TOWARD THE RULE OF LAW:

Soviet Legal Reform and Human Rights Under Perestroika

A HELSINKI WATCH REPORT

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Preface

Since Mikhail Gorbachev's accession to power, the U.S. Helsinki Watch Committee has been encouraged by the apparent willingness of the Soviet government to speak with Western human rights organizations about issues that formerly were not acknowledged as legitimate subjects of discussion by the Soviets. Given the Soviet government's declared interest in changing laws affecting human rights, the Committee of Jurists of Helsinki Watch requested permission from Soviet authorities to visit the Soviet Union in order to meet with government officials who would be able to provide information concerning the progress of certain legal reforms of special interest.[1] In Helsinki Watch's communications, it was made clear that during the visit to the USSR, meetings would also be arranged with persons other than representatives of the Soviet government who could provide information. Areas of special interest to Helsinki Watch were described and a list of officials whom the Committee members desired to meet was also provided.

These contacts were carried out with the Soviet Public Commission for International Cooperation on Humanitarian Issues and Human Rights, which is a relatively new so-called "public" group authorized by the Soviet government and chaired by Professor Fyodor Burlatsky and therefore often referred to as the "Burlatsky Commission," and with the official Soviet Committee for European Security and Cooperation, to which the Burlatsky Commission is

attached. Following the exchange of a number of letters and telexes, and personal meetings with Professor Burlatsky, the Soviet Committee for European Security and Cooperation issued an invitation to four members of Helsinki Watch to visit the Soviet Union for ten days during January and February 1989. The invitation was to visit Moscow, Kiev and Leningrad, as had been requested by the Committee. In a sense, this visit can be seen as a follow-up to a mission by the International Helsinki Federation for Human Rights in which three members of the U.S. Helsinki Watch Committee participated. That mission, which took place in January 1988, was at the invitation of the Soviet government to discuss human rights concerns.[2]

From January 25-30, the group met in Moscow with representatives of the USSR Ministry of Foreign Affairs, the Burlatsky Commission, the Soviet Committee for European Security and Cooperation, the USSR Office of the Procurator General, the Presidium of the Moscow City Bar, the USSR Ministry of Internal Affairs, the Law Faculty of Moscow State University, and the Institute of State and Law of the USSR Academy of Sciences.[3] In addition, the group met with a Moscow judge after observing a trial, visited the U.S. Embassy, attended an independent psychiatric seminar, visited the Moscow synagogue and Danilov Monastery during their respective sabbath services, and discussed the current state of human rights in the Soviet Union with a number of independent activists and civil rights monitors.

On January 31-February 1, the delegation visited Kiev, the capital of the Republic of Ukraine and the third largest city in the Soviet Union. During that visit it met representatives of the Office of the Procurator General of Ukraine, the Office of the Arbitrator of Ukraine, the Presidium of the Kiev City Bar, and the Institute of State and Law of the Ukrainian Academy of Sciences.[4] The delegation's activities in Kiev, especially its ability to meet activists, were severely restricted by Soviet authorities.

The delegation visited Leningrad, the second largest city in the Soviet Union, on February 2-3, and met with representatives of the Office of the Procurator General of Leningrad, the Leningrad City Court, and the Presidium of the Leningrad City Bar.[5]

1. The members of the Committee of Jurists of the U.S. Helsinki Watch Committee who took part in the trip to the USSR are set forth in Annex A.

2. For a full report of that mission, see International Helsinki Federation for Human rights, On Speaking Terms (1988).

3. The officials interviewed in Moscow are set forth in Annex B.

4. The officials interviewed in Kiev are set forth in Annex C.

5. The officials interviewed in Leningrad are set forth in Annex D.

INTRODUCTION

Mikhail Gorbachev, the first Soviet Communist Party General Secretary since Lenin to have legal training,[1] has placed far more emphasis on the law and legal reforms than any of his predecessors. General Secretary Gorbachev (now also President of the Supreme Soviet) has often referred to the need to create a "law-based state."[2] He and members of his perestroika team appear to recognize that reforms cannot be dealt with ad hoc or by mere announcement of policy changes, but must be incorporated in law and institutionalized both to ensure certainty of scope and application of those reforms within the Soviet Union and to convince outside observers that perestroika and glasnost are serious policies that may be relied upon.

The recognition of the need to institutionalize legal reforms was manifested by a spate of announcements in the official Soviet press of the proposed enactment of new laws and revision of existing laws. Among areas in which changes have been announced, and which this report examines, are criminal law and procedure, emigration law, judicial review of actions of a government official, the rights of psychiatric patients and the rights of unofficial groups not sponsored by the government. These and many of the other proposals made by reformers have encountered both support and criticism from powerful sectors of Soviet society. The general lack of legal culture, or acceptance of the rule of law, has inhibited the process of reform, and often there is

little political willingness to place the law above the state and those who exercise its powers. This has made reform slow and faltering. Much of the legislative program of perestroika remains pending. Many of the improvements in human rights that have taken place have come because of political will, or the exercise of sovereign grace, not through the provision of a just remedy at law. These improvements may be quickly and easily reversed if reforms are not institutionalized.

The current turmoil in Soviet politics causes tension between some officials and scholars who, desiring change, present possible reforms to Soviet society and the world as if it were certain that they will be implemented and others who oppose reform and often have the power to block, or at least vitiate, such reforms. The consequence is often a disparity between pronouncements of officials and their deeds. This gap, and the growing importance of public opinion in shaping policy, counsel caution to the outside observer of Soviet policy shifts, especially in the complex realm of the law. For example, the disappointing changes actually made in Soviet criminal law in the area of "anti-state crimes" surprised those who relied upon predictions of promised liberal changes provided by supposed "insiders."

Beyond this frequent failure to meet the expectations that have been aroused, Soviet statutes must be read carefully. It is important to distinguish between the general description of a change, or a proposed draft law provided by the official press or

a government representative, and the actual change in legislation and thereafter, the application of the law. For example, the law on psychiatric patients' rights has been heralded as a major step forward because, in some cases, it provides previously helpless patients the right to appeal commitment. Upon examination, however, it becomes clear that avenues of appeal are restricted and that in any event, it does not apply in cases which originate in the criminal process, which made up the majority of the cases of psychiatric political abuse in the past.

A wide disparity remains in the Soviet Union between the written law and its implementation. This has been, of course, a major focus of criticism of the Soviet judicial system. The new law on appealing decisions of bureaucrats, for example, superficially satisfies the promise held out by Article 58 of the USSR Constitution that all citizens may appeal official decisions. However, this is belied by the dearth of appeals actually filed in a country beset by arbitrary and corrupt bureaucrats. Similarly, the refusal of officials even to accept emigration applications from other than members of a few selected ethnic groups whose cause is championed by particular constituencies in the West allows Soviet officials to reassure the world that almost no one who applies is refused permission to emigrate while, for most Soviet citizens, this internationally recognized right is effectively nullified. Although a new draft emigration law announced in November may streamline procedures, citizens who wish

to emigrate must first obtain prior permission from a foreign government to settle permanently in their country. Thus freedom of movement, both within the country and internationally, is viewed as a privilege dispensed by the state; to be eligible for this privilege, citizens must first petition and then either obtain permission or be rejected.

Part of the current problem may be traced to the fact that many officials responsible for abuses before the glasnost and perestroika era are still in power. Even those who support perestroika and glasnost are generally unwilling to acknowledge past human rights abuses except those that occurred long ago in the Stalin era. Refusal to acknowledge the abuses that have been pervasive up to the present make it difficult to create the spirit needed to implement reforms fairly. Even those few who have now condemned past practices generally are not pushing further to rectify injustices through law. With few exceptions, for example, those who were arbitrarily stripped of their Soviet citizenship, by administrative fiat, have not had their citizenship restored. Thousands of former political prisoners from the 1960s through the 1980s have been unable to obtain exoneration and nullification of their criminal records. As a consequence, many continue to be denied jobs and residence permits and, therefore, continue to suffer. As for compensation, similar to that which the United States Government is now providing to the Japanese-Americans who were forcibly relocated and interned during World War II, this is

now being discussed only for pre-1953 victims.

Lawyers in the Soviet Union, especially those concerned with human rights, barely function as defense attorneys. The system does not permit a vigorous, adversarial defense. The mechanisms that would guarantee a genuine presumption of innocence do not function. Legal training is poor; the shortage of defense attorneys is great (27,000 advocates [defense attorneys and lawyers in private practice] for a population of 282 million, or one lawyer for every 10,500 citizens[3]); and the lawyers who do practice lack law libraries to aid their work. In a country still suffering the after-effects of pseudo-legal terror (under the guise of legality), much remains to be done to create the climate where even just laws may be effective.

