

Gediminas Vitkus

The “Democracy Deficit” and Prospects for EU Enlargement

The ongoing enlargement of the European Union in an eastern direction is a many-sided process which has not yet been fully examined. However, it is already clear that it will bring about long-term geopolitical, economic and cultural consequences. One of the aspects of this ongoing process is directly related to the further development of democracy in this region. On the one hand, it is obvious that EU enlargement will positively affect and help consolidate democracy in Central and Eastern European (CEE) countries. This is confirmed by the undoubted consolidation of democracy in the Southern European states, which are already EU members, namely, Greece, Spain and Portugal. On the other hand, the very process of the CEE countries' accession to the EU raises many problems connected with the normal functioning of democratic governments in these states.

First of all, the EU states have themselves faced the well-known and widely discussed problem of the democracy deficit. Essentially the problem is that universally binding legislation is adopted not by an assembly of a nation's representatives, such as a parliament, but by ministers assembled in the Council, i.e. representatives of the executive. In other words, the nationals of EU countries must obey laws over whose deliberation and adoption they have virtually no control, either directly or through representatives elected by them. The EU member states are intensively seeking ways to resolve this problem: the powers of the European Parliament are gradually being expanded, while the Amsterdam Treaty provides for a possibility of greater involvement of the national parliaments in the adoption of EU legal acts. This demonstrates the understanding that the national parliaments' opportunities for compensating for the deficit of democracy have still not been utilized properly and in full.

In the case of the CEE states, the problem of democracy deficit is still more acute. The citizens of these countries will be obliged to obey laws, which were prepared and adopted without any participation by their elected representatives. Neither will the validity of these legal acts be subject to discussion, for it is well known that all countries willing to join the EU must comply with the requirement that the *acquis communautaire* be unconditionally accepted in its entirety, i.e. all the legal acts and the practice of their application which have already been accumulated by the EU states since the beginning of the organization. Of course one could argue that there is no deficit of democracy in fact. The decision by the CEE countries to seek membership in the EU and to comply with its requirements was not forced upon them but rather is an expression of the self-determination of the states and their democratically-elected authorities. Nevertheless the situation is complicated and an “antidemocratic spirit” attaches itself to the entire process by the extent, rate and character of the legislative program to be adopted by each state. The point is that everything that the EU member countries have accumulated in the course of four decades will have to be accepted by the present candidate countries in several years.

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The later the date of accession of a state, the larger the number of EU legal acts it will be obliged to adopt and incorporate in its legal system. For example, it was relatively easier for the United Kingdom or Denmark to become members of the European Economic Community in 1973, than it was for Austria or Sweden when they aspired to do the same in 1995. Undoubtedly even more difficult will be the CEE countries' accession, which will start much later. It has been estimated that CEE countries joining the EU will have to take over, adapt and enforce up to 13,000 legal acts set forth on as many as 80,000 pages.¹

In other words, the size and rate of the legislative program to be implemented essentially raises two problems for each candidate country: on the one hand, this means an enormous load of technical work for the lawmakers of those countries, and, on the other hand, it raises the question of the democratic legitimacy, in a broad political sense, of the legal acts which seemingly come down from on high and are not subject to discussion. If the first problem is essentially a problem of ensuring good management - to the extent that good management can be ensured in institutions subject to political authorities - the second issue is much more complicated. Here Euro-institutions and especially national parliaments of the candidate countries find themselves in a paradoxical situation. Instead of acting as guarantors of democracy, the national parliaments of the candidate countries must "serve" an essentially antidemocratic and compulsory process of adopting the *acquis*.

However, it is gratifying to note the strengthening of the role of national parliaments in this process as integration becomes wider and deeper. All EU member states have established and developed specialized parliamentary machinery for dealing with EU policy-making. Governments in all EU member states are now required to provide sufficient advance notification of important initiatives to their parliaments, and the national parliaments have obtained increased scrutiny powers over their governments' Community policy. So far, however, no parliament of an EU member state or corresponding European Affairs Committee has the powers equal to the European Committee (*Europaudvalget*) of the Folketing (the Danish Parliament). The basic role of the Danish *Europaudvalget* is to give the Danish Government a mandate before any important decision is taken in the Council of the European Union.² However, the difficulties associated with the ratification of the Maastricht Treaty and subsequent debates on the democracy deficit in the European Union have prompted other member states (e.g., Germany and France) to strengthen the role of national parliaments in the integration policy of these countries. This desideratum is reflected in the modified EU Treaty signed by the representatives of EU member countries in Amsterdam. The Treaty contains a provision calling on the national parliaments to play a greater role in the affairs of the Union. The Commission is to delay presenting its legislative proposals to the Parliament and the Council of the Union for six weeks to give national parliaments a chance to debate the proposals with their respective governments at the start of the legislative process.³ In analyzing the role of the Austrian, Swedish and Finnish Parliaments, John Fitzmaurice, the author of an article entitled *National Parliamentary Control of EU Policy in the Three*

