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Human Rights Protection Under the New Constitutions of Central Europe

JEAN-MARIE HENCKAERTS* AND STEFAAN VAN DER JEUGHT**

I. INTRODUCTION

Following the demise of communism in Eastern Europe, Poland, Hungary, the Czech Republic, and the Slovak Republic, have strived for integration into Europe. These nations, referred to as the Visegrád countries, have eagerly sought membership in the Council of Europe, the European Union (EU), and the North Atlantic Treaty Organization (NATO).¹ While EU membership has been based primarily on economic performance, an application for membership is not judged solely on economic criteria.² Respect for human rights is also critical.³ In 1993 for example, the European Council stated that membership in the European Union required that the candidate country achieve stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.⁴ Poland, Hungary, and the Czech

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Research for this article was carried out while the authors were affiliated with the Centre for Eastern European Law of the University of Brussels and an earlier version has been published in Dutch in Pieter De Meyere et al (eds.). OOST-EUROPA IN EUROPA: EENHEID EN VERSCHIEDENHEID, HULDEBOEK OPGEDRAGEN AAN FRITS GORLE [EASTERN EUROPE IN EUROPE: UNITY AND DIVERSITY, FESTSCHRIFT DEDICATED TO FRITS GORLE] (Brussels: VUBPress, 1996). As such, this article is a further dedication to Frits Gorle and the value of humanity he stands for.

1. See *Central Europe Leaders Gather for Summit in Slovenia* (visited Feb. 25, 1998) <<http://www.robust-east.net/Net/europe/slov.html>>.

2. See *Slovakian, Romanian Economic Reform Said on Track*, THE REUTER EUROPEAN COMMUNITY REPORT, Feb. 27, 1996.

3. See *id.*

4. 26(6) BULL. EUR. COMMUNITIES 13 (1993).

Republic have been deemed "qualified" and will start membership negotiations with the EU in 1998.⁵ They have also been approved to join NATO.⁶ Moreover, these three countries plus the Slovak Republic have joined the Council of Europe.⁷

This Article compares the constitutional protection of selected fundamental rights and freedoms in Poland, Czech Republic, Slovak Republic, and Hungary.⁸ It examines the extent to which Visegrád countries have turned to the West and indicates the problems which persist regarding the constitutional protection of human rights. Part II explores the constitutional protection of human rights in the Visegrád countries. Part III describes the various civil rights and freedoms accorded by those countries. Part IV sets out the political rights and freedoms. Part V examines the economic, social, and cultural rights. Part VI describes the minority rights in the Visegrád countries. Finally, Part VII lays out the remedies for the violation of human rights in these countries.

II. CONSTITUTIONAL PROTECTION OF HUMAN RIGHTS

After the 1989 revolution, leaders of the Visegrád countries became aware of the need to provide constitutional guarantees for basic rights and to judicially enforce those rights.⁹ This awareness was inspired primarily by the lack of protection of basic rights during the communist era.¹⁰ Indeed, individual human rights did not exist under communist constitutional law; all the rights belonged to the State as a collective body.¹¹ Individual rights were merely a "favor" given by the State to its citizen in exchange for their fulfillment of civic duties.¹² Moreover, no provisions were made for judicial remedies, since there was no need for them. Rights in the communist-era Constitutions, therefore, tended to be unenforceable pledges.¹³

5. See European Union Press Release, *supra* note 2.

6. See Kinkel: *NATO Enlargement Not Aimed at Any State*, DEUTSCHE PRESSE-AGENTUR, Feb. 12, 1998.

7. See *Ukrainian Membership in the European Union is Closer to Reality*, RUSSIA AND COMMONWEALTH BUSINESS LAW REPORT, Sept. 27, 1995.

8. These are the so-called Visegrád countries.

9. See Wiktor Osiatynski, *Rights in New Constitutions of East Central Europe*, 26 COLUM. HUM. RTS. L. REV. 111, 112 (1994).

10. See *id.*

11. See *id.*

12. See *id.*

13. See *id.*

Under communist constitutional law however, some rights were protected by a "material guarantee" rather than the Western style "judicial guarantee."¹⁴ The most striking example concerns the freedom of the press.¹⁵ The freedom of press was not guaranteed by an enforceable individual right but by the material guarantee ensuring general access to the means to print and publish via the collective ownership of the press, publishing firms, and other media.¹⁶

From 1989 forward, despite harsh economic realities, the Visegrád countries considered enforceable individual rights indispensable in keeping the newly started democratization on track.¹⁷ Moreover, such rights were meant to help avoid a return to a totalitarian government and alleviate economic hardships.¹⁸ This belief was reinforced when the former communists came to power again—this time by winning democratic elections.¹⁹ The newly formed democratic governments, therefore, actively sought to place constitutional limits on the state's power to protect individual rights and freedoms.²⁰

A second reason to include basic rights in the new constitutions was the risk of discrimination by a democratic majority system against minorities, such as Romanians,²¹ Jews, and Hungarians residing in Romania and the Slovak Republic.²²

The drafting of new constitutions in the former communist nations was difficult because it involved reformulating fundamental individual rights and freedoms.²³ An equally formidable task was the introduction of efficient and genuine mechanisms of implementation and judicial enforcement of such rights. It required

14. *See id.* at 113-14.

15. *See id.*

16. *See id.*

17. *See id.*

18. *See id.* at 114.

19. *See id.*

20. *See id.* at 114-15.

21. Romany is a reference to the Gypsy population. *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1970 (1986).

22. *See* Osiatynski, *supra* note 9, at 113-14.

23. *See* Rett R. Ludwikowski, *Constitution Making in the Countries of Former Soviet Dominance: Current Development*, 23 GA. J. INT'L & COMP. L. 155 (1993) [hereinafter Ludwikowski, *Constitution Making*]; *see also* Rett R. Ludwikowski, *Searching for a New Constitutional Model for East-Central Europe*, 17 SYRACUSE J. INT'L L. & COM. 91, 92 (1991) [hereinafter Ludwikowski, *Searching for a New Constitutional Model*].

allowing citizens to lodge individual complaints to safeguard their fundamental rights and creating mechanisms to prevent the constitutions themselves from being altered, restricted, or suspended.²⁴

In the Czech Republic, human rights are protected by a Constitutional Act, which instituted the Charter of Fundamental Rights and Freedoms.²⁵ This Act was passed in 1991, before the split of Czechoslovakia by the Federal Assembly. Rather than incorporate the Charter into the new Constitution, however, the Czechs chose merely to refer to it as "part of the Czech Republic's constitutional order."²⁶ This reference raised doubts concerning the legal status of the Charter.²⁷ The initial Constitutional Act instituting the Charter lost its constitutional character with the new Constitution of 1992, and has become ordinary law. Therefore, it is uncertain whether the Charter ranks equally with the Constitution or has become an ordinary law.

Conversely, in the Slovak Republic the Charter has been incorporated into the text of its new Constitution with only minor modifications concerning economic and social rights.²⁸

In Poland, human rights were protected, until the adoption of the new Constitution of 1997, under Chapter 8 of the old communist Constitution of 1952.²⁹ Since consensus on the human rights issue could not be reached,³⁰ Chapter 8 of the so-called "Interim" Constitution remained in force until the adoption of the new Constitution.³¹ On April 2, 1997, the National Assembly adopted a

24. See Osiatynski, *supra* note 9, at 113.

25. See Constitutional Act of the Federal Assembly, Jan. 9, 1991, art. 1, § 2 (Czech. & Slovak. Fed. Rep.) (instituting the Charter of Fundamental Rights and Freedoms) [hereinafter Czech. Charter].

26. ÚSTAVA ČESKE REPUBLIKY [Constitution], art. 3 (1992) (Czech.) [hereinafter CZECH. REP. CONST.], reprinted in THE REBIRTH OF DEMOCRACY - 12 CONSTITUTIONS OF CENTRAL AND EASTERN EUROPE 118 (1995).

27. See Cass R. Sunstein, *A Constitutional Anomaly in the Czech Republic?*, 4 E. EUR. CONST. REV. 50, 50-51 (1995).

28. See ÚSTAVA SLOVENSKEJ REPUBLIKY [Constitution] arts. 11-54 (Slovak.) [hereinafter SLOV. CONST.], reprinted in THE REBIRTH OF DEMOCRACY - 12 CONSTITUTIONS OF CENTRAL AND EASTERN EUROPE 500-16 (1995).

29. See USTAWA KONSTYTUCYJNA [Constitution] arts. 67-93 (Pol.) [hereinafter INTERIM POL. CONST.], reprinted in THE REBIRTH OF DEMOCRACY-12 CONSTITUTIONS OF CENTRAL AND EASTERN EUROPE 415-23 (1995).