This report examines five areas of the Soviet legal system in which the Soviet government has, in the spirit of perestroika, announced changes. These are: 1) the new "complaints law" permitting citizens to appeal acts of official malfeasance or injustice; 2) the new law on the rights of psychiatric patients; 3) draft laws on freedom of association, with particular emphasis on the treatment of independent groups, known in the USSR as "informal associations"; 4) revision of criminal law and procedure; and 5) the new law on emigration and travel. These topics raise issues implicating Soviet criminal, civil and administrative law. However, this report is not a comprehensive review of the changes and proposed changes in Soviet law in the

era of glasnost and perestroika.[4]

The format of this report is that, for each of the five substantive areas covered, the relevant international legal norms which the Soviets have undertaken to respect by, for example, ratifying the International Covenant on Civil and Political Rights (hereafter, the "Covenant") are set out.[5] The background from which the reform emerged is then discussed briefly. Next, the provisions of the new law or revision are examined. Finally, the reform is analyzed and, to the extent data are available, the actual implementation of the reform is described.

1. At the Faculty of Law of Moscow State University.

2. Pravovoye gosudarstvo. This phrase is sometimes translated as "rule of law," but "law-based state" is more appropriate, since the Soviet government is not placing the law above the state, but rather signalling its intent to rule by law rather than by secret administrative instruction. Sometimes the phrase has been translated as "government under law," but this is understood in various ways by different political groups in the USSR. Some understand it to mean not merely "rule by laws," but just rule, where the law, which embodies justice, is above the state. Others understand it to mean that a government abides by its own laws, although it is still above the law.

3. Unpublished and undated (c. September 1989) information sheet prepared by Pyotr Barenboim, member, board, Union of Advocates, Helsinki Watch archives. See also "Grimasy yuridicheskogo litsa," L. Nikitinsky, Komsomolskaya pravda, June 29, 1989.

4. For an omnibus review of changes in Soviet law since 1985, see P.B. Maggs, Changes in Soviet Law Under Gorbachev (unpublished consolidated report prepared for U.S. Dept. of State under Contract 1724-720082) (Oct. 27, 1988), hereinafter "Changes in Soviet Law."

5. Annex to G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966); 999 U.N.T.S. 171; 6 Int'l Leg. Mat. 368 (1967).

1. The Complaints Law

A. The International Norms

Article 2, paragraph 3, of the Covenant provides that:

> Each State Party to the present Covenant undertakes:
>
> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
>
> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> (c) To ensure that the competent authorities shall enforce such remedies when granted.

B. Background

Paragraph one of Article 58 of the 1977 Soviet Constitution provides that "[c]itizens of the USSR have the right to lodge a complaint against the actions of officials, state bodies and public bodies. Complaints shall be examined according to the procedure and within the time-limit established by law." Paragraph two of Article 58 provides that "[a]ctions by officials that contravene the law or exceed their powers, and infringe the rights of citizens, may be appealed against in a court in the manner prescribed by law."

Until recently Article 58 was of limited utility to Soviet citizens since few procedures for appeals of official decisions had been "established by law" or "prescribed by law." Complaint

procedures that did exist provided the courts the power to review the dismissal of an employee from a state-owned factory, "entries in voter registration lists, acts recorded by State notaries or offices of civil status, fines imposed on citizens by administrative agencies, and grants of apartment housing to a person other than the one entitled thereto."[1] There were instances, however, where those who complained suffered reprisals. Naturally, this led to a public reluctance to use the courts to obtain justice.

Soviet legal scholars discussed the implementation of the constitutional right of complaint for almost ten years without legislation being adopted.[2] Following the public discussion in the official press of the jailing of Viktor Berkhin, head of a regional bureau of the magazine Soviet Miner, by the authorities of Voroshilovgrad Oblast of the Ukrainian Republic because of his criticism of the work of local law enforcement agencies[3] and Berkhin's subsequent death by heart attack as a result of gruelling interrogations during his detention,[4] action speeded up on the drafting of a law to implement Article 58. A Tass commentator noted, however, that "the very idea of such a bill was opposed by the heads of agencies."[5] Important sections of the Soviet bureaucracy disagreed as to the scope and content of the law, as indicated by its revision on October 20, 1987, after its adoption by the USSR Supreme Soviet on June 30, 1987, but before it went into effect on January 1, 1988.[6]

C. The 1988 Law

The "Law on the Procedure for Legal Complaints Against Unlawful Acts by Officials, Infringing Upon the Rights of Citizens" (hereinafter, the "Complaints Law")[7] was passed on June 30, 1987, went into effect on January 1, 1988 and is applicable to acts since December 31, 1987.[8] (A new Complaints Law, passed on November 2, 1989, will go into effect July 1, 1990. An analysis of this law can be found at the end of this chapter.) The legislation contemplates appeals for protection of "personal, property, family, labor, housing and other rights and liberties."[9] However, the law does not cover appeals against actions subject to an existing appeal procedure and against "actions related to ensuring the country's defense capability and state security."[10]

A citizen may "take a complaint to court if he believes that an official's actions have infringed his rights."[11] The complaint may be against actions of an official carried out in his individual capacity or actions carried out "on behalf of the agency [the official] represent[s]."[12] The appeal may be lodged against "[a]ctions by officials, committed in violation of the law or exceeding their authority, that infringe the rights of citizens [i.e.,] actions as a result of which: a citizen is illegally deprived of the opportunity to fully or partially exercise a right granted to him by a law or other normative act; or some duty is illegally placed on a citizen."[13]

As originally adopted by the Supreme Soviet, the Complaints Law would have allowed appeal to the courts only if a complaint had not been resolved by a superior official or agency, or--in U.S. terms--if all adminstrative remedies had been exhausted. As amended, the Complaints Law now provides the citizen the option of appealing the official's acts either (i) to a superior official or agency before going to court or (ii) of going directly to court.[14] The appeal must be filed within a month of the official's action,[15] though this deadline may be extended by the court for a "valid reason."[16] A decision by a court to refuse to accept a complaint may be appealed to a superior court within ten days.[17] The appeal must be heard by the court within ten days of filing at a public hearing to be attended by the citizen appealing and the official whose decision is being appealed.[18] The court must examine "materials presented by the appropriate higher-level officials or agencies that have deemed the official's actions that are the subject of the complaint to be legal, and it also may hear explanations from other persons and study relevant documents and other evidence."[19]

While the Complaints Law requires the court to render a decision if it takes the appeal,[20] it does not set a time by which such a decision must be made. If the court decides in favor of the complainant, its decision is referred to the official whose acts were appealed or to a superior institution or official.[21] The measures taken to carry out the court's

decision must be reported to the court and the complainant within a month of the court's decision,[22] and, in the event of noncompliance, the court may apply measures provided by existing law.[23] If the court finds "that the established procedure for examining citizens' proposals, requests and complaints was violated, or that red-tape, suppression of criticism and persecution for criticism, or other violations of legality" have occurred, the court is to bring in a supplementary decision and refer the decision to a higher-level official or agency, which shall report to the court within one month on the measures it has taken in response to the supplementary decision.[24] The court's decision on a complaint may be appealed by either party or may be protested by a procurator, who has the general right and responsibility under Soviet law to supervise the legality of official and private actions.[25] Before it was amended, the Complaints Law permitted only a protest of the decision by a procurator.

On the one hand the Law encourages appeals by waiving the standard court filing fee;[26] on the other hand, however, it discourages complaints by allowing the court to impose the "[c]osts related to the examination of a complaint" on the losing party[27] and by explicitly reminding complainers that lodging a complaint "for slanderous purposes" is punishable by the existing criminal law.[28]

D. Analysis and Implementation

There are a number of weaknesses and gaps in the 1988 Complaints Law that, though they may not on their face violate the obligations of the Soviet Union under Article 2 of the Covenant, may be exploited to continue to deny Soviet citizens their fundamental right to protection against arbitrary and abusive official acts. For example, the time period of a month within which to file a complaint[29] is short and provides little time for reflection and for organizing a legal case. Given the shortage of lawyers, it may be difficult to obtain counsel during the period. Even if counsel is obtained, in the Soviet non-adversarial system lawyers are not themselves empowered to gather evidence on behalf of their clients nor to subpoena witnesses. They may petition the judge to subpoena witnesses for the defense; in practice, in many cases, this petition is denied. Accordingly, the burden of lodging a complaint falls on the citizen who must manage with little or no assistance within an exceedingly brief period.