¹Gediminas Šerksnys, "Lithuanian Self-Avis. Presentations at the International Conference," *Lithuania for Europe. Proceedings of the International Conference* (Vilnius, September 26-28, 1997), p. 94.

²*European Affairs Committees of the Parliaments of the Member States*, European Parliament (June, 1995), p. 14-17.

³*Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts. Protocol on the Role of National Parliaments*, in <http://ue.eu.int/Amsterdam/en/amsteroc/docs/amsten.doc>

New Member States, notes a common trend towards greater involvement of the national parliaments in EU policy and believes that this trend should become more marked as EU enlargement progresses.⁴ Thus one may hypothesize that probable EU enlargement and the accession of new states will inevitably mean that the national parliaments of these states will be unwilling to lag behind the parliaments of member states and will exercise a profound influence on this process. This article is based on an analysis of the early experience of Lithuania, Latvia and Poland and will examine this hypothesis in greater depth. We will discuss how the parliaments of the candidate countries are attempting to master and define their new role as their countries gradually integrate into the EU.

European Affairs in the Lithuanian Seimas

The Seimas of the Republic Lithuania is now serving its second term in accordance with the new Constitution. The first Seimas, which functioned from 1992-1996, was controlled by the leftist Democratic Labor Party. The majority in the second Seimas, which started its deliberations in 1996, and whose term expires in 2000, belongs to the right-of-center coalition of Conservatives and Christian Democrats. Despite this change in political composition, Lithuania's policy in the area of European integration remains unchanged. All the main political parties approve of and support Lithuania's integration into the EU.

Along with the change in political structure of the Seimas in 1996, there have been changes regarding the decisions of supervisory institutions concerned with governmental policy towards the EU. In the Seimas of 1992-1996, supervision over EU integration policy was mainly within the competence of the Seimas' Foreign Affairs Committee. It was only on 15 March 1995, not long before the signing of the European (Association) Agreement⁵, that a European Subcommittee was set up under the Foreign Affairs Committee (incidentally, it is interesting to note that the governmental institutions dealing with European integration issues were established as late as May 22, i.e. two months later). However, this structure so far has not played any important role in democratic control over the integration policy pursued by the Government - both due to its relatively low status and because at that time the European integration issues were mainly a matter of high politics. The most that could be done by this subcommittee was the initiation of relevant discussions in the Foreign Affairs Committee and the Seimas. Therefore the prevailing item on the work plans of the subcommittee was the acquaintance with the integration-related work carried out in Lithuania. But later, after the signing of the European (Association) Agreement, attention was naturally focused on preparations for the ratification of the Agreement. The more so that the process of ratification was likely to be quite complicated since it became apparent during Lithuania's discussions with the European Union that Article 47 of the Lithuanian Constitution regulating land ownership did not provide for the possibility of acquisition of land by foreign natural or legal persons. This constituted a serious obstacle, which could prevent the signing of the European (Association) Agreement between the EU and Lithuania. On May 4, 1995, the Seimas of Lithuania passed a declaration committing itself "to take the initiative to prepare and adopt an

⁴John Fitzmaurice, "National Parliamentary Control of EU policy in the Three New Member States," *West European Politics*, 1, 19 (January 1996), p. 88-96.

⁵The European (Association) Agreement between Lithuania and the European Union was signed on June 12, 1995.

amendment to the Constitution of the Republic of Lithuania necessary for this purpose as well as a corresponding constitutional law regulating the implementation of the new constitutional norm". Though this work was formally undertaken by the Joint Working Group of Authorized Representatives of Parliamentary Parties and Factions, the main coordinating work was performed by the European Affairs Subcommittee. Therefore one may state, in a certain sense, that the preparation for the ratification of the European (Association) Agreement and the corresponding amending of Article 47 was the main achievement of the European Affairs Subcommittee. The amendment to the Constitution was passed, and the European Agreement was ratified on June 20, 1996. No time was left for the subcommittee to engage in other activities, including supervision of the executive, since the Seimas completed its term in the autumn of that year.

