

# **Moldova's Flawed Constitution**

## ***With a Prescription for Limited Government***

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### **Introduction**

The draft Constitution proposed by the leadership of the current Parliament of the Republic of Moldova<sup>1</sup> is a fatally flawed attempt at taking the former Moldavian Soviet Socialist Republic into democracy. Like so many of the post-Soviet constitutions already adopted in the newly independent states, it mixes together the words of human rights with the powers of the Bolshevik state. In Moldova, this fundamental error, unless altered, will ensure continued civil conflict, inhibit individual initiative and limit liberty.

### **Historical Background**

Moldova, a tiny country of approximately 3.5 million, is the most densely populated of the former Soviet republics. Sandwiched between Romania and Ukraine, just off the northwest coast of the Black Sea, it was annexed by Stalin at the beginning of the Second World War.

Like much of the rest of the former Soviet Union, Moldova is experiencing significant problems with the various nationalities which comprise the population. Previously a part of Romania, the country is dominated by the two-thirds of the people who speak Romanian as their native tongue. Another one-fourth of the people are Slavophones. The remainder are ethnic Turks, Bulgarians, and miscellaneous other nationalities.

One of the first of the former Soviet republics to declare its sovereignty,<sup>2</sup> Moldova thus far has resisted the temptation to merge into Romania. Nevertheless, the early talks of reunification, the adoption of Romanian as the national language, and the use of Romanian emblems by the government in Chişinău, the Moldovan capital, triggered calls for separation in two regions of the country with significant non-Romanian populations.<sup>3</sup> In the summer of 1992, the tensions broke out into a civil war. The Russian Fourteenth Army, still present in the cities of Bendery and Tiraspol, intervened, and brokered a cease fire which has held since the end of open hostilities.<sup>4</sup>

### **Political Background**

The current Moldovan Parliament, elected well before the collapse of the Soviet Union, has been working to prepare a constitutional draft. The hope was to have a

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constitution in place before new elections were held. That hope came to an end in the fall of 1993, when it became apparent that the Parliament had virtually no popular support. It gave up its attempts at completing a proposed constitution, postponing a final decision until after elections called for the winter of 1994.<sup>5</sup>

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That is for the better, for the most recent draft Constitution is fatally flawed throughout. It begins with the most fundamental of fallacies for a democratic society: It assumes that power originates in the state. From this false start, the constitutional draft more closely resembles a Soviet polemic

more than a post-Soviet fundamental law.

The centrality of this shortcoming is best seen in the draft's scheme of individual rights. The Moldovan parliamentary proposal is quite long. Indeed, Title II, called “Men, State, Society”, has 39 articles, twice as many as the individual rights section of the German *Grundgesetz*. The entire Constitution of the United States has only seven articles and 27<sup>6</sup> amendments. Indeed, the most recent Moldovan draft has 134 articles, and approximately 10,000 words. It tries to address all contingencies, but thereby addresses very few. Ultimately, it is reminiscent of the Soviet Constitution of 1977<sup>7</sup> more than the constitution of any of the leading democratic states of the world.<sup>8</sup>

### **Positive Rights or No Rights**

The drafting committee adopted the positive rights approach of the Soviet Constitution. The emphasis of this plan is best shown by reviewing examples from the all but defunct 1977 Constitution of the USSR. For example, Article 18 states:

In the interests of the present and future generations, the necessary steps are taken in the USSR to protect and make scientific, rational use of the land and its mineral and water resources, and the plant and animal kingdoms, to preserve the purity of air and water, ensure reproduction of natural wealth, and improve the human environment.

This undoubtedly was a hollow promise from an all-powerful government. Such a provision, although it sounds nice, does little to protect the citizens from an all-powerful state. The stated goals are laudable. Article 18, however, did not prevent, indeed could not, environmental waste or accidents. Instead, it empowered the governing elite, without protecting the public or the environment from irrational or oppressive measures.