Though the Complaints Law contemplates that a court may refuse to hear a complaint,[30] it does not describe the legitimate grounds for such refusal. This is the major deficiency of the complaints law. It enables any court to reject a politically-sensitive case without explanation by claiming non-jurisdiction. Moreover, it is an anomaly of Soviet law (but consistent with the primacy attached to the state) that the Complaints Law specifically contemplates court examination of official materials

that may exonerate the official, but not of official materials that may support the complaint. This is the case even though the Complaints Law does provide generally for the review of "relevant documents and other evidence."[31] A court seeking to avoid addressing the merits of an appeal might find in this provision justification not to accept even official materials supporting a complaint. Also, the Law provides no mechanism for the aggrieved citizen to discover government documents that may support a complaint. No time limit is provided by which a judgment on an appeal must be rendered;[32] the absence of a deadline may allow cases simply to languish without remedy.

In the case of a supplementary decision (see above) which by definition would arise out of more grievous violations of a citizen's rights, the Complaints Law does not require that the response of superior officials or agencies be communicated to the citizen, but only to the court.[33] While it is certainly important to keep a court informed of the way its decision is carried out, it is also important, and provides an additional safeguard, if the person who uncovered the abuse and who suffered because of it knows what happens. This illustrates another major failing of the court system generally, which is the lack of written decisions. The citizen is thereby hampered in challenging refusals for reasons at variance with the facts by the lack of written decisions.

Certain features of the law on complaints appear intended to

deter lawsuits. The possible imposition of court costs on a complainant losing an appeal,[34] though supposedly limited only to "unfounded complaints,"[35] appears unnecessary. The government will certainly defend its representatives' actions, so complaints do not impose monetary burdens on innocent officials. If the lawmakers' goal was to reduce the incidence of nuisance suits, a narrower standard than "unfounded complaints" could be devised that would be less potentially abusive given that "unfounded" could be interpreted to mean simply "losing," or worse, "politically incorrect." In addition, the specific reference to the libel law,[36] which carries criminal penalties, might cause a legitimate complainant to wonder if he might be liable to penalty, thereby inhibiting suit. (Helsinki Watch does not have information on whether these provisions have been invoked as yet to punish litigants, but their presence on the books serve as deterrents.)

In two areas, at least, the Complaints Law is clearly inconsistent with the international obligations of the Soviet Union. First, the exemption of "actions related to ensuring the country's defense capability and state security" creates a large loophole which is not contemplated by international law. This exclusion would seem to rule out most complaints against actions of the Ministry of Defense and the KGB, and many other actions by other agencies, such as the Ministry of Internal Affairs. (The concept of "state security" is very broadly understood in the

USSR, and includes matters in the public domain or that are considered merely proprietary information in most Western democracies.) Rights and freedoms recognized by the Covenant might very well be affected by such actions and should have protection pursuant to the terms of the Covenant.

An even more troubling aspect of the 1988 Complaints Law is its failure to allow appeals against collective decisions of state bodies. As with the exception for acts connected with defense and state security, there is no justification in international law or in Soviet constitutional law for this omission. The Chairman of the Legislative Proposals Commission of the Soviet Union, in explaining the draft law to the Supreme Soviet, asserted that "in full accordance with the second paragraph of Article 58 of the USSR Constitution, the draft law stipulates procedures for appealing only individual actions of officials to the courts."[37] The Chairman evidently misread the Soviet Constitution. The second paragraph of Article 58 speaks of appeals against the "actions of officials," without any reference to "individual actions."[38] This limitation of the Law is a substantial impediment to the efficacy of the Complaints Law since, as a senior research associate at the USSR Academy of Sciences' Institute of State and Law has observed, "an enormous majority--the overwhelming majority, I would say--of the decisions that citizens dispute as infringing their rights are adopted collectively."[39] Most administrative decisions in the

Soviet Union are made by commissions or agencies of some kind and therefore are outside the scope of the 1988 Complaints Law. The importance of this limitation has been recognized by members of the Institute of State and Law.[40]

Representatives of the Presidium of the Moscow City Bar also noted to Helsinki Watch that Soviet administrative tradition is to make collective decisions.[41] In some instances, decisions that had been made by individuals before the adoption of the Complaints Law are now being made collectively so as to avoid the impact of the Complaints Law.[42] Interestingly, the law on psychiatric patients' rights (see Section 2 below) stipulates that individual chief psychiatrists are subject to the complaints law,[43] although they base their decision on the results of collective "experts' commissions" which examine patients.

The denial of residence permits appears to be the area in which the 1988 Complaints Law has been used most often up to now. Here, the Complaints Law is being used against one of the most pervasive and restrictive aspects of Soviet society -- the internal passport regimen with its residence registration requirements. Grants or denials of housing permits are sometimes made by individuals and sometimes by collective bodies.[44] Normally, citizens appeal to the local Soviet of Deputies about housing permit problems before they turn to the courts. If their appeals are rejected at this level, they may be discouraged from attempting a court appeal, because they are then going over the

heads of local state officials.

Representatives of the Presidium of the Moscow City Bar could recall only one case as of January 1989 where the Complaints Law had been used in Moscow and that involved the denial of a residence permit.[45] A Moscow judge interviewed by Helsinki Watch reported that there had been a small number of residence permit appeals that were successfully resolved in her court. The Moscow advocates think so little of the Complaints Law that a seminar for the public on its potential use was cancelled.[46] On the other hand, the Director of the Institute of State and Law of the Ukraine Academy of Sciences has stated that in the Ukraine there were 137 appeals in the first six months of 1988.[47] There were reportedly many types of complaints, including denial of housing, denial of treatment in hospitals and denial of jobs, especially to pregnant women and women with young families.[48] Officials of the Leningrad City Court reported that 200 applications to appeal, constituting three percent of the courts' caseload, were made in Leningrad.[49] Of these, 120 were rejected and 80 accepted.[50] Of the 80 appeals heard, 60 were found in favor of the appellant. Reportedly, 99% of the cases considered were appeals of denial of housing permits. All cases are considered first by the district courts and then, on further appeal, by the City Court. Only 30 cases reached the City Court.[51] Although the Leningrad City Court reported in relative detail on 200 appeals in the city, representatives of the Office

of the Procurator General of Leningrad, who are charged with monitoring such cases, unaccountably stated that there had been only 12 appeals in Leningrad in 1988 under the Law.[52] According to the Procuracy, the appeals were mainly against denials of housing permits and the actions of the chief psychiatrist. The Procuracy officials reported that only three cases were decided in favor of the appellant, as opposed to the City Court count of 60. (The denied appeals were reported to be unfounded cases, such as those involving psychiatric patients who claimed to have been unlawfully placed on the psychiatric register or involuntarily hospitalized. Since this is a common problem in the Soviet Union, it is not certain if the cases were in fact unfounded. In the cases of psychiatric appeals, the Procuracy asserted that the courts carried out detailed investigations to see if the appellants were healthy or needed treatment.[53] But they may have performed their investigation by going back to the same health authorities who hospitalized the patients in the first place. It is not clear how an independent diagnosis could be made since all psychiatric hospitals are run by the state. While in the Soviet Union Helsinki Watch heard of only one case, in Moscow, of a successful appeal against the actions of a psychiatrist. That case is described in Section 2.D below.)

E. The 1990 Law

As this report was going to press, a new Complaints Law was passed by the Supreme Soviet to go into effect on July 1, 1990.[54]

Although there was some indication that the old law would be revised, the appearance of the new law was sudden and did not appear to involve much public discussion. In some respects, the new law is an improvement over the 1988 Complaints Law, particularly in that it provides specifically for appeal of "collegial," i.e., collective decisions by official bodies, as well as decisions by individual officials.[55] In other respects, the new law reverses some of the progress made in the 1988 law.

Like the old law, the new law exempts unspecified government agencies that provide for appeals procedures than those envisioned in the Complaints Law.[56] But whereas the old law specifically exempted state security agencies, the new law exempts any agency that provides other appeals procedures or any agency that makes decisions on the basis of unspecified "normative acts."[57] Thus the new opportunities for challenging collective decisions in court may be blocked, if an agency or official claims exception for following orders under "acts of state administration and officials that are of a normative nature."[58]

A "normative act" and a "norm of law" are defined by the Yuridicheskiy Entsiklopedicheskiy slovar' as follows:

> Normative act: an official written document passed by an authorized government agency; it establishes, alters or abolishes norms of law....Unlike individual legal acts (the sentence of a court, the order of an enterprise director to fire an employee, etc.), the prescriptions of a normative act are usually of a more general nature, directed towards regulating a certain type of social relations and are applied repeatedly.[59]

> Norm of law: expresses the will of the ruling class (in a socialist society of the whole people); a rule established or sanctioned by the state and guaranteed by its force, regulating the mutual relations of individuals, agencies and organizations.[60]

Normative acts can be issued by the Central Committee of the Communist Party, the Presidium of the Supreme Soviet, and the Soviet of Ministries; they can also be issued on certain matters by the Central Trade Union and other public organizations.

