

CONSTITUTIONS OF CENTRAL AND EASTERN EUROPEAN COUNTRIES AND THE BALTIC STATES

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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FOREWORD

The SIGMA Papers series is a series of specialised reports prepared as a contribution to SIGMA's work in Central and Eastern Europe and focused on particular issues in public management, such as expenditure control, administrative oversight, inter-ministerial co-ordination, and public service management.

Constitutions of Central and Eastern European Countries and the Baltic States is the second paper in the SIGMA Papers series, which was launched in 1995 with the release of *Top Management Service in Central Government: Introducing a System for the Higher Civil Service in Central and Eastern European Countries*.

This edition of the SIGMA Papers constitutes the introductory chapter in the compilation entitled "*Constitutions d'Europe centrale, orientale et balte*", published by *La Documentation Française*, which has granted its permission to SIGMA to translate¹ and release the text in its present form. Consequently, SIGMA is able to provide complimentary copies of this report, written by Professor Michel Lesage, to interested public administration practitioners in Central and Eastern Europe.

Derry Ormond
Head
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¹ This English translation was co-ordinated by SIGMA. The original French version entitled "*Constitutions d'Europe centrale, orientale et balte*" is also available through SIGMA. The complete compilation can be ordered only in French from the *Documentation Française*, Paris, France.

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Introduction

Transition to Democracy and the Rule of Law and Constitutional Change

by Michel Lesage²

In just a few weeks in the autumn of 1989 the political face of "Eastern Europe" was to change completely. The political regimes which came to power after the Second World War collapsed: in Poland, with the formation of the Mazowiecki Government in September 1989, Hungary on 23 October 1989, the German Democratic Republic on 8 November 1989, Bulgaria on 10 November 1989, Czechoslovakia on 24 November 1989 and Romania on 22 December 1989. Albania was to follow suit in December 1990. Symbolically, these countries changed their official names, jettisoning the "socialist" or "people's" labels.

At the same time, Poland, Hungary, Bulgaria, Romania and Czechoslovakia -- countries which were officially independent but were in fact under the influence of the USSR -- regained full independence. In 1990, the German Democratic Republic disappeared to become part of the Federal Republic of Germany.

In the Baltic States, the process of independence started after the elections in spring 1990 and was completed by August 1991. Fifty-one years after being forced to join the Soviet Union, Estonia, Latvia and Lithuania each regained their independence and became once again part of the western community of nations. The USSR disappeared in late 1991 and from it sprung 12 new independent states³.

A similar process started in Yugoslavia, peacefully at first. On 23 December 1990, Slovenia held a referendum on independence and on 20 February 1991 submitted a proposal to dismantle the Yugoslav Federation by mutual consent⁴. On 25 June 1991, Slovenia and Croatia declared their independence; Macedonia held a referendum on independence on 8 September 1991, and on 15 October 1991 Bosnia and Herzegovina declared itself to be a sovereign state.

From 1945 to 1989, the USSR and "Eastern" Europe (Poland, Hungary, Czechoslovakia, Romania, Bulgaria, German Democratic Republic) formed a bloc of seven states, united by the Warsaw Pact and COMECON. There was also Yugoslavia and Albania, which had left these organisations in 1948. Since 1993, the same geographical area has contained 27 states, 15 of which make up Baltic, Central and Eastern Europe. Among these 15 states, three sub-groups can be identified on the basis of geographical and cultural criteria: in the middle, Poland, Hungary, the Czech Republic, Slovakia, Slovenia and Croatia; further south and eastwards, Romania, Bulgaria, Macedonia, Bosnia and Herzegovina, Yugoslavia (Serbia and Montenegro) and Albania; finally, in the north-east, the three Baltic States, Estonia, Latvia and Lithuania.

² Professor at Paris I University, Director of CNRS Institute of Comparative Research on Institutions and Law.

³ Amounting in total, with the Baltic States, to fifteen. However, the twelve states, unlike the Baltic States which have rejected any form of association with Russia whatsoever, have retained institutional links amongst themselves: the European ex-USSR states (Russia, Ukraine, Belarus, Moldova, Armenia, Georgia, Azerbaijan) have joined with the Central Asian states (Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan) to form a Community of Independent States (CIS).

⁴ *Documents d'actualité internationale*, n° 20, 15 October 1991, doc. n° 245, Ministry of Foreign Affairs -- La documentation française.

I. Central and Eastern European Countries and the Baltic States and Europe

1. Requirements for Recognition

To establish a new State involves not only achieving independence but also receiving international recognition. The two have not always coincided.

The European Community, in a Joint Statement of the Community and Member States on 16 December 1991 concerning "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union", stipulated five requirements for recognition of a new state. Three concerned the state's own organisation:

- respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights⁵;
- guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE; and
- respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement⁶.

In a declaration on Yugoslavia on the same day, the Twelve invited all Yugoslav republics to state by 23 December 1991 whether they wished to be recognised as independent states and accepted the commitments contained in the guidelines⁷.

In Yugoslavia, a referendum was held in Montenegro on 1 March 1992 and 95.94 per cent of votes cast (66 per cent of the electorate) were in favour of the continued existence of Yugoslavia. In contrast, Slovenia, Croatia and Bosnia and Herzegovina were recognised in early 1992, first by the Twelve and then virtually simultaneously by the United States⁸. (See chronologies for these different states).

In the Joint Statement of 11 April 1992, the Twelve were to "reaffirm that they strongly uphold the principle of the territorial integrity of the Republic of Bosnia and Herzegovina as the unquestionable

⁵ Emmanuel Decaux, *Sécurité et coopération en Europe, les textes officiels du processus de Helsinki*, Paris, La Documentation française, collection Retour aux textes, 1992.

⁶ *Documents d'actualité internationale*, n° 4, 15 February 1992, doc. n° 62.

⁷ *Documents d'actualité internationale*, n° 9, 1 May 1992, doc. n° 136. The Community and its Member States also laid down a further requirement implicitly directed at Macedonia: they "also require a Yugoslav republic to commit itself, prior to recognition, to adopt constitutional and political guarantees ensuring that it has no territorial claims towards a neighbouring Community State and that it will conduct no hostile propaganda activities versus a neighbouring Community State, including the use of a denomination which implies territorial claims".

⁸ See Joint statement by the Twelve and the United States of 10 March 1992 on recognition of the three Yugoslav Republics (Slovenia, Croatia, Serbia + Montenegro), *Documents d'actualité internationale*, n° 11, 1 June 1992, doc. n° 164.

foundation of a constitutional order" and then in the Joint Statement of 16 April 1992 "support the Bosnian Government in its efforts to bring about a peaceful solution respecting the rights of all ethnic and national groups in the Republic and expect all parties to pursue without delay the negotiations on the future constitutional arrangements under the auspices of the Peace Conference".