Article 42<sup>9</sup> of the Soviet Constitution is another good example. After stating that Soviet citizens have the right to health protection, the Constitution provides how the state will ensure the right. But a review of the status of Soviet health care proves how empty this promise was. And the guarantor always remains the state. In other words, without the empowerment of the state, no right exists.<sup>10</sup>

Provisions such as these assume that the state retains all power to decide life's day-to-day problems. This is the approach of the Moldovan constitutional draft. The chapter on individual rights is chock full of such examples.

According to Article 20, "The state guarantees each individual the right to know his rights and duties." The purpose of this provision is to require publication of the nation's laws. Article 20 would correct a regular Soviet practice of enforcing unpublished regulations. But its wording reinforces the notion that it is the state which plays the key role. Without the state, no one can enforce the guarantee. A better provision would simply withhold from the state the power to enforce an unpublished law. That would make Article 20 self-executing.

Pursuant to Article 21, "The state guarantees a person the right to life and to a physical and psychological integrity."<sup>11</sup> Similar provisions exist in other democratic constitutions.<sup>12</sup> But an even stronger provision would withhold the power from the state to take life, either absolutely or unless certain conditions were met. For example, the Fourteenth Amendment to the Constitution of the United States provides that a state cannot deprive a person of life "without due process of law."<sup>13</sup> The former provision assumes that the state has the ultimate authority to remove life. The latter assumes that the people have withheld this power from the state, except under the most stringent of conditions.

The problem with the positive rights approach becomes crystal clear in Article 29, which is supposed to provide for the right to free thought. Section 1 states:

Every citizen is guaranteed the freedom of thought, of an opinion as well as the freedom to express himself in the society by speech, image or other possible means.

Yet, what the state gives with one hand it can take away with the other. For Section 2 prohibits expression which is "directed to harm somebody's honor ... or infringe on somebody's right to a personal vision." Precisely what those words might mean is unclear. But they give the state not merely the power, but indeed the duty, to regulate interpersonal communications. If that were not enough, Section 3 further prohibits "[t]he defamation of the country and its people," "incitement . . . to territorial separatism," and "obscene actions."<sup>14</sup> Because it is the state which provides the guarantee, instead of the people who keep from the state the very power to act, the state will have the ability to define for itself when the provisions of section 1 are operative, and when it can simply ignore the right to free expression.

Along the same lines is Article 33, by which "[t]he state ensures the observance of the rights and legitimate interests of the political parties and of the social-political organizations."<sup>15</sup> One must wonder whether the state will be beneficent to opposition parties. Will calls for the ouster of the government, for example, be considered "defamation of the country" as prohibited by Article 29?

Similarly troubling is Article 35, Section 5, whereby the state guarantees that "[t]he means of public information, state or private, are obliged to ensure a correct information of the public opinion." The state could not use that provision to keep the opposition off of the nation's air waves. Furthermore, because Section 5 includes *private* "means of public information," the state could have a constitutional basis for censoring privately owned media.

Perhaps the most fundamental right of a free and democratic system is the right to own and to use property. Yet, the Moldovan draft Constitution restricts that right as well. Although Article 40 provides that rights to property "are guaranteed,"<sup>16</sup> it immediately restricts that right in Section 4, which states:

The right to ownership imposes the observance of all assignments regarding the protection of the environment and the guarantee to a good neighborhood as well as the observance of all tasks incumbent on him in conformity to Law.

Furthermore, Article 9, Section 2, provides that “[n]o property shall be used to the detriment of a person's rights, liberty or dignity.” Muddying the waters even further is Article 119, Section 2, where “[t]he state guarantees the realization of the right to ownership in all forms required by its holders *which do not contradict the interests of society.*”<sup>17</sup> Unclear is the extent to which these provisions empower the state to interfere with private property.