As for the procedural aspects of the law (e.g. the communication of the court decision to the superior official rather than to the plaintiff), much has been retained from the 1988 law.

In any event, the appearance of the new law may mean that courts will refuse to review cases under the old regulations and will require citizens to wait until the middle of 1990 when the new law goes into effect.

The old law contemplated the possibility that a court would refuse to hear a complaint, but did not state the grounds for such a refusal. The new law makes no reference to the possibility that a court would assert non-jurisdiction. Yet the law limits the types of suits by exempting agencies with "other procedures" or following unspecified "normative acts," it may be very easy for a court to reject a suit without explanation.

Although the new law supersedes the old law,[61] it does not go into effect until July 1, 1990. The Supreme Soviet resolution stipulates that "only legal relations arising after July 1, 1990"

may be reviewed in court. This does not appear to refer to official acts per se, but to the legal case itself. (In Soviet legal parlance, a "legal relation" is a "social relation regulated by the norms of law, whose participants are bearers of subjective rights and duties."[62]) In practice, courts may refuse to review any cases involving official acts before July 1. Although this language is vague, it is hoped that the authorities will allow citizens to file suit against both collective and individual decisions that take place from now through July 1, 1990.

Unfortunately, unlike the amended 1988 law, the new 1990 law does not permit citizens to appeal official violations in court immediately; they must first appeal to a superior official or agency. This is a step backwards from the amendments to the old law. The superior official is obliged to respond to a complaint within one month. If he answers, but fails to satisfy the complaint, or if he does not respond at all within one month, the citizen may file suit against the official action at a district or city people's court.[63] The citizen must file within one month of the official response (or non-response), although the law does provide for renewal of the 30-day period by the court "for a valid reason."[64] It is possible that persons who wish to bring suit against collective decisions may lodge their complaints with superior officials on June 1, 1990, and then begin their court proceedings on July 1, or else file before

then, and hope that the court will find their reasons valid and extend their complaint period.

In one sense, seven months is not long to wait until an official violation may be challenged in court. But in the context of real events in the USSR, it is a significant period. A person unlawfully incarcerated in a psychiatric hospital, for example, could suffer damage to his health from unnecessary medication; a person subjected to unlawful arrest could be beaten by fellow inmates or wardens. Officials have not explained why the new law does not go into effect immediately, although postponing implementation may reflect an official desire to avoid suits connected to local elections. Nominations to the local government bodies known as soviets, or town councils, will begin in January 1990, and the elections are scheduled in February and March 1990. Thus at least one area may be off limits to citizens's suits -- the collective decisions of official electoral commissions that decide on the eligibility of nominated candidates for the ballot. During the 1988 national elections, there were numerous complaints concerning such electoral commissions, which at times arbitrarily rejected candidates with widespread support. In addition, labor collectives or other officials in government agencies may forbid certain employees from running in elections, who will be left with no recourse to appeal this collegial decision.

While the new law permits citizens to bring suit against

collective decisions, another article of the law does not allow the complaints law to be used "if another procedure for complaint is provided by the laws of the USSR and the union republics."[65] The new legislation also prohibits use of the complaints' law against "acts of state administration and officials which are of a normative nature."[66] The agencies which use "another procedure" are not specified, nor are the "normative acts" which cannot be sued. Thus an enormous loophole is left through which bureaucrats can escape by refering to unspecified "normative acts" -- possibly decisions made according to regulations within their ministries or agencies. Although there is a trend underway in the Soviet Union towards publishing such ministerial regulations, the light of glasnost has by no means shone on all bureaucrats.

An example of the loophole provided by the exclusion of suits in circumstances where "another procedure" is provided involves emigration and travel law. It is known from the draft of the new law (see below, Chapter 5) that "another procedure" is indeed contemplated for those who have been denied permission to emigrate. Such persons must first appeal to the superior official or agency of the visa office (OVIR) within the Ministry of Internal Affairs, and only after a failure to resolve the complaint may the plaintiff appeal to the Supreme Soviet Presidium's Citizenship Commission through unspecified "established procedures."[67] No appeals may be made through the

courts on travel or emigration.

Another change in the law provides that suits may be heard even if the plaintiff or the official fails to appear in court "without a valid reason."[68] Under the new clause, the judge may order either the plaintiff or the chief of the government agency or the official being sued to appear in court. In a number of complaint cases already heard, the failure of the official to appear has caused such cases to languish. Now plaintiffs will have an opportunity to gain a hearing even in the absence of the official in question, and may request that the judge use his subpoena power. Also, patients in mental hospitals or other institutions who wish to appeal the decision to incarcerate them may now attempt to gain a hearing even if their presence in court is made impossible by regulations requiring them to remain in the institution.

Like the 1988 Law, the 1990 Complaints Law provides that a court hearing must be made within 10 days of acceptance of a complaint. (It makes no reference to possible refusals to hear a case.) The new law does not specifically state that such hearings should be public, but it does say that the existing legislation should be used, which does provide for public court sessions in civil suits.[69] As with the old law, the new law does not provide a deadline for a court decision, thus opening up another way for cases to languish without remedy.

As with the old law, the evidence admissible in court are

"materials from the superior agencies or officials who claim their actions were legal." Further, "explanations of other persons may be heard and necessary documents and other evidence may be investigated." But the citizen is still left without the power to compel a court to discover official documents that may support his case.

As with the 1988 law, the new law stipulates that an official has one month to eliminate a violation and report on compliance with the court decision. If no action is taken, the court can "take measures" under existing legislation.[70]22 If evidence of a criminal action is found, the court may inform a procurator or open up a criminal case.[71] The new law also retains the option for the court to bring a supplementary decision (in addition to the decision on a particular violation of rights) if "red-tape, suppression of criticism, persecution for same and other violations of legality" are found in the way that officials have dealt with complaints. The supplementary decision is sent to the superior agency or official, with a one-month deadline for a compliance report.[72] Again, as with the old law, court decisions are communicated not to the plaintiff, but to the superior official.[73]

Unlike the amended 1988 law, the 1990 law does not waive court costs; it requires that the plaintiff pay a court filing fee. Further, as with the old law, the losing party must pay the court costs: the plaintiff pays if the court fails to find a

violation of the law, and the official pays if the court finds that his action was unlawful.[74]

Fortunately, the reference to citizens' liability under libel laws in the event of "unfounded complaints" has been removed from the new law, a feature that may have discouraged many cases in the past. Nevertheless, officials have shown their willingness to use both civil slander laws as well as criminal libel laws to punish criticism. Georgy V. Morozov, chief of the Serbsky Institute for Forensic Medicine, attempted to take independent journalist Sergei Grigoryants to court in 1988 under the civil slander law, although the case did not come to trial. At least one celebrated political case, that of the imprisoned independent journalist and Democratic Union member Sergei Kuznetsov[75], is still on trial as of this writing.

1. J. Quigley, The New Soviet Law on Appeals: Glasnost' in the Soviet Courts, 37 Int'l & Comp. L.Q. 172, 173 (1988).

2. See Changes in Soviet Law, at 156, note 74.

3. "In the USSR Prosecutor's Office," Pravda, Nov. 29, 1986, at 6, trans. in XXXVIII Current Digest of Soviet Press [hereinafter cited as "CDSP"] 1986, no. 48, at 29.

4. B. Plekhanov, "Looking Truth in the Eye: Reprisal," Meditsinskaya gazeta, Oct. 16. 1987, at 4, trans. in XXXIX CDSP 1987, no. 43, at 23.

5. B. Prokhorov, "Law on Individual Rights Takes Effect," Moscow Tass broadcast in English, reported in FBIS-SOV-88-013, Jan. 21, 1988, at 49.

6. See Id.; Changes in Soviet Law, at 156-57.

7. Vedomosti Verkhovnovo Soveta SSSR [USSR Supreme Soviet Record], no. 26 [2412], July 1, 1987, item 388, at 470-473, trans. in XXXIX CDSP 1987, no. 29, at 12-13, amended by "Law on Insertion of Amendments in the 'Law on the Procedure for Legal Appeals Against Unlawful Acts by Officials, Infringing Upon the Rights of Citizens'", Vedomosti Verkhovnovo Soveta SSSR, no. 42 [2428], Oct. 20, 1987, item 692, at 762-63, reported in Izvestia, Oct. 21, 1987, at 4.

8. Vedomosti Verkhovnovo Soveta SSSR, no. 26 [2412], July 1, 1987, item 389, at 473-474, reported in Pravda, July 2, 1987, trans. in English edition of Moscow News, no. 29 (3277), 1987, at 6.