30. Seven draft constitutions were submitted by political parties, the former president Walesa, the Senate, and the Solidarity Trade Union in the Sejm.

31. See *Interim Constitution: Who Gets the Power?*, POLISH NEWS BULLETIN, Aug. 14, 1992.

new Constitution containing Chapter II, entitled Freedoms, Rights and Duties of Man and Citizens.³²

Among the central European countries, Hungary appears to be the least interested in adopting a completely new Constitution.³³ The present political structure is roughly based on the communist-era Constitution of 1949.³⁴ This Constitution was thoroughly changed in 1989 and 1990, particularly the chapter concerning fundamental rights and freedoms.³⁵ The frequent amendments to the Constitution confirm its interim nature. For now, the dossier of the Constitution is blocked and Hungary is operating under what is in fact an interim Constitution.

It is striking to note that the "avant-garde" Visegrád countries have been slower to produce new constitutions than Bulgaria and Romania. Bulgaria was the first country of Eastern Europe to adopt a new Constitution in July 1991. This was the result of the unexpected victory of the reformed communists in the first democratic election in 1991. These elections did not lead to a fundamental change of the political landscape, as in Poland and Czechoslovakia. Therefore, the "socialists" had little difficulty in proving themselves as real reformers. In Romania, a similar logic prevailed, which led to the second new constitution in December 1991. Clearly then, in those cases where the reformed communists remained in power, constitutional changes were carried out quickly.³⁶ The changes were used by the reformed communists in a desperate effort to show the outside world and their own citizens, their determination to bring about changes to the political struc-

32. See KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [Constitution] arts. 30-86 (Pol.) [hereinafter POL. CONST.], reprinted in Gisbert H. Flanz, 15 *Constitutions of the Countries of the World* 7-19 (1997). The Freedoms, Rights and Duties of Man and Citizens chapter is further divided into six subchapters: General Principles, Personal Freedoms and Rights, Political Freedoms and Rights, Economic, Social and Cultural Freedoms and Rights, Means for the Defense of Freedoms and Rights, and Duties. See *id.* The new Constitution was promulgated on July 16, 1997 and entered into force on October 17, 1997. See *id.*

33. See Rett R. Ludwikowski, *Fundamental Constitutional Rights in the New Constitutions of Eastern and Central Europe*, 3 CARDOZO J. INT'L & COMP. L. 73, 140 (1995) [hereinafter Ludwikowski, *Fundamental Constitutional Rights*].

34. See *id.*; A MAGYAR KOZTARSASAG ALKOTMANYA [Constitution] arts. 54-70/K (Hung.), reprinted in THE REBIRTH OF DEMOCRACY - 12 CONSTITUTIONS OF CENTRAL AND EASTERN EUROPE 246-56 (1995) [hereinafter HUNG. CONST.].

35. See Ludwikowski, *Fundamental Constitutional Rights*, *supra* note 33, at 141.

36. See Ludwikowski, *Constitution Making*, *supra* note 23, at 236.

ture.³⁷ Conversely, in the Visegrád countries where the peaceful process of discarding communism started in the 1980s, there has been an overestimation of the power of the democratic processes and the maturity of the political culture.³⁸ Moreover, the futile discussions between the various political parties has slowed constitutional change.³⁹

The smoother the initial stages of reform, the more compromises must be made slowing the constitutional reforms. Where politicians are patient and do not precipitate constitutional change, it is possible that a more mature and concise constitution may result.

III. CIVIL RIGHTS AND FREEDOMS

A. Right to Life and Dignity

The right to life is guaranteed in the Hungarian, Polish, and Slovak Constitutions, and is recognized in the Czech Charter.⁴⁰ In all four countries, citizens are also protected against cruel, inhuman, or degrading treatment or punishment.⁴¹ Both the Hungarian and Polish Constitutions, moreover, expressly prohibit medical or scientific experimentation on nonconsenting individuals.⁴²

Once the right to life is guaranteed, the legality of capital punishment becomes an important inquiry. The death penalty is constitutionally banned in the Czech and Slovak Republics.⁴³ In Hungary, in one of its major decisions, the Constitutional Court also declared the death penalty unconstitutional.⁴⁴ In Poland, abolition of the death penalty is currently under way.⁴⁵

Another sensitive question related to the constitutional right

37. *See id.*

38. *See id.* "The deputies learned how to speak openly and criticize each other faster than they learned to respect the arguments of the opponents." *Id.*

39. *See id.*

40. *See* HUNG. CONST. art. 54, § 1; POL. CONST. art. 38; SLOVK. CONST. art. 15, § 1; CZECH CHARTER art. 6.

41. *See* HUNG. CONST. art. 54, § 2; POL. CONST. art. 40; SLOVK. CONST. art. 16, § 2; CZECH CHARTER art. 7, § 2.

42. *See* HUNG. CONST. art. 54, § 2; POL. CONST. art. 39.

43. *See* SLOVK. CONST. art. 15, § 3; CZECH CHARTER art. 6, § 3.

44. *See* Gabor Halmai, *Die Verfassungsgerichtsbarkeit in Ungarn*, 37 RECHT IN OST UND WEST 4 (1993) (referring to Decision 23/1990).

45. The new penal code which the Sejm adopted on June 6, 1997 in its first reading abolishes the death penalty. *See Sejm Meets*, POL. NEWS BULLETIN, June 9, 1997.

to life is the issue of abortion. While liberal abortion laws existed under Communist rule, in most of Eastern Europe after democratization, lobbying mainly from Catholics and Nationalists, resulted in more restrictive abortion laws.⁴⁶

In Poland, controversy over the highly sensitive abortion issue was one of the obstacles to drafting a new Constitution.⁴⁷ In 1993, after extensive lobbying from the influential Polish Church, the Sejm adopted a restrictive abortion law.⁴⁸ In 1994, former President Lech Walesa vetoed a new liberal abortion Act, which would have replaced this restrictive legislation.⁴⁹

In Hungary, one of the first decisions of the Hungarian Constitutional Court concerned the constitutionality of Hungary's abortion law.⁵⁰ The Court annulled the abortion law, not because it violated the fetus' fundamental right to life, but because it ruled the issue governed by statute and not by administrative regulations, as was the case.⁵¹ The Court, however, limited the discretionary power of Parliament in the matter by stating that "the legislature could neither find the fetus a legal person equal to the pregnant woman, nor find that the fetus was entitled to no legal protection whatsoever."⁵² In 1992, the Hungarian Parliament adopted a new act permitting abortion only under certain conditions.⁵³

In the Czech and Slovak Republics, human life is constitutionally protected "before birth."⁵⁴ In practice, however, this does not completely prohibit abortion. In the Slovak Republic, permission for an abortion may be granted within a certain time period, under medical supervision, and on specified grounds.⁵⁵ In the Czech Republic, a woman can make this decision for herself within a prescribed period of time.

46. See Kim Lane Scheppelle, *Women's Rights in Eastern Europe*, E. EUR. CONST. REV. 66, 66-67 (1995).

47. See *id.*

48. See *id.*

49. See *id.*

50. See *id.*

51. See *id.* (referring to the Abortion Case 64/1991 adjudicated before the Constitutional Court).

52. *Id.*

53. See *id.*

54. See SLOVK. CONST. art. 15, § 1; CZECH CHARTER art. 6, § 1.

55. These grounds can include health as well as the woman's social situation.

B. Right of Ownership

The right of ownership is constitutionally protected in Hungary, Poland, and the Slovak and Czech Republics.⁵⁶ Expropriation is permitted only under certain conditions: on the basis of a law; in the public interest; and with compensation.⁵⁷ The respective constitutions differ, however, in defining appropriate compensation for expropriated owners.⁵⁸

Hungary, for example, requires that "full, unconditional and immediate" compensation be paid.⁵⁹ This guarantees that all compensation is based on economic criteria.⁶⁰

In Poland, the Constitution provides for "just" compensation,⁶¹ leaving more room for interpretation. The Constitutional Tribunal has ruled, however, that in a State which is based on freedom of economic activity and a market economy, compensation must be based on economic criteria.⁶²

The Slovak Constitution also provides that expropriation or other restrictions on property rights "shall be justly compensated."⁶³ In connection with the foregoing, forty opposition Members of the National Council (Parliament) submitted a petition claiming that the retroactive cancellation Act by Parliament violated the constitutional protection of ownership.⁶⁴ The Act canceled a decision of the former government to privatize fifty-four state-owned enterprises.⁶⁵ The Court held that the cancellation of the sale violated the constitutional protection of property because Parliament had not demonstrated that it had acted in the public interest and expropriated owners had not been compensated.⁶⁶

In the Czech Charter, the nature of the actual compensation is

56. See POL. CONST. arts. 21, 64; CZECH CHARTER art. 11, § 1; SLOVK. CONST. art. 20, § 1; HUNG. CONST. art. 13, § 1.

57. See POL. CONST. art. 21.

58. See *id.* arts. 21, 64; CZECH CHARTER art. 11, § 4; SLOVK. CONST. art. 20, § 1; HUNG. CONST. art. 13, § 1.

59. HUNG. CONST. art. 13, § 2.

60. See Wolfram Gärtner, *Die Eigentums Garantien in den Verfassungen Polens, Ungarns, der Tschechischen und der Slowakischen Republik-Verfassungsrechtliche Grundlagen und Verfassungspraxis*, 39 RECHT IN OST UND WEST 75, 75-77 (1995).