On 27 April 1992, the establishment of the Federal Republic of Yugoslavia was announced (Serbia and Montenegro).

On 2 May 1992, the Twelve issued a joint statement on the Former Yugoslav Republic of Macedonia in which they said that they were "willing to recognise that state as a sovereign and independent state, within its existing borders, and under a name that can be accepted by all parties concerned"⁹.

On 1 January 1993, Czechoslovakia became two separate states, the Czech Republic and Slovakia. They were immediately recognised by the international community.

2. Establishing New Constitutional Frameworks

2.1. Political Transformation and Constitutional Change

The process of transformation was peaceful everywhere other than in Romania, Yugoslavia and Albania. The Soviet model was discarded by constitutional means, mostly on the initiative of assemblies elected under the socialist system. These assemblies paved the way for change, under pressure from new political forces manifesting themselves through government and opposition round tables or vigorous street protest. The Communist Party found itself in the position of having to relinquish its constitutionally-enshrined leading role and allow free elections. In some cases, such as in Poland, Hungary and Czechoslovakia, these rapid transformations were the culmination of a long process. In others, for instance in the German Democratic Republic, Romania or Albania, they were achieved through sudden, rapid change.

The change in the political system transformed the nature of the constitution. From being a propaganda document, a *dummy constitution* concealing the reality of power, it became fundamental law providing the framework for social and political life. There were two reasons for adopting new constitutional provisions. The first was to define those rules which should replace old rules and conventions, while the second was to guard against the return of arbitrary abuse of power. In some instances, basic mistrust of the executive has resulted in provision being made for the possibility of failure to exercise constitutional prerogatives, for instance where the head of state fails to sign a statute or appoint a prime minister.

⁹ *Documents d'actualité internationale*, n° 12, 15 June 1992, doc. n° 184. A year was to pass before the UN Security Council recommended on 7 April 1993 "that the state whose application is contained in document S/25147 be admitted to membership in the United Nations, this state being provisionally referred to for all purposes within the United Nations as the former Yugoslav Republic of Macedonia pending settlement of the difference that has arisen over the name of the state" (*Documents d'actualité internationale*, n° 10, 15 May 1993, doc. n° 137), and then almost another year before the United States officially recognised the former Yugoslav Republic of Macedonia (*Documents d'actualité internationale*, n° 8, 15 April 1994, doc. n° 121).

2.2. Amendment of Existing Constitution or Drafting of a New Constitution

The new provisions required to change the political and social system could have been introduced within the existing legal framework or by adopting a new one. In 1991, Latvia opted for the most symbolic solution, which was to reintroduce its constitution of 1922 as the legal basis for the political system. Hungary was the only country to decide to amend its constitution gradually, which it is in the process of doing (the latest amendments incorporated in the document reproduced below were adopted in 1994). All the other states preferred the more symbolic solution of adopting a new constitution.

Table 1. Adoption of Constitutions

Constitutional Solution	State	Date of Adoption	Method of Adoption
Reintroduction of Previous Constitution	<i>Latvia</i>	<i>21 Aug. 1991</i>	<i>Parliament</i>
Amendment of Constitution	Hungary	23 Oct. 1989	Parliament
Amendment of Constitution	Poland	7 April 1989 29 Dec. 1989 17 Oct. 1992	Parliament
Drafting of New Constitution		Not decided	Referendum
New Constitution	<i>Croatia</i> Slovenia Bulgaria <i>Macedonia</i> Romania Estonia Slovakia Czech Rep. Lithuania	<i>21 Dec. 1990</i> 25 June 1991 12 July 1991 <i>19 Nov. 1991</i> 8 Dec. 1991 28 June 1992 1 Sept. 1992 16 Dec. 1992 25 Oct. 1992	<i>Parliament</i> Parliament Parliament <i>Parliament</i> Referendum Referendum Parliament Parliament Referendum
Drafting of a New Constitution	<i>Albania</i>		<i>Referendum</i>

The names of Member States of the Council of Europe are in **bold type**. States which have been granted the status of "special guest" of the Parliamentary Assembly of the Council of Europe are in *italics*. The Constitution of the Croatian-Muslim Federation of Bosnia and Herzegovina was adopted by a constituent assembly on 30 March 1994. The constitution in force in Yugoslavia (Serbia and Montenegro) is that of 27 April 1992 (see below, chronology and constitutional status of these states).

Poland decided to do likewise, but had not yet adopted a new constitution by the beginning of 1995. The transition phase is based on two constitutional acts, although there are in fact three constitutional documents. The Constitutional Act of 23 April 1992, setting out the procedure for drafting and adopting the Constitution of the Republic of Poland concerns the future constitution. The rules governing the political system prevailing at the end of 1994 are laid down by the Constitutional Act of 17 October 1992 on relations between the legislative and executive power and on local self-government (*Small Constitution*). The last article of the *Small Constitution* upholds the provisions of nine chapters (including the chapter on citizens' rights) of the repealed Constitution of 22 July 1952.

As can be seen from Table 1, only three states adopted their constitutions by referendum after approval of the draft by the legislative assembly (Romania, Estonia and Lithuania). In the other states, the constitution was drawn up by the legislative assembly and then adopted by the same assembly. It is also planned to use the referendum procedure to adopt the Polish Constitution (Constitutional Act of 23 April 1992, amended 27 April 1994). In Albania, President Berisha failed to obtain the two-thirds majority in the Popular Assembly that was required under the existing constitution to adopt a draft amendment, and thus he took the initiative to submit the constitutional amendment to a referendum. The electorate voted against it in the referendum on 6 November 1994 and so the amended 1976 Constitution remains in force.

2.3. Admission to the Council of Europe: Elections, Constitution, Free Elections

All the central and eastern European countries and Baltic States have sought international recognition of their progress towards pluralist democracy, the rule of law and the protection of human rights through admission to the Council of Europe. Free elections and a new constitution have been the passport to entry to the community of democratic states.

Nine states had been admitted by the end of 1994. Five had been granted the status of "special guest" of the Parliamentary Assembly of the Council of Europe prior to admission, whilst Yugoslavia (Serbia and Montenegro) had been refused admission.

