

*Toward the Open Society in Central  
and Eastern Europe*

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To survive and flourish, constitutional democracy has many requirements. They include consent of the governed, respect for human dignity, fairness in criminal procedure, limits on arbitrary government power, and a commitment to the rule of law. No premise, however, is more fundamental than the ideal of the open society. There must be freedom to hold what opinions one will, to follow religious beliefs of one's own conviction, to express even unpopular ideas, to engage in full-ranging debate on the issues of the day. One must be free to draw upon the lessons of history, to make judgments about the present, to shape the future.<sup>1</sup>

In the American founding period, Thomas Jefferson understood the search for the open society. Among his greatest legacies is the Virginia Statute for Religious Freedom. In it Jefferson said that truth "is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them."<sup>2</sup>

Central and Eastern Europe, the field of so much historic conflict, has also been a proving ground for efforts to foster principles

I wish to acknowledge the immensely helpful research assistance I received from Bill Horton, Russell S. Post, Kelly A. Sweeney, and Sarah E. Yarbrough in the preparation of this article. Likewise, I appreciate the editorial contributions of friends and colleagues better versed in Central and Eastern European languages than I, who graciously offered their time and expertise to assure that my use of spelling and diacritical marks was true to the native languages of the region,

<sup>1</sup> I discuss the predicates of constitutionalism in *The Road to Constitutionalism* (Charlottesville: Virginia Commission on the Bicentennial of the United States Constitution, 1990).

<sup>2</sup> 12 *Hening's Statutes at Large* 82. On the Virginia Statute, see Merrill D. Peterson and Robert C. Vaughan, eds., *The Virginia Statute for Religious Freedom: Its Evolution and Consequences in American History* (Cambridge: Cambridge University Press, 1988).

of the open society.<sup>3</sup> The events of 1989 and beyond in the region invite comparison with the revolutions of 1848, the “springtime of nations.” In 1848 students, writers, and their friends gathered in the cafes of Budapest to debate the need for reform. In 1989 students in Prague organized discussion clubs and launched the demonstrations in Wenceslas Square that led to the unraveling of the old regime’s authority.

In 1848 intellectuals in Hungary signed petitions seeking the recognition of liberal constitutional principles. Entitled “What Does the Hungarian Nation Desire?” their manifesto demanded freedom of the press, equal civil and religious rights for all, and popular representation.<sup>4</sup> In 1989, in Prague’s Magic Lantern, Václav Klaus (later to be the Czech Republic’s prime minister) read a document, “What We Want” — the program of the Civic Forum. It proposed a new Czechoslovakia, with the rule of law, an independent judiciary, free elections, a market economy, social justice, respect for the environment, and independence in academic and cultural life — in short, as Timothy Garton Ash (the only foreigner present during those remarkable days at the Magic Lantern) described it, a “normal country in the centre of Europe.”<sup>5</sup>

Like other revolutionary periods, the changes that began unfolding late in 1989 illustrate the place and force of ideas. For decades captive peoples had lived under Communist ideology. One

<sup>3</sup> In referring to “Central and Eastern Europe,” I attempt no precise geographical description. Instead I use the phrase as a convenient way of referring to those countries that were part of the Communist sphere in Europe until that system’s collapse. In this paper I make no effort to take account of developments in the former Soviet Union itself, except in the Baltic states (which in a juridical sense were not properly part of the Soviet Union). In my discussion I do include the former Yugoslavia. Thus the countries whose recent experience I consider relevant to my enquiries in this paper are Poland, Hungary, the Czech Republic, Slovakia, Lithuania, Latvia, Estonia, Bulgaria, Romania, Slovenia, Croatia, Serbia, Bosnia, Macedonia, Montenegro, and Albania.

<sup>4</sup> See Edsel Walter Stroup, *Hungary in Early 1848: The Constitutional Struggle against Absolutism in Contemporary Eyes* (Buffalo, N.Y.: Hungarian Cultural Foundation, 1977), p. 100.

<sup>5</sup> Timothy Garton Ash, *The Magic Lantern* (New York: Random House, 1990), p. 104.

might debate the merits of Marxist thought as an abstraction, but as applied to actual life it had proved bankrupt. Certainly people in the countries unwillingly thrust within the Soviet sphere knew as much (one suspects that many of their rulers knew it, too).

Ideas — the quest for reality, for communication of aspirations and beliefs — were central to the revolutions that brought down the Communist governments of Central and Eastern Europe. Timothy Garton Ash, present at the creation, described what for him was one of the “great symbolic pictures of 1989” — the long queue that formed each morning in the dampness of Wenceslas Square for copies of a newspaper called the *Free World*.<sup>6</sup>

#### THE FIRST STEPS

Even during the darkest days of Communist rule after World War II, there were glimmerings of the yearnings for free expression in the countries within the Soviet sphere. Poles found ingenious ways to create an underground press. Beginning with the rudest of mimeograph machines, Polish underground publishers worked their way to offset presses. In 1987, when the authorities raided one such facility, they confiscated four offset presses and 4,000 reams of paper.<sup>7</sup> Indeed the underground press in Poland was better equipped than the official press in some countries in the Soviet bloc.

The underground press was no small operation. By one estimate, no fewer than 1,500 periodicals were being published during the period of martial law in Poland. The main underground weekly began printing regularly in 1982 and had print runs of between 30,000 and 80,000 copies. One publishing house had a catalogue of 130 books, among them Aleksandr Solzhenitsyn's *Gulag Archi-*

<sup>6</sup> *Ibid.*, p. 138.

<sup>7</sup> Anna Husarska, “Up from the Underground in Poland,” *New York Times*, October 8, 1989, p. 1. A colleague, Joachim Hermann, of the University of Augsburg, reminds me of the assistance the underground press received from Rome by way of the Catholic Church.

*pelago* and banned writings of Joseph Conrad.<sup>8</sup> During the 1989 roundtable discussions between the government and Solidarity on permitting greater press freedom, underground journalists were even accredited to attend press conferences.<sup>9</sup>

The slide toward democracy in Hungary brought more liberal policies on speech and press. By 1988 Hungary's media were becoming more outspoken, especially after Károly Grósz became the Communist Party's leader in May.<sup>10</sup> In November of that year, the party's Central Committee eliminated its propaganda section and called for a new press law that would allow private ownership of newspapers.<sup>11</sup> In April 1989, immediately after legalizing independent political parties, the Central Committee took the first steps toward making it possible for any individual, including foreigners, to establish a newspaper or a radio or television station.<sup>12</sup>

Events in Hungary had their effect beyond the country's borders. As the Hungarian government was lifting restrictions on speech and expression, the country's media were using their new-found freedom to infuriate the governments of other Soviet bloc countries. With undeniable prescience, the Hungarian press labeled the Berlin wall an "anachronism," and Magyar Television broadcast extensive coverage of Nicolae Ceausescu's program of razing villages. Hungarian Radio was the first radio station to interview Solidarity's leader Lech Watesa.<sup>13</sup>

<sup>8</sup> Ibid.

<sup>9</sup> William Echikson, "The Paradoxes of Freer Expression," *Christian Science Monitor*, April 13, 1989, p. 6.

<sup>10</sup> David Lewis, "Hungary Plans New Information Law as Openness Grows," *Reuter Library Report*, November 16, 1988. Citations from the BBC Monitoring Service or the Reuter Newswire to official news agencies or transcripts of European broadcasts, as well as citations to European publications, are available on the Westlaw Service, primarily via the International News database, and the Lexis Service, primarily via the Europe library.

<sup>11</sup> William Echikson, "Hungarian Magazines Relish New Press Freedom," *Christian Science Monitor*, December 8, 1988, p. 7.

<sup>12</sup> Imre Karacs, "Hungary Set to Loosen Restrictions on Media," *Washington Post*, April 3, 1989, p. A29.

<sup>13</sup> Leslie Colitt, "Listening to the Voice of Hungary," *Financial Times*, April 28, 1989, p. 14 .

The new mood found voice when Hungary's parliament, in September 1989, passed a law giving individuals the right to express opinions and to advocate political or social change.<sup>14</sup> It is significant that this law was enacted before multiparty elections were held. Premier József Antall made the connection between freedom of expression and political freedom. There had to be a completely free press in Hungary, he said; otherwise there would not be a free parliament.<sup>15</sup>

Communism's collapse in Central and Eastern Europe brought with it a remarkable explosion of publications. By 1992 the Polish Press Index listed 75 daily papers and 164 weeklies among the 1,000 publications it indexed. The country's most popular paper had a weekday circulation of 550,000, rising to 850,000 on weekends.<sup>16</sup> Even in Romania, whose break with its recent past is at best incomplete, the press has been described by Western media as being "truly emancipated." By the end of 1992 over 1,000 papers were being published in Romania, at least 17 of which were dailies published in Bucharest alone. The largest opposition newspaper had runs of around 150,000 to 200,000 copies.<sup>17</sup>

### *Economic Problems*

Greater freedom for the press in Central and Eastern Europe is by no means without its hazards. Along with relaxation in the political sphere have come economic stresses associated with the unshackling of command economies. As governments began to

<sup>14</sup> "Hungary's Parliament Backs Free Expression," *New York Times*, September 28, 1989, p. A10.

<sup>15</sup> "Proceedings and Debate" (Hungarian National Assembly), BBC Summary of World Broadcasts, September 20, 1990.

<sup>16</sup> Anna Sabbat-Swidlicka, "Poland," *RFE/RL Research Report* 1, no. 39 (October 2, 1992), 47.

<sup>17</sup> Dan Ionescu, "Romania," *RFE/RL Research Report* 1, no. 39 (October 2, 1992), 56. To keep things in perspective, it should be noted that a leftist paper with strong ties to the former Ceasescu regime was estimated to have a total run of over 1,000,000. Michael Shafir, "Growing Political Extremism in Romania," *RFE/RL Research Report* 2, no. 14 (April 2, 1993), 19.

eliminate price controls, the cost of living, especially for ordinary people such as pensioners, skyrocketed. Readership for papers and periodicals often dwindled because individuals felt they could no longer afford subscriptions or a paper's newsstand price. Serbs found themselves having to choose between buying a newspaper or paying the same price for two loaves of bread.<sup>18</sup> In Macedonia, when the average monthly salary was around \$78 a month, a newspaper cost 25 cents.<sup>19</sup>

Publishers also found themselves hit by rising costs. By late 1992 the cost of newsprint and distribution in Hungary accounted for 90 percent of the cost of publishing a periodical.<sup>20</sup> A Hebrew University scholar described the exceptional Jewish quarterly *Múlt és Jövő* (published in Hungary) as being "among the finest Jewish journals in the world," but it faced bankruptcy in 1991 when it had to raise its cover price to \$2.50, making this quarterly quite expensive in a country where the average monthly salary was \$150.<sup>21</sup>

Market realities continue to make times hard for the Hungarian press. Printing expenses have soared at the same time that high prices and a saturated market have depressed readership. The result is that many publications operate at a loss. *Beszélő*, formerly an underground journal, survived nearly a decade of Communist repression only to face insolvency on the free market. The journal's editor noted wryly that "the market is proving to be a stronger adversary than the secret police."<sup>22</sup>

Albania presents a case study of how disruptive chaotic times can be to the press. In late 1991 and early 1992 there was a two-

<sup>18</sup> Milan Andrejevich, "The Radicalization of Serbian Politics," *RFE/RL Research Report* 2, no. 13 (March 26, 1993), 18, n. 10.

<sup>19</sup> Duncan M. Perry, "Republic of Macedonia," *RFE/RL Research Report* 1, no. 39 (October 2, 1992), 46.

<sup>20</sup> Edith Oltay, "Hungary," *RFE/RL Research Report* 1, no. 39 (October 2, 1992), 41.

<sup>21</sup> Aloma Halter, "Hungary's Jewish Journal Fights for Its Future," *Jerusalem Post*, February 10, 1991.

<sup>22</sup> *Media Hirlevel* 6 (June 1993), quoted in Edith Oltay, "The Hungarian Press Struggles to Survive," *RFE/RL Research Report* 2, no. 39 (October 1, 1993), 51.



month period during which no papers were published.<sup>23</sup> Fourteen newspaper editors signed a protest to the government complaining about distribution problems and the rising cost of newsprint. The statement's signers demanded that newsprint be among the goods that would not have their prices liberalized and that the state intervene to smooth relations between the newspapers and the printers and the distributors.<sup>24</sup> To make matters worse, the country's only paper factory was running far below capacity. In order to make paper, the plant requires caustic soda, and Albania's only manufacturer of caustic soda had ceased production. As a stopgap, Albania arranged to purchase caustic soda from Greece and Germany.<sup>25</sup>

To other woes the region's press can add taxes. When Bulgaria's government proposed imposing a value added tax (VAT) on their product, the major Bulgarian papers went on strike in March 1994. The tax rate would be 18 percent and would be especially damaging to smaller, local papers.<sup>26</sup> Hard-pressed for revenue, a parliamentary committee was not prepared to abandon the VAT proposal, but it was considering a compromise that would phase in the tax for newspapers over the course of the year.<sup>27</sup>

One should not underestimate the importance of the press's practical problems. Establishing conditions of press freedom are, of course, fundamental. But observers concerned about the prospects for a vibrant and healthy press in emerging democracies should be sensitive to complaints like those of an Uzbek journalist

<sup>23</sup> Louis Zanga, "Albania and Kosovo," *RFE/RL Research Report* 1, no. 39 (October 2, 1992), 26.

<sup>24</sup> Albanian Radio in Tirana, "Newspaper Editors Protest at Newsprint Shortage and Its Price Rise," BBC Summary of World Broadcasts, November 26, 1991.

<sup>25</sup> Zanga, "Albania and Kosovo," p. 28.

<sup>26</sup> Bulgarian Telegraph Agency, "Ministers and Officials Comment on Media Protest against VAT," BBC Summary of World Broadcasts, March 31, 1994.

<sup>27</sup> Bulgarian Telegraph Agency, "Press Stops Reporting Government and Parliament Affairs in Protest against VAT," BBC Summary of World Broadcasts, March 26, 1994.

at a Conference on Security and Cooperation in Europe (CSCE) seminar on press freedom:

Damn it! Stop talking about press freedom! I don't know if my paper can come out on the first of January. I don't have a telephone that works. I don't have a computer. I don't have any newsprint.<sup>28</sup>

Microeconomics, he added, told him that his paper should cost 22,000 rubles per copy — in a country where the average monthly income was 20,000 rubles.<sup>29</sup>

Publishers, like playwrights and other artists, are finding ways to adapt to the uncertainties of the post-Communist age. Intellectuals in the region have often worried that communism's collapse might bring with it the atrophy of theater, publishing, and the arts generally, as they lost the heavy subsidies that had characterized the old regime. Indeed intellectuals' concerns were not confined to economics. A visitor to Budapest in 1992 captured Hungarian intellectuals' quest for a new role after communism's fall. "They feel," she reported, "a deep uncertainty, almost a crisis of faith, about their role in the new order they helped bring about."<sup>30</sup>

As time passes, however, publishers, editors, and writers seem to be finding ways to cope (even if they are a touch nostalgic about the days of Sándor Petőfi and the poet-as-revolutionary). The distinguished historian István Deák reports that there now seem to be more books than ever, there are "more daily papers in Budapest than in New York City," and dozens of cultural journals "of reasonably high quality" are published in Hungary. Deák concedes that nearly all these journals require financial support, but they in

<sup>28</sup> Juliusz Urbanowicz, "Media Freedom: A Deadline's a Deadline," *Warsaw Voice*, November 14, 1993.

<sup>29</sup> *Ibid.*

<sup>30</sup> Jennifer Howard, "Budapest Coffeehouse Culture Revisited: Cafe New York, 1992," *East European Quarterly* 27, no. 2 (June 1993), 224.

fact get it, either from the Soros Foundation or from one of the many new Hungarian foundations, some of which are backed by industries or private banks.<sup>31</sup>

### *The Need for Professionalism*

If the free press is to fulfill its highest mission in a democratic society, journalists should think of themselves as professionals. Unfortunately, just as the era of Marxist-Leninist ideology and one-party rule was antithetical to independence among lawyers and judges, so that period gave journalists little opportunity to inculcate the attitudes of professionalism so important to the Fourth Estate. It is all too easy for a journalist in the post-Communist age to embrace a simplistic notion of what freedom means. Václav Havel expressed his concern that “our press understands the conception of freedom of expression only as a kind of private detective’s job, who is searching for sensations, and from time to time forgets . . . that freedom is only one side of the coin, where the other side is represented by responsibility.”<sup>32</sup>

Soon after Ceausescu’s fall in Romania, the *Independent’s* Marc Champion described that country’s situation as follows:

The Alice in Wonderland lunacy with which Ceausescu managed to infect Romania in the last decade of his rule is proving the ultimate corruption. No one expects the truth. Few have faith in the existence of uncoloured facts. And they rarely get either. . . . It is always harder to forgive the government, but the opposition is equally loose with reality. When it comes to freedom of expression Romania is not a police state. Rather it is the wild west.<sup>33</sup>

<sup>31</sup> István Deák, “Post-Post-Communist Hungary,” *New York Review of Books*, August 11, 1994, p. 36. In 1992 it was reckoned that *Holmi*, widely recognized as Hungary’s most prestigious literary journal, depended on subsidies (from the Ministry of Culture, the Soros Foundation, and several banks) for 80 percent of its revenue. Howard, “Budapest Coffeehouse Culture Revisited: Cafe New York, 1992,” p. 288.