61. See POL. CONST. art. 21; see also Gärtner, *supra* note 60, at 76.

62. See Gärtner, *supra* note 60, at 76.

63. SLOVK. CONST. art. 20, § 4.

64. See *Constitution Watch*, E. EUR. CONST. REV., Summer 1995, at 29.

65. See *id.*

66. See *id.*

not defined; it simply stipulates that compensation is required.⁶⁷ Nevertheless, Czech courts are unlikely to ignore precedents in other democratic countries and therefore are likely to provide an equitable compensation based on economic criteria.

Another well-known problem relating to the right of ownership originates from confiscations perpetrated just before and after World War II.⁶⁸ These confiscations had to be corrected in the context of a general settlement of the past.

Restitution for past confiscations is one of the most sensitive and controversial subjects in current Czech politics.⁶⁹ Although an act on property restitution was passed in 1991, it only addressed expropriations taking place after the seizure of power by the Communists on February 25, 1948.⁷⁰ This left the confiscations pursuant to the Benes decree unaddressed.

In a case before the Czech Constitutional Court, a Czech plaintiff of German origin requested restitution of his family property. He claimed that Benes' decree was invalid because at that time Benes was not the legal President.⁷¹ The Court rejected this claim, finding that Benes had full authority to issue the decree. Furthermore, the Court stated that the confiscation decree was not aimed against citizens of German or Hungarian origin but against enemies of democracy.⁷² It therefore declared the decree to be in conformity with the Charter of Rights and Freedoms, as well as international agreements.⁷³

In a subsequent petition by the same plaintiff, however, the Constitutional Court annulled the decision of a lower court which denied the return of the plaintiff's property.⁷⁴ Although this deci-

67. See CZECH CHARTER art. 11, § 4.

68. For example, Czechoslovak President Benes, pursuant to Decrees No. 12/1945 and No. 108/1945, ordered the confiscation of property owned by Germans, Hungarians, and persons disloyal to Czechoslovakia during World War II. See Jeffrey J. Renzulli, *Claims of U.S. Nationals Under the Restitution Laws of Czechoslovakia*, 15 B.C. INT'L & COMP. L. REV. 165, 168 (1992).

69. See *Constitution Watch*, E. EUR. CONST. REV., Spring 1995, at 9. After World War II, the property of approximately three million Sudeten (ethnic Germans) and ethnic Hungarians living in Czechoslovakia, many of whom collaborated with the Nazis, was confiscated by President Benes' Decree No. 108, on the Confiscation of Enemy Property and the Funds of the National Revival (1945). See *id.*

70. See *Constitution Watch*, E. EUR. CONST. REV., Summer/Fall 1994, at 7-8.

71. See *Constitution Watch*, *supra* note 69, at 9.

72. See *id.*

73. See *id.* at 10.

74. See *Constitution Watch*, E. EUR. CONST. REV., Summer 1995, at 8.

sion does not automatically apply to all Sudeten Germans, the ruling could enable Czech citizens of German ethnicity who were not expelled after World War II to reclaim their property.⁷⁵

In Hungary, the Constitutional Court decided that the Jewish community is entitled, under the Paris Peace Treaty, to compensation for property confiscated during World War II.⁷⁶

In the Slovak Republic, an Act of 1993 provides for the restitution of property to churches and religious communities.⁷⁷ Cooperative farms and companies in possession of church property are compensated for their loss, however, property under private ownership is not returned.⁷⁸ Pursuant to this Act, expropriated Jewish Slovaks can also reclaim property confiscated after 1938.⁷⁹

Finally, in Poland, the issue of compensating private citizens who lost their property under the communist or Nazi regimes, has not been resolved.

C. Right to Privacy

State interference in private life is constitutionally restricted in the Visegrád countries. Poland and the Czech and Slovak Republics constitutionally restrict state interference in private life.⁸⁰ The Hungarian Constitution, however, does not guarantee privacy. The Interim Polish Constitution did not guarantee privacy either. The Polish ombudsman, however, successfully prevented police from forcing hotels to hand over guest lists by relying upon Article 17 of the United Nations International Covenant on Civil and Political Rights.⁸¹

Personal information is also protected in the Visegrád countries.⁸² Under the Czech Charter and the Slovak Constitution, this guarantee extends only to protect against unauthorized gathering

75. See *Constitution Watch*, E. EUR. CONST. REV., Spring 1995, at 10.

76. See *Constitution Watch*, E. EUR. CONST. REV., Spring 1993, at 7.

77. See *Constitution Watch*, E. EUR. CONST. REV., Fall 1993/Winter 1994, at 19.

78. See *id.*

79. See *id.*

80. See CZECH CHARTER art. 10, § 2; SLOVK. CONST. art. 19, § 2; POL. CONST. arts. 47, 49.

81. See Ewa Letowska, *The Ombudsman and Basic Rights*, E. EUR. CONST. REV. 63, 65 (1995) [hereinafter Letowska, *Ombudsman*].

82. See SLOVK. CONST. art. 19, § 3; CZECH CHARTER art. 10, § 3; HUNG. CONST. art. 59, § 1; POL. CONST. art. 51.

or misuse of personal information.⁸³ The Hungarian Constitution, however, does not restrict the right.⁸⁴ The Hungarian Constitutional Court broadly interpreted this right when it ruled that government regulations which compel citizens to declare their assets to deter tax evasion violated the constitutional protection of personal information.⁸⁵ The Court stated that a restriction of the right to privacy is permissible only if it is necessary and tailored to the goal being pursued.⁸⁶

Both Czech and Slovak law prohibits unjustified state interference in citizens' personal and family life.⁸⁷ Both countries also expressly guarantee the secrecy of letters and all other means of communication.⁸⁸ Similarly, the Polish Constitution guarantees the privacy of communication as well.⁸⁹

Constitutions in the Visegrád countries also generally assure the inviolability of the home.⁹⁰ Under Czech and Slovak constitutional law, a search of a private house is permitted only if warranted by a written order issued by a judge.⁹¹

The Hungarian Constitution contains no provision regarding house searches by police. A law provides that public prosecutors may issue search warrants.⁹² Search warrants are not required, however, when the police are checking the identity papers of foreigners. This has led to reports of human rights abuses by the police.⁹³ Under Polish law, arbitrary forced entry into houses is forbidden.⁹⁴ Search warrants may be issued by public prosecutors or local police commanders. In most urgent cases, no warrants are required.⁹⁵ There have been no reports of abuses by the police.⁹⁶

83. See SLOVK. CONST. art. 19, § 3; CZECH CHARTER art. 10, § 3.

84. See HUNG. CONST. art. 59, § 1.

85. See *Constitution Watch*, E. EUR. CONST. REV., Spring 1993, at 8.

86. See *id.*

87. See CZECH CHARTER art. 10, § 2; SLOVK. CONST. art. 19, § 2.

88. See CZECH CHARTER art. 13; SLOVK. CONST. art. 22, §§ 1, 2.

89. See POL. CONST. art. 49.

90. See SLOVK. CONST. art. 21; CZECH CHARTER art. 12; HUNG. CONST. art. 59, § 1, POL. CONST. art. 50.

91. See SLOVK. CONST. art. 21, § 2; CZECH CHARTER art. 12, § 2.

92. See U.S. DEP'T OF STATE, *Hungary Human Rights Practices, 1996*, (March, 1996).

93. See *id.*

94. See POL. CONST. art. 50.

95. See U.S. DEP'T OF STATE, *Poland Republic Human Rights Practices, 1995*, (March, 1996), at 967.

96. See *id.*

D. Right to Freedom

In the Czech and Slovak Republics, an individual may not be prosecuted or deprived of liberty unless for cause and according to methods set forth by law.⁹⁷ An arrest can only take place when a judge issues a written order and the person under arrest is promptly informed of the grounds thereof.⁹⁸ Within twenty-four hours the detainee must be brought before a judge, who will either set the accused free or decide to put him or her in pre-trial detention.⁹⁹ In addition, constitutional guarantees against unlawful detention in medical institutions are provided.¹⁰⁰ Such a measure must be communicated to a Court, within twenty-four hours, which then rules within a specified time period.¹⁰¹ The Slovak Constitution stipulates that a written court order is required even for a psychological examination of a suspect.¹⁰²

