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FEATURE

MAKING SENSE OF THE HAGUE TRIBUNAL

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state administration in Transcarpathia. Dozens of MPs simply refused to comply with the new compatibility rule. Parliamentary speaker Oleksander Moroz (Socialist Party [SP]) asked a Kyiv city court to rule on the cases of 38 dual office-holders—including Environment Minister Yurii Kostenko and Deputy Foreign Minister Anton Buteyko—all of whom refused to choose between their two roles. On November 17, the Court ruled that ministerial officials cannot retain their parliamentary seats. Those affected, in turn, asked the prosecutor general to prosecute Moroz for abusing his authority, claiming that he did not have the power to appeal directly to the Kyiv court and that his action was obviously politically motivated, as he chose to overlook compatibility violations by members of left-wing parties. Moroz said that the dispute should be solved by the Constitutional Court and has already compiled a list, for the Constitutional Court's scrutiny of MPs subject to dismissal for violating the incompatibility provision of Art. 78.

According to Art. 79, MPs must swear an oath of allegiance on assuming office. Sixty-six members of Parliament, including 58 members of the Communist Party (CP), declined to take the oath. Explaining his refusal to swear, CP member Leonid Garmash stressed that Art. 79 required parliamentarians to take the oath "on assuming office." Since Garmash already holds office, he argues, he should not be required to take the oath.

On October 15, Parliament approved Prime Minister Pavlo Lazarenko's three-year economic plan. Calling for massive support to key industrial sectors, the plan postpones land reform. Lazarenko also determined that the government will only be able to pay off its 1.7 billion dollar wage debt to public-sector employees in monthly installments of 117 million dollars. After the announcement of the plan, two SP MPs, Natalia Vitrenko and Volodymyr Marchenko, declared a hunger strike, claiming that the plan is unconstitutional and violates social and labor laws. MPs also demanded raises in public sector wages and pensions. The government's wage arrears continue to cause labor strife and affect domestic policy in Ukraine. On August 12, the Ministry of Education announced that it was cutting enrollment at higher education institutions and laying off one-third of the teaching staff at medical universities in order to help the ministry reduce its backlog of unpaid wages. The coal mine strikes that struck Ukraine last summer, it should be recalled, were triggered by the government's failure to pay the salaries of miners.

On November 5, local law enforcement agencies issued a report stating that crime had fallen five percent in Ukraine over the last year, although investigations of corruption among government officials have jumped 32 percent. Just before the announcement, on November 3, Yevhen Shcherban, reputedly one of the richest men in Ukraine and a prominent MP from the Liberal Party (LP), was killed. Shcherban was the head of Aton Transnational Trading Corporation, a large enterprise

which operates in the energy and metals sectors. Police officials claim that competitors for metal and gas markets were behind the killing, although LP members and former Prime Minister Yevhen Marchuk (Social Market Choice faction) allege that the killing was politically motivated.

Yugoslavia

In late November and early December, Belgrade witnessed massive demonstrations against the partial nullification by the Serbian Supreme Court of the second round of the Serbian municipal elections. Demonstrators have dubbed their movement the "Yellow Revolt," in reference to the yolk left on government buildings from thrown eggs. The Court's nullification decision was issued on November 20, one day after the release of the official election results which gave the opposition coalition "Together" (Zajedno) a majority of council seats in 15 out of 18 major cities throughout Serbia including Belgrade, Nis, Novi Sad, and Kragujevac. Petitions for nullification, which were filed by members of Slobodan Milosevic's Serbian Socialist Party (SSP), claimed that the opposition won seats fraudulently and requested that the Serbian Supreme Court revoke dozens of the seats awarded to the opposition throughout Serbia. The Court complied and ordered a repeat ballot on November 27 in which the SSP won a majority of seats on most municipal councils, including Belgrade and Nis. Demonstrators point out that Serbian President Slobodan Milosevic ordered the nullification because of the poor showing of his own SSP and that he then rigged the results of the repeat ballot. In local elections, candidates run in single-member districts and must gain 50 percent of the ballots cast in order to be elected. Run-offs are held in districts where no candidate wins a majority of votes in the first round.