Table 2. **The Council of Europe, the Central and Eastern European Countries, and the Baltic States**

2.a. Status of the Fifteen Countries

Central Europe		Baltic States	Former Yugoslavia and Albania	
Poland	Hungary	Estonia	Slovenia	<i>Albania</i>
Czech Rep.	Slovakia	Lithuania	<i>Croatia</i>	<i>Bosnia and Herzegovina</i>
Bulgaria	Romania	<i>Latvia (*)</i>	<i>Macedonia</i>	Yugoslavia

Bold type: Member States of the Council of Europe;

Italics: States with the status of special guest of the Parliamentary Assembly of the Council of Europe;

Roman type: State that has lost special guest status;

(*) This was the situation as at 1 January 1995; Latvia became a full member of the Council of Europe on 3 February 1995.

2.b. Member States
(in order of admission)

States	Elections before Constitution	Amendment or Adoption of Constitution	Elections since Constitution	Admission to Council of Europe	Elections since Admission
Hungary	1985	23 Oct. 1989	25 March & 8 April 1990	6 Nov. 1990	8 & 29 May 1994
Poland	1989	29 Dec. 1989	27 Oct. 1991	26 Nov. 1991	19 Sept. 1993
Bulgaria	10 & 18 June 1990	12 July 1991	13 Oct. 1991	7 May 1992	18 Dec. 1994
Estonia	24 Feb. & 18 March 1990	26 June 1992	20 Dec. 1992	14 May 1993	
Lithuania	8 & 22 April 1990	25 Oct. 1992	25 Oct. 1992	14 May 1993	
Slovenia	8 & 22 April 1990	25 June 1991	6 Dec. 1992	14 May 1993	
Slovakia	5 & 6 June 1992	1 Sept. 1992	2 Oct. 1994	29 June 1993	
Czech Rep.	5 & 6 June 1992	16 Dec. 1992		30 June 1993	
Romania	20 May 1990	8 Dec. 1991	27 Sept. 1993	7 Oct. 1993	

2.c. States with Special Guest Status
(in order status was granted)

States	Elections	Constitution	Granting of Special Guest Status	Elections Since
Latvia⁽¹⁾	18 March 1990	C.A. ⁽²⁾ 21 Aug. 1991	18 Sept. 1991	6 June 1993
Albania	31 March & 7 April 1991		25 Nov. 1991	22 & 29 March 1992
Croatia	22 April & 6 May 1990	21 Dec. 1990	4 May 1992	2 Aug. 1992
Macedonia	11 & 25 Nov. 1990	19 Nov. 1991	13 May 1993	16 & 30 Oct. 1994
Bosnia and Herzegovina	18 Nov. & 2 Dec. 1990		28 Jan. 1994	

(1) This was the situation as at 1 January 1995; Latvia became a full member of the Council of Europe on 3 February 1995.

(2) Constitutional Act.

II. The Constitution as an Instrument of Transition

1. Transformation of Regimes: Rejection of the Soviet Model

1.1. Political Power: Pluralist Democracy¹⁰

The new constitutions abandoned the basic philosophy that had been at the heart of the old system, i.e. the leading role of the Communist Party, and unity of state as the organ of state power.

1.1.1. *Rejection of the Party's Leading Role and the Primacy of Elections*

While the socialist constitutions purported to vest state power in an assembly elected by the people, affirmation of the leading role of the Communist Party meant that the electoral system was geared to ensuring that the Party had a majority, thus making the assembly basically a rubber stamp for Party decisions. The Party was in fact synonymous with executive power.

This system has been abolished. Sham elections have been replaced by free elections. No longer are electors obliged to vote for candidates from the compulsory list, which is how the Party had maintained its position of domination. The role of political parties is to express the will of the people, but they must not be permitted to dominate the state or civil service. In Hungary, this was expressly laid down in the 1989 constitutional amendment: "The parties shall not directly exercise power. Accordingly, no party may control any state organ. In order to separate the parties' and public authority from each other, an act shall determine the positions and public offices which may not be held by a member or official of any party" (Article 3.3).

1.1.2. *Separation of Powers*

All the constitutions divide functions between parliament, president, government and judiciary, but the doctrine of the separation of powers is only expressly enshrined in five constitutions: Bulgaria (Article 8), Slovenia (Article 3), Croatia (Article 4), Macedonia (Article 8) and Estonia (Article 4); the distinction between legislative, executive and judicial powers appears in the Constitution of the Czech Republic (Article 2.1).

1.1.3. *Local Self-Government*

The unitary Socialist system kept all local government under direct central control. The concept of local self-government was unknown; sub-national bodies were simply organs of state power. Hierarchical subordination of tiers of government was concealed behind the concept of *democratic centralism*; local budgets were part of the national budget.

In contrast, the new constitutions have introduced self-government as a fundamental principle of state organisation, in exactly the same way as Article 72 of the French Constitution of 1958, "*les collectivités [territoriales] s'administrent librement par des conseils élus*" (territorial authorities shall be freely administered by elected councils) or the concept of self-government in the English-speaking

¹⁰ See J. McGregor, "*Qui gouverne en Europe centrale et orientale ?*", *L'Europe centrale et orientale*, Paris, La documentation française, collection les Études, published 1994.

countries. However, although in French the combination of the pronominal "*s'administrer*" and the adverb "*librement*" makes the concept perfectly clear, the French language has no corresponding noun and terms such as "*autonomie locale*" or "*collectivités locales*" have to be used, or the new word "*autoadministration*" accepted¹¹.

1.2. Economic Power: Reduction in State Control

The main features of the Socialist economy were public ownership of the means of production, restrictions on private business, and planning. Whether in their general provisions, the chapters on the economy or the chapters on economic and social rights, all the new constitutions enshrine the two cornerstones of the market economy, private ownership and free enterprise, and their corollary, i.e. restricting expropriation to cases that are in the public good and where adequate compensation is paid. Some of the constitutions also give the new economy a label: "free market economy" (Romania), "social market economy" (Hungary) or "socially and ecologically oriented market economy" (Slovakia).

The Socialist form of constitution, being not only the constitution of the state but also of society in general, set out the principles previously applicable. To change the system, was it sufficient to adopt a constitution which was only the state constitution and no longer claimed to govern civil society and by so doing grant freedom, or would there still have to be chapters setting forth the basic principles of the economic system?

The Constitution of the Czech Republic opts for the first solution and gives no description of the economic system. The Slovak Constitution on the other hand devotes a section to the "Economy in the Slovak Republic"; a part of the Constitution of Slovenia is dedicated to "Economic and social relations"; Title IV of the Romanian Constitution is entitled "Economy and Public Finance" and Chapter IV of the Lithuanian Constitution deals with the "National Economy and Labour".