The Hungarian Constitution also guarantees the right to freedom. It states that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are determined by law."¹⁰³ The time period within which a person in custody must be brought before a judge, however, is not clearly provided. It merely states that an accused person be "brought before a judge within the shortest possible time."¹⁰⁴ Citizens unlawfully arrested or detained, however, may be compensated.¹⁰⁵

The Polish Constitution also guarantees the right to personal freedom. It states:

1. Personal inviolability and security are assured to everyone. Any deprivation or limitation of freedom can be imposed only in accordance with principles and under procedures specified by law.
2. Anyone deprived of freedom, except by sentence of a court, has the right to appeal to a court for immediate decision on the legality of such deprivation.

97. See SLOVK. CONST. art. 17, § 2; CZECH CHARTER art. 8, § 2.

98. See SLOVK. CONST. art. 17, §§ 3, 4; CZECH CHARTER art. 8, §§ 3, 4.

99. See CZECH CHARTER art. 8, § 4; SLOVK. CONST. art. 17, § 4.

100. See SLOVK. CONST. art. 17, § 6; CZECH CHARTER art. 8, § 6.

101. See SLOVK. CONST. art. 17, § 6; CZECH CHARTER art. 8, § 6.

102. See SLOVK. CONST. art. 17, § 7.

103. HUNG. CONST. art. 55, § 1.

104. *Id.* art. 55, § 2.

105. See *id.* art. 55, § 3.

3. Any detained person must be informed, immediately and in a manner comprehensible to him, of the reason for detention. The person must, within 48 hours of detention, be transferred to a court for disposition of the case. The detained person must be set free unless a warrant of temporary arrest issued by a court, along with specification of the charge, has been served on him within 48 hours of the time given to the court's disposal.¹⁰⁶

In Poland, before 1996, public prosecutors issued arrest warrants which could be challenged by the detainee through an appeal to the district court.¹⁰⁷ The ombudsman invoked Article 9 of the Covenant on Civil and Political Rights, recognizing the right to freedom in cases where individuals had been arrested without a valid warrant.¹⁰⁸ In August 1996, a new law went into effect requiring courts, rather than prosecutors, to issue arrest warrants. This law was adopted to comply with the European Convention on Human Rights.¹⁰⁹

IV. POLITICAL RIGHTS AND FREEDOMS

A. *Freedom of Speech and of the Press*

In all of the Visegrád countries, freedom of expression is guaranteed.¹¹⁰ In the Czech and Slovak Republics, censorship is expressly prohibited.¹¹¹ Restrictions on the freedom of expression are permitted only where it is necessary to protect rights and freedoms of others, state security, law and order, health and morality.¹¹² To illustrate, the Czech Criminal Code prohibits defamation of the State and the Presidency.¹¹³ In practice, however, the courts have given suspended sentences in the few cases to date.¹¹⁴

Although the Slovak and Czech Republics have similar legislation, their approach to freedom of speech and expression differ.

106. POL. CONST. art. 41.

107. See U.S. DEP'T OF STATE, *supra* note 95, at 967.

108. See Ludwikowski, *supra* note 33, at 64.

109. See U.S. DEP'T OF STATE, *supra* note 95, at 967.

110. See POL. CONST. art. 54; SLOVK. CONST. art. 26; CZECH CHARTER art. 17; HUNG. CONST. art. 61, §§ 1, 2.

111. See SLOVK. CONST. art. 26, § 3; CZECH CHARTER art. 17, § 3.

112. See SLOVK. CONST. art. 26, § 4; CZECH CHARTER art. 17, § 4.

113. See U.S. DEP'T OF STATE, *Czech Republic Human Rights Practices, 1995*, (Mar. 1996), at 840.

114. See *id.*

The Slovak Criminal Code forbids defamation of the President.¹¹⁵ The Slovak government constantly interferes with the freedom of the press and controls the media through State-ownership.¹¹⁶ Moreover, journalists have been repeatedly warned that they would be punished for failing to publish the truth about the Slovak Republic.¹¹⁷ Consequently, the freedom of the press remains a problem, particularly because of the highly politicized state-owned media.¹¹⁸ The growing private sector, which currently owns one national and five local television stations and twenty free radio stations, has considerably alleviated this problem in the last few years.¹¹⁹

The Czech laws do not prohibit criticism against the government and public figures. Independent newspapers are freely available and permitted to publish without government censorship.¹²⁰

In Hungary, the Constitution requires a special two-thirds majority of the Members of the National Assembly present, for acts regarding freedom of the press and supervision of public radio, television and news agencies.¹²¹ The Press Act restricts freedom of the press.¹²² The Act requires licenses for all publications including books, leaflets, periodicals, television and radio programs, and videos.¹²³ The government may grant exemptions to the publication permit requirement, and it has done so in a very broad, general way.¹²⁴ Freedom of the press in Hungary, therefore, depends on government authorization, contradicting the unconditional freedom of the press guaranteed by the Hungarian Constitution.¹²⁵

115. See U.S. DEP'T OF STATE, *Slovak Republic Human Rights Practices, 1995*, (Mar. 1996), at 1023. For example, a bitter dispute between the President and the Prime Minister generated multiple defamation suits. In May 1996, the President sued the Prime Minister for defamation. The President also sued a former editor of the newspaper Slovenska Republika for defamation in October 1996. See *id.*

116. See Ludwikowski, *supra* note 33, at 139.

117. See *id.*

118. See U.S. DEP'T OF STATE, *supra* note 95, at 1024.

119. See *id.*

120. See *id.*

121. See HUNG. CONST. art. 61, §§ 3, 4.

122. See Andras Sajo, *Hate Speech for Hostile Hungarians*, E. EUR. CONST. REV. 82, 83 (1994) (referring to the Press Act of 1986 as amended by Act XI of 1990).

123. For example, see decree 58/1989, which declared that except for military publications and stamp catalogues, licenses are unnecessary. See *id.*

124. See Sajo, *supra* note 122, at 83.

125. See *id.*

In Poland, a law regulating broadcasting activities restricts freedom of the press.¹²⁶ This law requires that all programs “respect the religious feelings of the audiences and in particular respect the Christian system of values.”¹²⁷ The Radio and Television Council interprets the Christian values criterion, enforces the Act, and may admonish or fine broadcasters, or refuse to grant or even revoke broadcasting licenses.¹²⁸ Given the vagueness of the notion “Christian values,” this provision confers a significant discretionary power to the Council and essentially legalizes censorship.¹²⁹

The Polish Penal Code similarly prohibits offending religious sentiment through public speech.¹³⁰ The Code states that anyone who “publicly insults, ridicules and derides the Polish nation, the Polish People’s Republic, its political system, or its principal organs is punishable by between 6 months and 8 years of imprisonment.”¹³¹ In a recent case, however, the Polish Supreme Court decided that a professor who made insulting remarks about the Minister of Education was not guilty of libel.¹³² It agreed with the ombudsman’s argument that the rights of the politician concerned should not prevail over the freedom of speech and that politicians should be prepared to be criticized more than ordinary citizens.¹³³

In a case regarding the confidentiality of journalistic sources of information, the Polish Supreme Court held that “a journalist and the editor of a paper cannot refuse to be a witness in criminal proceedings about matters covered by professional secrets if a Court or a prosecutor releases a journalist from confidentiality.”¹³⁴ The ombudsman criticized the Court’s decision, arguing that “protection of professional secrets is essential for guaranteeing freedom of the press, radio and television which is, in turn, a pillar of a democratic State.”¹³⁵

126. See Irena Grudzinska Gross, *Broadcasting Values*, E. EUR. CONST. REV., Summer 1993, at 52 (referring to Act of December, 1992).

127. *Id.*

128. *Id.* at 52.

129. *See id.*

130. *See* U.S. DEP’T OF STATE, *supra* note 95, at 967.

131. *Id.*

132. *See* Letowska, *Ombudsman*, *supra* note 81, at 65 (referring to Case RPO 55056/90/1).