<sup>32</sup> Benjamin C. Bradlee, “The Shock of the Press,” *Washington Post*, July 15, 1990, p. B1.

<sup>33</sup> Marc Champion, “Lunacy Still Rules in Rumourania,” *Independent*, December 22, 1990, p. 13.

Four months after its creation, Romania's leading daily paper, *Evenimentul Zilei* (Event of the Day), had a daily press run half again as large as its nearest competitor. Political analysis sat next to such headlines as "Rats Prepare for Winter," "Pope Is President's Election Agent," and "Unhappy Husband Kills Wife Because She Grilled Chicken." The paper's editor commented, "We live in the Balkans, and people here are hungry for unsophisticated stories which they can tell their neighbors and comment on."<sup>34</sup>

The tabloid mentality is, of course, not peculiar to the emerging democracies. Any American who has ever gone through the checkout counter at a local grocery store recognizes the genre. But the pressure to sell papers through sensationalism is all the more intense when economic pressures are as great as they are in the former Soviet sphere. A wildly successful practitioner of the new journalism in Poland is Jerzy Urban. A government spokesman under the old Communist regime, Urban was said by some to be the most unpopular man in Poland as the old era came to an end. He seems to have adapted readily to a time of freer expression, having launched an uncommonly popular satirical weekly that has been described as "a peculiar blend of politics and pornography." He was reported to be making \$50,000 a month when the national average was \$200 a month.<sup>35</sup>

One Polish journalist provided a vivid example of the consequences of a lack of professionalism in a country's press. He portrayed the difficulties confronting a citizen wanting to know what has really happened by imagining the following episode:

A dog-bites-boy situation would be described by the postcommunist *Trybuna* as follows: The boy was the son of a female worker fired from a state factory. The dog belonged to an American advisor to Deputy Prime Minister Leszek Balcerowicz. The victim received no aid in the hospital because Health

<sup>34</sup> Adrian Dascalu, "Romanians Discover Delights of the Tabloid," *Independent*, September 23, 1992, p. 8.

<sup>35</sup> Anna Husarska, "Satirical Weekly Periodical 'Nie,'" *New Republic* 205, no. 24 (December 9, 1991), 10.

Minister Wladyslaw Sidorowicz had just cut off health subsidies. In the right-leaning *Express Wieczorny*, we would read about a dog that belonged to the director of a nomenklatura firm. The child's mother was a Solidarity activist who was investigating corruption before the upcoming parliamentary elections. There would be an energetic appeal to the Sejm by the Centrum Alliance, demanding that former communist dignitaries be deprived of the right to own dogs. The left-leaning *Gazeta Wyborcza* would probably denounce the mother's irresponsibility. Instead of looking after the child, she was glued to the TV screen listening to Cardinal Glemp lash away at liberals.<sup>36</sup>

Even more corrosive of the press's role in a democratic society is the phenomenon of journalists' conceiving their function as promoting the interests of one or another political faction. István Schlett observes that, as most Hungarian journalists were trained during the Communist era, they "continue to believe that one of the major tasks of the media is to change the political consciousness of the people."<sup>37</sup> Contentious relations between press and government in Hungary underscore the place which political views seem to have in reporting of the news. Edith Oltay believes that politics "still loom very large in the Hungarian press," and she adds:

Most Hungarian journalists still have difficulty separating news from comment and seem to feel obliged to play a political role by supporting the group of their choice. A change of attitude inside the profession to meet Western criteria of objectivity and timeliness is likely to be slow and painful, since the Hungarian media in general are still staffed by journalists and reporters who for decades were accustomed to toe the line of one single party.<sup>38</sup>

<sup>36</sup> "At the Newstand," *Warsaw Voice*, August 25, 1991.

<sup>37</sup> Cited in Judith Pataki, "Power Struggle over Broadcasting in Hungary," *RFE/RL Research Report* 2, no. 11 (March 12, 1993), 16.

<sup>38</sup> Edith Oltay, "The Hungarian Press Struggles to Survive," *RFE/RL Research Report* 2, no. 39 (October 1, 1993), 53.

Politicization of the broadcast media played a part in provoking what came to be called Hungary's "Media War."<sup>39</sup> Like their print counterparts, many Hungarian broadcasters came to regard themselves as the natural enemies of the government, acting as watchdogs for society. József Szabó, editor-in-chief of a Radio Budapest station, accurately forecast that, through its partisanship, the media would be drawn into political struggles that undermine its role as an objective mediator between state and society.<sup>40</sup> Edith Oltay concludes, "One thing on which the government and opposition agree is that radio and television have yet to match Western standards of quality and objectivity."<sup>41</sup>

In Slovakia Prime Minister Vladimir Meciar was aided by a group of loyal journalists, who formed the Club of Journalists for a Truthful Picture of Slovakia (later renamed the Association of Slovak Journalists). Members of this group became the "insiders" who were invited to Metiar's press conferences when other journalists were excluded, and it was reported that only members of the association were considered to speak for Slovakia's diplomatic missions.<sup>42</sup> Apparently these journalists understood what a critic of Meciar characterized as his call for journalists to engage in "ethical self-regulation" to prevent "distortion of the Slovaks' image."<sup>43</sup> Slovak journalists were also no doubt aware of Metiar's threat to establish a commission to determine which papers were telling the truth, to label untruthful papers as the "boulevard press," and to impose higher taxes on such papers than on "serious newspapers."<sup>44</sup>

<sup>39</sup> For a discussion of the Media War, see *infra*, pp. 234–36.

<sup>40</sup> Edith Oltay, "Hungarian Radio and Television under Fire," *RFE/RL Research Report* 2, no. 38 (September 24, 1993), 41.

<sup>41</sup> *Ibid.*, p. 44.

<sup>42</sup> Jan Obrman, "The Slovak Government versus the Media," *RFE/RL Research Report* 2, no. 6 (February 5, 1993), 28.

<sup>43</sup> "News in Brief," CTK National News Wire, September 6, 1992.

<sup>44</sup> Obrman, "The Slovak Government versus the Media," p. 27.

Ultimately it is to the press itself that a free society must look for the press's regulation. Like any other professionals, editors and journalists should be constantly vigilant to protect their right to express ideas and opinions, however unpopular. But they should also nurture a sense of responsibility. Michael Zantovsky, former press secretary to Václav Havel (and more recently Czech ambassador to the United States), recognizes freedom of the press to be "one of the best safeguards of the welfare of a democratic society." But Zantovsky reminds the press of the "powerful tools" it wields and the damage it can do when it acts irresponsibly.<sup>45</sup>

### *Foreign Assistance and Investment*

Foreigners have taken an interest in the development of press and media in the post-Cold War period in Central and Eastern Europe. Sometimes these initiatives take nonprofit forms (for example, goodwill gestures by private organizations such as the International Media Fund). Other times the interests are economic, as when foreign investors buy stakes in local newspapers.

Nonprofit groups have sought to nurture the freer flow of information and the development of professional media. The Freedom Forum provided \$110,000 so that the Associated Press news service would be available to ten newspapers in Albania, Bulgaria, Romania, Czechoslovakia, Hungary, and Poland. The Forum's chairman, Allen H. Neuharth, said, "The AP service will provide both an independent source of news and a training model for factual and objective reporting."<sup>46</sup> Sometimes the assistance is purely a stopgap, as when the Soros Foundation's Open Society Fund contributed 120 tons of newsprint to Albania after a lack of paper had prevented any newspapers from being printed for two months.<sup>47</sup>

<sup>45</sup> Cited in Bradlee, "The Shock of the Press," p. B1.

<sup>46</sup> "The Freedom Forum Funds AP Service for Ten Newspapers in East, Central Europe," PR Newswire, August 26, 1991.

<sup>47</sup> Zanga, "Albania and Kosovo," p. 28.

Aid often takes aim at long-term, systematic concerns, such as the training of journalists. The Freedom Forum, which has assets of \$700 million, created an International Division in 1992, its first priority being to encourage the emergence of a free press in Central and Eastern Europe and in the former Soviet Union.<sup>48</sup> The International Media Fund, established in 1990, is active in sixteen countries, has established media resource centers in nine capital cities, has projects at fourteen universities, assists independent newspapers and radio and television stations, and conducts workshops for editors, business managers, journalists, and students.<sup>49</sup> The IMF's chairman, Marvin Stone, lays special emphasis on reaching the next generation of journalists in the emerging democracies:

Why this emphasis on journalists-to-be rather than hold-over, older journalists? With notable exceptions, older journalists do not want to change, to learn new ways. Many carry four decades of ideological baggage thrust upon them by Communist bosses who gave them their jobs — and their orders. Many are still subservient to State or Party authority. They cling to a journalism of polemics. To many, objective journalism is an anathema.<sup>50</sup>

Like those American-based organizations, the European Community has taken a direct interest in the health of a free press and media in Central and Eastern Europe. When, in 1990–91, the Community first broached the prospect of agreements with and economic aid to the countries formerly within the Soviet sphere, an implicit condition of such cooperation was the development of a free press and media.<sup>51</sup> To hasten that gestation, the Community has

<sup>48</sup> Freedom Forum, *Annual Report*, 1991–92 (Arlington, Va., 1992), p. 31.

<sup>49</sup> "The International Media Fund" (one-page informational sheet dated June 1994).

<sup>50</sup> *International Media Fund Report* 3, no. 1 (March 1993), 1.

<sup>51</sup> "Activities of the European Community in the Field of Free Media," Working Paper presented at the CSCE Human Dimension Seminar on Free Media, Warsaw, November 2–5, 1993, p. 2.



cooperated with several nongovernmental organizations (NGOs) to such ends as sending seasoned journalists to consult with their counterparts in Central and Eastern Europe and assisting heads of journalism schools in the region to revise their curricula and teaching methods.<sup>52</sup>

Foreign investors have found Central European countries, notably Hungary, especially attractive. By 1992 it was estimated that about 80 percent of the capital invested in Hungary's press organizations had come from Western sources.<sup>53</sup> Major players in Central Europe have included Rupert Murdoch, Robert Maxwell, Robert Hersant, and Germany's Axel Springer Verlag media group.<sup>54</sup> One can well imagine that the incentives attracting investment in Central Europe's press are not limited to the prospects for enhanced advertising revenues as those countries' economies grow. A further incentive no doubt is hope that a stake in the press will be a stepping-stone to investments in the even more lucrative commercial broadcast media when they are permitted to develop.

Western assistance in the press and media landscape of Central and Eastern Europe is not always welcome. Serbia's leadership was apparently not pleased when the International Media Fund sought to provide the opposition Studio B television station in Belgrade with \$240,000 in broadcasting equipment. As the truck carrying the equipment entered Serbia, it was hijacked. The truck's crew spent five days drugged in a cellar, and attempts to locate the truck and its load proved fruitless.<sup>55</sup>

Private investment from abroad is also not embraced as an unmitigated blessing. Robert Maxwell made major investments in

<sup>52</sup> Cooperating NGOs include the International Federation of Journalists and the European Journalism Centre. *Ibid.*

<sup>53</sup> Oltay, "Hungary," p. 40.

<sup>54</sup> Miklos Vamos, "Eastern Europe's New Press Lords," *Nation* 253, no. 10 (September 30, 1991), 368.

<sup>55</sup> Leonard Marks, "From Our Point of View," *International Media Fund Report* 3, no. 1 (March 1993), 8.

*Magyar Hirlap*, one of the most important papers in Hungary. When the paper was threatened with bankruptcy, the government permitted Maxwell to increase his capital investment, saving the paper and leaving Maxwell as its majority stockholder. These events created an uproar in Hungary. Even journalists who would have lost their jobs if the paper had failed protested what many viewed as a threat to press independence. Some observers worried that money would replace the government as Hungary's chief censor.<sup>56</sup>

The countries of Central and Eastern Europe are especially, and understandably, concerned about the extent to which foreigners might control the broadcasting media. Not only will genuine competition be more unlikely or imperfect in broadcasting than in the press; television in Central and Eastern Europe is also a far more influential source of news and entertainment for people in the region. Hence the question of foreign investment or control is more explosive than is concern over foreign investment in newspapers. Such fears help explain laws such as Lithuania's 1991 statute that prohibits foreign investment in radio and television, broadcasting, with the exception of technical services.<sup>57</sup> Other approaches to cabinng foreign influence include a Polish law limiting foreign ownership of any broadcasting company in Poland to 33 percent and a Czech law forbidding private investors in broadcast companies to influence the content of programs.<sup>58</sup>

#### CONSTITUTIONS IN CENTRAL AND EASTERN EUROPE

Drafters of new constitutions in Central and Eastern Europe invariably include affirmations of rights of speech and expression.

<sup>56</sup> Vamos, "Eastern Europe's New Press Lords," p. 368.

<sup>57</sup> Saulius Girnius, "Lithuania," *RFE/RL Research Report* 1, no. 39 (October 2, 1992) 73.

<sup>58</sup> Christopher Bobinski, "Survey of Poland," *Financial Times*, June 17, 1993, p. ix; Jiri Pehe, "Czech Republic: Furor over Independent Radio and Television," *RFE/RL Research Report* 2, no. 15 (April 9, 1993), 27. See discussion, *infra*, pp. 242–47, of controversies over licensing private television stations.

The relevant constitutional provisions usually begin with quite broad statements. Slovenia's Constitution, for example, states:

Freedom of expression or thought, freedom of speech, and freedom to associate in public, together with freedom of the press and of other forms of public communication and expression, shall be guaranteed. Each person may freely collect, receive, and circulate information and opinions.<sup>59</sup>

The new constitutions also typically include protection for such related rights as association, peaceful assembly, and petition.<sup>60</sup>

In a free and democratic society, some rights ought, of their very nature, to be seen as absolute. An example would be the right of conscience—one's inherent right, as a human being, to hold what views one will about matters of religion.

Many rights, however, may be qualified or limited when measured against some other right or interest. Few would argue that a theory of freedom of expression means that a broker who makes false statements about a stock issue cannot be punished under a country's securities laws or that the government cannot prevent a person from revealing military information potentially damaging to the national security.

Consider the approach taken by the International Covenant on Civil and Political Rights. Article 19 states that everyone "shall have the right to hold opinions without interference." The article then goes on to declare the right to freedom of expression, including freedom to seek, receive, and impart information and ideas of all kinds. Article 19 does not qualify the right to hold opinions, but the article sees one's exercise of rights regarding the flow of information as carrying with it "special duties and responsibilities." Article 19 states that the right may therefore be subject to such restrictions as are necessary to respect the rights or reputations of

<sup>59</sup> Constitution of Slovenia, Art. 39.

<sup>60</sup> See, e.g., Constitution of Slovenia, Arts. 42, 45.

others or for the protection of national security, public order, or public health or morals.

Living together in civilized society requires that what people say must, on occasion, be balanced against some other legitimate interest. I should be able to speak my mind in a free society, but it does not follow that I should be at liberty to spread calumnies about my neighbor, regardless of the truth of what I say. Yet deciding how much rein to give to expression, and when to draw the line, is one of the most subtle challenges in a constitutional democracy.

One approach to this problem is that taken by the Universal Declaration of Human Rights. That document recites a number of fundamental freedoms, including conscience, opinion, expression, assembly, and association.<sup>61</sup> The declaration's individual articles do not spell out the limits on the respective rights. In a concluding section, however, the declaration states that the exercise of the rights and freedoms shall be subject "only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society."<sup>62</sup>

One quickly realizes just how elastic such qualifications can be. What are the requirements of "morality" or of "public order"? What is meant by the reference to a "democratic society"? Such generalizations raise obvious questions of interpretation and application. One's questions about the metes and bounds that qualifications impose on a freedom or right become even more insistent when one turns to the text of the constitutions being drafted in the countries of Central and Eastern Europe.