¹¹ The concept used in the constitutions of the central and eastern European countries and Baltic States is easy to understand when it has been translated into French by the idea of "*autonomie*" (autonomy), for "*autonomie*" in Romanian or "*savivalda*" in Lithuanian, or "*collectivité locale*" for "*kohalik omavalitsus*" in Estonian or "*savivaldybės*" in Lithuanian. However, does the fact that the Hungarian "*önkormányzat*", Polish "*samorząd*", Slovenian, Croatian and Macedonia "*samouprava*" have been translated by "*autogestion*" (self-management) whilst the Bulgarian "*samoupravenie*" and Czech and Slovak "*samosprava*" have been translated by "*autoadministration*" (self-administration) mean that we are dealing with two different concepts? Doubtless not. At the very most, the choice of words reflects the general political background and attitude with regard to administration and self-management. The latter term was in general use in Yugoslavia. In the case of Poland and Hungary, it was used to emphasize that conventional forms of socialist government were being rejected. The use of the term "*autoadministration*" is simply the equivalent of Article 72 of the French Constitution.

2. Rule of Law and Civil Liberties

2.1. Rule of Law

The hierarchy of legal rules is a basic principle of the rule of law and must be safeguarded.

2.1.1. Constitutionality Principle: Constitutional Courts

The first requirement when transforming a constitution into a truly normative instrument is to create bodies to ensure that it is actually applied. Other than in Estonia and Latvia, where the high court is responsible for reviewing constitutionality, all the other constitutions have created a constitutional court (Constitutional Tribunal in Poland).

The constitutions lay down the main rules governing the organisation and workings of the constitutional courts; the provisions of the Hungarian and Polish Constitutions, however, are very short and refer to an act adopted by a two-thirds majority (Hungary) or an ordinary law (Poland). In the other constitutions, the provisions are supplemented by an organic law (Romania), constitutional law or ordinary law (Lithuania).

Composition:

The number of judges ranges from nine to 16 depending on constitution: nine in Romania, Slovenia, Macedonia, Lithuania; ten in Slovakia; 11 in Hungary; 12 in Poland and Bulgaria; 15 in the Czech Republic; and 16 in Croatia. However, the actual number is sometimes lower (11 in Croatia for instance).

Judges are appointed for a term of seven years in Slovakia; eight in Poland and Croatia; nine years (unrenewable) in Bulgaria, Romania, Slovenia, Macedonia, and Lithuania; nine years (renewable) once in Hungary; and ten years in the Czech Republic. In Poland, half of the bench is renewed every four years, and in Bulgaria, Romania and Lithuania, one-third of the bench is renewed every three years.

The methods of appointing judges are also very diverse.

In six states, judges are elected by parliament: the 11 judges in Hungary are elected by the National Assembly, the eight in Poland by the *Sejm*, and the nine in Macedonia by the Assembly. In Slovenia, the eight judges are elected by the National Assembly on a proposal by the president of the republic. In Lithuania, the nine judges are chosen by the *Seimas*, three having been proposed by the president, three by the chairperson of the *Seimas* and three by the chairperson of the Supreme Court. In Croatia, the 16 judges are appointed by the Chamber of Representatives on a proposal by the *Zupanije*.

In the Czech Republic and Slovakia, judges are appointed by the president with the approval of one chamber or from a pool of candidates put forward by the Parliament. The 15 judges in the Czech Republic are appointed by the president of the republic with the Senate's approval; the ten judges in Slovakia are appointed by the president from a pool of 20 candidates put forward by the National Council of the Slovak Republic.

In Bulgaria and Romania, the power of appointment is vested in a number of authorities which each appoint or elect part of the bench. Of the 12 judges in Bulgaria, three are elected by the National Assembly, three appointed by the president and three elected by a joint meeting of the judges of the Supreme Administrative Court and the Supreme Court of Cassation. Of the nine judges in Romania,

three are appointed by the Chamber of Deputies, three by the Senate and three by the President of Romania.

Jurisdiction:

All the constitutional courts are responsible for verifying the constitutionality of laws and international treaties, but some have a wider jurisdiction: interpretation of the constitution, review of the constitutionality of all or some regulations (emanating from the president or government), cases involving pleas of unconstitutionality, cases concerning parliamentary elections, presidential elections (in four of the seven States which have introduced election of the president by universal suffrage) and referendums, constitutionality of political parties, and presidential accountability.

Table 3. **Jurisdiction of the Constitutional Courts**

	Interp. Constit. (1)	Review Regs. (2)	Unconst. Def. (3)	Parl. Elecs. (4)	Pres. Elecs. (5)	Refer. (7)	Polit. Parties (8)	Pres. Account. (9)
Bulgaria	X	X		X	X	X	X	X
Croatia		X		X	X	X	X	X
Hungary	X		X			X		X
Lithuania		X		X	X			
Macedonia		X		Opinion	Incomp. (6)		X	X
Poland		X	X		Incomp. (6)		X	
Romania		X	X		X	X	X	Opinion
Slovakia	X			X			X	X
Slovenia		X		X	Incomp. (6)	X	X	X
Czech Rep.				X			X	X

- (1) Interpretation of Constitution
- (2) Review of constitutionality of regulations
- (3) Cases involving the defence of unconstitutionality
- (4) Cases concerning parliamentary elections
- (5) Cases concerning presidential elections
- (6) Jurisdiction to rule on incompatibilities with the office of president
- (7) Cases concerning referendums
- (8) Constitutionality of political parties
- (9) Presidential accountability

Four constitutions set down the rules for initiating proceedings: Bulgaria (Article 150), Romania (Article 144), Slovakia (Article 130), and Lithuania (Article 106). Six others refer to a constitutional act (Croatia -- Article 127), to the law (Poland -- Article 33a.6; Hungary -- Article 32a;

Czech Republic -- Art. 88; Slovenia -- Article 162), or an enactment of the court (Macedonia -- Article 113).

2.1.2. *Independence of the Judiciary*

All the constitutions enshrine the principle of the independence of the judiciary. Several make provision for the creation of a Judicial Service Commission¹² to safeguard this principle. The rules governing the State Prosecution Service (*Prokuratura* in the Slavonic languages) are laid down by legislation in the Czech Republic and Slovenia and by the constitution in the other States. In Poland, the *Prokuratura* comes under the Ministry of Justice which acts as principal public prosecutor. In the other countries, it is separate from the executive.

Judges and prosecutors are appointed by the Supreme Judicial Council in Bulgaria and by the High Judiciary Council in Croatia. Judges are appointed by the president in Poland (nominated by the National Council of the Judiciary), Hungary, the Czech Republic, Romania (nominated by the Superior Council of the Magistracy), Estonia (nominated by the National Court), and Lithuania (after an opinion by a "special institution of judges provided by law"). They are elected by the Parliament in Slovenia (nominated by the Judicial Council), Slovakia (nominated by the government) and Macedonia. In Latvia, appointments to the bench are ratified by the *Saeima*.