Taken together, Articles 9, 40 and 119, constitutionally empower the state to interfere with basic property rights for the most amorphous of reasons. If the intent is to maintain state control of property, the parliamentary proposal will admirably serve its cause. If, however, Moldova truly intends to become a market economy, the drafters should rewrite these paragraphs. It would be much simpler, for example, if the power of the state to restrict the use of property itself were limited.

The positive rights approach of the Moldovan draft Constitution finds its zenith, however, in several of the articles numbered in the 40's and 50's. There, the state guarantees rights to education,<sup>18</sup> social security,<sup>19</sup> health,<sup>20</sup> a clean environment,<sup>21</sup> protection of youth,<sup>22</sup> protection of the disabled,<sup>23</sup> families,<sup>24</sup> and so forth.<sup>25</sup> Although these may be laudable goals, the draft never mentions how Moldova could possibly ever realize them. The finances are wholly lacking.

What makes the mere statement of laudable goals dangerous is that such a constitution allows the state to retain vast power over virtually every aspect of life. The state guarantees the rights of families,<sup>26</sup> the disabled,<sup>27</sup> the elderly,<sup>28</sup> the youth.<sup>29</sup> The state guarantees the right to free speech.<sup>30</sup> The state guarantees the right to free religious expression.<sup>31</sup> The state guarantees the right to hold property.<sup>32</sup> Thus, it is only by the sufferance of the state that the people can enjoy the rights that the state will let them have.

Exacerbating the acuteness of the problem are the many qualifications on the grants of rights. In many articles, the state qualifies the grant of a right by retaining the power to abrogate the right without any change in the Constitution itself. Typical is the provision calling for the right of free travel. In the same section in which the state guarantees this right, the state also ominously qualifies it with the words, “[t]he common Law will establish the conditions of the implementation of this right.”<sup>33</sup> Article 28 similarly takes away the very right it supposedly grants:

The privacy of letters, telegrams, other mail, of the telephone conversations as well as of other legal means of communication is inviolable with the exception of cases foreseen by the Law.

Likewise, Article 31, which on the one hand guarantees the freedom of religious spirit, immediately restricts that right by requiring that religious sects organize themselves “within the framework of the Law in action.”<sup>34</sup>

State withdrawal of rights does not end there. Although the state guarantees the rights of political parties, Article 33 ominously empowers the state to interfere with

the activities of political parties “in cases foreseen by Law.”<sup>35</sup> Those situations are not specified.

Most disheartening, however, is the final provision of Title II, the portion of the draft dealing with individual rights. For that provision essentially eviscerates the proceeding 38 articles. Section 1 of Article 53 reads:

The exertion of certain rights or liberties can be restricted only by Law provided it is done for the following purposes: for the defence of the national security, of order, for the protection of the public health or morality, for the protection of rights and liberties of the citizens, for the performance of a penal inquiry, for prevention of the consequences of a calamity or of a severe catastrophe.

This provision essentially gives a majority of Parliament the right to eliminate all rights elsewhere provided in the Constitution. It has the potential of effectively eliminating all of Title II.

In far too many places in the constitutional draft, the legislature, by majority vote, can override the Constitution. These provisions serve no purpose other than to make the people feel like they have certain rights which, in actuality, do not exist. They wholly undermine the concept of a nation governed by the rule of law.

#### **Minority Rights and the Vertical Separation of Powers**

The constitutional draft does not adequately protect the rights of minorities. This is a fundamental error. In a multinational state, it is imperative that the rights of minorities be assured. In Moldova, which has fought a civil war, at least in part because of such issues, a constitution without adequate protections for minorities will not be an enduring document. Without such protections, the state cannot credibly claim to have justly addressed minority grievances.

The Moldovan draft has no true equal protection provision. Coming closest is Article 4, Section 2, which states:

All citizens in the Republic of Moldova are equal before Law indifferently of their race, nationality, ethnic origin, language, religion, sex, politics, property or social origin.