On November 28, 1996, the new Seimas adopted a resolution to establish the Economic Reform and Integration Commission. This Commission, however, was short-lived and did not introduce any notable initiatives in European affairs, in part because of the illness and death of the commission chairman. On September 18, 1997, the Seimas abolished this commission and established the European Affairs Committee in its place. Thus, for the first time in the history of the Lithuanian Seimas, European affairs acquired a status equal to that of other traditional concerns of the Lithuanian parliament.

The European Affairs Committee is one of the thirteen standing committees of the Seimas. Its membership, like that of the other committees, is composed in accordance with the principle of proportional representation by the majority and minority parties. At present it consists of 24 members of the Seimas. According to Article 72(2) of the Statute of the Seimas, the committee shall perform the following functions:

- consider major issues, within the jurisdiction of the Seimas, relating to the policy of the Republic of Lithuania in respect of the European Union and submit recommendations to the Government;
- coordinate the activities of the Seimas committees and commissions related to the issues concerning the integration into the European Union;
- consider a strategy of preparation for the membership of the European Union, the implementation of a program in harmonization of the European Union legislation with legal acts of the Republic of Lithuania, the Government provisions concerning major issues related to the preparation for negotiations on the membership of the European Union, other issues relating to the integration into the European Union, and submit recommendations to the Government;
- exercise parliamentary control over public authorities when preparing for and having entered into the negotiations for the membership of the European Union; and
- assist in ensuring democratic development of the process of Lithuania's integration into the European Union.⁶

The resolutions of this Committee are of an advisory nature, as are those of other Seimas committees. Any executive institution which receives recommendations or proposals by the Committee must consider them and, within 15 days of receipt of

⁶*Statute of Seimas of the Republic of Lithuania*, (17 February 1994, No.I-399. As amended by 11 November 1997, VIII-508), official translation, <http://www.lrs.lt/c-bin/eng/preps2?Condition1=48325&Condition2=>

the proposals or within an agreed period, inform the Committee of the results of its deliberations and any measures taken in this respect. Furthermore, the committee may exert influence on the executive institutions by initiating decisions or resolutions of the Seimas which are binding on the Government. The European Affairs Committee has already made use of this possibility by initiating the adoption of two key Seimas resolutions in the area of European integration ("On the Priorities of the Activities of the Government in the Process of Lithuania's Integration into the European Union" of November 6, 1997, and "On the Implementation of the National Programme for the Adoption of the *Acquis*" of March 17, 1998).

Comparing Lithuanian, Latvian and Polish Parliamentary Euroinstitutions

The European Affairs Committee of the Seimas does not differ in its main functions and work organisation from analogous institutions established in the parliaments of Poland and Latvia. The Polish and Latvian committees are also based on the principle of proportional representation. The standing Commission on European Agreement Affairs was established in the Sejm (i.e. the lower house of the Polish parliament⁷) immediately after the signing of the European (Association) Agreement in 1991. In the present Sejm the European Affairs Commission was established after the last election held in the autumn of 1997. This commission is now one of the 27 standing commissions of the Sejm. The Commission for Foreign Affairs and European Integration was established in the new upper house, the Senate, and has become one of the 14 standing commissions of the Senate. From a political point of view, the Sejm commission has greater weight, since, according to the Polish constitution, the Sejm adopts legislation, while the Senate approves or rejects it. Both commissions are staffed in accordance with the principle of proportional representation.. The Sejm commission has 32 members while 20 members serve on the Senate commission.⁸

In the Latvian parliament, called the Saeima, the European Affairs Committee started functioning in November of 1995. After the 1996 parliamentary election this committee became one of the 16 standing committees of the Saeima. It is also staffed by the proportional representation principle. Until 1998 parliamentary elections the committee consisted of 10 members⁹.

However, the European Affairs Committee of the Lithuanian Seimas differs in certain respects from the analogous Latvian and Polish institutions. First of all, it is relatively larger than its counterparts in the neighbouring states. Not less than 17% of the members of the Seimas (24 of 141) belong to the European Affairs Committee, while in Latvia the comparable ratio is 10%, (10 of 100) and in Poland it is only 6.9% (32 of 460). Furthermore, the European Affairs Committees (Commissions) of Poland and Latvia are not granted any special or extraordinary rights and powers under the statutes of these countries' parliaments that would distinguish them from the other

⁷The Polish Parliament, called - Zgromadzenie Narodowe (i.e. National Assembly) - consists from the higher house - Senate and the lower house- Sejm.