In Poland, Hungary, Estonia and Lithuania, the Presiding Judge of the Supreme Court¹³ is elected by Parliament (two-thirds majority required in Hungary) on a proposal by the president of the republic.

The Procurator-General in Hungary and Public Prosecutor in Macedonia are elected by the Assembly. In Slovakia, the Public Prosecutor is appointed by the president on a proposal by the Assembly.

2.1.3. *Compliance with the Law*

Subordination of the administration to the law had already been embodied in previous constitutions but it now was given real effect by the introduction of review systems. Several states provide a constitutional basis for judicial review of administrative action. Only three constitutions enshrine parliament's prerogative to authorise the government to issue regulations which have statutory force: Poland (Article 23), Romania (Article 114) and Croatia (Article 110).

2.1.4. *Domestic and International Law*

Most of the constitutions cover relationships between international law and domestic law, although international law is binding to differing degrees. The wording ranges from confirming the precedence of ratified treaties over domestic law (Bulgaria, Croatia, Estonia), to a mere statement to the effect that legally ratified treaties are part of the domestic law (Romania, Lithuania). The middle ground is the rule of direct application of international treaties that have been ratified and promulgated (Slovenia) or the Hungarian wording, which is that the "legal system of the Republic of Hungary" (...) shall ensure harmony between the assumed international law obligations and domestic law". (Article 7).

¹² National Council of the Judiciary (Poland), Superior Council of the Magistracy (Romania), High Judiciary Council (Croatia), Republican Judicial Council (Macedonia), and Supreme Judicial Council (Bulgaria).

¹³ National Court in Estonia.

A number of constitutions only accord precedence over domestic law to treaties concerning human rights (Czech Republic, Article 10; Slovakia, Article 11; Romania, Article 20) and refer to generally accepted principles of international law (Hungary, Article 7; Romania, Article 10; Slovenia, Article 8).

2.2. Rights and Freedoms

The problem with rights and freedoms under the Socialist systems did not lie with the constitutions -- many provisions seemed liberal -- but with the lack of a political and legal system to enforce them. These provisions could therefore have been retained in many cases, but it was natural to want to accompany the change in political system and setting up of an independent judicial system by a more precise constitutional definition of rights and freedoms.

International models were available to assist in drafting the constitutions, namely three sets of documents, adopted at three different stages in history and in three different contexts. These were the documents of the United Nations, Council of Europe and the CSCE¹⁴ and were drawn on to a very large extent.

2.2.1. *Rights and Freedoms of Citizens*

Particularly in the area of political rights and freedoms, the new constitutions have enshrined the full range of fundamental rights: security, freedom of speech, freedom of association and assembly, freedom of information, etc.

Economic and social rights were more of a problem as they had been given prominence in the Socialist constitutions, even though they mainly existed in name only. Was the best approach to take a realistic stance and only enshrine economic and social rights that could actually be achieved within a reasonable timeframe -- which risked being interpreted as a social policy climb-down -- or was it to continue to affirm rights as the philosophical starting point from which to inspire state policy? The second option was chosen in most cases. As a consequence, the economic and social rights are often very different in nature to the political rights.

2.2.2. *Status of National and Ethnic Minorities*

All the constitutions enshrine the principle of non-discrimination, but they accord varying degrees of autonomy to national and ethnic minorities depending on the country's own situation.

¹⁴ United Nations documents (1948-1966): the Universal Declaration of Human Rights, adopted and proclaimed by the United Nations General Assembly on 10 December 1948; and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the United Nations General Assembly on 19 December 1966. Council of Europe documents (1950--1988): the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the protocols; the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987); and the European Social Charter (1988) and the protocol (1988). CSCE documents (1989--1990): chiefly the concluding document of the Vienna meeting on the follow-up to the Helsinki conference (1989) and the Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE (1990) (See Emmanuel Decaux, *op.cit.*, pp. 163 *et seq.* and 229 *et seq.*).

The Polish population is ethnically homogeneous and so the Polish constitutional documents do not touch on the ethnic minority problem. The other constitutions recognise the right to preserve, develop and express ethnic, cultural, linguistic and religious identity, but the constitutions of Lithuania and Romania prefer to grant this right to individuals belonging to national minorities rather than to the national minorities themselves. By way of contrast, the Macedonian Constitution guarantees "the protection of the ethnic, cultural, linguistic and religious identities of the nationalities" (Article 48). The Slovenian Constitution guarantees "the right of the autochthonous Italian and Hungarian ethnic communities" (Article 5). Article 1 of the Latvian Constitutional Act on the rights and duties of the individual and citizen imposes the obligation to comply with the law of the Republic of Latvia, respect the traditions and customs of the Latvian people and of ethnic groups residing in Latvia, and to respect the national dignity of others.

Article 36 of the Bulgarian Constitution focuses on the use of languages other than Bulgarian. The right to education in the language, its use in dealings with the authorities and the setting up of national associations is recognised by the Czech (Article 25) and Slovak (Article 34) constitutions.

The Croatian Constitution recognises the right to cultural autonomy (Article 15). While Hungary does not have any minorities of any significant numerical size, it is very sensitive to the status of Hungarians in Romania, Slovakia and Serbia, amongst other countries, and it therefore accords national and ethnic minorities the right to set up local and national organs of self-government (Article 68). The Estonian Constitution grants ethnic minorities the right to establish institutions of local self-government (Articles 49 to 52). In contrast, in Romania, where there is a large Hungarian minority, the constitution states that it is the Romanian people that are the basis of the state (Article 4). The Bulgarian Constitution declares the Republic of Bulgaria to be a unitary state with local self-government and prohibits "autonomous territorial formations" (Article 2-1).

III. Balance of Powers

Every country has at least one assembly elected by universal suffrage, a government responsible to this assembly and a head of state distinct from the head of the government. These three institutions are set out in all the constitutions in the same order: first parliament, then the president of the republic, then the government¹⁵. All the constitutions provide for referendums.

1. Parliament

A parliament, in most cases unicameral, exercises legislative power and scrutinises government activity.

1.1. Parliamentary Structure: Unicameralism and Bicameralism

The parliament has only one chamber in seven of the 12 central and eastern European countries and Baltic States. In four of the countries where the constitution establishes a bicameral system, the second chamber is also elected by universal suffrage. In Slovenia, the National Council represents "social, economic, trade and professional, and local interests".

In bicameral systems, the two chambers normally sit separately. The Polish, Czech and Romanian Constitutions provide for the two chambers to sit in joint session¹⁶.