9. Preamble, para. 2.

10. Art. 3.

11. Art. 1, para. 1.

12. Id., para. 2.

13. Art. 4, para. 1.

14. Art. 4, para.1.

15. Art. 5, para. 1.

16. Id., para. 2.

17. Id., para. 3.

18. Art. 6, para.2.

19. Art. 6, para. 6.

20. Art. 7, para. 1.

21. Art. 7, para. 4.

22. Art. 7, para. 4.

23. Id. Art. 188-2 of the RSFSR Criminal Code provides for a fine of up to 300 rubles or dismissal of officials for failure to comply with a court order not to occupy a certain post, or engage in a certain activity. Art. 356 of the Code of Criminal Procedure provides for supervision of court sentences by the procurator and Art. 358 proclaims that such sentences are binding in nature. Art. 359 states that the court shall be obliged to see that judgment is executed and in cases of non-compliance, convene a review panel with the procurator present for criminal cases and the plaintiff present in civil cases.

24. Art. 8, para. 1.

25. Art. 9, para. 1.

26. Art. 11.

27. Art. 12.

28. Art. 10. Art. 130 of the RSFSR Criminal Code provides for libel, and Art. 131 provides for insult.

29. Art. 5, para. 1.

30. Art. 5, para. 1.

31. Art. 6, para. 6.

32. Art. 7, para. 1.

33. Art. 8, para. 1.

34. Art. 12.

35. G.P. Razumovsky, "On the Draft USSR Law on Procedures for Appealing to the Courts Unlawful Actions By Officials That Infringe the Rights of Citizens," Pravda and Izvestia, July 1, 1987, at 6, trans. in XXXIX CDSP 1987, no. 29, at 11, and FBIS-SOV, July 1, 1987, at R38, R43, hereinafter "Draft Law".

36. Art. 10.

37. Draft Law.

38. See R. Livshits, "Viewpoint: On Judicial Safeguards," Izvestiya, Sept. 29, 1987, at 3, trans. in XXXIX CDSP 1987, no. 41, at 14, 21. The first paragraph of Art. 58 also speaks of "officials, state and public agencies."

39. Id.

40. International Helsinki Federation for Human Rights, On Speaking Terms, 30 (1988).

41. Interview on January 27, 1989, in Moscow.

42. Id.; also see Changes in Soviet Law, at 158.

43. See Statute on the Conditions and Procedures Governing the Provisions of Psychiatric Assistance, USSR Supreme Soviet, January 5, 1988, No. 8282-XI, art. 27; Changes in Soviet Law, at 158-59.

44. Changes in Soviet Law, at 145.

45. Interview by Helsinki Watch on Jan. 27, 1989, in Moscow.

46. Id.

47. Interview by Helsinki Watch on Feb. 1, 1989, in Kiev.

48. Id. The Director did not provide information on the outcome of those appeals.

49. Interview by Helsinki Watch on Feb. 3, 1989, in Leningrad.

50. The bases of rejection were not discussed by the City Court officials.

51. Interview by Helsinki Watch on Feb. 3, 1989 in Leningrad. The City Court officials did not describe which parties usually appealed the trial courts' decisions or the outcome of the cases they heard.

52. Interview by Helsinki Watch on February 2, 1989, in Leningrad. It is unclear why this number reported by the Procuracy should be so different from that reported by the City Court.

53. Id.

54. A resolution of the USSR Supreme Soviet, signed by Gorbachev on November 2, 1989, concerning the implementation of a new complaints' law on July 1, 1990, as well as the text of the law itself, was published in Izvestiya, November 2, 1989, p. 2. (O vvedenii v deystviye zakona SSSR "O poryadke obzhalovaniya v sud nepravomernykh deystviy organov gosudarstvvennogo upravleniya i dolzhnostnykh lits, ushchemlyayushchikh prava grazhdan.)

55. Art. 2.

56. Art. 3.

57. Art. 3.

58. Art. 3.

59. at 254.

60. at 253.

61. November 2, 1989 resolution of the Supreme Soviet on the new complaints' law, Art. 4, Izvestiya, November 12, 1989, p. 2.

62. Yuridicheskiy entsiklopedicheskiy slovar', at 357.

63. Art. 4.

64. Art. 5.

65. Art. 3.

66. Art. 3.

67. Art. 14 of the Draft Law on Entry and Exit to and from the USSR.

68. Art. 6.

69. Art. 6.

70. Art. 7.

71. Id.

72. Id.

73. Art. 7.

74. Art. 10.

75. Art. 130 of the RSFSR Penal Code.

3. Freedom of Association

A. The International Norms

Article 22 of the Covenant provides that:

> 1. Everyone shall have the right to freedom of association with others....
>
> 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

B. Background

The opportunities for Soviet citizens to form groups and otherwise freely associate with each other have been severely restricted in the past. Pursuant to a little-publicized 1932 decree, any new organization had to receive official approval or registration before it could undertake activities.[1] This approval was generally limited to those organizations for which there was a "social need" or which were deemed by authorities to "contribute to society's change from capitalism to socialism." The discretion given in approving organizations has meant that the right to associate has not existed in the Soviet Union except where specifically sanctioned and controlled by the Communist Party.[2] Those citizens who attempted to organize groups that were not registered because they did not desire or could not get Party approval were often persecuted by state authorities and subjected to dismissal from their jobs, arrest and sentencing for

"anti-Soviet activities" or trumped-up charges or incarceration in psychiatric hospitals.

The much-heralded advent of glasnost and perestroika has encouraged Soviet citizens with similar interests and concerns to organize and to undertake activities in public in ways that would have been unheard of only a short time ago.[3] An astonishing array of "informal groups" has sprung up in the Soviet Union in the past two years. Tens, perhaps hundreds, of thousands of groups, clubs, associations and societies have been established. Pravda itself has estimated that there are 60,000 informal associations in the Soviet Union.[4] The members of these groups may share cultural, ethnic, religious, musical, educational, environmental, recreational, professional or political interests.[5] Certain of these groups, such as the Moscow Helsinki Group, specifically monitor human rights in the Soviet Union.

C. The Law

The proliferation of unofficial groups poses a challenge to the Soviet system, in which only a few officially sanctioned organizations exist, chief among them the Communist Party and the Komsomol (the Young Communist League). While on the one hand the government cannot ignore such a large number of groups, on the other hand it may begin to perceive that the role of the Communist Party as "the leading and guiding force of Soviet society"[6] is threatened. The Soviet government has responded to these pressures in two ways: it is attempting to draft a modern

law regulating the organization of groups and it has adopted a package of legislation regulating the conduct of public assemblies and demonstrations and providing for punishment of unauthorized demonstrators, and providing new powers to the special Internal Affairs Ministry troops to deal with demonstrations. These two responses will be addressed in turn.

1. Draft Law on Informal Groups

A draft "Law on Voluntary Societies, Organs of Independent Public Activity and Independent Public Associations" was completed in December 1987 and began to circulate in the Soviet Union in early 1988.[7] This draft is apparently based on a draft law which was first conceived in 1980 and drawn up as early as 1983.[8] The circulation of the draft was so tightly controlled in the Soviet Union that a reporter from Komsomolskaya pravda was unable to obtain a copy in September 1988.[9]

After vehement public criticism, it appears that this version of the draft law was subsequently rejected. In an article in Moscow News, legal scholar Nina Belyayeva reported that this draft law had been prepared by the Ministry of Justice with the help of the Ministry of Internal Affairs, the Procuracy, the Supreme Court, the All-Union Central Council of Trade Unions and the Komsomol [Young Communist League], but had been killed.[10] The official revised draft law prepared by the same ministries and official bodies was not publicized for many months and had not appeared as of this writing. It was not until the fall

session of the Supreme Soviet opened in September 1989, that liberal deputies in the Supreme Soviet legislative commission announced their draft version of the law as an alternative to the ministerial version. The deputies envisioned a challenge to the one-party dictatorship through the legalization of alternative political parties, and allowed for the formation of groups that did not necessarily acknowledge "the leading role of the party." But since the liberal draft calls for groups to adhere to the Constitution, they may still be subject to the "leading role" of the Communist Party under Art. 6 of the current Constitution, which is still being amended.[11] The progress of the liberal version of the law is uncertain, since various conservative ministries and official bodies interested in restricting competition with the Communist Party are likely to fight the revisions. Further, the power of Congress to draft and pass laws (instead of the Presidium of the Supreme Soviet) has only just been affirmed by the Vice President of the Supreme Soviet[12] and will continue to be tested. At stake is the very notion of separation of powers, that is, the right of Congress to draft and debate laws without interference from state ministries and executive bodies.

