Yet he does not fall into the trap of a deterministic historicism. What he argues, with carefully sketched examples marshaled one after the other, is that the differences in the development of various postcommunist societies have to be understood in light of the different historical legacies each of these societies brings into postcommunist reality, and he is skilled in showing that these include both precommunist as well as communist ingredients.

Perhaps the point is made most persuasively in the case of Czechoslovakia (pp. 51-65, 199-204). Contrary to other less historically-oriented analysts, Brown goes back to pre-1918 days and stresses the importance of the fact that while the Czech lands belonged to the Austrian part of the Hapsburg Monarchy as Crown Lands with a distinct identity, Slovakia was an integral part of the Hungarian half of the Empire ("Upper Hungary"). This means that over the centuries these two distinct areas developed in a totally different fashion. In Bohemia and Moravia, there developed a rather secularized civil society, accustomed to limited yet deeply entrenched representative institutions in the form of the historical *Stände* and, after the *Ausgleich*, representatives from the Czech lands sat in the Vienna Parliament. All this went along with a large measure of social and cultural diversity, anchored in an urban burgher culture. In Slovakia, on the other hand, a Slovak-speaking peasantry was almost totally subordinated to an Hungarian feudal overlord-

ship. There was no entrenched representative culture, with little urbanization and hardly a local middle class besides Jewish and German merchants and artisans. All this was accompanied by a rather retrograde Catholic priesthood that would eventually become the bearer of an intolerant ethnic nationalism. The shotgun wedding of 1918 carried within it the seeds of the 1938 and 1993 divorces.

Of even more interest, and originality, is Brown's suggestion that the so-called Prague Spring of 1968 had completely different resonance in the Czech lands and in Slovakia. In Prague, it was seen as a revolt against Soviet-imposed communism and for more pluralism and intellectual freedom. In Bratislava, the impetus was mainly aimed against Prague-inspired communist centralism. Hence, post-invasion "normalization," while crushing the reformers in Prague, was much more ambivalent in Bratislava. It gave the Slovak communists much more leeway vis à vis Prague and Husak, who had been earlier jailed as a Slovak "bourgeois-nationalist," even became the overall Czechoslovak communist leader. Consequently, dissent, while not too strong in Prague, still remained alive there and got extra impetus from the emergence of Charter 77. In Slovakia, dissent was muted, if not non-existent. The velvet divorce was an outcome of a misalliance, not just a series of political mistakes or "elite manipulations" attributed to Masaryk, Havel, Klaus, and Meciar.

A similar, though in a way more obvious, reference to an historical burden appears in Brown's subchapter on anti-Semitism ("A Note on Anti-Semitism: Old and New," pp. 221-224, also in separate discussions in the general overviews on Poland and Hungary). The resurgence of anti-Semitism, apparently "without Jews," as Paul Lendvai once called it, has justifiably received much attention in the West, but Brown is right to put it into the broader perspective of a search for national identity. He ironically remarks (on p. 222) that sometimes, despite the fact that hardly any Jews survived the Nazi Holocaust in countries like Poland, "the fewer they are, the more noticed they often become." But beyond this, Brown shows that the resurgence of anti-Semitism is linked to the revival of precommunist political and intellec-

tual discourse—as highlighted by the case of Istvan Czurka, who revived, albeit in a particularly vulgar form, the old cleavage between “populists” and “urbanists.” One should always recall that for many Hungarians the Red Army was not viewed as a “liberator,” and echoes of this could be heard also in some of Antall’s turns of phrase. Similarly, for some circles in Poland, Katyn was as bad (if not worse) crime against the Polish nation as Auschwitz.

Brown also points out the salience of Jews among the “Muscovite” communists returning to Eastern Europe in the wake of the Soviet Army, thus helping to create the impression—and not only among inveterate anti-Semites—that communist rule was a Soviet imposition aided and abetted by “the Jews.” What Brown does not mention is that even prior to 1939 there was a disproportionate number of Jews in the communist (and socialist) movements in Eastern Europe. Given the nationalist and in many cases racist policies of many pre-1939 Eastern European governments, there was obviously little reason for many Jews to be particularly enamored of these regimes: many immigrated to the West, others became Zionists, yet others became communists. The myth of “Zydo-Komuna” was well anchored, for example, in the social realities of pre-1939 Poland and the Bela Kun period, and its brutal repression left similar memories in Hungarian political consciousness.

Yet Brown is right that anti-Semitism, while a serious blemish on postcommunist reality in some cases, is not a serious problem (among other reasons because most of the Jews were murdered by the Germans with the help of their Hungarian, Lithuanian, Ukrainian, Croatian, Slovakian and Rumanian accomplices, during World War II). A genuinely oppressed and persecuted minority all over Eastern Europe is the Romany, and Brown’s section on the Gypsies (pp. 224-228) is most perceptive about what is going to be a very serious moral and political problem for practically all Eastern European countries. In this case, the “liberal” and “tolerant” Czech population is no better than its neighbors.