In the November 3 federal parliamentary elections, held simultaneously with the first round of the local elections, Slobodan Milosevic's SSP and its Montenegrin counterpart, the Democratic Party of Socialists (DPS), together won 84 of the 138 seats in the Federal Chamber of Citizens (lower house). The opposition coalition "Together" won 22 seats. The Serbian Radical Party (SRP) won 16 seats, the Montenegrin National Party 8, Alliance of Vojvodina Hungarians 3, Vojvodina Coalition 2, Social Democrats of Montenegro 1, the Party of Democratic Action in Serbia (the Muslim party) 1, and the Party of Democratic Action of Montenegro (the Muslim party) 1. Candidates ran on party lists and seats were awarded on a proportional basis. Members of the upper house will be elected by the Serbian and Montenegrin parliaments early next year. SSP gained many seats from districts in the Kosovo province where Albanian minority parties boycotted the election. Simultaneous elections to the Parliament of the Montenegrin republic gave the DPS 45 of 70 seats, National Concord won 19, Party of Democratic Action 3, Democratic Alliance of Montenegro 2, and Democratic Union of

Albanians 1. Elections to the Parliament of the Serbian republic are scheduled for sometime in 1997.

In the run-up to the federal elections, SSP and DPS amended federal election legislation which radically altered the configuration of federal electoral districts. Rather than two districts, one in Serbia and one in Montenegro, 36 new districts were created, 29 in Serbia, and 7 in Montenegro. The opposition claims that this gerrymandering decreased its chances of winning seats because its constituency was divided in such a way as to prevent it from passing the representation threshold in several districts. The preemptive redistricting sparked a frantic and often bizarre effort to form coalitions between parties with totally divergent political platforms. In Serbia, the highly successful coalition "Together" was formed between the Serbian Revival Movement (SRM), Civil Alliance of Serbia (CAS), the Democratic Party (DP), and the Serbian Democratic Party (SDP). In Montenegro, Novak Kilibarda's pro-Serb National Party (NP), Slavko Perovic's pro-independent Montenegro Liberal Union (MLU), and, for a time, the Social Democratic Party of Montenegro (SDPM) formed a coalition under the banner National Concord (Narodna sloga).

The elections gave rise to two legal procedures before constitutional courts. The Serbian Revival Movement (SRM) petitioned the Federal Constitutional Court claiming that the amendments to the "Federal Election Districts Law," which changed the number of districts from 2 to 36, were unconstitutional on the grounds that they were not adopted by a qualified majority. As expected, the Court ruled that the amendments were constitutional (September 11). In another case still pending, the Helsinki Committee for Human Rights in Montenegro initiated a procedure before the Constitutional Court of Montenegro, claiming the unconstitutionality of several procedural provisions of the electoral law. However, this case heightened public interest for a different reason, as the committee insists that hearings be public (as prescribed by the rules of court procedure), while the chief justice of the Constitutional Court refuses to schedule the public hearing.

The Constitution of the Federal Republic of Yugoslavia (April 27, 1992), established Yugoslavia as a two-member federation composed of Serbia and Montenegro. Each of the two member republics have their own constitutions. Serbia's was ratified in September 1990; Montenegro's in October 1992. The Constitution established the Federal Assembly (Arts. 78-95), the presidency of the republic (Art. 96-98), the federal government (Arts. 99-107), the Federal Court (Arts. 108-110), the Federal Public Prosecutor's office (Arts. 111-112), and the National Bank of Yugoslavia (Art. 114).

The Federal Assembly has two chambers: the Chamber of Citizens and the Chamber of Republics. The Chamber of Citizens is composed of 138 federal members of Parliament, who are elected to a four-year term by citizens of their respective republics (Art. 81). The Chamber of Republics consists of 20 federal MPs from each member republic, elect-

ed by the republican assemblies in accord with their respective republic statutes (Art. 80).

The Federal Assembly enacts federal laws and statutes, including the federal budget, ratifies international agreements, elects and dismisses the presidents of the republics, the president of the federal government, justices of the federal Constitutional Court, judges of the Federal Court, the federal state prosecutor, and the governor of the National Bank of Yugoslavia (Art. 78).

