

The Moldovan Constitution: a unique case study

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In mid-November 2004, I was contacted by the United Nations Development Programme UNDP and asked if I would be interested in leading a needs assessment of the Moldovan Parliament to propose a program of support to the Parliament. Briefing material that I consulted prior to my departure stated that Moldova is the only parliamentary republic among the 15 states of the former Soviet Union. I found this quite surprising because as a post-Soviet specialist working in democratization for 10 years, I did not know that there was a parliamentary system operating in the former USSR.

When I read the Moldovan Constitution, I realized that in fact the system Moldova had developed was a departure from the traditions of a parliamentary system. Under a traditional parliamentary system, the President (or head of state) holds a position that is largely ceremonial. In a Presidential (or semi-Presidential) system, the President has substantial authority; however he/she receives a mandate directly from the people and therefore is responsible to the people. This was the case in Moldova until the constitution was amended in July 2000, ostensibly with the aim of reducing the powers of the President and making him more accountable to Parliament. The Moldovan constitution has retained the separation of powers and the President holds quite a bit of independent authority; however the President is now elected by Members of Parliament rather than by universal suffrage. As a result, the Moldovan constitution has created a hybrid constitutional system that removes the vital checks and balances found in a Presidential (or semi-Presidential) system, but has not replaced it with a true parliamentary system where the head of state's role is largely nominal and the head of government is responsible to the legislative branch. The problem here is that a branch of government with significant powers (President) is now being directly appointed by another branch (legislature) without begin responsible to it.

According to the Moldovan constitution, the President retains the right to initiate legislation, to sign international treaties (pending ratification by parliament), to appoint public officers, and to declare war. In addition, under article 87(4) “the President of Moldova may take other due measures as to ensure the national security and public order under...” Article 88(j) allows the President to “exercise other powers as foreseen by law”, allowing Parliament to delegate to the President other areas of jurisdiction. The President can also, in some cases, issue decrees which do not require Parliament’s consent. Although article 104 states that “the Government shall be responsible before the Parliament” and article 105 states that the “Government as a whole and each of its members shall be bound to reply to questions or interpellations raised by members of Parliament”. The President is not required to answer to Parliament for his actions. These are not insignificant powers. Given the President’s position outside of the normal accountability structure – the result is that other powers that are normally merely functional or ceremonial (such as the power of dissolution or the power of nominating a new Prime Minister) take on a new meaning.

In a parliamentary system where the head of state is not a hereditary monarch, there is a necessity to establish some method of selection for a new head of state. When this is a merely ceremonial post (with real powers only in exceptional circumstances), the selection method does not take on as much significance. In Moldova, however, it can – and has – had the result of triggering new elections and could even lead to a constitutional crisis. Article 78 of the Moldovan constitution states that candidates for President must receive 60% support of the 101 elected members of parliament. If one candidate does not receive 60% support, this results in a run-off ballot between the two top-placed candidates. If one of the two candidates does not meet the 60% threshold, yet another election is organized. If Parliament still cannot reach a consensus based on the criteria mentioned above, the acting President dissolves Parliament. The result is no Parliament and an acting President without a mandate to implement

policy. This is exactly what happened in December 2000, just months after the Constitution was changed to include this provision, when Parliament was dissolved on January 12, 2001 after failing to elect a new President following the expiration of President Luciani's term. There might have been reasons why the parliament decided to go with a 60 percent threshold as opposed to a clear majority – and it is quite possible that the threat of dissolution was intended as incentive to the parliament to come to a consensus. The reality is that the ramifications of a less-than-ideal selection process are felt more strongly because of the fact that the President is not merely a nominal figure but holds real authority.

Similarly, the ability of the President (head of state) to nominate the Prime Minister following consultations with party factions, provided that it be followed by a vote of confidence in the government and its program is not, in itself, a departure from tradition in parliamentary systems. In fact, this is normal practice – with most heads of state selecting the leader of the largest party or the leader who is most likely to be able to form the strongest coalition. It is the very real independent authority and power of the Moldovan President that causes this to take on a whole new meaning in the Moldovan context. According to the constitution, the President nominates the Prime Minister “after a hearing of the parliamentary fractions (i.e. parties)”, the latter who then requests under article 98(2) a vote of confidence “of the Parliament over the programme of activity and the entire list of government members”. It is also significant to note that the President of Moldova is not obliged to name someone in the Parliament as candidate for the office of Prime Minister – giving him even more latitude. Failure of the Parliament to vote confidence in the Government within 3 months (“or of blocking up the procedure of laws within 3 months”) allows the President the option to dissolve Parliament, as does the failure of the Parliament to pass a vote of confidence within 45 days of the President requesting it do so (on condition that Parliament has already failed to do so on two previous occasions). Again, this power of dissolution is not necessarily inconsistent with the parliamentary

model, but most parliamentary heads of state use this power with restraint. It is the extent and breadth of the existing powers of the Moldovan President that make these other powers more troubling. The result is essentially to give the President strong prerogative powers that in effect punish the Parliament for not agreeing with his nomination for Prime Minister.

The reforms of 2000 were intended to make the President more accountable to parliament by having him selected by parliament. Instead, it made the President accountable to no-one, and put the Moldovan constitution in uncharted waters between a responsible government model and a separation-of-powers model – leaving it with neither.

LESSONS/CONCLUDING OBSERVATIONS

Constitutional structures are, of necessity, responsive to the unique geographical and political realities of a country, and when there is a consensus that there is a problem that needs to be addressed, they can—and should—be amended. However, there are certain norms – such as responsible government, separation of powers, etc. – that are well proven. A departure from these models should be done deliberately and with much forethought as to the potential implications of the proposed changes. Since a country's constitution sets out the basic rules under which political power is to be decided upon and shared, the ramifications of a well intentioned but poorly drafted constitution can lead to political deadlock. On the other hand, countries are often able to adapt remarkably well in practice despite the limitations of their written constitutions. And some countries with ideally drafted constitutions are, regardless, unable to govern effectively. With new elections expected this year, Moldova will be a country to watch.