The second major achievement of Brown’s book is his attempt to identify possible future points

of friction in Eastern Europe. As a consequence of his general analysis, he sees these in the variety of ethnic conflicts simmering in the region, some of which may get out of control (he also supplies a useful taxonomy of the different variants of such conflicts on pp. 176-177). Brown rightly points out that one of the most exasperating aspects of the way the West has dealt with such conflicts in postcommunist Eastern Europe has been the reactive nature of much of the response by politicians and political scientists. In the case of Yugoslavia, Brown gives an excruciatingly painful blow-by-blow account (on pp. 268-270) of the way in which the West, with its tunnel vision, has reacted to the unfolding crisis, at each step misjudging what could and should have been done because of its lack of an overall perspective on what the crisis was really about. Only an understanding of the main thrust of Serbian history could put into perspective the Serbian Academy of Sciences 1986 “Memorandum” advocating the policy that all Serbs should live in one (Serb-)dominated state, and make clear what the political consequences of such a policy would be.

What Brown suggests is not a grand theory of crisis prevention or crisis management, so beloved of international relations system analysts with scant historical knowledge. He knows better than this. His approach is to study existing points of friction and assess their potential for escalating into major crises. If knowledge about such impending crises would be widely diffused in the international political community, he believes, pragmatic preventive policies, exacting minimal political costs, could be applied before positions become so politically and ideologically entrenched that leaders, and public opinion, find it difficult to retreat. Early response would also decrease the need to use force. Yugoslavia is an obvious example.

As always, Brown is judicious and well-informed. In the case of Poland, he reviews both Polish-German and Polish-Lithuanian relations and rightly points out that, despite past animosity and present issues, it does not appear that under current geopolitical conditions any of these problems will deteriorate into a major international crisis. The same applies to Polish relations with Belarus or

(despite some caveats) with Ukraine. The Kaliningrad exclave, on the other hand, is a possible flash-point, but even here Brown sees a congruence of competing interests which will probably prevent deterioration. I tend to be less reassured on this issue.

On Hungary, on the other hand, Brown is less optimistic, precisely because of the complex and overlapping issues the legacy of Trianon has left as a burden to Hungary's relations with three, and possibly four, of its neighbors: Slovakia, Romania, Serbia and also Ukraine. Extremist nationalist movements use anti-Hungarian feelings in Slovakia and Romania in a dangerous way (Funar, the Mayor of Cluj in Transylvania, is a case in point). The Hungarian minorities in these countries, as well as in Vojvodina in Serbia, have a legitimate case when they argue that they are being discriminated against in various ways. But Brown's fairness does not totally absolve Hungary, especially under Antall, from responsibility. The recent victory of Gyula Horn's Socialists has already decreased the tension considerably. The internal problems of democratic institutionalization in Slovakia and Romania obviously puts an extra burden on the ability of these countries to develop a liberal and fair policy towards their Hungarian minority. As Brown stresses, the problem is compounded by the historical circumstance that the Hungarian minorities are, in each case, a remnant of the old Magyar hegemonic power in these regions. This inversion from master to minority exacerbates the perceptual and psychological problems, both on the part of the majority society as well as among the Hungarians themselves. The obvious parallel with the status of the ethnic Russian minorities in the non-Russian successor states of the old Soviet Union should make observers realize that the problem is of lengthy duration and will not go away quickly, especially if one realizes that contrary to rump Hungary, Russia is a major power. Its recent assertive foreign policy in what Moscow calls its "near abroad" does not bode well for regional stability.

Brown naturally concentrates much of his analysis on the potential dangers still looming in the wake of the disintegration of Yugoslavia. Brown's

account is most illuminating in its ability to weave together the complex strands of some of the problems involved (Kosovo and Macedonia, for example, and their ramification into the whole range of Greek-Bulgarian-Albanian-Serbian relations). It is a frightening reminder of the possibility for more mayhem. To imagine that the Macedonian Question—that ghost that stalked the chancelleries of pre-1914 Europe—could again become a *casus belli* in the Balkans sounds like waking into a bad historical dream. No wonder that one can discern in Brown a wistful kind of admiration, if not nostalgia, for Tito's astute combination of the carrot and the stick (perhaps in reverse order, but adroit nonetheless) in the way he managed to give the South Slavs their only half century, in recent memory, of (relative) respite from violent ethnic strife. After all, nobody was subjected to "ethnic cleansing" or killed for ethnic reasons in the period between Tito's rather bloody assumption of power and the final disintegration of his edifice in 1990-91. As in other cases of social engineering, Tito's success could not be translated into a policy which could survive its founder's death. The question of institutionalized succession was caught up in what Robert Kaplan has called "Balkan ghosts." Brown's sections on Kosovo and Macedonia should be studied by the van den Broecks, Vances, Owens and Stoltenbergs of the future now, not after the shooting and the massacres have started. The European Community's initial failure to address the question of the former Yugoslav republic of Macedonia in its wider regional ramifications, and not as a mere aspect of EC solidarity with Mitsotakis's government, will haunt Europe and the United States for many years to come.