The Federal Assembly is dissolved if, within three months of its creation, the federal government is not elected, or if the federal budget is not passed within three months of its presentation by the government (Art. 82). The federal government may dissolve the Federal Assembly but terminates its own mandate by so doing (Art. 84). The Federal Parliament cannot be dissolved if a motion for a vote of confidence in the federal government is in process, during the first or last six months of the parliamentary term, or during war or a state of emergency (Art. 83).

The president of the republic represents the Federal Republic of Yugoslavia at home and abroad, proposes the candidate for the president of the federal government and schedules federal elections (Art. 96). The president is elected by the Federal Assembly for a four-year mandate and is not eligible for a second term (Art. 97). The federal government, which consists of the president, vice presidents and federal ministers (Art. 100), and manages domestic and foreign political affairs, executes the implementation of federal laws and statutes, establishes and abolishes federal ministries and other federal agencies and offices, orders general mobilization, and organizes defense preparations (Art. 99). The candidate for the president of the federal government proposes to the Federal Assembly his program and the members of the federal government. The federal government is elected by a majority vote of all federal MPs in each of the parliamentary chambers (Art. 101). A motion for no-confidence in the federal government may be put forward in the Federal Assembly by 20 federal MPs in either chamber (Art. 104).

The Federal Court is the court of last resort when so designated by federal law. It decides on extraordinary legal remedies against decisions of courts in the republics, concerning the implementation of federal laws, decides on property matters between the federation and the republics, and resolves federal administrative suits (Art. 108). The five justices on the Federal Court are appointed by the Federal Assembly to nine-year terms (Art. 109). The state prosecutor, when authorized by federal law, files extraordinary legal remedies in cases before the Federal Court, may give mandatory instructions to prosecutors in the republics and may substitute them in federal criminal cases. The state prosecutor is appointed and dismissed by the Federal Assembly for a four-year mandate.

The National Bank of Yugoslavia is a supposedly independent institution authorized to deal with monetary issues, including the stability of the currency and fiscal discipline.

The governor of the National Bank is appointed for a five-year mandate, and may be reappointed. (Art. 114)

The federal Constitutional Court is supposed to determine whether the constitutions and laws of the member-republics comply with the federal Constitution, and to hear constitutional complaints regarding violations of individual rights. It should also consider the legality of the prohibition of political parties and complaints regarding electoral violations. The federal Constitutional Court consists of seven judges, with nine-year mandates, who elect the chief justice for a three-year term. Public institutions and citizens may petition the Court directly and the Court may also initiate procedures itself. Decisions of the Court are mandatory and are implemented by the federal government (Arts. 125 and 124).

The president of the republic commands the Yugoslav army in accordance with the decisions of the Supreme

Defense Council, which includes the president of the republic and presidents of the member republics (Art. 135). The Yugoslav Constitution, with no apparent irony intended, proclaims the rule of law (Art. 9), respect and guarantee of internationally acknowledged human rights (Art. 10), the separation of the powers (Art. 12), market economy (Art. 13), political pluralism (Art. 14), as well as respect for national minority rights (Arts. 46-50).

With this issue, the EECR has resumed its coverage of Croatia (suspended in December 1993) and begins coverage of the Federal Republic of Yugoslavia (Serbia and Montenegro) for the first time. The editors have concluded that, although neither country qualifies as a constitutional democracy or rule-of-law state, the legal and constitutional aspects of their troubled political situations deserve greater attention and analysis.

These reports have been written by the CSCEE's affiliates and the staff of the EECR: Ania Budziak, Milos Calda, Miro Cerar, Aurelian Craiutu, Judge Bohdan A. Futey, Venelin I. Ganov, Mark Gillis, Bohdan Harasymiw, Kathleen Imholz, Rумыana Kolarova, Ireneusz Kondak, Andrei Kortunov, Gunars Kusins, Stevan Lilic, Krenar Loloci, Yuri Lukanov, Alexander Lukashuk, Darina Malova, Alina Mungiu-Pippidi, Vello Pettai, Judit Revesz, Gabor Rona, Alison Rose, Pavel Shevtsov, Branko Smerdel, Daniel Smilov, Elena Stefoi-Sava, Gintaras Steponavicius, and Artur Wolek.