That would seem to settle the matter. But the draft Constitution subsequently provides various means of circumventing what otherwise would appear to be a clear statement. For example, Article 15, Section 2, provides:

Certain restrictions can be applied to a citizen only when these restrictions are established by Law and are meant to ensure the rights and liberties of other people or when the application of certain restrictions demanded by some society necessity or the necessity to secure the public order and the general prosperity.

This clause gives wide-ranging power to the government to restrict equal protection virtually at will. Equally troubling, and especially disturbing to Moldova's national minorities, are the various provisions which are designed to show that Moldova is an ethnic Romanian state, and that non-ethnic Romanians will be treated differently.

The very first section of Article 1, the most fundamental provision of the constitution, tells non-Romanian Moldovans in no uncertain terms who is in control. It provides that “[t]he Republic of Moldova is a sovereign, independent, unitary and indivisible state.” The use of the word “unitary” is so important to so many of the Moldovan Mps that they will brook no discussion about deleting this legally unnecessary term.

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By “unitary,” the drafters intend to foreclose the possibility of any type of federalism. They equate federalism with separatism. They want to maintain centralized control of the entire country. Protests to the contrary notwithstanding, this would enact a continuation of

what existed in the Soviet era.

In this context, words like “unitary,” “federal,” and “national” take on heightened significance and are used as code words. “Unitary” means Romanian. “Federal” means Russian. The definitions of “nation” and “national” change depending on the group using the terms.

What the drafters seek is to enforce the essentially Romanian character of Moldova. This is seen throughout the proposed constitution. Article 10, for example, provides:

The unity of the nation of the Republic of Moldova constitutes the basis of the State. The Republic of Moldova is a common, indivisible Motherland for all her citizens.<sup>36</sup>

Given that the use of the words “unity” and “nation” in the Moldovan context imply “Romanian,” such a provision is not merely unnecessary, but also an intentional affront to the Russian, Gagauzi, and other minorities throughout the country.

Similarly, Articles 12 and 13 are troubling. Article 12 specifies the state flag and emblem. The flag is the Romanian tricolor, the emblem the traditional symbol of the Romanian province of Moldova. Article 13 specifies that Romanian is the official language, and that the Parliament can regulate its use. This gives little real protection to the large minority in the country which does not even speak Romanian at all.

Certainly, there is nothing *per se* improper with having a flag, emblem or language of which the overwhelming majority of the country approves. After those years of Soviet oppression,<sup>37</sup> including forced Russification, the importance of Articles 12 and 13 is understandable. But there is no reason to constitutionalize what the overwhelming majority can enforce by law. Placing such restrictions in society's fundamental document simply becomes retribution, not sound policy or necessary constitutional law.

If there were any doubts remaining about who controlled the newly independent Moldova, Article 76 lays them to rest. There, the constitutional drafters require that any candidate for the office of president “speak the Romanian language.”<sup>38</sup> In a country where a person's language is so important, such a provision is clearly intended to disenfranchise a large part of the population. Presumably, it would be difficult for a person who does not speak Romanian to win a free election. But to

disqualify such a large part of the country merely because of the individual's language capabilities will do little to make the various minorities of Moldova feel like they are an integral part of the nation.

Ultimately, the minorities in Moldova can take little comfort in any aspect of the current draft. To many of the most ardent Romanian nationalists of Moldova, the Russians living in the country are mere colonizers, who have no right to citizenship, indeed no right to remain where they live. With that understanding, the provisions of Article 3, Section 3, which reads that “[n]o foreign population shall be displaced or colonized on the territory of the Republic of Moldova,” are especially disturbing. Should this hyper-nationalistic understanding be given the imprimatur of constitutionality, those who are not ethnic Romanians may have good reason to fear for their future.