Those who read the texts of constitutions in the emerging democracies with a close and critical eye will find no small grounds for concern. The future of the open society in Central and Eastern

<sup>61</sup> Arts. 18, 19, 20.

<sup>62</sup> Art. 29.

Europe depends in good measure on questions of interpretation of constitutional text. What meaning will be poured into the textual language? By what standards and criteria will the provisions for expression and other freedoms be measured? And, critical in any constitutional democracy, who will decide? How much leeway will lawmakers have to decide the metes and bounds of free expression? How much discretion will be left to police officers and to other officials? Will there be judicial review by independent judges having the power to shape meaningful injunctions and other remedies?

These concerns may be abated somewhat if those who interpret a constitution, especially the judges, take an expansive view of those freedoms that make for free and robust debate over the whole realm of ideas. For example, fuller protection for expressive activities is likely to occur if one takes the view that human rights such as speech and religion are natural rights, not dependent on positive law for their existence — rights that, to draw upon the teachings of the social contract theorists, preexist civil society.<sup>63</sup>

Reading the constitutions of Central and Eastern Europe, however, one can well imagine their being read by the light of positivism. If they be viewed from that perspective, then individuals will be taken to have such rights as they are given by law (including constitutions), but exceptions and limitations provided by law will be seen as enjoying equal legitimacy with the rights themselves. Positivism is a powerful force in European thought, especially where French notions of popular sovereignty and legislative supremacy have had such influence.

Time will tell us how legislators, administrators, judges, and others will read the provisions of constitutions in Central and

<sup>63</sup> See, e.g., the statement in the Virginia Declaration of Rights (1776) that “all men are by nature free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely, the enjoyment of life and liberty, and with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.” The debt to John Locke’s *Second Treatise on Government* is obvious.

Eastern Europe. In the meantime, however, one should ponder the range and number of exceptions to the principles of free expression found in the new constitutions. Among those limitations are the following.

*The protection of public morality.* It is common for constitutions to make this exception. Sometimes the formulation, as in Bulgaria, is that the exercise of the right to obtain or disseminate information may not be detrimental to public morality.<sup>64</sup> Another approach is to state, as does Slovakia's Constitution, that freedom of expression may be limited "by law" in order to protect morality.<sup>65</sup>

*Protection of the constitutional order.* Where this provision appears, it usually is aimed at calls for a "violent" or forcible change in the constitutional order (as in the constitutions of Bulgaria, Croatia, and Macedonia).<sup>66</sup> In Lithuania's Constitution, it is simply stated that freedom of expression may be limited "for the protection of the constitutional order."<sup>67</sup>

*Territorial integrity.* Romania's Constitution forbids incitement to territorial separatism.<sup>68</sup> Bulgaria bans organizations whose activities are directed against the country's sovereignty and territorial integrity.<sup>69</sup> Serbia's Constitution permits censorship of the press in the event of a call for the violation of the territorial integrity and independence of the Republic of Serbia.<sup>70</sup>

*Speech encouraging national, ethnic, racial, or religious hatred.* "Hate speech" is often placed beyond the protection of a constitution. Serbia's Constitution, for example, forbids arousing and encouraging ethnic, racial, or religious intolerance and hatred."<sup>71</sup>

<sup>64</sup> Constitution of Bulgaria, Art. 41.

<sup>65</sup> Constitution of Slovakia, Art. 26.

<sup>66</sup> Constitution of Bulgaria, Arts. 39, 40; Constitution of Croatia, Art. 39; Constitution of Macedonia, Art. 20.

<sup>67</sup> Constitution of Lithuania, Art. 25.

<sup>68</sup> Constitution of Romania, Art. 30.

<sup>69</sup> Constitution of Bulgaria, Art. 44.

<sup>70</sup> Constitution of Serbia, Art. 46.

<sup>71</sup> Constitution of Serbia, Art. 44.

Although the precise formulation varies, similar bans can be found in the constitutions of Bulgaria, Croatia, Lithuania, Macedonia, Romania, and Slovenia.<sup>72</sup> (Curiously, Romania adds incitement to “class” hatred to the list, an odd inversion of the Marxist tradition of appealing to the masses by stoking the fires of class feelings.)<sup>73</sup>

Other examples would include prohibitions on defamation of the nation, protection of children, and liability for defamation.<sup>74</sup> Moreover, in assessing the reach and strength of constitutional protections for expression and related activities, one should note provisions that permit restrictions on at least some of a constitution’s enumerated rights during times of national emergency.<sup>75</sup>

Each exception to the principle of free expression and the open exchange of ideas and opinion presents its own problems. Some constitutional limitations, such as those regarding public morality, are a fairly well known feature of the European legal landscape. These can nevertheless be troublesome, as one can see by noting Poland’s adoption of a law requiring broadcasters to respect “Christian values.”<sup>76</sup>

Among the constitutional limits on expression and advocacy, however, especially worrisome are those limits that seem closest to the flash points of Central and Eastern European politics — nationality and ethnicity. Hungary’s Constitutional Court has grappled with this problem in reviewing provisions of the Hungarian Criminal Code that penalize incitements to hatred against any nationality, people, faith, or race. The public prosecutor brought

<sup>72</sup> Constitution of Bulgaria, Art. 44; Constitution of Croatia, Art. 39; Constitution of Lithuania, Art. 25; Constitution of Macedonia, Art. 20; Constitution of Romania, Art. 30; Constitution of Slovenia, Art. 63.

<sup>73</sup> Constitution of Romania, Art. 30. It may be that “class” refers to Gypsies, an oblique reference to a people who, in Romania, are both numerous and disliked.

<sup>74</sup> See, e.g., Constitution of Romania, Art. 30 (defamation of the nation); Constitution of Albania, Art. 19 (protection of children); Constitution of Romania, Art. 30 (liability for defamation).

<sup>75</sup> See, e.g., Constitution of Bulgaria, Art. 57.

<sup>76</sup> See discussion *infra*, pp. 247–49.

proceedings against the author of anti-Semitic articles in a right-wing periodical, *Hunnia*. The Constitutional Court ruled that incitements to racial hatred can be prohibited even if there is no “clear and present” danger of the incitement’s being acted upon by those who read it. (The court held, however, that another section of the statute punishing expressions that are “offensive or demeaning” to nationalities or groups was unconstitutional.)<sup>77</sup>

The Hungarian court’s decision on incitement to racial or ethnic hatred has obvious roots in Europe’s post–World War II jurisprudence. There is no doubt that the experience with Nazism has colored European willingness to impose limits on free expression in the interest of avoiding social conflict. The Hungarian Constitutional Court pointed, for example, to the United Nations Covenant on Civil and Political Rights, which calls for bans on “any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence.”<sup>78</sup>

András Sajó sums up the dilemma inherent in the enactment of hate speech laws. On the one hand, he says, unrestrained speech may endanger social stability, especially in light of “the social and political conflicts racking Hungarian society during the transition period.” On the other hand, limits on speech “may immobilize nascent civil society, limit fundamental freedoms, and stifle the lively criticism of government so essential to democracy.”<sup>79</sup>

The decision of Hungary’s Constitutional Court represents a careful effort to strike a defensible balance between social peace and the free flow of ideas. Nevertheless, one should regard with skepticism attempts (especially when undertaken by illiberal governments) to keep national and ethnic antagonisms off the public agenda. In particular, one should not ignore the opportunities for discrimination and suppression that inhere in constitutional bans

<sup>77</sup> For a thoughtful discussion of the Hungarian court’s decision, see András Sajó, “Hate Speech for Hostile Hungarians,” *East European Constitutional Review* 3, no. 2 (Spring 1994), 82.

<sup>78</sup> Art. 20(2).

<sup>79</sup> Sajó, “Hate Speech for Hostile Hungarians,” p. 82.



on encouragement to national, ethnic, or religious hatred. One can conceive benign motives for such a provision — an effort to protect groups, especially minorities, from harassment and abuse. But in the hands of a willful government, how easy it is to turn such provisions against the very people who were thought to be their beneficiaries.

One can readily imagine, for example, the risks an ethnic Hungarian in Transylvania might run by complaining about Romania's policies toward its Hungarian minority. Might he be charged with stirring up hatred toward ethnic Romanians? Provisions banning "hate" speech do not, after all, forbid only majority abuse of minorities; it works the other way around as well.

It is no accident that constitutions that have the most forcible denunciation of incitement to national or ethnic hatred are often the constitutions that also reflect concern about territorial integrity. Bulgaria's Constitution, in the same article, forbids organizations that encourage racial, ethnic, or religious hatred and those whose activities threaten the country's sovereignty or territorial integrity.<sup>80</sup>

The fault lines of Central and Eastern European history and geography are sharply revealed in constitutional provisions touching nationality, ethnicity, sovereignty, and territorial integrity. Romanians are concerned about their Hungarian minority; Bulgarians see Turks as separationists; Serbs recite historic "victimization" by other peoples. When one thinks about Serbian aggression and "ethnic cleansing" in Bosnia, how seriously should one take the ban in Serbia's Constitution against "arousing or encouraging ethnic, racial, or religious intolerance and hatred"?<sup>81</sup>

Assessing the hazards for the open society in any country requires, of course, more than parsing the language of that country's constitution. Friends of free speech and expression must ask questions about the country's actual practices — what attitudes its leaders take toward rights that bolster the open society, what politi-

<sup>80</sup> Constitution of Bulgaria, Art. 44.

<sup>81</sup> Constitution of Serbia, Art. 44.

cal pressures its journalists and editors face, what place the society makes for the free flow of ideas and tolerance for dissenting views, however distasteful or unpopular. Ultimately the prospects for the open society, like those for constitutional democracy itself, turn heavily upon the extent to which a civic culture thrives among the people themselves.

#### HAZARDS ON THE ROAD TO THE OPEN SOCIETY

##### *Government Repression*

Those who attempt to justify restrictions on free expression often do so in the name of “democracy” or “truth” or “human dignity.” When critics assailed a 1993 Albanian press law, President Sali Berisha invoked just such rationales:

The right for information is the right for truth, consequently only true information based on the freedom of press contributes to the promotion and development of democracy.

It is true that democracy is the rule of law . . . but we should bear in mind that democracy considers first of all man’s dignity. The Albanian press has lost its reputation not because of its strained relationship with the truth but because there are hundreds upon thousands of cases showing violation of human dignity.<sup>82</sup>

Read narrowly, such limitations on speech and press might turn squarely on a concern for the honor and dignity of ordinary individuals who are the victims of libel or slander. But notions about “honor” and “dignity” quickly slide into efforts to protect the “state” or “nation” or the party in power, especially in countries where the post-Communist period brings instability and social malaise. Hear Romania’s President Ion Iliescu on the dangers of misinformation:

The act of circulating certain inexact and unfounded information, launching accusations without value and making delib-

<sup>82</sup> Albanian Telegraph Agency, “Berisha Defends New Press Law,” BBC Summary of World Broadcasts, October 31, 1993.

erate use of those accusations for political purposes, all these have a very dangerous effect. I am talking about the denigration and undermining of the authority of state institutions which are called upon to defend the order of the law and the security of people. This becomes very dangerous for self-defence, I mean for the self-defence forces of society. There is the danger that the artificial exacerbation of corruption scandals might discredit certain fundamental values of democracy and the reforms. We are not in favour of embellishing reality, but nor are we for a nightmare image about Romania. Moreover, the freedom of the press should not harm the dignity and honour of the individual.<sup>83</sup>

Romania's government has found creative ways to lean on the press. Before the May 1990 general elections, the government ordered three major daily papers to reduce their press run by 20 percent and other papers to reduce their runs by 50 percent, citing shortages of newsprint.<sup>84</sup> In late 1991, not long before the 1992 elections, Leta, the sole producer of newsprint in Romania, raised the price of their product by 200 percent, making it prohibitively expensive to publish newspapers.<sup>85</sup>

Freedom of expression took an even more literal beating in June 1990 when the government suppressed a demonstration in Victory Square in Bucharest. The demonstrators were demanding democratic reforms, including the creation of a private television station. In response to violent actions by demonstrators who might well have been undercover ex-Securitate members, President Iliescu brought in miners from outside the city to help end the protest.<sup>86</sup> The miners went on a rampage, beating protesters and ransacking oppo-

<sup>83</sup> Romanian Radio, "Iliescu News Conference: Visit to Former Yugoslavia: Problems of Corruption," BBC Summary of World Broadcasts, May 26, 1993.

<sup>84</sup> "French Group Criticizes Press Freedom in Romania," *Reuter Library Report*, April 2, 1990.

<sup>85</sup> Rompres in English, "Striking Journalists Protest at 'Monopoly' on Paper Costs," BBC Summary of World Broadcasts, December 16, 1991.

<sup>86</sup> Vladimir Tismaneanu, "Homage to Golan: The Romanian Opposition Gets Bashed," *New Republic* 203, nos. 5-6, 16.

sition party offices and the offices of major opposition newspapers, actions apparently taken on the instruction of government agents.<sup>87</sup>

State television highlighted demonstrators' violence but overlooked many of the miners' actions. The miners also demanded that *Romania Libera*, an opposition newspaper, be banned. At the violence's outset, the progovernment printing workers' union refused to print several opposition papers on the grounds that they were guilty of inciting "to disorder, destabilisation, and contesting the authorities."<sup>88</sup> The union's notion of press freedom was made explicit in their statement: "we cannot admit the instances of irresponsibility of certain servants of the written press that mistook the freedom of the press for misinformation and incitement to violence."<sup>89</sup> Concerned about the threat to press freedom, Western governments brought pressure to bear on Romania's government, which took steps to see that the opposition papers could resume publication.<sup>90</sup>

Few politicians who hold public office enjoy criticism. Some officeholders are more sensitive than others. When Petre Băcanu, editor of *România Liberă*, wrote an article accusing Prime Minister Petre Roman of corruptly distributing real estate formerly owned by the Communist Party, the Romanian police summoned Băcanu for questioning. Their charge: that the article infringed a section of the penal code forbidding "offences against public authority."<sup>91</sup> (Băcanu on other occasions had his car vandalized and papers stolen.)<sup>92</sup>

<sup>87</sup> See Jonathan C. Randal, "Romania to Probe Violence in Bucharest; Government Concedes 'Excesses' in Rampage by Vigilante Miners," *Washington Post*, June 17, 1990, p. A34.

<sup>88</sup> "The Events in Romania," BBC Summary of World Broadcasts, June 15, 1990.

<sup>89</sup> Rompres in English, "Print Workers' Unions Warn against 'Irresponsibility' in Press," BBC Summary of World Broadcasts, June 18, 1990.

<sup>90</sup> See Jonathan C. Randal, "Use of Force Approved in Romania: Authorities Arrest Three Protest Leaders," *Washington Post*, June 19, 1990, p. A12.

<sup>91</sup> "Police Quiz Romanian Editor on Graft Allegation against Premier," *Reuter Library Report*, May 6, 1991.

<sup>92</sup> "Romania Group Says Dozen Injured in Bucharest Clashes," *Reuter Library Report*, April 23, 1991.

Romania's president proved no less sensitive to press criticism. In 1991 he responded (with a press release) to press reports that he and the prime minister were "tools in the hands of the former Securitate." These allegations, he fumed, were a "calumny touching the offices these men hold and represented a direct attack on the democratic system in Romania." The president warned that moral and legal responsibility for these irresponsible charges would be borne not only by the journalist who wrote the article but also by the editor and the editorial board.<sup>93</sup>

Croatia's birth pains have proved especially uncomfortable for the independent press. A broad hint of what was to come surfaced in 1990 when Information Minister Milova Sibl laid down the young government's intention to "strive for sovereignty in the field of information."<sup>94</sup> As elections approached in 1992, the staff of the country's leading independent daily, *Slobodna Dalmacija*, were threatened with prosecution for having played a part in the placing of a photomontage in the weekly insert *Feral Tribune*. Playing on President Franjo Tudjman's past as a Communist army general, the feature juxtaposed pictures of Tudjman, Hitler, and Stalin as students under the headline, "One school, one class, one pupil."<sup>95</sup>

Another paper, the weekly *Danas*, made the mistake of publishing reports of "ethnic cleansing" by the Croatian military. Opponents of the government claimed that such acts of independence led to the paper's being closed in 1992.<sup>96</sup> Information Minister Sibl claimed that the paper had been closed because it was \$372,000 in debt. When reminded that a progovernment newspaper, *Vjesnik*, was \$1.24 million in debt but was still operating, Sibl responded that

<sup>93</sup> Rompres in English, "Opposition Papers Accused of Slander Campaign," BBC Summary of World Broadcasts, March 7, 1991.