¹⁵ The only variant is that the Czech and Slovak constitutions deal in turn with the president and the government in the same section on executive power.

¹⁶ In Poland, the Czech Republic and Romania, the two houses meet in joint session for the swearing in of the president. The Romanian Constitution further provides for joint sessions on a dozen issues (Article 62) and the Polish Constitutional Act of 23 April 1992 provides for the *Sejm* and Senate to meet as a National Assembly to adopt the Constitution which will be subject to a referendum (Article 1).

Table 4. **Composition of Parliaments**

Country	First Chamber	Number of Members	Second Chamber	Number of Members
Bulgaria	National Assembly	240		
Croatia	Chamber of Representatives	100	<i>Zupanije</i>	3 per <i>Zupanija</i>
Czech Republic	House of Deputies	200	Senate	80
Estonia	Parliament (<i>Riigikogu</i>)	101		
Hungary	National Assembly	Law (*)		
Latvia	Parliament (<i>Saeima</i>)	100		
Lithuania	Parliament (<i>Seimas</i>)	141		
Macedonia	Assembly	120 to 140		
Poland	Parliament (<i>Sejm</i>)	460	Senate	100
Romania	Chamber of Deputies	Law (*)	Senate	Law (*)
Slovakia	National Council	150		
Slovenia	National Assembly	90	National Council	40

(*) The number of deputies is not specified in the constitution and must be laid down by law.

1.2. Duration of Parliamentary Sessions

The parliaments in the Socialist states held very brief sessions, which meant that they were unable to exercise legislative power or scrutinise government activity in any real way. In contrast, the new constitutions provide for long sessions, sometimes giving parliament the discretion to determine its

own duration. The constitutions are divided between those which set the dates of the two annual sessions (generally with a fairly long first session)¹⁷ and those where parliament itself decides the duration of sessions (Latvia), normally sits continuously, and itself decides when to adjourn or convene a session (Slovenia)¹⁸.

1.3. Voting Systems

Most of the constitutions simply state that parliament is elected by direct universal suffrage by secret ballot, leaving the choice of voting system to be determined by law. The exceptions are Poland and the Czech Republic: the Polish Constitutional Act of 17 October 1992 and the Constitution of the Czech Republic stipulate that the first chamber must be elected by proportional representation (*Sejm* and House of Deputies). For the second chamber, the Polish Constitutional Act leaves the choice of voting system for Senate elections open, while the Constitution of the Czech Republic stipulates that the Senate must be elected by the majority voting system.

2. Government Answerable to Parliament

The government is answerable to parliament in all 12 states.

2.1. Formation of the Government

2.1.1. Head of Government

The prime minister is the head of government and must have the confidence of parliament.

It is the responsibility of the head of state to nominate a candidate for the post of prime minister, with the constitutions offering varying degrees of latitude in this respect. Seven constitutions impose no constraints at all (Hungary, Czech Republic, Slovakia, Croatia, Estonia, Latvia, and Lithuania). Two provide for a consultation procedure: in Romania, the president must consult the majority party or the parties represented in the Assembly; in Slovenia, the president of the republic, after consulting parliamentary group leaders, submits a prime ministerial candidate to the National Assembly. Two other constitutions allow political groups to choose the candidate: in Bulgaria the candidate is appointed by the largest political group; in Macedonia, the president is required to appoint the candidate of the majority party or parties. In Poland, the president appoints the prime minister but if the *Sejm* passes a motion of no confidence, the next candidates are appointed by the *Sejm* and president in turn (Article 57 to 59).

¹⁷ Hungary: 1 February-15 June, 1 September-15 December; Romania: February-June, September-December; Estonia: January-June, September-December; Lithuania: 10 March-30 June, 10 September-23 December; Croatia: 15 January-30 June, 15 September-15 December.

¹⁸ Poland, Czech Republic and Slovakia, where the constitutions specify that the total length of time for which a session may be interrupted must not exceed one hundred and twenty days (Czech Constitution, Article 34) or four months (Slovak Constitution, Article 82) in a year, Bulgaria and Macedonia.

Procedures for appointing prime ministers vary greatly between countries. In four states (Hungary, Slovenia, Bulgaria, Macedonia), the prime minister is elected by the parliament. In six other states (Poland, Lithuania, Romania, Czech Republic, Slovakia, Croatia), a vote of confidence is held before or after nomination. The Latvian Constitution (Article 59) simply states that the prime minister and ministers must receive the confidence of the *Saeima*, and the Estonian Constitution (Article 65) that the *Riigikogu* authorises the candidate for the Office of the prime minister to form the government.

2.1.2. Ministers

In nine constitutions, ministers are appointed by the president on a proposal by the prime minister¹⁹. In the other three constitutions (Slovenia, Bulgaria, Macedonia), ministers are appointed or elected by parliament²⁰.

In practice, the president accords particular importance to the choice of the ministers of foreign affairs, defence and the interior. In Poland, this is embodied in the constitution: the president appoints the members of the government on the proposal of the prime minister. However, the "Prime Minister shall lay a motion to appoint the Ministers of Foreign Affairs, National Defence and of Internal Affairs after consultation with the President" (Article 61).

Two constitutions try to protect parliament from a substantial change in the composition of the government without a general vote. The Lithuanian Constitution states that: "When more than half of the Ministers are changed, the Government must be re-invested with authority by the *Seimas*. Otherwise the Government must resign" (Article 101). The Macedonian Constitution states that: "If the Prime Minister dismisses more than one-third of the initial composition of the Government, the Assembly follows the same procedure as for the election of a new Government." (Article 94).

2.2. Government Responsibility

Hungary, the Czech Republic and Romania are the only countries to introduce the principle of the government's full collective responsibility, in that motions of censure can only be tabled against the prime minister (Hungary) or the government (Romania, Czech Republic). All the other constitutions provide for government responsibility and for ministers' individual responsibility. A minister must resign if a vote of no confidence is passed against him. However, in Croatia, the constitution stipulates that if a vote of no confidence in an individual member of the government is passed, the prime minister may resign or may propose to the president that the member of the government against whom the vote of no confidence was passed be relieved of office (Article 113).

¹⁹ Thus, in Estonia, the President of the Republic shall "appoint and recall members of the Government.." (Article 78), while in Lithuania he approves the composition of the Government (Articles 84 and 92).

²⁰ In Slovenia, the National Assembly appoints to office and dismisses ministers on the proposal of the prime minister (Article 112); in Bulgaria, the Assembly elects the Council of ministers (Article 84); in Macedonia, the Assembly elects the Government; the prime minister may propose to the Assembly the dismissal of a member of the Government.