133. *See id.*

134. *Constitution Watch*, E. EUR. CONST. REV., Spring 1995, at 21.

135. *Id.*

B. Right to Information

In Hungary, Poland, and the Czech and Slovak Republics, citizens have a constitutionally recognized right to gather information.¹³⁶ For example, the Hungarian Constitutional Court declared the provisions of statutes restricting access to government archives unconstitutional based on Article 70/G of the Constitution which guarantees "freedom of science."¹³⁷

In the Czech Republic, the government granted access to former communist secret police files.¹³⁸ This enabled Czech citizens to retrieve the names of former secret agents who had spied on them.¹³⁹

C. Freedom of Assembly and Association

The Visegrád countries also recognize other important political rights, such as the freedom of peaceful assembly and the freedom of association.¹⁴⁰

In Hungary, legislation on the rights of assembly and association, as well as on the functioning of political parties require a two-thirds majority of the members of the National Assembly present.¹⁴¹ Political parties are expressly excluded from directly exercising power.¹⁴²

In Poland, private associations are subject to preliminary governmental approval and must register with their district court.¹⁴³ Although an organization is only required to sign a declaration stating its allegiance to the laws of Poland, in practice, the discretionary power of the courts, complicates the procedure.¹⁴⁴ For example, an organization to support minorities on the basis of nationality, ethnicity or sexual preference was refused permission on the grounds that it did not promote Polish national interests.

136. See SLOVK. CONST. art. 26, § 1; CZECH CHARTER art. 17, § 1; HUNG. CONST. art. 61, § 1, POL. CONST. art. 54.

137. See *Constitution Watch*, E. EUR. CONST. REV., Summer/Fall 1994, at 10.

138. See *Constitution Watch*, E. EUR. CONST. REV., Summer 1995, at 7.

139. See *id.*

140. See POL. CONST. arts. 57, 58; CZECH CHARTER arts. 19, 20; SLOVK. CONST. arts. 28, 29; HUNG. CONST. arts. 62, 63.

141. See HUNG. CONST. arts. 62, § 2 & 63, § 3.

142. See *id.* art. 3, § 3.

143. See U.S. DEP'T OF STATE, *supra* note 95, at 968.

144. See *id.*

V. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Introduction

The Constitutions of Poland, Hungary and the Czech and Slovak Republics provide many economic, social and cultural rights. This is the legacy of the communist era, when constitutions defined the aspirations of society, rather than the fundamental and unalienable rights of citizens.

In the Czech Charter and the Slovak Constitution, these rights are not absolute. The enforceability of these rights can be based only on laws that transform these "soft-law" guidelines into "real" rights.

In Hungary, all fundamental rights, including economic and social rights, are in principle, enforceable.¹⁴⁵ The right to social security, however, has been narrowly interpreted. The Constitutional Court held that the Constitution does not entitle anyone to social security, safety, and legal claims on a general level which cannot be defined.¹⁴⁶ This decision suggests that social rights in Hungary are not rights of the citizens, but are legislative and executive "governmental tasks."¹⁴⁷

This Constitutional Court decision, however, does not necessarily apply to all social and economic rights.¹⁴⁸ In a case concerning a pension adjustment, the Hungarian Court ruled against the adjustment by a 5-4 decision. The judges argued that since social rights are provided for in the Constitution, they must be permanently recognized and be constitutionally guaranteed.¹⁴⁹ When new appointments are made to the court, judges in favor of liberal constitutional protection of economic and social rights might become a majority.¹⁵⁰

In Poland, Lech Walesa introduced a proposal for a new "Bill of Rights" during his presidency in order to revise the economic and social rights enumerated in Chapter 8 of the former Constitu-

145. See HUNG. CONST. art. 70/K.

146. See Osiatynski, *supra* note 9, at 143.

147. See Peter Paczolay, *The New Hungarian Constitutional State: Challenges and Perspectives*, CONSTITUTION-MAKING IN EASTERN EUROPE 21, 48 (A.E. Dick Howard ed., 1993).

148. See Osiatynski, *supra* note 9, at 143 n.143.

149. See *id.*

150. See *id.*

tion.¹⁵¹ This proposal divided the traditional economic, social and cultural rights into two categories.¹⁵² The first encompassed enforceable rights such as the right of basic education, the right to work and to work in safe conditions, the right of minimum health care, and the right of social security.¹⁵³ This category of rights was to be limited to a minimum but, these rights were to be directly enforceable by procedures enumerated in the "Bill of Rights."¹⁵⁴

The second category included improvement of working conditions, full employment, social assistance, health care, and education exceeding the minimum level, protection of the cultural heritage, consumer protection, and environmental protection.¹⁵⁵ These advantages were not referred to as rights; they were considered "tasks of the public authorities" in the economic, social and cultural areas.¹⁵⁶ These tasks were not enforceable through the courts, and implementation was dependent on budget availability.¹⁵⁷ To ensure these tasks would be taken seriously, a system to make authorities accountable for their policy was established.¹⁵⁸

The new Polish Constitution contains a separate subchapter on economic, social, and cultural freedoms and rights.¹⁵⁹ These rights include enforceable rights such as the right to safe working conditions and social security, and policy objectives, such as full employment and ecological safety.¹⁶⁰

B. Working Conditions

The Czech Charter merely provides for a general principle of fair remuneration for work and satisfactory working conditions.¹⁶¹ The Slovak Constitution contains more detailed provisions. One

151. See President Walesa's Draft Bill of Rights and Freedoms (1992)(Pol.). For a brief description of the Bill of Rights, see Wiktor Osiatynski, *Bill of Rights of Poland*, E. EUR. CONST. REV., Summer 1992, at 29.

152. See Osiatynski, *supra* note 9, at 143.

153. See President Walesa's Draft Bill of Rights and Freedoms arts. 29-33 (Pol.).

154. See *id.* at arts. 34-40.

155. See *id.* at arts. 41-48.

156. See *id.*

157. See *id.* at art. 48.

158. See *id.*

159. See POL. CONST. arts. 64-76.

160. Compare, e.g., POL. CONST. art. 66 ("Everyone has the right to safe and hygienic conditions of work.") with art. 65, § 5 ("Public authorities pursue policies aiming at full, productive employment by implementing programs to combat unemployment").

161. See CZECH CHARTER art. 28.

of the conflicts that caused the dissolution of Czechoslovakia was determining the appropriate degree of social protection.¹⁶² The Slovaks favored a higher degree of protection than the Czechs.¹⁶³

In the Slovak Republic, employees are entitled to "fair and satisfactory conditions at work."¹⁶⁴ The law must further provide for:

[T]he right to compensation for the work performed to secure a dignified standard of life, the security from arbitrary dismissal and discrimination at work, the protection of health and safety at work, the setting of maximum working hours, reasonable rest time after work, a minimum amount of paid vacation, the right of collective bargaining.¹⁶⁵

In Hungary, employees have a constitutional right "to rest and leisure and to regular holidays, with pay."¹⁶⁶ The Constitution also provides for the principle of "equal pay for equal work."¹⁶⁷

The new Polish Constitution provides for rights such as the right to choose and to pursue an occupation, choice of employment, minimum remuneration, safe and hygienic working conditions, vacation, and annual paid holidays.¹⁶⁸

In addition, the Visegrád countries recognize the right of workers to establish trade unions¹⁶⁹ and to go on strike.¹⁷⁰

C. Social Security

Under the Czech Charter and the Slovak Constitution, citizens are entitled to material security in old age as well as in cases of disability, and disability of the family's principal provider.¹⁷¹ Additionally, any citizen in financial need is entitled to government assistance.¹⁷²

162. See Ludwikowski, *supra* note 33, at 130.

163. See *id.*

164. SLOVK. CONST. art. 36.

165. *Id.*

166. HUNG. CONST. art. 70/B, § 4.

167. *Id.* art. 70/B, § 2.

168. See POL. CONST. arts. 65, 66.

169. See HUNG. CONST. art. 70/C; POL. CONST. art. 59, § 1; SLOVK. CONST. art. 37, §§ 1, 2, 3; CZECH CHARTER art. 27, §§ 1, 2, 3.

170. See HUNG. CONST. art. 70/C, §§ 2, 3; SLOVK. CONST. art. 37, § 4; CZECH CHARTER art. 27, § 4; POL. CONST. art. 59, § 3.