<sup>94</sup> Svetislav Maksovic, "Journalists Fight for Freedom," Inter Press Service, November 23, 1990.

<sup>95</sup> Yigal Chazan, "Zagreb Cracks Down on Dissent: Reporters Opposition Leaders Could Face Prosecution," *Gazette* (Montreal), June 9, 1992, p. A14.

<sup>96</sup> Ken Kasriel, "Communist Past Weighs on Croatian Press," *Christian Science Monitor*, January 26, 1993, p. 13.

*Danas* was “against the Croatian state” and that most of the paper’s writers were “children of Yugoslav People’s Army officers, children of mixed marriages, or children of Communist party members.”<sup>97</sup>

After the government closed *Danas*, a private businessman set up a magazine called *Novi Danas* and hired many of the former paper’s writers. The government failed in its attempt to close *Novi Danas* on the basis of a copyright violation, but the state-owned printing house refused to print it and the state-owned newsstands refused to distribute it. *Novi Danas* went out of business in September 1992.<sup>98</sup>

By the beginning of 1993, *Slobodna Dalmacija* was the only remaining major newspaper that dared to criticize Tudjman. In late 1992, however, Tudjman installed a new managing board in an effort to gain greater control over the paper.<sup>99</sup> (A battle ensued in which the editor drew parallels between the new publisher and Hitler’s propagandist Joseph Goebbels and the publisher compared the editor to a cleaning woman.)<sup>100</sup> The paper had been owned by the state at the time of Croatia’s becoming independent, and the government rejected plans put forth by the staff to privatize the paper so as to keep it under the staff’s control.<sup>101</sup> Instead, a state-controlled bank purchased 60 percent of the paper’s shares.<sup>102</sup> Tudjman’s managing board named two new editors-in-chief. On resuming publication, the paper was less critical of the government, most of the writers — a strike against the change in control having been unsuccessful — apparently preferring constrained employment to no job at all.<sup>103</sup>

<sup>97</sup> Ibid.

<sup>99</sup> Ibid.

<sup>99</sup> Peter Maass, “Staff Battles Bosses at Croatian Paper,” *Washington Post*, February 20, 1993, p. A16

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Croatian TV Satellite Service, “‘Slobodna Dalmacija’ Daily on Strike ‘to Defend Professional Rights,’” BBC Summary of World Broadcasts, March 9, 1993.

<sup>103</sup> See Mark Heinrich, “Free Press Says It Is Threatened in Independent Croatia,” *Reuter Library Report*, March 17, 1993.

In 1994 an editor of *Feral Tribune* discovered the price of excessive commentary. The paper printed a picture showing Croatia's Tudjman and Serbia's Slobodan Milošević in bed together under a headline asking, "Is this what we fought for?" Within twenty-four hours of the issue's having been distributed, the editor was mobilized into the Croatian army and confined to a military post.<sup>104</sup> The government found yet one more way to harass *Feral Tribune* when it subjected the publication to a crippling 50 percent sales tax previously reserved for sex magazines.<sup>105</sup>

Excesses like these may be better understood (though by no means justified) when one considers the state of hyperpatriotism that sweeps a country at war. Especially is this true in the Balkans, where passions about ethnicity and nationality run so high. It is perhaps not surprising to find such actions being taken in Croatia, which was, in 1991, an early victim of Serbian aggression.

In such circumstances opposition to government policy is painted as disloyalty to the nation. Five women who opposed holding the 1992 International PEN Congress in Dubrovnik because of Croatian press censorship were charged in the weekly *Globus* with being enemies of Croatia. The article charted the women's ancestry to prove that they were not of pure Croatian blood and pointed out that those who were married had husbands who were Serbs (either from Croatia or Serbia).<sup>106</sup> One of the subjects of the attack, Rada Ivekovic, said that the nationalists "don't need to put writers into prison; they simply give them to the press, like to rabid dogs."<sup>107</sup>

Notions that press and media must conform to official notions of "correct" behavior are by no means confined to countries that

<sup>104</sup> Carol J. Williams, "Lampoon Is No Joke to Croatia's Rulers," *Los Angeles Times*, January 18, 1994, p. 3.

<sup>105</sup> Reuter, "Croatian Paper Fails to Publish as Protest," Reuter Newswire, July 31, 1994.

<sup>106</sup> Meredith Tax, "Five Women Who Won't Be Silenced: Croatia's Witches," *Nation* 256, no. 18, 624.

<sup>107</sup> *Ibid.*

feel threatened by warfare. Slovakia's divorce from the Czech Republic was in every respect a peaceful one. Yet Prime Minister Vladimir Meciar declared in 1992 that "the state must guarantee that the media report in a truthful manner."<sup>108</sup> Truthful" in this context obviously connotes portraying the nation in an attractive and affirmative light. Meciar proposed that penal sanctions be imposed on those "who knowingly and intentionally spread wrong information about Slovakia and its government abroad." Any society, Meciar added, "has the right to defend its interests."<sup>109</sup>

A practical demonstration of a government's notion of how to assure that reporting is "truthful" came when a Slovak government commission proposed to ban live broadcasts of public meetings and gatherings. Defending the recommendation, Deputy Prime Minister Ján Carnogursky observed that speakers at public meetings are "often not representative of Slovak society. A camera team cannot assess the situation on the spot." Moreover, he added, demonstrations might include "slogans that overstep the legal order."<sup>110</sup>

### *The Misuse of Defamation Laws*

Well before the events that toppled the Communist regimes in Central and Eastern Europe, countries in the region had laws on the books imposing penalties for insulting the honor of the nation, the state, or its leaders. Indeed the idea of such laws predated the Communist era. Poland, for example, enacted such a statute in 1932.

One might suppose that, with the dawn of the democratic age, aspirations for an open society and free expression would bring the repeal of laws of this kind. Stanislaw Bartosiriski found this

<sup>108</sup> Adele Kalniczky, "Slovak Television: Back to State Control?" *RFE/RL Research Report* 1, no. 45 (November 13, 1992), 67.

<sup>109</sup> Jan Obrman, "Punish 'Disinformation,' Meciar Says," *RFE/RL News Briefs* 2, no. 6 (January 25–29, 1993), 9.

<sup>110</sup> *Verejnost*, September 27, 1991, quoted in Kalniczky, "Slovak Television: Back to State Control?" p. 64.



not to be so. Standing at the bus stop in a Polish town, Bartosiliski was airing his distaste for President Walesa. Not given to euphemisms, Bartosinski used the Polish equivalent of “son of a bitch” and other colorful language to describe the president.

Bartosiliski was charged, under Article 270(1) of the Polish penal code, with “publicly insulting the Polish Nation or State or its system of supreme bodies.” It did not matter that the conversation, between two individuals, was the kind that could take place almost anywhere when the subject of politics surfaces. The prosecutor described the crime as entailing the use of “vulgar words” in a “very public place.” For this offense, the defendant was convicted in 1992, given a suspended prison sentence (on condition of good behavior), and fined 3 million zlotys (about \$230).<sup>111</sup>

The prosecutor was not able to tell a reporter just what insults the rather vague law covers. She was unable to say, for example, whether the defendant would have been convicted if he had not used obscenities. An adviser to President Walesa was obviously troubled by the case. He described it as “sort of an accident in the system” and said that the law should be revised. The adviser noted further that the president was “a little bit troubled by this case. He didn’t want an ordinary man to have such problems.”<sup>112</sup>

Two Polish students also ran afoul of the law when, after a demonstration in 1992, a regional court in Brzeg convicted them for “abusing and discrediting” President Walesa. The students admitted to shouting “Down with Walesa — Communist agent” at a demonstration. The students were fined 2.5 million zlotys each plus court costs. The trial judge recognized that it is “normal for the president to have adversaries and fervent political opponents.” The defendants’ actions, however, “cannot be seen as anything but an attack on the presidency.”<sup>113</sup>

<sup>111</sup> Linnet Myers, “Poland’s New Democracy Has Limits,” *Houston Chronicle*, September 13, 1992, p. A26. See also “American Helsinki Committee Appeals to Walesa,” *Polish News Bulletin*, October 5, 1992.

<sup>112</sup> *Ibid.*

<sup>113</sup> “Threats to Press Freedoms,” *Helsinki Watch* 5, no. 21 (November 1993), 11.

A journalist, Ryszard Zajac, is the first Pole in the post-Communist period actually to have been imprisoned under the statute against slandering the nation or its leaders. He published an article in which he referred to a local council in Katowice and to nine Solidarity officials as “dopes” and “smalltime politicians and careerists.” He also charged that the council aspired to becoming “a Communist party committee.” Solidarity leaders filed a libel suit, and the regional prosecutor brought criminal charges. Zajac was fined and sentenced to ten months in prison, suspended if he agreed to apologize in two newspapers. Refusing to apologize, he was sent to jail. After his case was taken up publicly by Poland’s Ombudsman, the Polish Helsinki Committee, members of the Senate, and others, Zajac was released.<sup>115</sup>

Even candidates for the highest office can come under the penal statute’s gun. Running for the presidency in 1990, Stanislaw Tymiliski charged that Prime Minister Tadeusz Mazowiecki had committed “treason” by selling Polish companies to foreign investors at low prices. Tymiliski also was reported to have threatened to reveal personal items about Walesa. On December 10, 1990, the day after the election, Tymiliski was brought to book under Article 270(1). After much public attention and an apology by Tymiliski, the charges were finally dropped.<sup>115</sup>

The hazards of criticizing the government or its officials are, of course, by no means peculiar to Central and Eastern Europe. Even the most liberal democracies are not free of the law’s being used to discourage the full and free airing of complaints about government and its actions. But the incidents related here offer vivid reminders of the importance, in building a constitutional democracy, of guarding against cutting off the flow of ideas, however bothersome those ideas may be to officeholders.

In at least some of the countries of Central and Eastern Europe, there are unmistakable signs of progress toward freeing speech and

<sup>114</sup> Ibid.

<sup>115</sup> Ibid., pp. 11–12.

the press from unwarranted uses of defamation law. Both the Czech and Slovak republics have taken steps away from the notion that defaming the state and its organs can be the subject of criminal prosecution.

Early in 1994 Slovakia's parliament voted to repeal Articles 102 and 103 of the Criminal Code.<sup>116</sup> Amnesty International had objected to the prosecution of two Slovaks, one for suggesting that President Michal Kováč tolerated corruption, the other for publishing a letter critical of the president. The articles in question permitted prosecutions for defaming the republic, its government, the National Council, the Constitutional Court, or the president. Amnesty International had charged that the statutes were in conflict with the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>117</sup> It is admirable that Slovakia's government, which could have acted defensively in the face of these charges, chose to affirm Slovakia's commitment to the principle of freedom of expression by simply repealing the statutes in question.

Events in the Czech Republic were somewhat more ambiguous. President Havel referred his version of Articles 102 and 103 to the Constitutional Court. Acting on the president's request, the court struck those portions of Article 102 that dealt with defamation of parliament, the government, and the Constitutional Court. The court preserved, however, the penalty for defaming the republic. More curiously, President Havel had not asked the court to strike Article 103's ban on defamation of the president, and the court left that provision in place?<sup>118</sup>

<sup>116</sup> Slovakia 1 Radio, "Government Approves Repeal of Legislation on Defamation of State," BBC Monitoring Service, February 3, 1994.

<sup>117</sup> Slovakia 1 Radio, "Amnesty International Voices Concern over Freedom of Expression in Slovakia," BBC Monitoring Service, February 7, 1994; Reuter, "Amnesty International Urges Slovaks to Review Slander Law," Reuter Newswire, February 4, 1994.

<sup>118</sup> CTK News Agency, "Constitutional Court Abolishes Clause on Defamation of Institutions," BBC Monitoring Service, April 14, 1994; CTK News Agency, "Havel Welcomes Court's Defamation Decision," BBC Monitoring Service, April 14, 1994.

The victory for freedom of expression in the Czech Republic is therefore a mixed one. No longer need a citizen fear, as the parliament's speaker put it, being "prosecuted for harsh, open criticism of parliament or the government in accordance with some pliable interpretation of the old Article 102, which is now amended."<sup>119</sup> Yet one attacks the president at one's peril. Less than a month before the Constitutional Court's decision, Havel had ordered the dismissal of a criminal proceeding against a Czech editor charged with defaming the president, notwithstanding the editor's insistence that he be tried.<sup>120</sup> Perhaps this episode illustrates Havel's commitment to free speech. But suppose he or his successor feels differently the next time a journalist fires some harsh charge his way? That the statutory basis for prosecution in such a case remains on the books is cause for concern.

Hungary's Constitutional Court took an important step to limit the harmful potential of libel laws when it declared unconstitutional a statute that characterizes an offense against any official of the state as cause for punishment. The court did not go so far as to prohibit defamation statutes in toto. The justices believed instead that it is permissible in principle to protect the "honor and prestige" of a state authority or official. Nevertheless, the Hungarian judgment enhances freedom of expression by protecting a broader range of statements about the government, insulating personal value judgments from criminal sanction, and requiring a strict standard of proof for a libel to be actionable."<sup>121</sup> In general the court's decision moves Hungarian libel law significantly in the direction of more protective standards such as those found in the United States Supreme Court's opinion in *New York Times v. Sul-*

<sup>119</sup> CTK News Agency, "Parliament's Speaker Udhe Expected Defamation Decision," BBC Monitoring Service, April 14, 1994. Agency ellipses in transcription omitted.

<sup>120</sup> CTK News Agency, "Havel Orders Defamation Proceedings to Be Dropped," BBC Monitoring Service, March 31, 1994.

<sup>121</sup> Hungarian Radio, "Constitutional Court Relaxes Libel Laws," BBC Monitoring Service, June 24, 1994.

*livan* (1964). In that decision the Court ruled that a public official may not recover damages even for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with “actual malice,” that is, with knowledge that it was false or with “reckless disregard” of whether it was false or not.<sup>122</sup>

In stark contrast to the liberalization of defamation law in places like Slovakia and the Czech Republic, other countries, including Romania, Albania, and Serbia, are following a more reactionary course. In 1994 the Romanian Senate voted to amend that country’s criminal code to provide that defamation of the country or of the Romanian nation would be punishable by up to five years in prison.<sup>123</sup> Ironically, this amendment represented a pyrrhic victory for the press. An earlier draft of the bill had specifically targeted journalists, attracting international criticism.<sup>124</sup> Rather than drop the bill, the Senate instead made it broader so that everyone, journalists and other citizens alike, is subject to its strictures.<sup>125</sup>

Thus in Romania satire becomes serious business. A satirist compared President Iliescu to a pig, reminiscent of a Romanian fairy tale. For this thrust, Nicolae Andrei was charged with “offending state authority.”<sup>126</sup> The statute under which Andrei was charged, Article 238, had been used in the days of communism to silence dissidents. Romanian journalists accused the current government

<sup>122</sup> *New York Times v. Sullivan*, 376 U.S. 254 (1964). In March 1994 a district court in Budapest found the chief editor of a gossip magazine, *Heti Szuper Pszt!* guilty of tarnishing Foreign Minister Geza Jeszensky’s reputation by publishing an article with the title “Jeszensky Was a Double Spy?!” The court ordered 38,000 copies of the offending issue confiscated. *RFE/RL News Briefs* 3, no. 13 (March 21–25, 1994), 19.

<sup>123</sup> Rompres News Agency, “Amendment to Law States Jail Terms of up to Five Years for Defamation of Nation,” BBC Monitoring Service, February 5, 1994.

<sup>124</sup> Reuter, “Romanian Senate Amends Homosexual Ban,” Reuter Newswire, February 4, 1994.

<sup>125</sup> Opposition senators expressed fears that the law could be used to repress political opponents or members of ethnic minorities. *RFE/RL News Briefs* 3, no. 6 (January 31–February 4, 1994), 17.