Regardless of how Moldova resolves issues of local government, the constitutional draft contains contradictory and mutually exclusive provisions. Providing, for example, for local self government, and at the same time for a centrally appointed prefect, invites inherent strife. Under the best of circumstances, the scheme of the draft Constitution will be extremely difficult. More than likely, it simply cannot work. Local officials would constantly wonder whether to answer to the local head of government or the prefect. The one entity, probably the local government, would likely be an emasculated shell, having the appearance of responding to local concerns when in actuality it merely paid obeisance to the center through the prefect.

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### **The Collaboration of State Powers—The Definition of Tyranny**

In the end, the Moldovan draft Constitution fails even to construct a workable government. Once again, the proposal contains the words of democracy, yet too closely resembles its Soviet predecessor. Like the 1977 Constitution of the USSR, the Moldovan draft places overwhelming power in the hands of the legislature. It boldly empowers the office of the *Prokuratura*, or Procuracy—the public prosecutor—and emasculates the judiciary. And, like its predecessor, the Moldovan draft eliminates the most fundamental of protections of liberty, the separation of powers.

The problem begins at the outset of the draft. Article 6 deals with the separation of powers. It reads:

The Legislative, the Executive and the Judicial Powers are separated and shall collaborate in the exercise of their prerogatives in conformity with the provisions of the Constitution.

The drafters had proposed a different version of Article 6. They rewrote it, however, shortly after the Parliament held what it called, “The Scientific Workshop on the Draft of the Constitution of the Republic of Moldova” on 27 and 28 May 1993. The constitutional experts who spoke on the issue of the separation of powers<sup>39</sup> universally criticized the then extent draft for its general lack of a well

defined separation of powers. But the one article which received universal praise was Article 6, which seemingly provided for a clear cut separation of powers.<sup>40</sup> Incredibly, the drafters rewrote the one paragraph which received no criticism, and turned it into something which neither Locke nor Montesquieu, the intellectual fathers of the separation of powers, would recognize.

The concept of the rule of law absolutely requires recognition and acceptance of a scheme of separation of powers that involves creating, as Madison put it, “the necessary constitutional means, and personal motives, to resist encroachments of the others. The provision for defence must in this, as in all other cases, be made commensurate to the danger of attack.”<sup>41</sup>

Unfortunately, the Moldovan draft is woefully lacking in this regard. This is especially apparent in its treatment of the judiciary. The non-political branch is by far the weakest of the three branches of government. That is probably as it should be. In Moldova, however, the rule of law will not take hold unless the judiciary receives greater power than it had under communism.

The separation of powers is perhaps the single greatest protection against tyranny. If the powers of the state are separate, no single person, no single governmental organ, can control the mechanisms of state power.

In *The Federalist*, No. 47, James Madison well expressed the importance of the separation of powers:

The accumulation of all powers legislative, executive, and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. . . . [T]he preservation of liberty requires, that the three great departments of power should be separate and distinct.

Similarly, Madison later wrote in *The Federalist*, No. 51:

[S]eparate and distinct exercise of the different powers of government . . . [is] essential to the preservation of liberty. . . .

By contrast, the Soviet system did not recognize the separation of powers. To the contrary, the 1977 Soviet Constitution emphasized that the powers of the state were subordinate to the soviets of people's deputies,<sup>42</sup> and, ultimately, to the Communist Party of the Soviet Union.<sup>43</sup> This was an expression of tyranny at its purest.

The Moldovan draft is a vast improvement over the Soviet model. But it has not gone far enough. In this regard, the position of the Procuracy is especially disturbing. Virtually all agree that the Procuracy is too strong, and that the judiciary is too weak. But few are willing to take on the Procuracy, and turn it into some combination of attorney general/ombudsman. Under the Soviet system, the Procuracy had oversight over the security apparatus, the police, and virtually all other organs of the executive branch of government.<sup>44</sup> It reported only to the legislature,<sup>45</sup> and essentially ruled over the judiciary.<sup>46</sup>