⁸A. Dziewulska, A. A. Ambroziak, "Instytucje koordynujace integracji z UE w Czechach, na Wegrzech i w Polsce," *Wspolnoty Europejskie. Biuletyn informacyjny*, 1 (65), 1997, p. 13-18; the internet web site of the Polish Sejm and Senate: <http://sejm.gov.pl>; <http://senat.gov.pl>

⁹Interview with Ms. Ilona Kirule, First Secretary of Embassy of Republic of Latvia in Vilnius, May 11, 1998.; the Internet web site of Latvian Parliament: <http://saeima.lanet.lv>

committees (commissions), while the Lithuanian Committee has been granted extraordinary status by several articles of the Statute of the Seimas of Lithuania:

- Article 10 provides for participation in the work of the European Affairs Committee by the members of other Seimas committees. This is an exception because the Statute of the Seimas prohibits a Seimas member from working in more than one committee and he/she may only represent another Seimas member in another committee.
- Article 44 states that, according to the proportional principle of representation of factions, the European Affairs Committee shall be composed of not less than 15 members, while other committees of the Seimas must consist of not less than 7 and not more than 17 members of the Seimas.
- Article 46 states that one of the members of the Board of the Seimas shall be elected chairman of the European Affairs Committee. This is also an exception because members of the Seimas Board (i.e. Chairman, Deputy Chairman and Chancellor of the Seimas) may not be committee members.¹⁰

Thus, Lithuania, as distinct from Latvia or Poland, chose a model of the committee oriented towards the consideration of “strategic” integration issues, integration policy and co-ordination of work performed by other committees rather than a model which would turn the body into a forum for the consideration of integration-related issues. The consideration of specific draft legislation is left to traditional special committees. The European Affairs Committee has been given this role by the above-mentioned exceptions provided for in the Statute of the Seimas. Thus, it was at the initiative of the European Affairs Committee that, prior to the adoption of the resolution "On the Implementation of the National Programme for the Adoption of the *Acquis*," attempts were made not only to discuss this document in the Committee itself but also to ensure that all other committees of the Seimas and even individual parliamentarians were able to familiarise themselves with the contents of this programme¹¹.

Finally, practice has already shown that the “exclusivity” of the European Affairs Committee enables it to devote much more time for parliamentary supervision over the executive as compared with the “ordinary” committees. For example, in the period from December 15, 1997 to May 4, 1998, the Committee met 11 times and examined 25 issues, of which as much as 10 (or 40% of the total) were related to the reports of representatives of executive institutions. The following documents prepared by the euroinstitutions of the executive as well as work conducted by them were considered over this period: the national programme for the adoption of the *acquis*, the programme for the integration into the common market, the process of privatisation of major enterprises, the preparation of administrative reform, the status of public information about the EU and others. Only two draft laws (the Law on Telecommunications and the Law on Administrative Reform) were discussed by the Committee over the same period, although the consideration was not detailed; the representatives of the executive institutions presented the drafts to the Committee.

¹⁰*Statute of Seimas of the Republic of Lithuania* (17 February 1994, No.I-399. As amended by 11 November 1997, VIII-508), official translation, <http://www.lrs.lt/c-bin/eng/preps2?Condition1=48325&Condition2=>

¹¹Interview with Ms. Rūta Bunevičiūtė, Senior Advisor to the European Affairs Committee of the Seimas, May 6, 1998.

The European Affairs Committee differs from other committees in not only hearing information furnished by representatives of other state institutions, but also in expressing its own opinion, initiating parliamentary investigations and identifying problems connected with pre-accession. The adequate size of the Committee (24 Seimas deputies) allowed it to form as many as 8 working groups on the basis of eight short-term priorities defined in the National Programme for the Adoption of the *Acquis*. Thus the European Affairs Committee not only exercises control over the executive but takes certain initiatives itself.

Are CEE National Parliaments Becoming Serious Negotiating Partners or EU Fifth Columns?

This overview of the parliamentary euroinstitutions in Lithuania and other CEE countries allows us to conclude that these bodies not only function actively, but also have undergone considerable transformation over a relatively short period of association with the European Union. Parliamentary structures adapted quickly to the varying character of the pre-accession preparations. Since pre-accession has evolved from a foreign policy process to a process of internal political and economic reforms, its management has changed accordingly. As shown by the analysis of the activities of Lithuanian and other CEE countries' parliaments, their participation in European policy underwent gradual differentiation and separated from the sphere of foreign affairs, as was the case with the executive institutions. The Lithuanian European Affairs Subcommittee started functioning in the Seimas Foreign Affairs Committee even before the signing of the European (Association) Agreement, while the new Seimas elected in 1996 has already established a special committee for European affairs.