<sup>126</sup> Reuter, “Romanian Police Arrest Reporter Who Mocked Iliescu,” Reuter Newswire, February 18, 1994.

of perpetuating “communist-style repression.”<sup>127</sup> In such a climate of repression, it is hardly surprising that Amnesty International has described Romania’s criminal code as placing “arbitrary and excessive restrictions on the rights to freedom of expression, assembly, and association with others.”<sup>128</sup>

Ironies abound when regimes in the Balkans use defamation and censorship laws to silence their critics. In July 1994 Serbia’s legislature enacted a criminal statute imposing up to three years’ imprisonment for defamation of state symbols or top officials, the latest in a relentless litany of measures intended to suppress freedom of speech and the press.<sup>129</sup> The Albanian government and media have been particularly diligent in exposing Serbian repression of ethnic Albanians residing in Kosovo, a region of the Serb state where Albanians are a large majority. For instance, in 1993 the Serbian government closed the only Albanian-language publishing house in Kosovo, reopening it under Serbian editorial leadership and management. The official Albanian news agency accused the Serbs of fostering “Serbian militarist propaganda” and choking off free speech in the region.<sup>130</sup>

The episode garnered international attention when a prominent Albanian human rights activist in Kosovo joined twenty-six reporters and other employees of the banished publisher in a hunger strike to protest the closure.<sup>131</sup> Albanian Radio charac-

<sup>127</sup> Reuter, “Romanian Reporter Who Mocked Illiescu Freed on Bail,” Reuter Newswire, February 21, 1994.

<sup>128</sup> Quoted in Reuter, “Amnesty Worried by Romanian Human Rights Curbs,” Reuter Newswire, April 25, 1994.

<sup>129</sup> Tanjug News Agency, “Opposition Move to Abolish Death Penalty Defeated in Parliament,” BBC Monitoring Service, July 18, 1994. See also Stan Markotich, “Government Control over Serbia’s Media,” *RFE/RL, Research Report* 3, no. 5 (February 4, 1994), 35.

<sup>130</sup> ATA News Agency, “Serbian Panorama Company Is Threat to Albanian Culture in Kosovo, ATA Says,” BBC Monitoring Service, May 20, 1993; Reuter, “Albanian-American Journalists Go on Hunger Strike,” Reuter Newswire, May 28, 1993.

<sup>131</sup> Albanian Radio, “CSCE Mission Talks with Demaci and Albanian Strikers in Pristina,” BBC Monitoring Service, May 31, 1993; Albanian Radio, “Kosovo —

terized the strike as a heroic struggle “in defense of social freedom and free thinking” and “against the national communist repression of the Serbian regime towards the Albanian press and culture.”<sup>132</sup>

Additional pressure was brought to bear by international human rights organizations and by a CSCE delegation that sought to mediate the dispute. Nevertheless, the Serbian government would not be moved. Finally, the Albanian strikers were forced to surrender, their leader conceding that “the strike produced no results.”<sup>133</sup>

In contrast to the well-chronicled Serbian indifference to human rights, particularly the freedoms of speech and press, Albanians profess a deep commitment to the principles of the open society. President Sali Berisha, comparing the two countries, decried the repression of ethnic Albanians by the Serbs. “Their constitution was abolished by tanks. The schools are closed, the enterprises too. In fact, Kosovo is living under a full occupation.”<sup>134</sup> In contrast, Berisha extolled the virtues of Albania, observing that “the secret of stability of Albania, I think lies, first of all, in the freedom and the free man, the consolidation of the values of democracy.”<sup>135</sup>

These sentiments were called into question, however, when Albania itself undertook to enforce controversial defamation laws against journalists, leading the Association of Professional Journalists to accuse the government of “revenge against the free

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No Final Agreement Reached after CSCE Mediation in Rilindja Hunger Strike,” BBC Monitoring Service, June 4, 1993.

<sup>132</sup> Albanian Radio, “CSCE Mission Talks with Demaci and Albanian Strikers in Pristina.”

<sup>133</sup> Tanjug News Agency, “Hunger Strike Yields No Agreements for Future of Albanian Publications,” BBC Monitoring Service, June 8, 1993. See Albanian Radio, “Kosovo — No Final Agreement Reached after CSCE Mediation in Rilindja Hunger Strike.”

<sup>134</sup> Albanian Radio, “President Berisha Answers Questions on Domestic and International Affairs,” BBC Monitoring Service, June 28, 1993.

<sup>135</sup> ATA News Agency, “Berisha in Korce — Foreign Policy and the Issue of Albanians in Kosovo,” BBC Monitoring Service, June 5, 1993.

press.”<sup>136</sup> To mark international press freedom day, President Berisha pardoned the imprisoned journalists. He called on the Albanian people to use the free speech to tell the truth and to affirm it, to consolidate the values of democracy, to respect the people and their dignity and to build a society based on law and free initiative.”<sup>137</sup>

The more one tries to make sense of such events, the more one wonders whether some invisible satirist is writing the script. Journalists, politicians, and ordinary people all mingle on a stage where the pursuit of “truth” crosses paths with campaigns to use press and media to achieve advantage at home and to confound enemies abroad.

### *Political Control of the Media*

When the vehicle of expression is state-run media, such as state television, the search for “truth” merges with the quest for political advantage. István Schlett, a Hungarian political scientist, noted that, whatever else politicians might quarrel about, they seem of like mind when it comes to the proper role of the state-run media: in Schlett’s view, both the governing and the opposition parties believe that one function of these institutions is to propagate their political views.<sup>138</sup>

Official statements and actions often seem to bear out this assessment. In March 1992 Robert Terentiew became the head of news programming at Poland’s state television station. “We are,” he said, “obliged to act in the interests of the state. The state is represented, for better or worse, by the government and the presi-

<sup>136</sup> Reuter, “Albanian Press Protests at Arrest of Journalists,” Reuter Newswire, February 2, 1994. See also Albanian Radio, “Trial of ‘Koha Jone’ Reporters Opens in Tirana,” BBC Monitoring Service, February 28, 1994; Albanian TV, “‘Koha Jone’ Journalists’ Trial Ends—Three Men Convicted, One Acquitted,” BBC Monitoring Service, March 2, 1994.

<sup>137</sup> ATA News Agency, “President Berisha Pardons Convicted Journalists,” BBC Monitoring Service, May 5, 1994.

<sup>138</sup> Judith Pataki, “Power Struggle over Broadcasting in Hungary,” *RFE/RL Research Report* 2, no. 11 (March 12, 1993), 17.



dent. We must not be anti-government or anti-president.” To show that he meant what he said, he gave all television journalists three months’ notice of dismissal, intending to reinstate those that passed ideological muster.<sup>139</sup> One can imagine the pressure this put on the station’s employees, who, in mid-1992, had no other television stations to which to turn if they lost their jobs.

The view of state-run media as a mouthpiece for the government of the day is nicely captured in a 1990 statement of the Romanian government: “Freedom of expression as applied to television does not imply freedom to make irrelevant assessments of the government or to refuse to relay official communiques.”<sup>140</sup> Slovakia’s President Michal Kováč was equally direct: the Slovak Press Agency, he declared, should be “an extended arm of the president.”<sup>141</sup>

Sometimes a government official is candid about the political uses that a regime makes of state-run media. Kujtim Ymeri, a member of the Management Council of Albanian Radio-Television, conceded that Albanian television is a creature of the state, managing the flow of information so as to rule out alternative views or criticisms of the government. “In the final analysis, one can blurt out the truth,” he said in an interview. “The principal reason for this situation is that ARTV’s activities are subject to strict political censorship.” In fact, Ymeri believed that censorship had become stricter in recent years and that “ARTV is on the verge of being wholly converted into a party and government instrument.”<sup>142</sup>

The establishment of independent boards to supervise state television has often failed to insulate those operations from the

<sup>139</sup> Patricia Clough, “Fears over TV Clampdown in Poland,” *Independent*, March 31, 1992, p. 14.

<sup>140</sup> Associated Press (Bucharest), October 21, 1990, quoted in Helsinki Watch, *Since the Revolution: Human Rights in Romania* (New York, 1991), p. 37.

<sup>141</sup> Jiri Pehe, “Slovak President on the Media,” *RFE/RL News Briefs* 2, no. 16 (April 5–8, 1993), 11.

<sup>142</sup> *Koha Jone*, “Radio-TV Management Member Says It Is Partial and Prejudiced,” BBC Monitoring Service, June 3, 1994.

winds of politics. Slovakia's parliament established independent boards for the control of Slovak Television and Radio in May 1991, intended to "safeguard the objectivity and the independence of programming."<sup>143</sup> In the interest of impartiality, these boards were to be selected by a wide range of interests. Relations between the boards and the government quickly deteriorated, however, after the Movement for a Democratic Slovakia (MDS) came to power in June 1992.

In July 1992 Slovak Television's chief producer, Ján Füle, rejected a demand by Prime Minister Vladimir Meciar for ten minutes of regular air time each week to address the people. Füle relied on a 1991 law that obliged the station to give air time only for "important and urgent announcements that cannot be delayed." Füle proposed that the station air regularly scheduled interviews with the prime minister, each conducted by a different journalist. In October he was fired from his job. Meanwhile the government moved against Slovak Television's supervisory board. The government was highly critical of the board for its support of Füle's decision; after an impasse within the board's membership over the Füle dispute, the chairman resigned, along with three other members. By mid-September the board had declared itself "incapable of functioning."<sup>144</sup> The Presidium of the Slovak National Council, dominated by the MDS, took over supervision of Slovak Television. In September 1992 Slovakia's parliament enacted a law creating a new board. The statute provided that all nine members of the board were to be elected by parliament, a body dominated by a coalition of the MDS and the Slovak National Party (SNP). When parliament chose the new board, most of its members had run on the MDS ticket in the June 1992 elections.<sup>145</sup>

<sup>143</sup> Sharon Fisher, "Slovak Television in Disarray," *RFE/RL Research Report* 3, no. 7 (February 18, 1994), 29.

<sup>144</sup> *Ibid.*, p. 30.

<sup>145</sup> For accounts of the struggles over control of Slovak Television, see Jan Obrman, "The Slovak Government versus the Media," *RFE/RL Research Report* 2, no. 6 (February 5, 1993), 26; Adele Kalniczky, "Slovak Television: Back to State Control?" *RFE/RL Research Report* 1, no. 45 (November 13, 1992), 64.

Throughout 1993 the Slovakian media endured harsh criticism from officials of the MDS, and in September 1993 Minister of Culture Dušan Slobodník proposed that both Slovakian Television and Slovakian Radio be placed under his direct control. Charging that both broadcast media gave “too much space to the opposition” and “show only what is wrong in our country,” Slobodník urged that the two entities be deprived of their status as semi-autonomous public corporations in order to ensure their objectivity.<sup>140</sup> MDS deputy chairman Roman Zelenay agreed, accusing Slovak Television and Radio of acting as “Anti-Slovak Television and Radio.”<sup>147</sup>

Despite such harsh rhetoric, for most of 1993 the MDS was unable to muster the bite to back up its bark. As leader of a minority government, Meciar could not secure adequate parliamentary support to pass significant legislation. The approval of a parliamentary coalition between MDS and SNP in October 1993, however, provided Meciar with the legislative majority he needed. Following a successful no-confidence vote aimed at Slovak Television Board chairman Ivan Ciel and another member, the parliament elected seven new members to the nine-member board, considering only candidates from within the ruling coalition.<sup>148</sup> In November 1993 the sole remaining member from the previous board observed that “television can win an election. . . . I’m sure the MDS and SNP want to control it.” He had decided not to resign from the board, he said, because “it would only mean that the goal of the MDS and SNP was accomplished. If I don’t stay they’ll be able to do absolutely everything they want.”<sup>149</sup>

Managing boards are the focus of efforts at political control of the media in other countries in the region as well. Romania’s 1992 Law on the Broadcast Media established a National Audio-

<sup>146</sup> Fisher, “Slovak Television in Disarray,” p. 31.

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*, pp. 31–32.

<sup>149</sup> *Prague Post*, November 10–16, 1993, quoted in *ibid.*, p. 32.

visual Council (NAC) to oversee radio and television broadcasting. As of July 1992 eight of the council's eleven members were loyal to President Iliescu, prompting the opposition publication *Adevarul* to liken the NAC to Ceausescu's National Radio-Television Council and to decry the "restoration of communist superstructures."<sup>150</sup> In April 1994 the Romanian parliament approved a controversial law on the organization of state radio and television; an opposition leader called it a step back toward the Communist era.<sup>151</sup> In Croatia, a top official of the ruling Croatian Democracy Community (HDZ) was installed as director of Croatian Television.<sup>152</sup> A Television and Radio Council, made up of members of various parties, exists, but as of 1993 the council apparently had never met.<sup>153</sup>

The stakes over control of the broadcasting media are vividly illustrated by Hungary's so-called Media War. The contestants in this war were the country's ruling coalition, led by Premier József Antall's Hungarian Democratic Forum (HDF), and the opposition Alliance of Free Democrats (AFD), led by President Árpád Göncz. In 1992 Antall asked Göncz to dismiss Elemér Hankiss, the head of the state television station, and Csaba Gombár, the state radio's chief. Although both men had originally been appointed with broad multiparty support, their actions, after some months in office, might fairly have been characterized as tilting to the interests of the opposition.<sup>154</sup>

Politics surely played a part in Antall's demand for the dismissals. According to a Gallup poll, in December 1992 HDF's

<sup>150</sup> Quoted in Dan Ionescu, "Romania," *RFE/RL Research Report* 1, no. 39 (October 2, 1992), 54.

<sup>151</sup> *RPE/RL News Briefs* 3, no. 17 (April 18–22, 1994), 16.

<sup>152</sup> Patrick Moore, "Croatian Opposition Demands Replacement of TV Director," *RFE/RL News Briefs* 2, no. 19 (April 26–30, 1993), 12.

<sup>153</sup> Ken Kasriel, "Communist Past Weighs on Croatian Press," *Christian Science Monitor*, January 26, 1993, p. 13.

<sup>154</sup> See Pataki, "Power Struggle over Broadcasting in Hungary," p. 17.

popularity hit an all-time low of 11 percent.<sup>155</sup> With a party congress looming, Antall needed to defend himself against complaints from the party's right wing. That wing's leader, István Csurka, declared that the party could increase its popularity "only if it had its own press and media which breathed together with the government."<sup>156</sup> (Csurka and his allies attracted no little attention by their claims that Hungarian Radio and TV were in the hands of Communist Jews and that Göncz took his orders from New York, Tel Aviv, and the freemasons in Paris.)<sup>157</sup>

President Göncz refused Antall's request, and the prime minister appealed to the Constitutional Court in June 1992. Weighing the constitution's provisions regarding the prerogatives of the president and the government respectively, the court ruled that Göncz could refuse Antall's request only if he believed that the democratic functions of the organizations were at risk. The president, however, found justification not to comply with the court's decision.<sup>158</sup>

One casualty of the Media War was the attempt to enact a law on the media, including provisions for the issuing of private broadcasting licenses. The political battle over whether or not to fire the two officials brought an impasse to efforts in parliament to enact a new media law. Meanwhile, the Constitutional Court had declared the existing law (enacted in 1974) to be unconstitutional, but the court had permitted that law to stay in effect until a new law was passed. Not only was Hungary operating under an unconstitutional media law, but also a moratorium on issuing broadcast licenses had

<sup>155</sup> Ken Kasriel, "Hungary's 'Media War' Curbs Press Freedoms," *Christian Science Monitor*, January 11, 1993, p. 5.

<sup>156</sup> *Ibid.*

<sup>157</sup> István Deák, "Post-Post-Communist Hungary," *New York Review of Books*, August 11, 1994, p. 34. Csurka also charged that the American philanthropist George Soros was the leader of an international Jewish conspiracy. *Ibid.*

<sup>158</sup> Edith Okay, "Hungary," *RFE/RL Research Report* 1, no. 39 (October 2, 1992), 42. The embattled chairmen resigned their posts in January 1993, complaining that they could no longer guarantee media independence in an environment of escalating government pressure. Edith Oltay, "Hungarian Radio and Television under Fire," *RFE/RL Research Report* 2, no. 38 (September 24, 1993), 40.

been declared by the former Communist government in 1989. As of late 1992, 266 applications for licenses had piled up while the long and painful debate over a new media law continued.<sup>159</sup>

The experience of Poland illustrates a classic case of the politicization of media boards, as the National Radio and Television Broadcasting Council and President Lech Walesa have engaged in a bitter struggle for the right to dictate the future of the Polish broadcast media. The council, created pursuant to the Radio and Television Broadcasting Law of 1992, focused simultaneously on the dual goals of reforming the state television bureaucracy and facilitating the commencement of private commercial television broadcasting in Poland. Neither objective has escaped the political controversy seemingly endemic to the media in Central and Eastern Europe.<sup>160</sup>

The immediate challenge confronting the council was to reform the Communist media monopoly. The archaic Radio and Television Committee (RTVC), mouthpiece of the Polish Communist Party since 1960, required over two years to silence. "Because of the organization's Byzantine structure, its impenetrable system of discretionary payments, and its irregular bookkeeping methods, the task was reminiscent of cleaning out the Augean stables," reported observer Anna Sabbat-Swidlicka, emphasizing the Herculean task confronting the reformers.<sup>161</sup> Suspicious that RTVC management was obstructing the reform effort, council chairman Marek Markiewicz enlisted the aid of the Supreme Auditing Chamber, whose investigations disclosed a litany of fiscal mismanagement and conflicts of interest.<sup>162</sup>

Despite the black eye given Polish Television and Radio by the council reform efforts, RTVC chairman Janusz Zaorski had

<sup>159</sup> Oltay, "Hungary," p. 40.