171. See CZECH CHARTER art. 30, § 1; SLOVK. CONST. art. 39, § 1.

172. See CZECH CHARTER art. 30, § 2; SLOVK. CONST. art. 39, § 2.

Czechs and Slovaks are also entitled to free medical care through a public insurance system.¹⁷³ The Slovak Constitutional Court interpreting this provision found a decree by the Minister of Health, requiring the patients themselves to pay for certain medication and medical services, unconstitutional.¹⁷⁴ The Court held that only an act of Parliament can place restrictions on medical care paid through the national insurance system.¹⁷⁵

The Hungarian Constitution similarly provides for the right to social security.¹⁷⁶ Citizens are entitled to subsistence in the event of illness, disability, widowhood, orphanhood, old age, or unemployment beyond the individual's control.¹⁷⁷ This subsistence should be implemented by a system of social insurance and other social institutions.¹⁷⁸ These constitutional provisions, however, do not grant citizens enforceable rights.¹⁷⁹

The Interim Polish Constitution provided for generous rights to social security such as the right to health care and assistance in case of illness or incapacity to work.¹⁸⁰ These provisions were obviously copied from the communist party program; implemented in a "progressive" way, through the establishment of social insurance, improvement of health care, free medical assistance, improvement of safety conditions, prevention and treatment of diseases.¹⁸¹ These rights, were therefore also not enforceable. Lech Walesa's "Bill of Rights" proposed, at a minimum, to ensure enforceability of rights to employment, safe working conditions, basic levels of health care, and social security.¹⁸²

Under the new Polish Constitution, both the right to social security and the right to equal access to health care services financed from public funds are enforceable rights.¹⁸³ The law specifies the scope, forms, and conditions for the exercise of these rights.¹⁸⁴

173. See CZECH CHARTER art. 31; SLOVK. CONST. art. 40.

174. See Constitutional Court Decision (Oct. 19, 1994), 3 BULL. CONST. CASE L. 271 (1994).

175. See *id.*

176. See HUNG. CONST. art. 70/E.

177. See *id.* art. 70/E, § 1.

178. See *id.* arts. 70/D, 70/E.

179. See Osiatynski, *supra* note 9, at 145.

180. See INTERIM POL. CONST. art. 70.

181. See *id.*

182. See President Walesa's Draft Bill of Rights and Freedoms arts. 29-40 (Pol.).

183. See POL. CONST. arts. 67, 68.

184. See *id.* art. 68.

D. Educational Rights

The Visegrád countries generally guarantee the right to education albeit at different levels of enforceability. In the Interim Polish Constitution, the right to education was formulated as a policy aspiration.¹⁸⁵ In ascending order, the Constitution stated that free education, general and compulsory basic education, generalized secondary education as well as the development of higher education was required.¹⁸⁶ The new Polish Constitution formulates the right to education as an enforceable right.¹⁸⁷ This right includes compulsory and free education until the age of eighteen, universal and equal access to education for all citizens, and the parental right to choose and establish alternative schools.¹⁸⁸

The Czech Charter and the Slovak Constitution guarantee the right to free education at the primary and the secondary levels.¹⁸⁹ Access to the university depends on the capability of the student and budgetary means of the State.¹⁹⁰

In Hungary, the Constitution provides for the enforceable right to free basic education.¹⁹¹ Access to secondary and higher education, however, depends on the capabilities of the student.¹⁹²

E. Environmental Rights

The Czech Charter provides that "everybody has the right to live in a favourable living environment and is entitled to timely and complete information about the state of the living environment and natural resources."¹⁹³ No person is permitted to exert their rights in a manner detrimental to the environment or harm it beyond the statutory limits.¹⁹⁴ The Slovak Constitution further provides that the State is responsible for "the economical use of natural resources, an ecological balance, and an effective environmental policy."¹⁹⁵ Citizens have a constitutional duty to protect

185. *See id.* art. 70.

186. *See id.*

187. *See id.*

188. *See id.*

189. *See* CZECH CHARTER art. 33; SLOVK. CONST. art. 42.

190. *See id.*

191. *See* HUNG. CONST. art. 70/F.

192. *See id.*

193. CZECH CHARTER art. 35, §§ 1, 2.

194. *See id.* at § 3.

195. SLOVK. CONST. art. 44, § 4.

and improve the environment.¹⁹⁶ The enforceability of these provisions is currently unknown. It appears that only the right to "timely and complete information" is enforceable based on the general constitutional right to information.¹⁹⁷

The Interim Polish Constitution provides that citizens have the right to enjoy the natural environment and that it is their duty to protect it.¹⁹⁸ The new Polish Constitution provides for separate provisions on the duties of the public authorities for environmental protection and the citizens to care for the environment.¹⁹⁹

The Hungarian constitution does not provide a guarantee for a healthy environment.

VI. MINORITY RIGHTS

The Constitutions of the Visegrád countries contain a non-discrimination provision that guarantees equal treatment irrespective of sex, race, religion, political conviction, ethnicity, language or other criteria.²⁰⁰ An individual can claim a violation of their rights as a minority based on the freedom of religion, freedom of speech, freedom of association and assembly, and other rights.

A. Poland

Today, Poland is a homogenous country with relatively few minority groups²⁰¹ largely because of the genocide of the Jews and other groups by the German occupation forces during World War II.²⁰² Consequently, the Interim Polish Constitution, unlike the Czech, Slovak and Hungarian Constitutions, did not contain specific provisions regarding the protection of minorities.²⁰³ Minority rights were included in the drafts of the new Polish Constitution due to international pressure and repeated complaints by minority groups.²⁰⁴ Poland also entered into agreements "on good neigh-

196. See *id.* art. 44, § 2.

197. See *id.* art. 45.

198. See INTERIM POL. CONST. art. 71.

199. See POL. CONST. arts. 74, 86.

200. See *id.* arts. 32, 35; SLOVK. CONST. art. 12, § 2; HUNG. CONST. art. 70/A; CZECH CHARTER art. 3.

201. See Osiatynski, *supra* note 9, at 131.

202. See *id.*

203. See *id.* at 135.

204. See Marian Kallas, *Nationale und Ethnische Minderheiten in Polen*, 39 RECHT IN OST UND WEST 188, 189-91 (1995).

borship” with Germany and the Ukraine, containing similar provisions on minority rights.²⁰⁵

The new Polish Constitution better protects minority rights. To illustrate, Article 35 provides:

1. The Republic of Poland ensures to Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions and to develop their own culture.
2. National and ethnic minorities have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the solution of matters connected with their cultural identity.²⁰⁶

B. Hungary

The Hungarian Constitution states that national and ethnic minorities living in Hungary share in the power of the State.²⁰⁷ The State is obligated to protect national and ethnic minorities by ensuring their “collective participation in public life” and the use of their own language.²⁰⁸

In 1993, the Hungarian Assembly overwhelmingly approved the Act on the Rights of National and Ethnic Minorities to provide for minority representation in Parliament.²⁰⁹ The Act entitles minorities to set up minority local governments²¹⁰ and provides for a special ombudsman who safeguards their rights.²¹¹

Despite this legal protection, human rights observers have voiced concern about discrimination, harassment, and violent attacks directed particularly against Romanies and Jews.²¹² The Hungarian government has, however, committed itself to implement a policy to improve the situation.²¹³

205. *See id.*

206. POL. CONST. art. 35.

207. *See* Osiatynski, *supra* 9, at 136.

208. HUNG. CONST. art. 68.

209. *See Constitution Watch*, E. EUR. CONST. REV., Summer 1993, at 9.

210. *See id.*

211. *See id.* at 10.

212. *See* Ludwikowski, *supra* note 33, at 146-47.