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The drafters of the Moldovan Constitution seem to have recognized this. They have eliminated much of the verbiage from previous drafts which gave the Procuracy the same wide ranging powers of the Communist system. Indeed, earlier versions essentially made courts jointly responsible with, and ultimately responsible to, the Procuracy as the protector of the legal system. Deleting such provisions is a first good step. But Article 117, the paragraph which creates the Procuracy, currently does not at all define the duties of that office.<sup>47</sup> Such a failure to place specific limits on the powers of the Procuracy would be a grave error. It leaves the structure of the Procuracy wholly in place. As drafted, the proposed Constitution leaves the judiciary far from being the independent body it must be for a free, republican government to succeed.<sup>48</sup>

### **Conclusion**

The draft Constitution appears to be an attempt to present democracy, on the one hand, but to preserve the powers of the state, on the other hand. The state gives rights with one hand, but takes them away with the other. This is a prescription for failure under good circumstances, and for tyranny under bad circumstances.

The constitution is the fundamental document of a democratic society. It should provide the basic framework, the legal structure, of the society. It is the legal foundation upon which the nation is built. It should be a short document. It should do two things. It should establish the government, and limit the scope of the government.

Many constitutions try to do more. They tend to contain nice words that actually indicate the overriding power of the state. The Soviet Constitution, for example, claimed to ensure a right to work “by the socialist economic system, steady growth of the productive forces,” and so forth.<sup>49</sup> Other constitutions try to do similar things. Such rights, however, ultimately are no rights at all. They are merely empty promises by an all-powerful government, which occasionally decides to be beneficent to the masses of its subjects.

The Moldovan Constitution needs a strong statement of individual rights, including rights to free speech, free media, free exercise of religion. The Constitution must protect against unwarranted arrests and torture. It must protect the rights of citizens to own and use their property free of the threat of state confiscation. And, especially in the context of Moldova, it needs an equal protection clause.

In a democracy, the majority exercises power. The minority, on the other hand, needs assurance that its place in society is no different than that of the majority. If for no better reason than to keep the peace, the majority must assure that the minority has a stake in the country. All minorities, and especially national minorities, are, as Ludwig von Mises wrote, bound to feel like “political pariahs who have no say when matters concerning them are being debated.” The best remedy? Limit the size and scope of government. Keep government from interfering with the rights of any. Thereby, protect all.

The concept of limited government looks not to so-called positive rights, which the governing elite will provide to the masses, but to real rights, rights which the people reserve to themselves. If the government is not empowered to act in a specific area, it can do nothing at all. For example, a constitution which prohibits the state

from interfering with free speech is much more protective than one in which the state supposedly guarantees the right to free speech. Under the first approach, the state has no ability to take away the rights of the people. In this regard, the need for a strong and independent judiciary has proved indispensable in the nurturing of liberty.

The judicial system in a democratic society is of central importance. A strong and independent judiciary empowers the people to enforce their rights against state encroachments. Courts act as a check on political branches of government. For this reason, one must regard with suspicion the role of the Procuracy, an institution invented by socialist law, wholly unknown in and wholly foreign to contemporary democracies. The powers of the Procuracy should be limited. The Procuracy should be kept separate from, thereby ensuring the strength and independence of, the judiciary.

Instead of the governing elite granting guarantees, a constitution which secures liberty speaks in terms of limited powers of the state. A constitution based on the rule of law is one in which the various powers of the state are kept separate.

The world has several good models of democratic constitutions which have withstood the test of time. Ultimately, however, a constitution should not merely be a document which lists rights. It is, as both Burke and Disraeli argued, more than the formal procedures of elections and the relationship among the various branches of power. A constitution is a reflection of the practices, instincts, legal systems and political culture of the people who make up a society. It embodies the hopes and aspirations a society has for itself.

Nonetheless, there are various principles of universal application. Power comes from the people. Residual power remains in the people. The people create government not for the benefit of those who govern, but for the benefit of the people. The rulers are, in actuality, not so much rulers, but mere servants of the public. The people create a limited government, with limited and separated powers, and then restrict the government from interfering with their rights.