2.3. Right of Dissolution

Most of the constitutions associate dissolution with the passing of a vote of no confidence or inability to form a government. The Croatian Constitution provides for dissolution by the president on the proposal of the government and with the approval of the prime minister. The Macedonian Constitution provides for self-dissolution and the Latvian Constitution dissolution by referendum on the proposal of the president.

3. Head of State: President

3.1. Presidential Elections

Seven of the 12 constitutions provide for election of the president of the republic by universal suffrage.

The constitutions of five states, Latvia (1922), Estonia, Hungary, the Czech Republic and Slovakia, provide for election of the president by parliament. The reformist communists in Hungary, who thought that election of the president by universal suffrage would work in their favour, introduced this in the 1989 amendment to the constitution, but it was rejected by the winners of the 1990 parliamentary election. The divisions between Czechs and Slovaks made it difficult to elect a President of Czechoslovakia with majority support from both sides and so this method of election had been ruled out in that country. Neither was it introduced by the new constitutions of the Czech Republic and Slovakia. In 1992, Estonia adopted a mixed transitional system for presidential elections: the electoral law for the first presidential election stipulated that if none of the candidates obtained a majority, Parliament would select the president from the two candidates with the highest number of votes. The Constitution of 28 June 1992, however, stipulated that the president would henceforth be elected by the *Riigikogu* by a three-round voting process or, should no winning candidate emerge, by an electoral body composed of members of the *Riigikogu* and representatives of local councils (Article 79).

Table 5. Election of the Head of State

State	Election Date and Method		
	Universal Suffrage		Assembly
	First Round	Second Round	
Hungary			3 Aug. 1990
Poland	25 Nov. 1990	9 Dec. 1990	
Bulgaria	12 Jan. 1992	19 Jan. 1992	
Croatia	2 Aug. 1992		
Estonia	20 Sept. 1992		6 Oct. 1990
Romania	27 Sept. 1992	11 Oct. 1992	
Slovenia	6 Dec. 1992		
Czech Rep.			26 Jan. 1993
Slovakia			4 Feb. 1990
Lithuania	14 Feb. 1993		
Latvia			6 July 1993
Macedonia	16 Oct. 1994		

This table only shows elections held since the adoption of new institutions or amendment of old constitutional instruments. It does not show elections held between the fall of the Communist regimes and the resumption of legitimate working of the public authorities in accordance with the rules laid down in those instruments. Albania therefore does not appear in this table since the draft constitution was rejected by referendum on 6 November 1994, 19 months after the president had been elected (6 April 1992) by the Parliament formed after the March 1992 legislative elections. The Federal Assembly of the former Czechoslovakia elected the Czechoslovak president on 29 December 1989. See below, for each country, the chronologies that precede the constitutional documents.

3.2. Presidential Powers

Comparison of the prerogatives of the 12 presidents reveals no direct correlation between method of election and extent of powers.

Each of the 12 presidents has different prerogatives from among the broad range of possible presidential powers. Approval by the prime minister of some regulations issued by the president is only introduced by seven of the 12 constitutions: Poland, Hungary, Czech Republic, Romania, Bulgaria, Latvia and Lithuania.

3.2.1. Powers to Ensure the Proper Functioning of Institutions

The first task of a president is to ensure that institutions work properly: formation of the government, elections, etc. As previous sections have shown, presidents have widely differing prerogatives in choosing the prime minister or exercising the power of dissolution. The same is true for the right to call for a second discussion of a proposed statute, which all the presidents have other than the Croatian President. At the second deliberation, parliament can adopt the proposal by simple majority in Hungary, Romania, Slovakia, and Latvia; by the majority laid down for adoption of laws²¹ in Estonia; or by a majority of all members in the Czech Republic, Slovenia, Bulgaria, Macedonia, and Lithuania.

In Poland, the president has what amounts to a power of veto: He is only obliged to approve a law which he had referred back to the Parliament for a second deliberation if it is adopted by a two-thirds majority (Article 18).

3.2.2. Powers in the Realms of Security, Defence and International Relations

In Poland, the constitution states that the "President shall exercise general supervision with respect to the external and internal security of the State" (Article 34). In all the countries, the president is the Supreme Commander (Poland, Czech Republic), Commander-in-Chief (Romania, Slovakia, Croatia), Chief Commander (Lithuania), Chief (Latvia) or Supreme Commander-in-Chief (Bulgaria) of the Armed Forces. He frequently has the power to make top-level military appointments.

Eight of the 12 constitutions²² state that the president of the republic presides over the National Security Council (Poland, Bulgaria), Security Council (Macedonia), Council of National Defence (Hungary), National Defence Council (Croatia, Estonia), State Defence Council (Lithuania) and Supreme Council of National Defence (Romania).

The president can, to different degrees and under parliamentary supervision, declare a state of war, siege or emergency. In the field of international relations, the constitutions embody the conventional prerogatives of appointing ambassadors and signing treaties.

3.2.3. Relations with the Government

Other than in the case of presidential acts requiring countersignature (see above), there is relatively little collaboration between the president and the government. Government sittings are normally presided over by the prime minister, but the Polish Constitution states: "The Prime Minister shall inform the President about fundamental matters concerning the activity of the Council of ministers. On matters of particular importance to the State, the President may summon sittings of the Council of ministers and preside over them" (Article 38). The constitutions of Romania, Slovakia and Croatia give the president a similar power. The constitution of the Czech Republic grants the president the power to

²¹ Simple majority or majority of all members, depending on type of law.

²² The four exceptions are the Czech Republic, Slovakia, Slovenia and Latvia.

take part in government sessions; the Latvian constitution grants the president the power to convene extraordinary sessions.

Several constitutions empower the president to appoint top civil servants, with countersignature (Poland, Bulgaria) or without (Slovakia, Slovenia, Romania, Macedonia).

3.3. Presidential Accountability

All the constitutions set limits on presidential accountability, but the grounds for invoking presidential accountability and the mechanisms for doing so differ greatly. The model most frequently followed is impeachment by one or both parliamentary assemblies and dismissal from office by the constitutional court (or Tribunal of State in Poland) or by the courts, but a procedure also exists whereby dismissal from office is by the assembly itself (Slovakia, Lithuania) or by referendum (Romania).