Although the 1987 draft is unlikely to be used to challenge the liberal draft, certain elements of it, such as the categories of groups, may be retained in any version, and are therefore worth examining. Most probably, the Ministry of Justice, the

Ministry of Internal Affairs, the Procuracy, Komsomol, and other approved organizations which have had a stake in the draft law will mount their own lobbying effort, and conservative deputies in the Supreme Soviet may go with their version. The discussion that follows of the 1987 draft law is intended to illustrate the type of legislation which is drafted by ministries left to their own devices.

The 1987 draft law[13] contemplated three types of "autonomous" groups in Soviet society: "voluntary societies," "organs of independent public activity" and "independent public associations." These are the traditional categories of organizations in Soviet society outside of the Party. The 1987 draft contemplated "an increase in the role" of such organizations in "solving socio-political, economic and socio-cultural questions" when there exist "conditions of the all-around improvement of socialist society, the further extension of socialist democracy and socialist self-administration of the people."[14] (Some scholars have opposed this categorization, stressing that citizens should be allowed to form any type of association, the law should protect rather than regulate that right, and that all organizations should be equal before the law.)

Chapter I of the draft law contained general provisions based on the Constitution applicable to all legal independent groups. According to Art. 2, citizens of the USSR "have the

right to form voluntary societies and independent public associations, and to participate in the formation and work of organs of independent public activity" in accordance with the Constitution of the USSR. Art. 51 of the USSR Constitution, states as follows: "In accordance with the aims of building Communism, citizens have the right to associate in public organizations in order to promote their political activity and initiative and to satisfy their various interests." But Art. 39, para. 2, provides that "enjoyment by citizens of their rights and freedoms must not be detrimental to the interests of society or the state, or infringe upon the rights of other citizens." Unfortunately, the Constitution restricts assembly by providing that assembly must be "in the interests of building communism," so that an alternative political group which condemned communism or failed to promote it sufficiently would be rejected on these grounds. Although the new draft law may dispense with such language by referring to the Constitution, it may return to this problem through the back door.

According to the 1987 draft, organizations "shall be guaranteed conditions for the successful discharge of their functions. The State shall provide them with material and organizational support, as well as with other assistance in the performance of their functions."[15] The legally recognized groups "shall be organized and operate on the basis of the principles of voluntariness, socialist self-administration and democratic

centralism, socialist legality, criticism and self-criticism, collegiality, glasnost and respect for public opinion.... Their activity shall not be detrimental to the interests of socialist society and the State or the rights and lawful interests of citizens and organizations."[16]

The next three chapters of the draft law address the rights and responsibilities of each of the three types of officially acceptable unofficial organizations.

Chapter II, the longest chapter by far, is concerned with "voluntary societies." This chapter contains 17 of the 30 articles of the draft law. Clearly, here is where the Soviet government contemplates the greatest concentration of activity, because that is the category in which most existing groups would fit. Voluntary societies may be formed for a wide variety of purposes, including:

> developing the socio-political activism and independent activity of citizens; educating citizens in the spirit of Soviet patriotism and socialist internationalism; promoting the economic and socio-cultural development of the country and the strengthening of its defense capability; providing the necessary support to members of the voluntary societies in meeting their professional and leisure interests...; conducting cultural educational work...; nature conservation and preservation of historical and cultural monuments; development of mass physical culture and sport; [or] engaging in other socially useful activities."[17]

This litany, if applied expansively, could encompass almost every conceivable interest group. It also makes clear the kinds of loyal, patriotic activities the government would like to promote.

"Voluntary societies may be founded by State and public

organs, enterprises, institutions and organizations, by labor collectives, and also by not less than twenty-five citizens of full legal age."[18] Voluntary societies can operate at the All-Union, Republic and local levels.[19] The draft law is only applicable to All-Union voluntary societies; Republic and local voluntary societies are to be governed by the legislation of the Republics but the drafters no doubt envision that past practice will be followed, whereby republican legislation closely conforms to federal law.[20] A proposal for the establishment of an All-Union voluntary society is to be considered by the "USSR ministry, State committee or department for the corresponding economic or management sector....The competent State agency ... shall review the application, the draft charter and the composition of the organizing committee, and shall communicate its decision to the founders within one month."[21]

"An application for the establishment of a voluntary society may be rejected if the provisions of its charter conflict with the requirements of this Statute or other legislative acts of the USSR and the union republics.... Decisions of State agencies with respect to the establishment of voluntary societies ... may be appealed to the Council of Ministers of the USSR."[22]

An approved voluntary society shall convene a founding congress to adopt formally its charter and elect officers.[23] The charter so adopted "shall be submitted for registration to the State agency ... which took the decision regarding the

establishment of the voluntary society. The voluntary society shall be deemed to have been established and shall commence its activities on the date of registration of its charter."[24]

Although the draft law provides that "[i]ssues directly relating to the activity of voluntary societies may not be resolved by State agencies ... without the participation or prior consent of the voluntary societies concerned,"[25] the draft contemplates a number of ways in which the State can interfere in the activities of a voluntary society. For example, the draft provides that "State organs shall not be entitled to interfere in the activity of voluntary societies unless it constitutes a breach of Soviet law, of the purposes for which they were established or of their charters."[26] In addition, the draft also states that "[v]oluntary societies shall conduct their activities in cooperation with State agencies, trade union, Komsomol, cooperative and other public organizations and labor collectives....The Soviet of Peoples' Deputies [, i.e., the local government] and their executive and administrative agencies shall, in line with their areas of competence, guide the activities of the voluntary societies, ensure that they comply with the law and support their work. Mass activities organized by voluntary societies in line with their charters and for purposes of strengthening and developing the socialist system shall be conducted in accordance with the procedure established by the local Soviet of Peoples' Deputies."[27] "The State agency ...

which registers the charter of an All-Union voluntary society shall monitor compliance by that voluntary society with the requirements of the legislation in force and of its charter."[28] "[D]ecisions taken by such organs in the course of monitoring compliance ... may be appealed to the Council of Ministers of the USSR."[29] The activities of a voluntary society "may be terminated ... at the decision of the State agency ... which registered the charter of the voluntary society, if the activity of the voluntary society contravenes the legislation in force, the purposes for which it was established or its charter."[30]

An illuminating restriction on the scope of activities of voluntary societies is that they "may join international public organizations and participate in line with their charter objectives in the conduct of activities deriving from international treaties and conventions to which the USSR is a party."[31] If this provision were to be construed to restrict the "[i]nternational contacts of voluntary societies"[32] to activities deriving from treaty relationships of the USSR it would severely limit those international contacts since the Soviet Union has entered into relatively few treaties in areas of which can be expected to be of interest to voluntary societies.

Moreover, under the draft law the State would exercise a certain degree of control over the administration and finances of a voluntary society. "The amount of the operating costs for the administrative machinery of a voluntary society and the size

of that machinery shall be determined by the voluntary society in accordance with the procedure established by the USSR Council of Ministers."[33] "Voluntary societies shall be entitled to possess property, which shall be socialist property (i.e. collectively-owned or public property). (The Soviet Juridical Encyclopedia defines socialist property as "public property from the means of production, the economic base of socialism. It arises as the result of a socialist revolution through appropriation of large private capitalist property and the conversion of small private property to a socialist base.")[34] The property of voluntary societies may include buildings, facilities, equipment and other property required by them for the performance of their charter functions."[35] Funding for a voluntary society's activities can come from members' dues, money making activities of the organization, such as exhibitions and lotteries, "revenues from State and public organizations as provided for by the legislation of the USSR and the union republics," voluntary contributions from citizens and other sources.[36] Most important of all these methods of financial control is the requirement that "[v]oluntary societies ... make payments to the State budget in the cases, manner and amounts specified by the legislation of the USSR".[37]

The cumulative effect of these provisions, especially those encouraging groups to promote the state and those granting power to "guide the activities"[38] of voluntary societies, to extract "payments to the State budget"[39] and to "terminate" the

activities of a voluntary society,[40] would be to give the State the potential to control firmly the activities of "voluntary societies" which desire to act in conformity with the law.

Chapter III of the draft law governed "organs of independent public activity." Unlike voluntary societies and "independent public associations," "organs of independent public activity" are almost extensions of the government. A Soviet lawyer commented to Helsinki Watch these these "organs" or putative "mass movements" of public activity never had the mass public to go with their bureaucratic leaders. In fact, they are completely unaccountable to the public. For example, while citizens may "form voluntary societies,"[41] they may only "participate in the formation of organs of independent public activity."[42] (Emphasis added.) That is because the directive to form them comes from above. These "organs" may be formed "at enterprises and in institutions and organizations, as well as at places of residence"[43] and their activities may be terminated" as a result of the closure of the enterprise, institution or organization in which the organ of independent public activity was active."[44] Such "organs" may be formed to promote "broad involvement of citizens in the management of State and public affairs" and to assist local Soviets of Peoples' Deputies in a variety of matters.[45] Examples given of "organs" formed at residences include "councils to combat drunkenness [and] voluntary people's groups for the maintenance of public order."[46] From these

provisions, it appears that "organs of independent public activity" are meant to be quasi-official bodies carrying out certain functions which the State wishes to perform in the guise of citizen organizations.