The constitutional draft prepared by the Moldovan Parliament is a start. Given the extreme difficulties engendered by the civil conflict of 1992, preparing such a proposal is itself a remarkable achievement. Furthermore, the continued pressure of the Russian Fourteenth Army, literally hundreds of miles from the nearest piece of Russian territory, makes any political solution especially difficult. Nevertheless, the proposed Constitution still needs substantial revision. One hopes that a freely elected parliament or a representative constitutional convention will devise such a document.

## Notes

<sup>1</sup> The draft to which this article refers was translated by the Parliament in the late summer of 1993. All quotations, unless otherwise indicated, are directly from that document. Grammatical errors were not corrected. Sometimes, they reflect poor draftsmanship in the original Romanian.

<sup>2</sup> Moldova declared independence and sovereignty on 27. August 1991.

<sup>3</sup> The first region is the relatively industrialized Transdnistria, the population of which is about 50% Russian and Ukrainian. Transdnistria is the area roughly to the northeast of the Dniester River, although Bendery, one of the main Transdnistrian cities, is on the west bank. It borders on Ukraine to the northeast. Bendery and Tiraspol, the Transdnistrian capital, are about an hour's drive from Chişinău. The other region is Gagauzia, an agricultural area in the south, where the dominant Gagauzi population is a Turkic Christian people of around 150,000.

<sup>4</sup> The authorities in Tiraspol declared the existence of the Pridnestrovian Moldavian Republic, which in effect is governing Transnistria.

<sup>5</sup> Elections are set for 27 February 1994.

<sup>6</sup> The 27th amendment, barring implementation of Congressional pay raises before an intervening election, was prepared as part of the Bill of Rights in 1789, but finally approved by the necessary three-fourths of the states in 1992.

<sup>7</sup> The Constitution (Fundamental Law) of the Union of Soviet Socialist Republics, adopted at the Seventh (Special) Session of the Supreme Soviet of the USSR, Ninth Convocation, on 7 October 1977. All quotations are from the English translation published by Novosti Press Agency Publishing House, Moscow, 1977.

<sup>8</sup> Actually, the parliamentary draft resembles the worst parts of the harshly criticized Romanian Constitution of 1991, while simultaneously rejecting some of the better portions of that document. For example, the Moldovan Parliament specifically proposes a unicameral legislature, thus further enhancing its already overwhelming power. Cf. The Constitution of Romania, 1991, Article 58, Section 2: "Parliament consists of the Chamber of Deputies and the Senate." Quotations are from the English translation published by the *Monitorial Official*, Bucharest, 1991.

<sup>9</sup> Article 42 stated:

Citizens of the USSR have the right to health protection.

This right is ensured by free, qualified medical care provided by state health institutions; by extension of the network of therapeutic and health-building institutions; by the development and improvement of safety and hygiene in industry; by carrying out broad prophylactic measures; by measures to improve the environment; by special care for the health of the rising generation, including prohibition of child labor, excluding the work done by children as part of the school curriculum; and by developing research to prevent and reduce the incidence of disease and ensure citizens a long and active life.

<sup>10</sup> Article 33 of the Romanian Constitution of 1991 also states that "[t]he right to the protection of health is guaranteed."

<sup>11</sup> Article 21, Section 1.

<sup>12</sup> See, e.g., Article 2, Section 2, of the German *Grundgesetz*, which states, in part: "Each person has the right to life and to bodily integrity." ("Jeder hat das Recht auf Leben und körperliche Unversehrtheit.") Even this provision, which perhaps reflects a positive rights approach, does not make the state the empowering agency.

<sup>13</sup> In pertinent part, U.S. Const. Am. XIV, Section 1, states: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

<sup>14</sup> The full text of Article 29, Section 3 is: "The defamation of the country and its people, instigation to war or aggression, to national hatred, racial or religious hatred, incitement to discrimination, to territorial separatism, to violence in public as well as obscene actions are forbidden and punished by Law."