213. *See id.*

C. Czech Republic

The Czech Charter in general guarantees the right of development to national and ethnic minorities.²¹⁴ The Charter specifically recognizes the right of national and ethnic minorities to use their language "in official contacts" and to be educated in their language.²¹⁵ The Charter also provides for the right to associate on an ethnic basis and to participate in decisions affecting minorities.²¹⁶

The dissolution of Czechoslovakia gave rise to international concern regarding the treatment of the large Czech and Slovak minorities in their neighboring country.²¹⁷ The problem was especially acute in the Czech Republic where Slovaks made numerous applications to obtain Czech nationality.²¹⁸ As a result, the Czech Parliament passed a law stipulating that Slovaks may obtain Czech citizenship only if they had resided in the Czech Republic for over two years, committed no felonies during the last five years, and renounced their Slovak nationality.²¹⁹ The Citizenship Law also requires fluency in the Czech language.²²⁰ Given the similarity between the Czech and Slovak languages, critics have argued that the provision is aimed at limiting citizenship access for Romany residents.²²¹ Consequently, in April, 1996, the Citizenship Law was modified whereby people residing on Czech territory on December 31, 1997, were exempt from the felony requirement.²²²

As in other Visegrád countries, the 200,000 Czech-Romanies suffer disproportionately from poverty, unemployment, violence, illiteracy, disease, and discrimination.²²³ In the last few years, cases of violent attacks on Romanies by skinheads have been reported.²²⁴

214. See generally CZECH CHARTER art. 25.

215. See *id.* § 2(a)(b).

216. See *id.* § 2(c).

217. See Ludwikowski, *supra* note 33, at 136.

218. By the end of 1992, approximately 30,000 applications had been lodged by Slovaks to gain Czech citizenship and almost 3000 new applications were coming in daily. See *id.*

219. See *id.* (Act of 1992 on Citizenship, Jan. 1, 1993).

220. See Osiatynski, *supra* note 9, at 134.

221. See U.S. DEP'T OF STATE, *supra* note 95, at 844.

222. See BULL. EUR. UNION, Supplement 14/97, at 10 (1997).

223. See *id.* at 843.

224. See *id.* at 844.

D. Slovak Republic

The Slovak Constitution guarantees national and ethnic minorities the same rights as the Czech Republic in the fields of culture, language, and education.²²⁵ A new article in the Constitution, however, restricts the exercise of such rights by stating that “[t]he exercise of rights by citizens of a national minority guaranteed by this Constitution may not threaten the sovereignty and territorial integrity of the Slovak Republic or discriminate against other citizens.”²²⁶ This provision rules out positive discrimination such as affirmative action and prohibits separatist movements.²²⁷

Complaints about minority rights violations have repeatedly been lodged against the Slovak government, especially by the large Hungarian minority which constitutes about ten percent of the population.²²⁸ The primary disputes involve bilingual road signs in areas with a majority Hungarian population, the freedom to use Hungarian names, and autonomy in education.²²⁹ In 1994, the plight of the minority population improved when the Slovak National Council adopted various legislation aimed at gaining admission into the Council of Europe.²³⁰ The protective legislation included abolishing the requirement that married women of ethnic Hungarian origin attach a Slovak suffix to their last names.²³¹ It also required bilingual road signs in areas with a minority population of at least twenty percent.²³²

An earlier example that foreshadowed the actions of the Slovak Council could be found in a 1990 law on languages passed in the Slovak Republic. The Slovak Linguistic Law of 1990 reiterates the status of the Slovak language as the national language of the Slovak Republic. The Linguistic Law, however, allows the use of minority languages in areas where minorities constitute at least

225. See SLOVK. CONST. art. 34, §§ 1, 2.

226. *Id.* art. 34, § 3.

227. See *id.*

228. See *Constitution Watch*, E. EUR. CONST. REV., Spring 1994, at 23.

229. See *id.*

230. See *Constitution Watch*, E. EUR. CONST. REV., Summer 1994, at 21.

231. See *id.*

232. See *id.* at 22. This constitutes a typical example of the way in which the Council of Europe has used its conditions of membership in Central and Eastern Europe as a lever to have certain changes made which otherwise would have been cumbersome or perhaps impossible to achieve. See *id.*

twenty percent of the population.²³³ Despite the enactment of this law, the government introduced a proposal to further restrict the use of minority languages in schools, government institutions, and the media.²³⁴ Such initiatives reinforce the view that constitutional guarantees for minority rights in the Slovak Republic are merely symbolic in nature.

In 1995, under international pressure, Hungary and the Slovak Republic signed a bilateral treaty whereby Hungary recognized the current Hungarian-Slovak border and the Slovak Republic granted linguistic, educational, and representation privileges to its Magyar minority.²³⁵ Although the Slovak Council ratified the treaty, it simultaneously adopted two declarations stating that it rejects collective rights of minorities and that it opposes to any form of local self-government on an ethnic basis.

Another persecuted minority in Slovakia are the Romanies who form the second largest ethnic group in the Slovak Republic and suffer discrimination in housing, employment, and public service.²³⁶ Violent attacks against Romanies is also a serious problem.²³⁷ The authorities have condemned such attacks and have offered compensation to the families of such victims, and proposed the creation of a government office to address the issue of "disadvantaged citizens."²³⁸

VII. REMEDIES IN CASE OF VIOLATION OF HUMAN RIGHTS

The collapse of communism has marked the end of the Marxist-Leninist theory of unity in State power.²³⁹ Eastern European countries have adopted the principle of separation of powers, including the establishment of an independent judiciary.²⁴⁰ Such a mechanism is essential to ensure that human rights are respected. As explained earlier, the citizens of the four Visegrád countries generally have the right to exert their basic constitutional rights

233. See Ludwikowski, *supra* note 33, at 137.

234. See U.S. DEP'T OF STATE, *supra* note 95, at 1027.

235. See *Constitution Watch*, E. EUR. CONST. REV., Spring 1995, at 30-31.

236. See U.S. DEP'T OF STATE, *supra* note 95, at 1027.

237. See *id.* For example, in 1995, in an attack by skinheads on a group of Romanies, an individual died as a result of being doused with liquid fuel and being set ablaze. *Id.*

238. See *id.*

239. See Georg Brunner, *Development of a Constitutional Judiciary in Eastern Europe*, 18 REV. CENT. & E. EUR. L. 535, 536 (1992).

240. See *id.*

before ordinary, administrative, and Constitutional courts.

Although the new democracies were inexperienced with judicial review, the respective constitutional courts have played an active role in ensuring the supremacy of constitutional principles.

Although the principle of judicial review was incompatible with the principle of "Unity of Powers," some democratic reforms had already taken place in Poland during the last years of the communist regime.²⁴¹ The current Constitutional Tribunal, for example was established in 1985.²⁴² In Hungary, the first attempt to create a Constitutional Court was in 1984, with the Hungarian Constitutional Law Council.²⁴³ The powers of the Council were, however, limited. The current Constitutional Court was established in 1989.²⁴⁴

A Constitutional Court was also set up in Czechoslovakia in 1991.²⁴⁵ After the dissolution of Czechoslovakia, each country established its own Constitutional Court.²⁴⁶ The Slovak Constitutional Court was established in 1993.²⁴⁷

In all four Visegrád countries, members of Parliament or the President of the Republic may petition to the Constitutional Court.²⁴⁸ Other state organs, such as the Council of Ministers or local governments, are also entitled to institute proceedings.²⁴⁹ In Poland, social organizations, such as trade unions, can bring matters within the scope of their activity before the Constitutional Tribunal.²⁵⁰ Moreover, under the new Polish Constitution, "[a]nyone whose constitutional freedoms or rights have been infringed, has the right to appeal in accordance with principles

241. See Brunner, *supra* note 239, at 538.

242. See *id.*

243. See *id.* at 539.

244. See HUNG. CONST. art. 32/A; see also Spencer Zifcak, *Hungary's Remarkable, Radical, Constitutional Court*, 3 J. CONST. L.E. & CENT. EUR. 1, 1-56 (1996).

245. See Brunner, *supra* note 239, at 542.

246. See CZECH REP. CONST. arts. 83-89; see also SLOVK. CONST. arts. 124-40.

247. See SLOVK. CONST. arts. 124-40.

248. See Act XXXII art. 21, §§ 1, 3, 6 (1989) (on the Hungarian Constitutional Court); Act on The Czech Constitutional Court (1995) § 64(1), (2) (1995), reprinted in RECHT IN OST UND WEST 27 (1995); SLOVK. CONST. art. 130(a), (b); POL. CONST. art. 18, § 4.

249. See Act XXXII art. 21, §§ 1(c), 3(c), 6(c) (1989) (on the Hungarian Constitutional Court); Act on The Czech Constitutional Court (1995), § 64(3); SLOVK. CONST. art. 130, § 1(c).

250. See Kazimierz Dzialocha, *Der Verfassungsgerichtshof der Volksrepublik Polen*, 32/1 OSTEUROPA RECHT 13, 20 (1996).

specified by law to the Constitutional Tribunal."²⁵¹ It is interesting to note, however, that the only right which is excluded from this constitutional review is the right to seek asylum in Poland.²⁵²

In Hungary and the Czech and Slovak Republics, proceedings before the Constitutional Court may also be initiated by regular courts where inconsistencies between legal provisions and the Constitution become apparent in a case.²⁵³ Moreover, in the Czech Republic, regular courts are obliged to refer questions of constitutionality of laws to the Constitutional Court.²⁵⁴

Under the Interim Polish Constitution, regular courts could only appeal indirectly to the Constitutional Tribunal.²⁵⁵ The high judicial courts decided whether a legal question should be forwarded to the Constitutional Tribunal.²⁵⁶ Under the new Polish Constitution, however, "[a]ny court may refer a question of law to the Constitutional Tribunal . . . if the answer to such question of law may determine an issue currently before such court."²⁵⁷ In practice, however, Polish regular courts have been reluctant to ask for preliminary rulings by the Constitutional Tribunal.²⁵⁸ The same can be said for Hungarian courts.²⁵⁹ As a result of years of totalitarianism, Central and Eastern European judges are used to simply applying the law without raising constitutional objections.