The separation of the so-called "European affairs" from foreign affairs undoubtedly had to cause changes in the character of parliamentary activities. Here a transition had to occur from the parliamentary control characteristic of the foreign affairs area where the foreign policy strategy is discussed and non-mandatory recommendations are made to the parliamentary control characteristic of the internal affairs where the national parliament traditionally exercises greater powers because the legislative authority is concentrated in its hands. On this basis, one may distinguish two main models of parliamentary work in the area of democratic control over the government's EU policies. The distinctive characteristic of the **first**, or the **early model** is that parliamentary control is formally exercised by the parliament's foreign affairs committee, which does not consider any draft proposals for new laws. This committee mainly communicates with the executive via the ministry of foreign affairs and is only engaged in the discussion of strategic political issues (ratification of the European (Association) Agreement, term of submission of the application for membership, the most important events concerning the EU, for example IGC etc.) and the making of recommendations. A characteristic of the **second** or the **later model** is parliamentary control exercised by a special committee for European affairs. This kind of committee (or commission), as a rule, is set up after the signing and coming into force of a European Agreement. The committee is only partially engaged in the consideration of major political issues, focusing its attention instead on so-called internal policy matters. On the one hand, the ability of the executive institutions to conduct reforms of the legal system and to prepare for negotiations is subject to control, and on the other hand, problems of certain sectors are directly examined and

recommendations are made to the Government.

However, these changes, which would have permitted more effective control over European policy and thus ensured the legitimacy of this policy, were partially negated by the paradoxical nature of "European affairs." The analysis of the activities of the Lithuanian as well as Polish and Latvian parliaments and their European Affairs Committees has shown that they are obliged to assume certain functions which are not typical of other lines of parliamentary activities, i.e. instead of examining draft proposals for new laws and exercising control over the executive they have to verify compliance of legislation with European law. The case of Latvia is particularly exceptional in this context. The Latvian European Affairs Committee monitors all draft laws which pass the Saeima and checks their compatibility with EU norms,¹² while in Poland and Lithuania this work is performed by executive institutions. Urging the government and other executive institutions to more actively and effectively meet the European Commission's requirements and prepare for membership has become a routine task of the parliamentary European Affairs Committees of all three countries.

In other words, the very "anti-democratic" nature of the procedures for preparations for EU accession imperceptibly shifts the main focus of the parliamentary committees' functions from representing national interests to representing the interests of the European Union. Instead of ensuring that the process of preparations for membership is made compatible with public opinion and social needs and adjusting actions of the executive branch of government accordingly, the European Affairs Committees often have begun functioning as the European Union's "unpaid agencies" or "fifth columns" which put pressure on national governments to adapt to EU requirements as quickly as possible. One can observe this kind of "lobbying" activity in all of the CEE countries' parliamentary European Affairs Committees.

That is why it is still difficult to determine whether the negotiation process of accession involving the first five CEE candidate countries will result in an even more active role by the parliaments and perhaps a "third" model, which could in a sense resemble Danish extremism. In any case, the circumstance that these will not be conventional international negotiations over which the executive branch of government exercises exclusive control allows one to presuppose such an eventuality. In other words, the parliaments of some of the candidate countries might express their will to control the contents of the mandate for negotiations (assuming that this is in line with constitutional frameworks).

But without regard to the direction of future developments, it is already notable that the CEE states have set up comprehensive mechanisms for dealing with European integration affairs in which parliamentary oversight institutions occupy an appropriate place. It is also significant that these institutions, at least in terms of their formal powers, differ little from the Euroinstitutions systems of the EU member states. This is a hopeful sign suggesting that the accumulated experience of the national parliaments and their European affairs Committees will help overcome the "democracy deficit" of the European Union, once the anomalies of the transition period end and the present associated countries begin taking full part in the process of adopting EU legal acts.

Conversely, having analyzed the activity and composition of parliamentary

¹²Interview with Ms. Inese Kriškane, EU Information Centre Administrator of the Saeima (Parliament) of Latvia on May 19, 1998.

Euroinstitutions, one is drawn to the conclusion that the parliaments and European Affairs Committees of Lithuania and other associated CEE states possess only a rudimentary and superficial capacity to serve as guarantors of democracy.