For all its virtues, the book's one fault lies in Brown's exclusion of the former Soviet Union. This of course, is legitimate, and no one can be an expert on everything. But this limited scope causes the book, for all its qualities, to look sometimes like a torso. For one thing, developments in Eastern Europe were an outcome of Gorbachev's decision to launch his reform policies. Brown acknowledges this, but mainly only in passing. Moreover, Gorbachev's decision—which took courage and

extraordinary political will—not to “send in the tanks” in 1989-90 was, after all, a *conditio sine qua non* for further developments. Last but not least, many of the problems—the return of nationalism and religion, the weakness of civil society, the gap between exaggerated expectations and the hard road ahead—have their obvious parallels in the former Soviet Union. Indeed, some of the ethnic conflicts in the former Soviet Union are spilling over into Eastern Europe as Brown himself acknowledges when discussing Polish-Lithuanian and Polish-Ukrainian relations, and the problems of Moldova. Russia remains the major regional power, as becomes evi-

dent in the difficult negotiations about future Eastern European membership in the EC and in NATO, which Brown discusses with many insights in the last chapter of his book.

It can only be wished that an author with similar historical knowledge, sensitivity, good sense and linguistic facility will give us a companion volume on the former Soviet Union. Statesmen and political scientists alike would benefit from such a book as much as they will, one hopes, from this valuable volume.

Shlomo Avineri is Professor of Political Science at Hebrew University.

From the Center

Workshop in Ekaterinburg

The Ford Foundation supported a seminar on the future of the Russian Constitution, organized by the Moscow branch of the Center and held in Ekaterinburg on October 19-20. Participants in the workshop, included a diverse group of lawyers, professors, and politicians from Ekaterinburg, as well as Vladimir Chetvernin, Gadis Gadzhiev, Stephen Holmes, Marie Mendras, Inga Mikailovskaia, and Tanya Smith.

Seminar on the Russian Constitutional Court

On December 19-20, the Center organized its second annual seminar on the Russian Constitutional Court. The conference was sponsored by the Open Society Institute and the MacArthur Foundation. Seven justices participated: Tamara Marshakova, Boris Ebseev, Gadis Gadzhiev, Ernst Ametistov, Vladimir Tumanov, Anatoly Kononov, and Vladimir Yaroslavtsev. Other participants included, Boris Strashun and Vadim Sobakin (advisors from the Court), Sergey Pashin, legal advisor in the presidential apparatus and Zolfyia Nigmatullina, from the Federation Council. Participants from abroad included Alexander Blankenagel (Berlin), Bragyova Andras (Budapest), George Fletcher (New York), Stephen Holmes (Chicago), Larry Lessig (Chicago), Marie Mendras (Paris), and Sarah Reynolds (Cambridge).

Conference topics discussed included: How can the Court avoid self-destructive involvement in political questions? What are the most troubling self-contradictions in the December 12 Constitution? What interpretive strategies can the Court employ to resolve or mitigate these inconsistencies? What are the main defects of the Constitutional Court Act, viewed abstractly, before it has been tested in prac-

tice? Did the Court make the right decision when it decided to refrain from sitting until a full panel of 19 justices was appointed?

Chicago Conference

On December 1-3, 1994, the Center held an international conference on the organization and functions of the parliaments in Central and Eastern Europe and the former Soviet Union. The conference was sponsored by the Soros Foundation. The Honorable Bronislaw Geremek, chairman of the Foreign Affairs Committee of the Sejm of Poland, opened the conference with a keynote address on the role and evolution of the parliament in the transition. Other members of Parliament who addressed the conference were: Peter Hack, chairman of the Legislative Committee of the National Assembly of Hungary; and Andrius Kubilius, member of Parliament of the Seimas of Lithuania. The conference focused on a regional comparison of the topics of the legislative framework of parliament through rules and procedures, the separation of powers and relations with other branches, the parliament's role vis à vis society, and the role of the political parties in democratic parliaments in Eastern Europe.

Participants in the conference included: Alexey Alyushin (Moscow), Milos Calda (Prague), Miro Cerar (Ljubjana), Mark Gillis (Prague), Bohdan Harasymiw (Calgary), Lev Ivanov (Moscow), Rumyana Kolarova (Sofia), Krenar Loloci (Tirana), Alexander Lukashuk (Minsk), Darina Malova (Bratislava), Elzbieta Morawska (Warsaw), Agnes Munkacsi (Budapest), Elena Stefoi Sava (Bucharest), Alexander Blankenagel (Berlin), J. Mark Hansen, Stephen Holmes, Lawrence Lessig, Dwight Semler.