<sup>160</sup> See Anna Sabbat-Swidlicka, "The Travails of Independent Broadcasting in Poland," *RFE/RL Research Report* 3, no. 10 (March 11, 1994), 40. For an account of the highly politicized decision to grant Poland's first national commercial broadcasting license, see the discussion of the PolSat episode, *infra*, pp. 244–47.

<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.*, p. 41.

a strong ally in President Lech Walesa. The chairman afforded presidential advisors direct access to television management for programming and personnel recommendations and was widely criticized for controversial programming and editorial decisions that appeared to favor the president during the 1993 parliamentary campaign.<sup>163</sup> In a special report assessing the campaign, the council chastised Polish Radio and Television for its partisanship and lack of professionalism, prompting Zaorski to charge that the council sought to introduce censorship of the broadcast media.<sup>164</sup>

Seeking to gain the upper hand in this escalating conflict, the council appointed an executive board to oversee Polish Television in November 1993, superseding Zaorski and distancing Walesa from the state media hierarchy. Chairman Markiewicz explained that the transition into a new era of broadcast journalism required a new generation of leadership at Polish Television: "In the Council's view there is the need to find, and we have been doing so, competent people able to undertake the enormous task of transforming state television into public television, which would become an element of the changes in the democratic state."<sup>165</sup>

In a decision with unmistakable symbolic overtones for the future of Polish Television, the council selected Wieslaw Walendziak, a progressive young "outsider" untainted by association with the corrupt RTVC establishment, as chairman of the new board.<sup>166</sup> Not surprisingly, President Walesa disagreed vehemently with the appointment.<sup>167</sup>

<sup>163</sup> Ibid., p. 42.

<sup>164</sup> PAP News Agency, "Radio and TV Council Think Radio Coverage of Elections Better Than TV's," BBC Monitoring Service, September 25, 1993; Sabbat-Swidlicka, "The Travails of Independent Broadcasting in Poland," pp. 42–43.

<sup>165</sup> Polish Radio 1, "State Television to Become Public Company by End of Year," BBC Monitoring Service, November 6, 1993.

<sup>166</sup> Sabbat-Swidlicka, "The Travails of Independent Broadcasting in Poland," p. 43.

<sup>167</sup> Polish Radio 1, "President Unhappy with Appointment of New Polish TV Chairman," BBC Monitoring Service, November 22, 1993; Sabbat-Swidlicka, "The Travails of Independent Broadcasting in Poland," p. 43.

From the outset, the new chairman voiced his determination to realize the goals of political neutrality and journalistic objectivity, pledging to “raise standards and rectify aspects that are obviously not in line with the idea of public television.”<sup>168</sup> Moreover, Walendziak has backed his promises up with an ambitious agenda that includes a strong commitment to political neutrality, expanded educational and cultural programming, greater autonomy for local television stations, and stricter standards of journalistic professionalism.<sup>169</sup>

In particular, Walendziak has made this emphasis on integrity and professionalism the hallmark of his tenure, insisting that the elimination of cronyism is the first step on the road to independent and objective media. “If this company is to survive and perform its tasks sensibly it needs new management,” the chairman declared.<sup>170</sup> With the young and aggressive Walendziak at the helm, Polish Television appears to have embarked on the road to objective public media in the Western tradition.

As it became apparent that the council would defend its independence against his efforts to dictate decisions, Walesa publicly withdrew his support from his three nominees — including chairman Markiewicz — and solicited their resignations.<sup>171</sup> The embattled board members rebutted Walesa’s criticisms and refused to retreat, however, and the Polish parliament chose not to accept Walesa’s thinly veiled invitation to reconstitute the council.<sup>172</sup> The

<sup>168</sup> Sabbat-Swidlicka, “The Travails of Independent Broadcasting in Poland,” p. 44

<sup>169</sup> *Ibid.*, pp. 44–45.

<sup>170</sup> PAP News Agency, “Head of Polish TV’s Public Opinion Body Not to Have Contract Renewed,” BBC Monitoring Service, January 3, 1994; PAP News Agency, “SLD Deputies Meet New Chairman of Polish Television Company,” BBC Monitoring Service, December 3, 1993.

<sup>171</sup> PAP, “President Walesa Withdraws Support for Broadcasting Council Members,” PAP Business News from Poland, December 15, 1993; PAP News Agency, “Walesa Presses for Resignation of His Nominees to Broadcasting Council,” BBC Monitoring Service, December 10, 1993.

<sup>172</sup> PAP News Agency, “Radio Piracy Cause of Walesa Opposition to Broadcasting Council Members,” BBC Monitoring Service, December 13, 1993; Sabbat-Swidlicka, “The Travails of Independent Broadcasting in Poland,” pp. 44–45.



prevailing sentiment was expressed by Ryszard Bugaj, leader of the Union of Labor:

It is [a] question of principle, because we cannot allow a situation to develop where those council representatives chosen by the president are treated as his errand boys. . . . If someone ceaselessly attempts this sort of manipulation, then radio and television will be unable to defend themselves against primitive political pressure, and this would mean the death of public broadcasting.<sup>173</sup>

In the arena of public broadcasting, at least, it appears that the National Radio and Television Broadcasting Council has been successful in implementing its agenda of media objectivity and autonomy. The battles over the reform of Polish Television, however, foreshadowed the more severe political controversy that would erupt in 1994 when the council clashed with President Walesa over the issue of private broadcasting licenses.<sup>174</sup>

Old ways of thinking about the press surfaced in Estonia in March 1994 when a government-appointed supervisory board dismissed the editor-in-chief of a major Estonian newspaper. Publication of the paper was temporarily suspended in retaliation for articles criticizing the government.<sup>175</sup> Owned by the state, *Rahva Haal* acquired a reputation for reliable journalism and an independent editorial style that belied its official status. A series of articles airing charges of state corruption, however, proved too much for the governing board. The board justified its actions as being in the interest of maintaining “political balance” as national elections neared.<sup>176</sup>

<sup>173</sup> PAP News Agency, “Labour Union Leader Supports Broadcasting Council,” BBC Monitoring Service, December 13, 1993.

<sup>174</sup> For a discussion of the PolSat episode, see *infra*, pp. 244–47.

<sup>175</sup> Reuter, “Estonian Newspaper Shut for Criticizing Government,” Reuter Newswire, March 29, 1994.

<sup>176</sup> Julian Borger, “Masthead Piracy Confuses Tallinn,” *Guardian*, April 2, 1994, p. 11.

The newspaper's staff, national press unions, and the opposition denounced the board's paternalism as thinly veiled censorship. The staff, perhaps recalling how direct protest in the Baltic states played such a key role in the early stages of the Soviet Union's unraveling, occupied the newspaper's premises to make their grievance more tangible. It may be a sign of how civilized protest has become in post-Communist society that, after a 48-hour standoff, both the staff members and the police officers who had surrounded the premises elected to go home for Easter. Both sides hired private security firms to maintain their lines.<sup>177</sup> It is more than a little symbolic that this dispute over press independence had a small touch of capitalist opportunity.

#### *Coverage of Political Campaigns and News*

Many countries in Central and Eastern Europe have grappled with the issue of fairness in allocating time for political parties' messages during political campaigns. In 1990 the campaign period in Czechoslovakia lasted forty days. During that period, each party contesting the election was eligible for a total of four hours of free radio and television time. This time was divided into segments of varying length, the longest being one thirty-minute slot, the shortest being seventy one-minute spots. A computer-generated schedule determined the allocation of time slots for various parties during the forty-day period, and a block of time from 5:00 P.M. to 7:00 P.M. was reserved for political advertisements. Observers commented on the fairness of Czechoslovakia's allocation, although it was reported that the public quickly lost interest in watching the two-hour block of advertising.<sup>178</sup>

During the 1990 campaign in Bulgaria, the political parties negotiated an agreement by which the two largest parties, the Socialist Party and the Union of Democratic Forces, got twenty

<sup>177</sup> Ibid.

<sup>178</sup> Larry Garber and Eric Bjornlund, eds., *The New Democratic Frontier* (Washington, D.C.: National Democratic Institute, 1992), p. 126.

minutes of airtime three nights a week. The third largest party, the Agrarian Party, received fifteen minutes, and the remaining parties split five minutes.<sup>179</sup>

Laws assuring equal access to the media do not always work equitably. Such a law in Romania is reported to have worked against the opposition and in favor of the National Front during the May 1990 elections. The problem was dilution of the major opposition parties' message when those parties were forced to compete for time with over eighty parties that initially qualified to air their three-minute campaign videos.<sup>180</sup>

Media laws are no better than their implementation. An international delegation that reported on Romania's May 1990 elections found serious problems in implementation of that country's laws, impeding any effort to achieve fair and equitable coverage. The observers identified, among other problems, a lack of established criteria for allocating the times at which parties' videos would run, unfair distribution of time, allocation of obscure hours for airing spots, and absence of notice as to when spots would appear.<sup>181</sup>

Fairness in the coverage of political campaigns is further undermined when reporting of the news is biased. A vivid example of such bias occurred during the coverage of campaign rallies in Romania in April 1990. On April 22 both the Peasant Party and the National Front held rallies at which their candidates spoke. Foreign observers who attended both events estimated that each attracted about 15,000 people. Media coverage, however, was not so evenly distributed. While a full ten minutes of the evening newscast was devoted to coverage of the National Front's rally, only sixty seconds were reserved for the Peasant Party. Moreover,

<sup>179</sup> Commission on Security and Cooperation in Europe, *Elections in Central and Eastern Europe: A Compendium of Reports on the Elections Held from March through June 1990* (Washington, D.C., July 1990), p. 149.

<sup>180</sup> National Republican Institute for International Affairs and National Democratic Institute for International Affairs, *The May 1990 Elections in Romania: International Delegation Report* (Washington, D.C., 1991), p. 39.

<sup>181</sup> *Ibid.*

while coverage of the opposition rally was restricted to a few shots of people loitering on the edge of an apparently insignificant event, wide-angle pans of the National Front assembly depicted the enthusiastic response of a massive crowd to President Iliescu's speech. As the speech ended, Iliescu's face was, in the words of a foreign observer, "superimposed on the Romanian flag and held in soft focus as dramatic music rose on the soundtrack — the image that concluded that day's newscast."<sup>182</sup>

Distortion of the day's news can also occur, of course, when the subject is something other than a political campaign. A bias was obvious in Romanian television's coverage of the ongoing demonstrations in University Square, especially during the early days of the rally. News broadcasts emphasized the presence of drunks, vagabonds, and Gypsies, a notably unpopular minority in Romania. Commentary accompanying this coverage characterized the gathering with "undisguised contempt."<sup>183</sup>

### *The Licensing and Censorship of Private Broadcasting Stations*

It takes some backbone for independent radio and television boards to operate without regard to political pressures, even in countries where the democratic way of life seems to have taken hold. The controversy over the award of a license to a private television station in the Czech Republic offers an apt illustration.

A 1992 law enacted by the Czech parliament created the Board for Radio and Television Broadcasting. The nine members of the board are elected by and are accountable only to the parliament. Its members may not hold posts in political parties or in media companies and may not have any financial interests in broadcasting companies or have other interests that could influence their decisions.<sup>184</sup>

<sup>182</sup> Ibid., p. 38.

<sup>183</sup> Ibid.

<sup>184</sup> See Jiri Pehe, "Czech Republic: Furor over Independent Radio and Television," *RFE/RL Research Report* 2, no. 15 (April 9, 1993), 23–24.

After an open competition, in January 1993 the board awarded a license for nationwide television broadcasting to a group called Central European Television for the Twenty-first Century (CET 21). The award to CET came under immediate and sharp attack. Václav Klaus's Civic Democratic Party, in a statement released on February 1, 1993, denounced the board's decision as "politically dangerous" and insisted that the board reconsider its action.<sup>185</sup>

The Civic Democratic Party's deputy chairman, Petr Cermák, was even sharper in his criticism of the CET award: "I, as a citizen of the Czech republic, absolutely cannot accept that the main news media should be in the hands of political losers who are not only the cause of many of the problems we currently face but are, moreover, from Slovakia."<sup>186</sup> Cermák and his colleagues were no doubt outraged that among CET's principal founders were individuals associated with political views at odds with those of Václav Klaus and the CDC. Among the founders of CET were Vladimír Zelezný, a leader of Civic Movement (a party that failed to win seats in the June 1992 parliamentary elections), and Fedor Gál, formerly chairman of Slovakia's Public against Violence. Thus Cermák was able to complain of CET's being in the hands of "a former leading politician of the country that has split away from the Czech Republic, a representative of Hungarians, and a representative of a party that lost in the last election." To make matters stickier, although CET is a Czech company, most of its capital is to come from the Central European Development Corporation, headed by Mark Palmer, formerly the U.S. ambassador to Hungary. Thus Cermák charged that the license had in effect been given "to a foreign company."<sup>187</sup>

In February 1994 the Czech Republic launched the first nationwide private television station in the former Soviet sphere of Cen-

<sup>185</sup> CTK, February 1, 1993, quoted in *ibid.*, p. 25.

<sup>186</sup> *Telegraf*, February 2, 1993, quoted in *ibid.*

<sup>187</sup> *Lidové noviny*, February 4, 1993, quoted in *ibid.*

tral and Eastern Europe.<sup>188</sup> Nova TV, owned by the consortium CET 21, sees its mission as civic service, a clinic in democratization. “This society must be taught that there is a choice,” said general director Vladimír Zelezný. To that end, the new station promised not only entertainment, but also programming meant to instruct. “The problem is that people after 42 years of communist rule are still not prepared to behave as in a democratic society,” Zelezný explained, “They are not prepared to defend themselves as citizens. We will try to help them understand that they are part of the process. They must be.”<sup>189</sup>

The new station appears to have whetted Czech appetites for private television. After only six months in operation, Nova already had more viewers than did state-owned Czech TV. The Council for Radio and TV Advertising awarded three licenses for satellite broadcasting in the Czech Republic, including a license to CET 21 on the strength of Nova’s performance.<sup>190</sup> Joining the queue, the Christian Democratic Party declared its intention to seek the creation of a second private nationwide television station.<sup>191</sup> It is obvious that the Czech Republic is well on its way to a new era in the broadcast media.

Meanwhile, events in Poland served as a reminder that efforts to set up private television stations remain fraught with political overtones. In January 1994 the National Radio and Television Broadcasting Council announced that PolSat, a Polish broadcasting company, would be granted the first license for a privately owned

<sup>188</sup> *Premiera*, an Italian-financed channel, was already on the air, but it reached only Prague and parts of southern Bohemia. *RFE/RL News Briefs* 3, no. 15 (April 5–8, 1994), 19.

<sup>189</sup> Reuter, “Czech Private TV Goes on the Air,” Reuter Newswire, February 4, 1994.

<sup>190</sup> “New Czech TV Channels,” *Euromarketing*, July 5, 1994.

<sup>191</sup> Reuter, “Czechs Plan Bill to Privatise Second TV Channel,” Reuter Newswire, March 29, 1994.

nationwide television channel in Poland.<sup>192</sup> Several prominent international media groups (among them Time-Warner, Inc.) had competed for the license. PolSat benefited, however, in that its capital derived entirely from Polish sources; the company is 97 percent owned by Zygmunt Solorz, who is of dual Polish-German citizenship. The council feared that the Western media giants' economic power and their technical and programming expertise would overwhelm the nascent Polish media industry.<sup>193</sup>

The award to PolSat provoked immediate controversy, with separation-of-powers and other constitutional implications. Immediately after the grant had been made, President Lech Walesa reportedly telephoned Marek Markiewicz, chairman of the council, and accused him of having "given it away to the communists."<sup>194</sup> When, notwithstanding the president's objections, the license was officially conferred upon PolSat in March, Walesa fired Markiewicz. Walesa ostensibly objected to Polsat's being the licensee on two grounds: first, that Polsat's having the new license in addition to its existing private satellite license created a monopoly in private television broadcasting, and, second, that on the basis of a secret police report Polsat's owner, Solorz, was of doubtful character and might pose a national security risk. Some observers wondered whether the real reason for Markiewicz's dismissal was tension between Walesa and the increasingly independent broadcasting council.<sup>195</sup>

Walesa's assertion of authority to remove the council's president was challenged as an abuse of presidential power. In May

<sup>192</sup> Reuter, "PolSat Wins Polish TV Broadcasting Licence," Reuter Newswire, January 27, 1994; Reuter, "Polish Group Wins TV Broadcasting Bid in Poland," Reuter Newswire, January 27, 1994.