<sup>15</sup> Article 33, Section 4.

<sup>16</sup> Article 40, Section 1.

<sup>17</sup> Emphasis added.

<sup>18</sup> Article 41.

<sup>19</sup> Article 45.

<sup>20</sup> Article 46.

<sup>21</sup> Article 47.

<sup>22</sup> Article 48.

<sup>23</sup> Article 49.

<sup>24</sup> Articles 50, 51 and 52.

<sup>25</sup> Article 42, Section 2, for example, provide for "protection measures concern[ing] the security and hygiene of labour, the labour regime of women and young people, the set-up of a minimum wage, the weekly rest, the paid leave, the remuneration of labour done in hard conditions and other specific situations."

<sup>26</sup> Articles 50, 51 and 52.

<sup>27</sup> Article 49.

<sup>28</sup> Article 45, Section 2.

<sup>29</sup> Article 48.

<sup>30</sup> Article 29.

<sup>31</sup> Article 31.

<sup>32</sup> Article 40.

<sup>33</sup> Article 26.

<sup>34</sup> Article 31, Section 2.

<sup>35</sup> Article 33, Section 5, states, in pertinent part: "Interference of public authorities and of official persons into the activity of the political parties and of the social-political organizations shall be admitted only in cases foreseen by Law."

<sup>36</sup> Article 10, Section 1.

<sup>37</sup> For example, Moldovans were forbidden from using the Roman alphabet, and instead forced to use the Russian alphabet. The people justly hated such regimentation. Artists, for example, though state supported, typically preferred to sign their paintings in Russian, and would pen a symbol in place of their name.

<sup>38</sup> Article 76, Section 2.

<sup>39</sup> Those speakers included Thomas Markert, administrator in the Secretariat of the European Commission for Democracy Through Law; Antonie Iorgovan, one of the principal drafters of the 1991 Romanian Constitution; Jacques Cadart, professor of law, University of Paris; and the author of this article.

<sup>40</sup> Originally, Article 6 read:

Article 6. Separation of state power.

(1) In the Republic of Moldova the state power is divided into the legislative, the executive and the judiciary one.

(2) The Parliament is the supreme and unique body which exercises the legislative power.

(3) The executive power shall be exercised by the Government.

(4) Justice shall be carried out exclusively by the juridical bodies.

<sup>41</sup> Madison, *The Federalist*, No. 51. All citations to *The Federalist* are taken from *The Debate on the Constitution: Federalist and Antifederalist Speeches, Articles, and Letters During the Struggle over Ratification*, The Library of America: New York, 1993.

<sup>42</sup> Article 2, Constitution of the USSR, 1977.

<sup>43</sup> Article 6, Constitution of the USSR, 1977.

<sup>44</sup> Article 164, Constitution of the USSR, 1977.

<sup>45</sup> Article 165, Constitution of the USSR, 1977.

<sup>46</sup> Article 164, Constitution of the USSR, 1977. Cf. Article 153, Constitution of the USSR, 1977, which, at best, placed the entire Soviet Supreme Court at the same level as the Procurator General. All officials with whom the author spoke considered the Procuracy to be much more powerful than the entire judiciary.

<sup>47</sup> Section 2 of Article 117 calls for presidential nomination and parliamentary approval of the General Prosecutor of the Republic of Moldova. While not specifying or limiting the duties of the office, Article 117 ominously provides in section 6 that "[t]he subordination of the judicial procedure shall be determined by the organic Law." This section seems to confirm the inferiority of the judiciary.

<sup>48</sup> The problem is precisely that for which Madison quotes Montesquieu in *The Federalist*, No. 47: "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for *the judge* would then be *the legislator*. Were it joined to the executive power, *the judge* might behave with all the violence of an *oppressor*."

<sup>49</sup> Article 40, Constitution of the USSR, 1977.