Chapter IV deals with "independent public associations." These are groups formed to "[satisfy] citizen's needs and interests with regard inter alia to the acquisition of knowledge, education, research, artistic and creative endeavor, sports and physical culture; [or to] comprehensively [promote] the communist education of the workers, inculcating in them high moral and esthetic tastes and spiritual needs."[47] Because of the more limited purposes for which independent public associations may be formed, as contrasted with voluntary societies, these groups are apparently believed to pose relatively little political threat to the Communist State and are treated more liberally than are voluntary societies.[48] These associations may be registered by the executive committee of the Soviet of Peoples' Deputies before their charters are drawn up,[49] in contrast to voluntary societies which are subject to extensive pre-organizational supervision.[50] "Independent public associations" may be formed by "founding organizations or by not less than ten citizens of full legal age,"[51] while "voluntary societies" may only be formed by at least 25 citizens.[52] The activities of these organizations are to be monitored by their founding organizations and by the Soviet of Peoples' Deputies,[53] which shall each have the right to

terminate their activities.[54]

2. Laws on Demonstrations

The growing number of demonstrations and public rallies in 1987 caused Soviet authorities concern.[55] "[T]he absence of legislative regulation of the organization and holdings of meetings, street marches, and demonstrations of course seriously weakens precautionary steps taken to ensure public safety....[I]t is evidently necessary to draw up, discuss widely, and pass legislative regulations for the exercise of the constitutional right to free assembly, meetings, and demonstrations."[56] At the end of July 1987, the Supreme Soviet Presidium passed three decrees laws which substantially strengthen the government's ability to control and punish demonstrators.[57] These decrees were ratified in September 1987 and subsequently incorporated into the criminal codes of the Russian Republic and other republics; the Baltic republics reformulated them in a more liberal manner.

The central piece of legislation is the decree of the Presidium of the USSR Supreme Soviet "On the Procedure for the Organization and Conduct of Meetings, Rallies, Street Marches and Demonstrations in the USSR" (the "Demonstrations Decree").[58] The Demonstrations Decree made permanent the temporary municipal ordinances banning unauthorized demonstrations which had been passed in Moscow, Leningrad and other cities in 1987 in the wake of numerous unofficial demonstrations.[59]

An application to hold a meeting, rally, street march or demonstration must now be made to the executive committee of the Soviet of Peoples' Deputies, i.e., the local government, by a representative of "the labor collectives of enterprises, institutions, and organizations, organs of cooperative or other public organizations, organs of voluntary public activity, and individual groups of citizens."[60] The application, which must be submitted in writing at least ten days before the date of the meeting, must include the purpose, form and place of the meeting, the route to be followed, the starting and ending times, the proposed number of participants, the names of the organizers and their places of residence and study or work.[61] The executive committee of the local government must inform the organizers of its decision at least five days before the proposed date, and may offer them an alternative time and place.[62] The executive committee may prohibit the meeting "if its purpose is contrary to the USSR Constitution or the constitutions of union or autonomous republics or [it] is a threat to public order and the safety of citizens."[63] It is important to note that the concept of an action being "contrary to the USSR Constitution" is primarily a code phrase for not recognizing the leading role of the Party. This makes every local Soviet an authority on "constitutionality," in a country where there is no constitutional court and where the Presidium of the Supreme Soviet, an executive organ, interprets the constitution in the

absence of such an independent institution. Although "[t]he decision may be subject to an appeal to a higher executive and administrative organ in accordance with the procedure laid down by existing legislation,"[64] this does not provide access to the courts via the Appeals Law discussed at Section 1 above since these are collegial decisions.[65] Moreover, the Decree does not set forth the bases upon which an appeal may be made. A meeting must be stopped upon the request of "representatives of organs of power" if an application has not been submitted or "there has been a decision to ban the event" or if there is a danger to life and health or in the event of "the violation of public order."[66] Persons violating the procedures of the Demonstrations Decree are responsible under All-Union and Republic law, and any damage to property caused during a meeting, whether permitted or not, whether by the demonstrators or by the "representatives of organs of power," must be made good.[67] The Decree does provide that if an application is granted, the executive committee must provide "the necessary conditions" for holding the meeting[68] and that "[s]tate and public organizations, officials, and also citizens have no right to hinder meetings...taking place in compliance with the established procedures."[69]

The Demonstrations Decree was presented as being an enhancement of glasnost.[70] Nonetheless, the law was so vigorously attacked as being antidemocratic that the Soviet government had to make a public reply to these charges.[71]

The second law on demonstrations was a Russian Republic decree "On Liability for the Violation of the Established Procedure for the Organization and Conducting of Meetings, Rallies, Street Marches and Demonstrations" which established criminal penalties for violating the Demonstrations Decree.[72] The Russian Republic decree added a new section to the Russian Republic Criminal Code, Article 200-1, instituting graduated penalties of up to one year of corrective labor, or a fine of up to 2,000 rubles (which is nearly a year's average salary), for repeatedly violating the official demonstrations procedures.

The final step to control demonstrations more effectively was a decree of the Presidium of the USSR Supreme Soviet adopted immediately after the Demonstrations Decree. This decree, "On the Duties and Rights of the Troops of the Ministry of Internal Affairs of the USSR in the Preservation of Public Order,"[73] increases the powers of the Ministry of Internal Affairs troops and codifies past police practices. These troops, which are analogous to the U.S. National Guard, are separate from the militsia (police), KGB and army. They are controlled by the Ministry of Internal Affairs at the federal level, and at the local branch of the Ministry in each republic. The internal troops have a variety of purposes, including "preservation of public order," "participation in maintaining public order during the holding of mass socio-political, sport and other events," and "participation in the interdiction of any breach of public order

if such violations occur on a massive scale or pose a threat to the life or health of any citizen, and disturb the work of enterprises, organizations or establishments aimed at the destruction of government, public or individual property."[74] The internal troops are granted the right to enter a private residence or other building "in pursuit of persons suspected of having committed a crime, and also to prevent crimes or violations threatening the public order or the personal safety of citizens."[75] In "exceptional cases and only as an extreme measure," troops can use weapons to "protect citizens from an assault which threatens their life or health, if other methods or means of defending them have not been effective" or to "detain a person who has perpetrated a crime and is engaging in armed resistance," but weapons are not to be used "on crowded streets, squares and in other public places where innocent bystanders could be harmed."[76] In addition, "under extreme circumstances, [they can] take special measures to end massive unrest and group violations of public order or other antisocial acts."[77] The nature of these secret "special measures" are is unclear, but they must be powers additional to those set forth in the decree.[78]

D. Analysis and Implementation

1. Draft Law on Informal Groups

The 1987 draft law on informal groups would place restrictions on the formation and activities of such groups that

would be inconsistent with the requirements of the Covenant. The requirement of a minimum number of persons to form a group or the requirement that they be of "full legal age" appears nowhere in the Covenant and cannot be derived from the limitations found in paragraph 2 of Article 22. The fact that a group must register with the State before it may legally carry on its activities is inconsistent with the Covenant's requirement that there be no restrictions on freedom of association except those "necessary in a democratic society,"[79] and the provision that empowers the Soviets of Peoples' Deputies with the legal competence to "guide the activities" of informal groups and to determine if a group is "constitutional" when reviewing demonstration applications are repugnant to the right of freedom of association which the Soviet Union guaranteed to its citizens when it ratified the Covenant. Although the text of the revised official draft of the law is not available, judging from criticism of it by scholars with access to the text, it apparently preserves the prohibitory nature of the registration procedure.[80] It would grant the state the right to decide on matters "affecting the interest" of civic organizations, and would make such organizations subject to "acts adopted by the ministries, state committes and other agencies." This revised draft also allows government institutions to serve as "founders" of civic organizations, which runs contrary to the idea of independent civil society. The new liberal draft of the law envisions registration with local Soviets or with the

Ministry of Justice merely as a notification, rather than as a petition. In this draft, ministries could not, on their own, block the registration of a society. Instead, the procuracy would be compelled to file suit in court against groups that were suspected of violating the law or the Constitution. Although the liberal draft recognizes more freedom of association, again without a constitutional court or similar independent judicial institution, the door is left open for excessive regulation.

There is no basis in international law to limit the international contacts of voluntary societies to participation in activities deriving from treaties to which the USSR is a party. This is too far-reaching to be consistent with paragraph 2 of Article 22 of the covenant.