The Hungarian Constitutional Court can *ex officio* investigate the compatibility of legislative provisions and other acts of State organs with international agreements.²⁶⁰ Similarly, the Court may also decide to dismiss cases of "manifest" unconstitutionality.²⁶¹ Although the Polish Constitutional Tribunal was also vested with similar powers under the Interim Constitution,²⁶² this power was

251. POL. CONST. arts. 79, § 1, 191, § 1, 6.

252. See *id.* art. 79, § 2 (excluding article 56 of the Constitution from constitutional review).

253. See ACT ON THE CZECH CONSTITUTIONAL COURT, § 64(4); see also SLOVK. CONST. art. 130(d); Halmay, *supra* note 44, at 4.

254. See CZECH REP. CONST. art. 95, § 2.

255. See Mark F. Brzezinski, *Poland: Constitutionalism Within Limits*, 2 E. EUR. CONST. REV., Spring 1993, at 39.

256. See *id.*

257. POL. CONST. art. 193

258. See Brzezinski, *supra* note 255, at 39.

259. See Brunner, *supra* note 239, at 547.

260. See Act XXXII art. 21, § 7 (1989) (on the Hungarian Constitutional Court).

261. See *id.*

262. See Brzezinski, *supra* note 255, at 39.

not granted to the Tribunal under the new Constitution.

In Hungary, citizens who seek redress against violations of their fundamental rights by administrative decisions have constitutionally guaranteed access to regular and administrative courts.²⁶³ Moreover, individuals may challenge general rules claimed to be unconstitutional before the Constitutional Court, even when not directly affected by the law.²⁶⁴ In addition, the office of the ombudsman can request documents and written explanations from public authorities relating to cases under review.²⁶⁵

In the Czech and Slovak Republics, private citizens are entitled to institute proceedings before the Constitutional Courts if they believe that their fundamental rights have been violated.²⁶⁶

Under the new Polish Constitution, the individual right of petition²⁶⁷ and access to the Constitutional Tribunal has been introduced.²⁶⁸ In addition, the office of the ombudsman plays an essential role in safeguarding fundamental rights and freedoms.²⁶⁹ Any person can file a complaint with the ombudsman, who can then institute proceedings before the Constitutional Tribunal, the Highest Administrative Court, or appeal to the Supreme Court against any final judicial decision.²⁷⁰

If dissatisfied with the final court decision or if appropriate judicial means are lacking, citizens can bring their case before the European Commission for Human Rights or the United Nations Human Rights Committee.²⁷¹

The possibility of international judicial review provides the final protection to the wide range of enforcement mechanisms de-

263. See HUNG. CONST. art. 70/K.

264. See Act XXXII art. 21, § 8 (1989) (on the Hungarian Constitutional Court).

265. See *Constitution Watch*, E. EUR. CONST. REV., Spring 1993, at 10.

266. See SLOVK. CONST. arts. 127, 130, § 1(f); Act on The Czech Constitutional Court, §§ 64(d), 74.

267. See POL. CONST. art. 63.

268. See POL. CONST. arts. 79, § 1, 191, § 6.

269. See POL. CONST. arts. 80, 208.

270. See POL. CONST. arts. 80, 208-12; see also Letowska, *Ombudsman*, *supra* note 81, at 63.

271. See Jean-Bernard Marie, *International Instruments Relating to Human Rights*, 16 HUM. RTS. L. J. 75, 80-81 (1995). All four countries have ratified the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms. They have also signed declarations regarding the right of individual petition and the jurisdiction of the European Court of Human Rights. *Id.*

signed to ensure nationally and internationally recognized human rights. Not only does judicial review occur internationally, but the international legal provisions themselves become subsumed into national law. Provisions on human rights in international law can be invoked directly before a national judge. Each country, however, takes a different position in terms of which provisions can be invoked, where they can be invoked, and their rank in the legal order. The general tendency is to subordinate domestic law to international law, and to allow direct appeal to the application of internationally recognized human rights.²⁷² To illustrate, Article 7 of the Hungarian Constitution states that the legal system of the Republic of Hungary shall adopt the universally accepted rules of international law, and furthermore, it shall ensure the agreement between the accepted international obligations and domestic statutes.²⁷³

In holding that international law is directly applicable in Hungary, the Constitutional Court in *Retroactivity II* stated that "generally recognized rules of international law" are "integral parts of Hungarian law without any further transformation."²⁷⁴ Moreover, the Constitutional Court concluded that Hungarian laws, including constitutional provisions, must be interpreted consistently with both treaty and customary international law.²⁷⁵ It appears, therefore, that individuals may institute proceedings before the Constitutional Court on the basis of incompatibility of domestic law with the provisions of international treaties.²⁷⁶

The Czech Constitution provides that "ratified and promulgated international treaties on human rights and fundamental freedoms, by which the Czech Republic is bound, shall be applicable as directly binding regulations, having priority before the law."²⁷⁷ In the hierarchy of the Czech legal order, international treaties rank equally with constitutional acts.²⁷⁸ The Constitu-

272. See Osiatynski, *supra* note 9, at 163.

273. See HUNG. CONST. art. 7, § 1.

274. See Decision No. 11/1992 (III.5) Alkotmánybíróság [Constitutional Law Court] 10 (Hung.) [hereinafter *Retroactivity II*]; see also Duc V. Trang, *Beyond the Historical Justice Debate: The Incorporation of International Law and the Impact on Constitutional Structures and Rights in Hungary*, 28 VAND. J. TRANSNAT'L L. 1, 12 (1995).

275. See *id.* at 16.

276. See *id.* at 26.

277. CZECH REP. CONST. art. 10.

278. See Jiri Malenovsky, *Human Rights Treaties and the Czechoslovak Constitutional Order*, 45 AUS. J. PUB. & INT'L L. 21, 32 (1993).

tional Court has jurisdiction to verify the compatibility of domestic law with international treaties on human rights.²⁷⁹

Under the Slovak Constitution, "international instruments on human rights and freedoms ratified by the Slovak Republic and promulgated under statutory requirements" take precedence over domestic law.²⁸⁰ This, however, is only to the extent that such international treaties "guarantee greater constitutional rights and freedoms."²⁸¹

The competence of the Slovak Constitutional Court to adjudicate conflicts between domestic law and international treaties on human rights is less clear than in the Czech Republic. While the Slovak Constitutional Court has jurisdiction over conflicts between international instruments and "generally binding rules," the Constitution does not confer it jurisdiction over conflicts between statutes and international treaties.²⁸² This omission arguably renders Article 11 ineffective in promoting the supremacy of international human rights instruments over domestic law.

The new Polish Constitution, on the other hand, provides for direct applicability and precedence of international law over domestic law.²⁸³

VIII. CONCLUSION

In general, current Constitutions substantially protect human rights. This was true historically as well. The significant difference lies in the enforceability of those rights. The current Constitutions have become a meaningful option because constitutionally guaranteed individual rights and freedoms can now be invoked and enforced. Citizens can also appeal to the European Court of Human Rights in Strasbourg to have laws and government decisions declared unconstitutional. In addition, they can file petitions to the authorities, lodge complaints with the office of the ombudsman, and appeal to the European Court in Strasbourg. These alternatives have turned mere promises into real rights.

Although general problems relating to governmental control persist, they are similar to those present in other European coun-

279. See Act on The Czech Constitutional Court.

280. See SLOVK. CONST. art. 11.

281. *Id.*

282. See *id.* art. 125(e).

283. See POL. CONST. art. 91.

tries. There are important issues the Visegrád countries must address. Particularly, they must consider the discrimination issue. The most striking problem is the discrimination and violence against ethnic minorities. Discrimination in housing, employment, education, and health care must be eradicated.

The persistent problems are often psychological and cannot be solved by granting rights or providing legal remedies. Nevertheless, it is important that legal means exist whenever illegal acts stemming from discrimination arise. Therefore, the Visegrád countries must increase their investigation of complaints, prosecute suspects, and accelerate the handling of cases.

Poland, Hungary, and the Czech and Slovak Republics have turned clearly to the West in terms of democratic values and human rights. We can hope that these trends will grow into lasting institutions that guarantee freedom and human rights for all.