<sup>193</sup> Sabbat-Swidlicka, "The Travails of Independent Broadcasting in Poland," p. 47.

<sup>194</sup> *Ibid.*, p. 48.

<sup>195</sup> "Poland's Walesa Fires Head, Reviews TV License Decision," *Euromarketing*, March 8, 1994; Reuter, "Walesa Orders Sacking of Polish TV Council Chief,"

1994 the Constitutional Tribunal ruled against Walesa, holding that the power vested in the president to nominate the chairman does not imply a corollary power to dismiss the chairman at the president's will.<sup>196</sup> Insulating the council from the executive was the talisman of the tribunal's ruling: the judges held that the council is entrusted with the responsibility of safeguarding freedom of speech and the public's right to information. Hence its independence from the executive had to be maintained.<sup>197</sup>

Poland's media struggle cannot be understood without considering its relation to the politics and personalities involved, especially the efforts of President Walesa and his adversaries to get the upper hand in shaping the powers of the presidency and of the parliament respectively. Anna Sabbat-Swidlicka maintains that Walesa's continuing conflict with the National Radio and Television Broadcasting Council "must be seen in the context of his broader struggle to gain the initiative in Polish politics and set up a presidential system of government that would reduce the role of political parties and the parliament in the political process."<sup>198</sup> The media conflict therefore had implications for Poland's emerging constitutional order that transcend the immediate dispute itself.

Three constitutional principles came together in the PolSat episode: freedom of expression and information, separation of powers, and an independent judicial arbiter of constitutional principles. The delicacy of licensing private television stations requires, if free expression is to be enhanced thereby, that there be officials able to act without fear of arbitrary removal at the executive's

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Reuter Newswire, March 1, 1994. Recall the discussion of the escalating political power struggle between Walesa and the council, *supra*, pp. 236-39, which foreshadowed this final showdown.

<sup>196</sup> PAP News Agency, "Constitutional Tribunal — Walesa Illegally Recalled Radio and TV Council Head," BBC Monitoring Service, May 14, 1994. Despite the ruling, Markiewicz was not restored to his post; the Constitutional Tribunal has prospective authority only. *Ibid.*

<sup>197</sup> *Ibid.*

<sup>198</sup> Sabbat-Swidlicka, "The Travails of Independent Broadcasting in Poland," p. 49.



whim. Moreover, there needs to be a forum in which to review the executive's action, as was available in the Markiewicz case.

Overall, the council's success in establishing the independence of Polish Television and the Constitutional Tribunal's ruling in the PolSat case offer grounds for optimism about the prospects for both public and commercial broadcasting in Poland. But the controversy over the Polsat license is a reminder of the political shoals to be navigated in enlarging opportunities for private broadcasting. The episode underscores the comment made by *Euromarketing*: "In Poland and other Eastern European countries where censorship was the norm before the fall of communism, governments are finding it hard to hand over control of the media to private hands or state-appointed regulators."<sup>199</sup>

It is not only politics that feeds the instinct to censor. Censorship can also be practiced in the name of morality and religion. Polish political culture seems to accept censorship of discourse touching two historically crucial subjects, the nation and religion. Poland's distinctive history includes the long period of partition, when Poland disappeared for over a century from the map of Europe, and the more recent Communist period. In both eras, Poles struggled to preserve a national identity, and in both periods the Catholic Church played a pivotal role in that effort. Irena Grudzinska Gross notes how in Poland "both fatherland and religion are treated with greater respect and reverence than in most European countries."<sup>200</sup> Moreover, there is in Polish culture a tradition viewing freedom as belonging to the nation rather than to the

<sup>199</sup> "Poland's Walesa Fires Head, Reviews TV License Decision," March 8, 1994. In Slovakia, the Radio and Television Council selected a local production company to broadcast the first nationwide private television station in that country. Reuter, "Slovak Agency Tabs Local Studio for TV License," Reuter Newswire, April 20, 1994. For the second time in three months, however, the Slovak parliament refused to approve the council's nominee, leaving the initiative stillborn. "This parliament simply does not want private television," a disappointed investor complained. "Private Television Company Refused License," *CTK Ecoservice*, June 10, 1994, p. 12.

<sup>200</sup> Irena Grudzinska Gross, "Broadcasting Values," *East European Constitutional Review* 2, no. 3 (Summer 1993), 52.

individual citizen (almost an echo of Jean-Jacques Rousseau's "general will"). The identification of religious faith with the idea of freedom and national independence is a peculiar aspect of political culture in Poland.<sup>201</sup>

Polish history thus throws light on the Radio and Television Act enacted in December 1992 by the Polish parliament. Perhaps the most striking feature of that law is the requirement that broadcasts "respect the religious feelings of the audience and in particular respect the Christian system of values."<sup>202</sup> The Sejm had voted in October 1992 to exclude that provision from the law as being too vague. Church leaders, however, including Cardinal Józef Glemp, complained of the clause's omission, and, at the urging of the Senate, it was reinserted in the bill as finally approved.<sup>205</sup>

The *Warsaw Voice* has reported that many journalists "are unsure of how to behave in the face of the new law's controversial requirements."<sup>204</sup> The Radio and Television Council, which enforces the law, has various means of enforcement at its disposal, including fines and, in severe cases, nonrenewal or revocation of a radio or television station's license.

Even before the law's enactment self-censorship was a fairly common practice. The "Christian values" provision has brought watchdog groups, especially the church, into more prominent roles as guardians of religious values against the spread of iniquitous ideas. In May 1993 the Conference of Bishops issued a declaration explaining what the phrase "Christian values" means. Irena Grudzinska Gross says that the bishops' declaration "was meant to serve as a basis for interpretation of the Broadcasting Bill."<sup>205</sup> The

<sup>201</sup> Ibid.

<sup>202</sup> See "Threats to Press Freedoms," *Helsinki Watch* 5, no. 21 (November 1993), 12. This issue of *Helsinki Watch* was a report prepared for CSCE's Free Media Seminar, which met in Warsaw in November, 1993.

<sup>203</sup> Ibid.

<sup>204</sup> Quoted in *ibid.*

<sup>205</sup> Gross, "Broadcasting Values," p. 53.

declaration's text takes aim at many aspects of modernity: divorce, abortion, consumerism, contraception, and crime, among them. While the declaration does not argue that Christian values can be forced upon people, it nevertheless looks to state censorship to uphold religion's precepts.

Helsinki Watch has argued that Poland's "Christian values" law "will chill legitimate speech as broadcasters are forced to censor themselves to fit within the undefined boundaries of the law."<sup>206</sup> Poland's ombudsman, Tadeusz Zielinski, sees totalitarian implications in efforts to make morality supreme over law.<sup>207</sup> But in response to a question posed by the chief justice, the Constitutional Tribunal ruled that the "Christian values" proviso does not violate constitutional protection for freedom of speech.<sup>208</sup>

It is not only journalists who must worry about offending religious sensibilities in Poland. Under the Polish penal code, offending religious feelings is punishable by a fine or a two-year prison sentence. A right-wing political party, the Christian National Union (ZChN), has been in the vanguard of efforts to have prosecutions brought under this statute. In 1992 the party pressed charges against a rock group for a song entitled "ZChN's Coming," sung to the tune of a hymn, "Jesus Christ Is Coming"; the prosecutor ultimately abandoned the proceedings. In 1993 a ZChN deputy, Marek Jurek, unsuccessfully sued the *Poznaniak* weekly for offending his religious feelings, demanding an apology and 500 million zlotys in damages, payable to the Red Cross. His complaint: that the paper had published a touched-up photograph of the Virgin Mary having the face of American singer Madonna, holding a baby with Mr. Jurek's face.<sup>209</sup>

<sup>206</sup> "Threats to Press Freedoms," p. 13.

<sup>207</sup> Gross, "Broadcasting Values," p. 53.

<sup>208</sup> *Rzeczpospolita*, "Constitutional Tribunal Rules Out Censorship," Polish News Bulletin, March 8, 1994, p. 1.

<sup>209</sup> "Threats to Press Freedoms," pp. 13–14.

## PROSPECTS FOR THE FUTURE

Any effort to assess progress toward the open society in Central and Eastern Europe must reckon with the fact that judgments about specific controversies will often rest upon uncertain conclusions. During the days of the one-party state, an outsider's generalizations about illiberal ideologies and repressive actions in the Soviet sphere were not difficult to make. Regimes faithful to Marxist-Leninist notions of state and law rarely set out to nurture authentic freedoms, in particular the right to speak one's mind.

Today the scene is murkier in countries now free of Soviet domination. Many of those countries have made unmistakable progress toward constitutional democracy. Yet there are old habits to be unlearned and new ways to be nurtured. In this transitional period, it is often not easy to know just when those in authority have used their power to unfair advantage.

A good example may be found in the spectacle that took place in Hungary when, only two months before the 1994 elections, the management of Hungarian Radio announced the dismissal of 129 editors and journalists, many of whom had been critical of the incumbent government.<sup>210</sup> International reaction was overwhelmingly negative to the firings; the move was seen as abridging the freedom of the press.<sup>211</sup> On closer examination, it is less clear just what principles were at stake in the struggle.

The crisis had its genesis in four years of parliamentary gridlock, as the battle for control of Hungarian Radio and Television destroyed hopes for agreement on a new media law.<sup>212</sup> The struggle

<sup>210</sup> See Judith Pataki, "Hungarian Radio Staff Cuts Cause Uproar," *RFE/RL Research Report* 3, no. 19 (May 13, 1994), 38. Pataki not only offers the only comprehensive analytical treatment of the episode, but likewise introduces persuasive — albeit not dispositive — reasons to temper the criticism heaped upon Hungary by opposition parties and the international media. Her nuanced treatment of this episode is a valuable reminder that free speech controversies are not always black and white; sometimes they are questions of interpretation.

<sup>211</sup> *Ibid.*, pp. 41–42. See also Reuter, "State TV Coverage Becomes Hungarian Campaign Issue," Reuter Newswire, May 5, 1994.

<sup>212</sup> See the discussion of the Hungarian Media War, *supra*, pp. 234–36.

was as much over power as over principle. The opposition refused to continue negotiations regarding the media law unless the government would assure the national media's independence.<sup>213</sup> The government was unwilling to give such assurances, however, as the heads of both Hungarian Radio and Television were sympathetic to the ruling party, an advantage the government was loath to forfeit.<sup>214</sup>

Failure to enact a new media law left Hungarian Radio and Television without the institutional safeguards for the media's independence that a new law was meant to provide.<sup>215</sup> As the election neared, the state radio and television became the battleground. Depending upon one's political persuasion, the 129 journalists became martyrs to the cause of free speech or opposition pawns whose firing was a pretext for a campaign of propaganda and misinformation.

Even before the dismissals, Hungarian Radio had real financial problems and had announced its intention to undertake austerity measures. Implementing that plan two months before the election, however, made the management's motives suspect, and it was easier for the opposition to charge political manipulation.<sup>216</sup> The four-year struggle over Hungary's media had heightened the symbolism surrounding both the leadership and the staff at Hungarian Radio. To the opposition parties, they had come to personify media independence, but to the ruling parties these same individuals were

<sup>213</sup> Hungarian Radio, "Opposition Demands Guarantees of Media Impartiality," BBC Monitoring Service, March 5, 1994. The opposition charged that "The MTV [Hungarian Television] continuously violates the ethical election code, it openly incites and slanders in several of its programs. The MTV belongs to the government openly and in the radio an open political showdown, disguised as professional reorganization, is being prepared." Ibid. See also Hungarian Radio, "HSP's Horn Reacts to 'Hate' Campaign; Demands Suspension of Panorama Editors," BBC Monitoring Service, May 3, 1994.

<sup>214</sup> Pataki, "Hungarian Radio Staff Cuts Cause Uproar," p. 39. See also Reuter, "20,000 March for Press Freedom in Budapest," Reuter Newswire, March 14, 1994.

<sup>215</sup> Reuter, "20,000 March for Press Freedom in Budapest."

<sup>216</sup> For evidence that Hungarian Radio was in fact in dire need of restructuring and downsizing, see Pataki, "Hungarian Radio Staff Cuts Cause Uproar," pp. 40–41.

seen as unreconstructed Communists standing in the way of reform.<sup>217</sup>

Notwithstanding the condemnations hurled upon Hungary for the dismissals, it remains unclear to what extent the decision to downsize Hungarian Radio turned on political motivations or to what degree it was justified by economic considerations. István Deák states that the Antall government fired the 129 employees “for purely political reasons”; others are not so sure.<sup>218</sup> What is clear, however, is the storm that broke following the dismissals. The opposition leadership was quite successful at exploiting the event to accuse the government of playing politics with the media and to stir protests both within the country and beyond.<sup>219</sup> Protest rallies gathered in the streets of Budapest, as 20,000 citizens demonstrated for freedom of the press.<sup>220</sup> If indeed the dismissals were a politically motivated “purge” of Hungarian Radio, the move backfired. The fallout from the incident proved a deep embarrassment for the government; its credibility with the voters was damaged, foreshadowing defeat at the polls.<sup>221</sup>

Socialist leader Gyula Horn seized the opportunity to present himself as a staunch advocate of the open society. Campaigning

<sup>217</sup> Ibid.

<sup>218</sup> Compare Deák, “Post-Post-Communist Hungary,” *New York Review of Books*, August 11, 1994, p. 37, with Pataki, “Hungarian Radio Staff Cuts Cause Uproar,” pp. 41–43.

<sup>219</sup> MTI News Agency, “Party Spokesmen Clash in Parliament over Sackings at Hungarian Radio,” BBC Monitoring Service, March 9, 1994; Reuter, “State TV Coverage Becomes Hungarian Campaign Issue,” Reuter Newswire, May 5, 1994; Pataki, “Hungarian Radio Staff Cuts Cause Uproar,” pp. 41–42.

<sup>220</sup> Reuter, “20,000 March for Press Freedom in Budapest,” Reuter Newswire, March 14, 1994; MTI News Agency, “Thousands Demonstrate for Press Freedom in Budapest,” BBC Monitoring Service, March 16, 1994.

<sup>221</sup> Pataki, “Hungarian Radio Staff Cuts Cause Uproar,” p. 43. István Deák believes that “attempts by rightists to push programming in a nationalist direction” and to ensure reporting favorable to the Antall government “undoubtedly contributed to the defeat of the Conservatives.” Deák, “Post-Post-Communist Hungary,” pp. 37–38. Pataki observed that the popularity of the ruling party dropped following the Hungarian Radio incident, but was reluctant to find a causal link between the two. Pataki, “Hungarian Radio Staff Cuts Cause Uproar,” p. 43. In any event, the government failed to derive any political benefit from the “austerity measures.”

on a platform that emphasized press freedom and media independence, he promised to reinstate the fired journalists if his party came to power.<sup>222</sup> Successful at the polls, Horn made this vow as the country's next prime minister:

The government wishes to see real freedom of the press. And it wants to avoid a situation in which anyone in the political sphere interferes in the programme policy of public service television and radio. In this country we also want to put an end to a government-party press operating with important public funds.<sup>223</sup>

Central Europe has always been a place of paradoxes. Perhaps after decades of Communist rule, in which so many ideas (as in George Orwell's *1984*) were turned on their heads, one should expect twists of plot that would do justice to *opera bouffe*. How intriguing it is, then, that a socialist government, coming to office in good part because of popular discontent with the post-Communist reformers, might be remembered for taking steps to separate the media and politics. One should view any new government's promises with skepticism, especially when on taking office they undertake to let go of such an influential and powerful medium of persuasion as the state media. But if Hungary's government does succeed in depoliticizing the media, the 1994 battle over Hungarian Radio and the 129 journalists will be remembered as having been as dramatic a chapter in the evolution of press and media in Hungary as the trial of John Peter Zenger has been in the lore of the American press.<sup>224</sup>

<sup>222</sup> *Ibid.*, p. 42. See also Chris Fuller, "Hungarian Broadcasting Chiefs Ousted," *Broadcast*, July 15, 1994, p. 12; TV1, "Interview with Horn on the Party's Past and Freedom of the Press," BBC Monitoring Service, June 7, 1994.