Table 6. Grounds and Procedures for Invoking Presidential Accountability

Country	Grounds				Procedure		
	Treason	Constitution	Law	Offence	Impeachment	Opinion	Dismissal
Bulgaria	High	Violation			Nat. Ass.		Const. C.
Croatia		Violation			Ch. of Reprs.		Const. C.
Estonia					<i>Riigikogu</i>		Courts
Hungary		Violation	Breach	Com.	Nat. Ass.		Const. C.
Latvia					<i>Saeima</i>		Courts
Lithuania	Oath	Gross violation		Com.	<i>Seimas</i>		<i>Seimas</i>
Macedonia		Violation	Breach		Assembly		Const. C.
Poland		Violation	Breach	Com.	Nat. Ass.		State Tribunal
Romania		Grave acts			Both chambers	Const. C.	Referendum
Slovakia	High and destr. of regime				Nat. C.		Const. C. and Nat. C.
Slovenia		Violation	Serious breach		Nat. Ass.		Const. C.
Czech Rep.	High				Senate		Const. C.

Abbreviations:

Destr. of regime: Destruction of regime
 Nat. Ass.: National Assembly
 Ch. of Reprs.: Chamber of Representatives

Com.: Commission
 Const. C.: Constitutional Court or Council
 Nat. C.: National Council

IV. Referendums and Constitutional Amendment

All the constitutions provide for sovereign power to be exercised directly by the people. Six provide for, or require, the holding of a referendum to amend the constitution.

1. Referendums

Referendums may be held on matters of particular importance to the state (Poland, Slovakia, Romania), on matters within the jurisdiction of the Parliament (Croatia, Macedonia) matters determined by Parliament (Hungary, Czech Republic, Slovenia, Bulgaria, Estonia), or to adopt a draft constitutional amendment or bill (Lithuania, Latvia).

Certain constitutions merely refer to a Constitutional Act (e.g. Czech Republic), while others devote several articles to the subject (e.g. the Slovak Constitution -- Part V "Legislative Power", Chapter 2 "Referendum", Articles 93 to 100).

The possibilities open to the president of the republic, the opposition and citizens to initiate a referendum are limited to an extent that varies from country to country. In Romania, the president of the republic may, after consulting Parliament, "ask the people of Romania to express, by referendum, its will on matters of national interest" (Article 90). In Poland, a referendum in "cases of particular interest to the State" may be ordered by the President of the Republic with the consent of the Senate, passed by absolute majority vote (Article 19). In Croatia, the "President of the Republic may, at the proposal of the government and with the countersignature of the Prime Minister, call a referendum on a proposal for the amendment of the Constitution or any other issue which he considers to be important for the independence, unity and existence of the Republic" (Article 87).

The status of the parliamentary opposition in respect of referendums differs greatly from country to country. In Hungary, a referendum is ordered by a two-thirds majority in the National Assembly, in Slovenia by a call by a third of members.

Several constitutions have provided for a referendum by popular initiative: Slovakia (350 000 citizens), Lithuania (300 000 citizens)²³, Slovenia (40 000 electors), Macedonia (150 000 electors).

As from 1922, the Latvian Constitution had introduced an original, albeit somewhat idealistic, system of holding referendums to oppose statutes adopted by Parliament. The president of the republic has the right, on his own initiative or at the request of one-third of the members of the *Saeima*, to suspend publication of a statute for a period of two months, during which time one-tenth of the electorate may request that the suspended statute be submitted to a referendum. If such a request is not made, then the statute is promulgated. A referendum will not be held if the *Saeima* puts the statute to the vote again and it is adopted by a majority of members (Articles 72 to 75).

²³ A referendum of this type was held in Lithuania on 27 August 1994 (on compensation for investors who had lost money through inflation and the holding of early legislative elections) and in Slovakia on 23 October 1994 (on the transparency of privatisations) at the initiative of the opposition which gained a majority in the legislative elections held before the referendum (see chronology below). The results of these referendums could not be validated because of the low turn-out (36.8 per cent in Lithuania, under 20 per cent in Slovakia).

2. Constitutional Amendment Procedures

2.1. Status of Constitutional Provisions: Unity and Diversity

In several constitutions there is a hierarchy of provisions based on political importance. The amendment procedure varies according to type of provision.

The Romanian Constitution states that the provisions thereof with regard to the national, independent, unitary and indivisible character of the Romanian State, the republican form of government, territorial integrity, independence of the judiciary, political pluralism and official language shall not be subject to revision. It also prohibits any revision which might result in the suppression of citizens' fundamental rights and freedoms, or the safeguards thereof (Article 148).

Article 9.2 of the Constitution of the Czech Republic prohibits any change in the "essential foundation of the democratic, law-governed state".

The Latvian Constitution requires that any amendments to Articles 1, 2, 3 and 6 of the constitution passed by the *Saeima* be submitted to a referendum in order to acquire force of law. Likewise, the provisions of Chapter I of the Lithuanian Constitution, "The State of Lithuania", and of Chapter XIV "Amending the Constitution" can only be amended by referendum. A majority of three-fourths of the electorate is also required to amend Article 1: "The State of Lithuania shall be an independent and democratic republic". The provisions of the other chapters can be amended by the *Seimas*. The Estonian Constitution states that Chapter I "General Provisions" and Chapter XV "Amendments to the Constitution" can only be amended by referendum.

2.2. Constitutional Rigidity and Flexibility: Qualified Parliamentary Majority and Referendum

With the exception of the constitutions of the Baltic States, which as stated above require a referendum to amend some provisions and empower parliament to amend others, only the Romanian and Slovenian Constitutions provide for the holding of a referendum. In Romania, the amendment, agreed by the two chambers, is final after approval by a referendum (Article 147). In Slovenia, the National Assembly can enact legislation to amend the constitution by a two-thirds majority of all elected deputies but, if requested by no fewer than thirty deputies, the proposal must be presented to the electorate at a referendum (Articles 170 to 171).

In the other seven states, the parliament has full control over the amendment process. In Bulgaria, the constitution requires a majority of three-fourths of the votes of all members, possibly being reduced to two-thirds (Article 155). A two-thirds majority in Parliament is required in Hungary (Article 24), Poland (Article 106 of the Constitutional Act of 17 October 1992²⁴), Croatia (Article 138) and Macedonia (Article 131). Finally, the constitutions of the Czech Republic (Article 39) and Slovakia (Article 84) require the approval of three-fifths of all members²⁵.

²⁴ This procedure applies to amendment both of the 1992 Constitutional Acts and of the provisions of the 1952 Constitution that are still in force.

²⁵ The Constitution of the Czech Republic also requires the approval of three-fifths of the senators present.

V. Conclusion

The new constitutions of the central and eastern European countries and Baltic States which have all recently been adopted offer vast scope for comparative study, as this paper demonstrates. However, while constitutions provide a basic framework indicating how political systems operate, they cannot show the full picture by any means.

Political parties, social and economic forces, customs and conventions which are often the legacy of an adverse and troubled history must all be considered in order to grasp the full reality of the progress that these states have made towards democracy and the rule of law.