<sup>223</sup> Hungarian Radio, "Horn Presents His Government Programme," BBC Monitoring Service, July 16, 1994.

<sup>224</sup> In speaking of Gyula Horn, one should recall that, as Hungary's foreign minister in 1989, he took steps that allowed East Germans then in Hungary to escape to Austria in order to get to West Germany. This breach in the Iron Curtain set events in motion that led ultimately to the tearing down of the Berlin Wall. See Misha Glenny, *The Rebirth of History: Eastern Europe in the Age of Democracy* (London: Penguin Books, 1990), p. 184.

*Measuring Progress*

Before the collapse of the Communist system in Central and Eastern Europe, dissidents and their friends could only hope that they might live long enough to see the day of the open society. International norms — such as those found in United Nations documents, in the European Convention on Human Rights, and in declarations of the Conference on Security and Cooperation in Europe — proclaimed universal freedoms including speech, press, association, and assembly. Such handmaidens of the free and open society were, of course, rarely honored where one-party rule made authentic democracy a hollow hope.

How far have the countries of Central and Eastern Europe traveled in the days since the Cold War? If one takes the repressive years of Communist rule as a yardstick, giant strides have been made in most countries of the region. Much progress can indeed be documented. For example, a report by the Polish ombudsman in early 1994 concluded that the media in that country enjoys freedom of speech and press, unhindered by state censorship.<sup>225</sup> Likewise Czech novelist Ivan Klima, a former dissident whose work was banned for twenty years in his native country, affirmed the triumph of the free speech principle in the Czech Republic: “So to the question, is freedom of the press restricted in my country? I can reply, with all honesty, no. There is no external censorship whatsoever.”<sup>226</sup>

In answering the question, “How far have we come?” much depends on who makes the assessment. Journalists, especially those from Western countries, tend to be particularly critical of the failure of the emerging democracies to realize the promise of the democratic revolution, especially as regards speech and press. They write articles with titles like “Free Press Eludes New Democracies” and “Eastern Europe’s Media: Read, Write, Disbelieve.”<sup>227</sup>

<sup>225</sup> TV Polonia Satellite Service, “Ombudsman’s Annual Report Says Poland Lacks Social Justice,” BBC Monitoring Service, April 16, 1994.

<sup>226</sup> Ivan Klima, “Taking Liberties,” *Observer*, April 10, 1994, p. S22.

<sup>227</sup> See “Free Press Eludes New Democracies,” *San Francisco Chronicle*, January 10, 1974, p. A9; “Eastern Europe’s Media: Read, Write, Disbelieve,” *Econo-*



Americans schooled in the teachings of First Amendment law — in the “firstness” of the First Amendment — tend to urge their colleagues in Central and Eastern Europe to reach for ever higher protections for speech and press. Europeans, coming from a different tradition, tend to see the values of expression, especially press and media, as measured against competing values such as morality and reputation.

Pronouncements about progress or backsliding depend, not only on who makes the assessment, but also on what standard they invoke. Human rights groups are concerned both about developments in the emerging democracies and about trends on the international scene. Helsinki Watch says that in Eastern Europe “the initial euphoria of freedom has given way to crude attempts to control the press — often relying on discredited Communist-era laws — and battles for control of state radio and television media.” But Helsinki Watch is equally alarmed about the “disturbing signs of erosion for universal free expression standards on the part of international and continental bodies that should be insisting on bedrock protection for freedom of the press.”<sup>228</sup> As an example Helsinki Watch cites language approved by delegates to the World Conference on Human Rights in Vienna (1993) that set press freedom “within the framework of national law” — a formulation that Helsinki Watch saw as a step back from the International Covenant on Civil and Political Rights. Helsinki Watch also decried the July 1993 declaration of the Council of Europe on journalistic “ethics” that struck the statement’s critics as putting media “responsibility” before media freedom and, in general, allowing government to make judgments not properly within its province.<sup>229</sup>

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*mist*, January 8, 1994, p. 50; Leonard R. Sussman, “Watching the Watchdogs,” *Christian Science Monitor*, May 9, 1994, p. 18; and “Walls of Silence Still Standing,” *Independent*, May 3, 1994, p. 17.

<sup>228</sup> “Threats to Press Freedoms,” *Helsinki Watch* 5, no. 21 (November, 1993), 1.

<sup>229</sup> *Ibid.*, p. 2.

*Developing a Civic and Legal Culture*

Countries whose human rights practices have been criticized by foreign observers urge that outsiders realize that achieving a full-blown political culture takes time. Addressing CSCE's Warsaw seminar on free media in 1993, an official of Slovakia's Ministry of Foreign Affairs faulted critics for "not taking into consideration the historic and cultural specifics of Slovakia." Those who judge Slovakia by "these often abstract evaluations," she said, "forget that the creation of an independent press isn't determined only by the political situation but by a general political culture and a pattern of political behavior." It is not enough simply to enact laws, she declared; it requires "a slow evolution of the interaction of the citizen and the democratic system."<sup>230</sup>

Experts who travel to countries in the former Soviet bloc are often struck by the need to develop a legal culture, one in which the rule of law rests upon a secure understanding of the rights and responsibilities entailed in a civil society. In 1993, at the request of the Croatian government, the Council of Europe sent a team of experts to consider the legislative, regulatory, and administrative framework for the media in Croatia. The team contrasted the large volume of post-Communist legislation, including media law, with "the relative absence of a 'legal culture' on the part of both Governmental and professional circles."<sup>231</sup>

The members of the council's mission were quite right in believing that the test of the rule of law lies, not merely in what laws are put on the books, but also in their implementation. And how laws are understood and applied depends in good measure on a

<sup>230</sup> Statement by Daniela Rozgonova, section director for Press Information and Cultural Affairs, Slovak Ministry of Foreign Affairs, at the CSCE Seminar on Free Media, Warsaw, November 2, 1993, p. 3.

<sup>231</sup> Council of Europe, Report of the Mission of the Council of Europe team of experts to consider the legislative, regulatory, and administrative framework for the media in Croatia, May 9–12, 1993 (Strasbourg, June 2, 1993), p. 5.

healthy legal culture, The members of the mission explained their understanding of a “legal culture”:

The team believes that the acquisition of a “legal culture” is an important element for the proper functioning of the media in a democratic society. It is important, on the one hand, for the public authorities to know and conform to the legal framework which distances the media from the State, Government and public authority generally. It is equally important, on the other hand, for the media to be aware of the “rules of the game” which the responsible exercise of freedom of expression and information imposes in a democratic society. It is also inevitable, as Croatia moves towards a market economy, that legal rules will acquire a greater prominence and recourse to the courts as a means of dealing with disputes will become more common. It was beyond the team’s terms of reference to consider how well the Croatian legal system would be able to deal with these new demands. However, the experience in other member States of the Council of Europe shows that issues such as access to lawyers and courts, the cost of legal proceedings and the impartiality of the judiciary are thrown into sharp relief when the media are involved.<sup>232</sup>

There is strong evidence that, whatever norms of press freedom officials may have in mind, many journalists in Central and Eastern Europe aspire to standards as they would be understood in the established democracies. When CSCE held a media seminar at Warsaw in November 1993, a rapporteur for one of the discussion groups commented about the unanimity among journalists and NGOs that “the emerging democracies do not see themselves as developing countries in the sense of that word in the 1950s.”<sup>233</sup> One gathers that, among the journalists who gathered in Warsaw, there was little interest in a “third way” — some supposed middle

<sup>232</sup> Ibid., p. 6.

<sup>233</sup> Summary Report, Discussion Group 2, by Joseph Fitchett, CSCE Seminar on Free Media, November 2–5, 1993. Fitchett is a reporter for the *International Herald Tribune*.

ground between Western ways and those of the Communist era. According to the rapporteur, these countries “aspire to a Western political model,” including press freedom of a kind understood as a core value in the West.

Journalists and governments may not, however, be singing from the same score. In governmental and political circles, one is more likely to hear talk of how to ensure that the press is “fair” or “honest.” Proposals for media laws, even if couched in terms of making the rules of the game more predictable, are by no means necessarily proposals that intend to guarantee greater freedom of expression. Indeed it is more often governments than journalists one will hear complaining that Western critics are “patronizing” or “condescending.” Likewise, it is likely to be leaders and officials who ask for “realism” and “cultural sensitivity” from those who demand that countries aspire to higher or universal standards in their approach to speech and press issues.

Divergence between governments and journalists in their attitude to press and media issues may reflect the role the press has played in European countries (Western as well as Eastern) in exposing scandals and official misconduct. Money and power have brought corruption in official circles to established and emerging democracies alike. Killing the messenger is an ancient tradition. At the Warsaw seminar, some European journalists commented that politicians might in some instances be using the press as scapegoats to distract attention from their own wrongdoing.<sup>234</sup>

### *The Place of International Norms and Obligations*

Overall, the post-Communist democracies of Central and Eastern Europe are keenly aware of the importance of adhering to international norms of human rights. In 1993 the United States’ Helsinki Commission published a report on human rights and democratization in Slovakia. Taking offense at some of the report’s conclusions, Slovakia’s Ministry of Foreign Affairs published a reply

<sup>234</sup> Ibid.

in which it took as its baseline that Slovakia's fundamental law "meets the criteria for the protection of human rights and fundamental freedoms applied both in the theory and practice of international law." The ministry pointed specifically to Slovakia's having met all the essential demands laid down by the Council of Europe for Slovakia's accession. "The democratic character of the Constitution and the legal system of the Slovak Republic," the statement maintained, have "thus been sanctioned by the international community."<sup>235</sup>

Drafters of new constitutions often take account of international law and of a country's treaty obligations. The precise formulation, and hence the legal effect, of these provisions varies considerably in those constitutions. Critical, of course, is the place that international norms and obligations have when they are in conflict with a country's domestic laws.

Bulgaria's Constitution is straightforward; it provides that treaties entered into by the state "are part of the country's internal laws" and that, where there is a conflict with domestic laws, the treaty takes precedence.<sup>236</sup> Some constitutions speak specifically of those treaties having to do with human rights and fundamental freedoms. The Czech Constitution states that treaties "concerning human rights and fundamental freedoms" ratified by the Czech Republic "are directly applicable and take precedence over a law."<sup>237</sup> Slovakia's Constitution makes essentially the same point; treaties "guaranteeing a greater extent of constitutional rights and freedoms" take precedence over Slovak laws.<sup>238</sup>

Romania's Constitution is interesting in that it lays down international norms as modes for interpreting the provisions of the

<sup>235</sup> Ministry of Foreign Affairs of the Slovak Republic, "Position on the Report of the Commission for Security and Cooperation in Europe, entitled *Human Rights and Democratization in Slovakia*" (Bratislava, October, 1993), p. 1.

<sup>236</sup> Art. 5.

<sup>237</sup> Art. 10.

<sup>238</sup> Art. 11.

constitution itself: “Constitutional provisions on the rights and freedoms of citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights and with other treaties and pacts to which Romania is a party.”<sup>239</sup>

As crucial as the norms themselves is the question whether a means is provided for resolving conflicts between domestic laws and international treaties and obligations. This is where the principle of judicial review becomes intrinsic to the enforcement of higher norms of law. The ability of a court—a constitutional court is a paradigm example—to invalidate a law found to be in conflict with the constitution puts teeth into that document. Likewise, authorizing a court to declare that international obligations override domestic law takes the country in question a significant step closer to being in step with larger value systems than its own. The Czech Constitution tackles this question head-on. It declares the Constitutional Court to have jurisdiction to declare acts of parliament and other legal norms invalid if they conflict with treaties concerning human rights and fundamental freedoms.<sup>240</sup>

Another means by which fundamental human rights, such as those of speech and expression, will become norms in the countries of Central and Eastern Europe is through those countries’ accession to such associations as the Conference on Security and Cooperation in Europe and the Council of Europe. With the collapse of communism, countries in Central and Eastern Europe (as well as the republics formerly part of the Soviet Union) joined CSCE, which grew almost overnight from thirty-five to fifty-two members. Documents subscribed to by the members of CSCE are political instruments, rather than binding treaties in the technical legal sense, but they have enormous influence, as the history of the Helsinki accords illustrates.

Accession to the Council of Europe brings with it the means for even more direct enforcement of human rights. Key to the

<sup>239</sup> Art. 20.

<sup>240</sup> Art. 87, referring to treaties covered by Art. 10.

council's *raison d'être* is the European Convention on Human Rights and the council's adjudicatory bodies, the European Commission and Court of Human Rights. Member states, in ratifying the convention, have the option to decide whether they also wish to avail their citizens of the right to individual petition (Article 25) and the court's compulsory jurisdiction (Article 46). All member states have in fact accepted these provisions, although some states have retained the right to act for stated periods, so that they renew their acceptance from time to time.<sup>241</sup> It is significant, as the Council of Europe itself has reported, that all of the countries of Central and Eastern Europe wishing to join the council "have expressed their readiness to sign and ratify the European Convention on Human Rights, including the optional provisions" of Articles 25 and 46.<sup>242</sup>

### *Toward the Open Society*

The peoples of Central and Eastern Europe have powerful incentives to measure their progress by the best standards of liberal democracy. Leaders who wish to bring out a country's best traditions can point to historical precedent — for example, the legacy of Poland's Enlightenment era, which culminated in the still cherished Constitution of May 3, 1791. Intellectuals in the region prize their standing among European thinkers; a lawyer from Krakow or Bratislava wishes to hold his head high when comparing notes with colleagues from Heidelberg or Paris.

Moreover, we speak here of countries who through their history have seen themselves to be, and in fact have been, part of Europe. Through no wish of their own, they were torn from their natural European moorings during the unhappy years after World War II. Now, with communism's overthrow, it is only natural that they wish to be, once again, part of the family of Europe.

<sup>241</sup> Council of Europe, *Short Guide to the European Convention on Human Rights* (Strasbourg, 1991), pp. 128, 131.

<sup>242</sup> *Ibid.*, p. 7.

Historical and cultural ties are reinforced by economic incentives. If they are to improve their economic lot, Central and Eastern Europeans require ties of trade and investment with Western Europe. Therein lies the better life. The countries of the region aspire, of course, to formal membership or other association with regional organizations such as the European Community.

To all of these incentives are added moral sentiment. A region that can produce a Václav Havel, that can accomplish largely peaceful revolutions, surely can foster the currents that feed the civil society. Those who were privileged to hear Havel address a joint session of the United States Congress in February 1990, only weeks after the unfolding of Czechoslovakia's "velvet revolution," could only have been moved by his admonition that "the salvation of this human world lies nowhere else than in the human heart, in the human power to reflect, in human meekness, and in human responsibility."<sup>243</sup>

Achieving the full measure of the open society in the emerging democracies will, to be sure, not be easy. Americans like to treasure the freedoms they associate with their First Amendment's guarantees of free speech, press, religion, assembly, and petition. Yet American history reveals the constant struggles — the setbacks as well as the triumphs — that have marked the road to the open society. Early in the republic's history came the Alien and Sedition Acts, authentically repressive measures. The American Civil War saw the internment of dissident newspaper editors. The First World War brought the "red scare" and more antisedition legislation. During the Cold War Americans had to endure the witch-hunting one associates with Senator Joseph McCarthy. Blacks who sought equality in the civil rights movement of the 1960s faced intimidation. And the debate over the metes and bounds of freedom of expression continues wherever college campuses adopt codes aiming at "hate speech," or self-appointed censors seek to

<sup>243</sup> The *Washington Post* carried the full text of Václav Havel's February 22, 1990, address to Congress.



remove distasteful books from local libraries, or protests at abortion clinics oblige judges to make difficult choices in fashioning injunctions to govern protesters' behavior.

Anyone who has traveled to the emerging democracies in Central and Eastern Europe — or, indeed, those who have only watched from afar — can only admire how far people of that region have come in their quest for freedom. The spirit that was more than a match for the ruling class of the Communist era will surely find ways to hold their elected representatives to account. As they fashion the frame of the open society, their friends elsewhere wish them great success.<sup>244</sup>

<sup>244</sup> Broadcasting from abroad still remains an important factor in the dissemination of ideas in Central and Eastern Europe. The Voice of America continues to broadcast news in the languages of the region, as does Radio Free Europe. Also, satellite dishes make it possible for local viewers to receive CNN and other foreign news programs.