Perhaps most important, freedom of association cannot exist where the State claims the power to disband an organization merely for acting outside the scope of its charter -- even if those actions do not otherwise violate the law -- and to assess an organization for payments to the State budget without limit. The essence of this right is that persons may band together to undertake any activities they desire, so long as those activities do not infringe on "national security or public safety, public order (ordre public), the protection of public health or morals or the ... the rights and freedoms of others."[81] The Soviet Union's apparent desire to circumscribe the potential concerns of

an organization does not fall within these limited exceptions. The power to bankrupt an organization through budget assessments, whether actually levied or threatened, clearly is also inconsistent with freedom of association.

The 1987 draft law on informal groups received some sharp criticism within the Soviet Union[82] which clearly sparked the movement to launch a better draft in the new legislative committee of the Supreme Soviet. Even the persons who drew up the law recognized that it "ignores such important political rights of voluntary societies as the right to initiate legislation and nominate candidate deputies, as well as questions of material, economic, and publishing activity."[83] Most of the groups that would satisfy the criteria of the draft law and which could live with its restrictions are probably already registered under the current regime.[84] Some legal experts told Helsinki Watch that, in 1986, a little-publicized statute was passed apparently by the Soviet of Ministers stating that groups that agreed to attach themselves to existing official institutions, such as scientific research institutes, could be registered with those institutions.[85] In effect, the 1987 draft law would not have provided any protection to independent and unofficial initiatives[86] which refused to accept institutional affiliation, but instead would likely serve as a method of, and excuse for, their repression. Such worries explain why certain groups such as Press Club Glasnost, the unofficial group established to

monitor Soviet compliance with the Helsinki Accords, publicly stated that they would not register under any version of the draft law.

The 1987 draft law now seems for all intents and purposes a dead letter. Consideration of the draft law was slowed by protests from both official groups, such as the Soviet Committee for the Defense of Peace, and unofficial groups.[87] The 1987 draft was attacked because it originated in the pre-glasnost era, it was prepared in secret, and for the absence of public participation in its creation.[88] Officials of the USSR Ministry of Internal Affairs All-Union Scientific Research Institute informed Helsinki Watch that a law on informal groups should be adopted by 1990, at the latest.[89] But because of the current struggle between the liberal deputies' draft and the revised ministerial draft, the time-table is not certain.

Unless the law as adopted is radically different from the draft which has circulated, however, the Soviet Union will have violated not just the spirit of glasnost, but also its international obligations under the Covenant.

The Sunday Times (London) has reported that informal groups can expect to be "smothered in red tape" when and if the draft law takes effect.[90] The Sunday Times also reported on unofficial ways in which the government has attempted to control these groups, including mass infiltration by Communist Party members and strong attacks in the official press. Through these means

the law would "enable the authorities to cut off what they regard as the extremist left and right wings of the unofficial movement while co-opting--or emasculating--the others."[91]

2. Laws on Demonstrations

While Soviet authorities have generally shown more tolerance in the past year for large rallies, especially if organizers obtain permission and hold them indoors, this tolerance varies from Republic to Republic.[92] The triad of demonstrations laws also makes it harder to obtain a permit in the first place and gives the authorities stronger weapons to use to break up unauthorized demonstrations. While a system to grant applications for meetings is better than no system at all, the structure imposed by the Demonstrations Decree is barely a system. The lack of specificity and legal criteria as well as the ill-defined right to appeal seems aimed at frustrating applicants, rather than imposing only those restrictions which "are necessary in a democratic society."[93]

The available information on the implementation of the Demonstrations Decree is contradictory. Officials of the USSR Ministry of Internal Affairs All-Union Scientific Research Institute have stated that over 300 applications for meetings were granted in Moscow between the beginning of August 1987 and the end of January 1989.[94] Such a number does not distinguish between meetings of official groups, such as Komsomol, and those of unofficial groups, such as Democratic Union. The leader of

the independent Moscow Popular Front reported to American journalists in October 1988 that only 3 of 33 applications made by independent groups known to him had been granted[95] while an attorney in Moscow informed Helsinki Watch in January 1989 that only 6 of 106 applications made by Moscow informal groups had been granted. The Office of the Procurator General of Leningrad has stated that over 60 percent of applications for demonstrations are granted by local executive committees,[96] but that favorable percentage may not count applications not even accepted for consideration because they were "improperly filled out."[97] Given the amount of specific information required by the Demonstrations Decree a large number of applications can be expected to be "improperly filled out". Notwithstanding the absence of permits, many demonstrations are taking place throughout the Soviet Union.

The criminal law related to demonstrations has been widely used against persons engaged in unauthorized meetings. There have been numerous reports of the detention and fining of demonstrators.[98] However, the law has not been enthusiastically received by the authorities in all Republics. While ordinarily a change in the Russian Republic's Criminal Code is followed slavishly by the other Republics, and in this case there were reports that Moldavia[99] and the Ukraine[100] adopted identical laws, it has also been reported that Estonia substituted its own, more permissive text.[101] Estonia has also declined to adopt the new

law on internal troops in the form published by Moscow.[102]

Perhaps an insight into the third law having an effect on demonstrations, the internal troops law, may be gained from the tragic events in Tbilisi, Soviet Georgia, on April 9, 1989. On the morning of April 9, a peaceful rally of approximately 10,000 people was attacked by the internal troops and army, who reportedly used sharpened shovels and poison gas on the crowd.[103] Official reports are that 20 died and at least 200 were wounded. Confusion has reigned over the types of toxic gas used in the attack by the internal troops; apparently not even the commander of the troops knew what chemicals his forces were using. The furor and confusion was so great that Soviet authorities were compelled to allow in experts from the International Committee of the Red Cross and the American group Physicians for Human Rights to treat victims of gas poisoning.[104] The inconsistent official statements concerning whether and to what extent the troops' actions were authorized prevents a final judgment as to whether the use of poison gas is an example of the secret "special measures" which the internal troops can take "to end massive unrest and group violations of public order or other antisocial acts."[105]

The powers granted to the special internal troops are overbroad, and the "special crowd control measures" provided for in the law are not specified. The troops may search and detain without a warrant and enter residential or other buildings to

pursue suspects or prevent crimes or violations threatening public health. This goes beyond the internationally-accepted concept of "hot pursuit," since violation of the ill-defined concept of public order is not a serious crime warranting failure to obtain a procurator's search order. This means that the troops may invade the homes of persons who took part in a peaceful, but unauthorized assembly -- as they did during demonstrations in Armenia and Georgia in the last year. The law makes reference to "massive disruption of public order," but it does not specify if violence or loss of life must accompany this "disorder" -- a mass, peaceful rally can be determined to be "disruptive" if it challenges the powers-that-be.

1. All-Union Central Committee of the Soviet People's Commissars of the RSFSR, "On the Confirmation of the Regulation of Voluntary Societies and Associations, Decree no. 74, Art. 331, July 10, 1932, discussed in U.S. Helsinki Watch, "Freedom of Association in Selected Helsinki Countries," (forthcoming) (hereafter, "Freedom of Association").

2. see id.

3. But see I. Yu. Sundiyev, "Unofficial Young People's Associations: Attempting an Exposition," Sotsiologicheskiye issledovanya, no. 5, Sept.-Oct., 1987, at 56-62, trans. in XXXIX CDSP 1988, no. 51, at 5-7, which argues that there were always unofficial youth groups of various kinds, and Interview of Y.Y. Levanov by A. Afanasyev, "A Scholar Approaches Unofficial Groups," Komsomolskaya pravda, Dec. 11, 1987, at 4, trans. in XXXIX CDSP 1988, no. 51, at 7-8, where a Komsomol researcher states that "unofficial, or grass-roots, associations have existed for decades. But public and state organizations steered us away from studying them."

4. U.S. Helsinki Watch Committee, "News From Helsinki Watch--News from the USSR," May 1989, at 8, hereinafter "News From the USSR"; see also I. Virabov, "In This Column Every Day: Top Secret?," Komsomolskaya pravda, Sept. 24, 1988, at 1, trans. in FBIS-SOV-88-188, Sept. 28, 1988, at 61, 61, hereinafter "Top Secret", who states that there are 30,000 "youth amateur societies in the country".

5. See, e.g., U.S. Helsinki Watch Committee, From Below: Independent Peace and Environmental Movements in Eastern Europe and the USSR (1987).

6. USSR Constitution, Art. 6.

7. See "Top Secret," at 61-62.

8. See id., at 61.

9. Id., at 62.

10. Moscow News, no. 34, p. 12.

11. Times clip on Stankevich draft.

12. Lukyanov speech in annex.

13. See Appendix 1.

14. Preamble.

15. Art. 4.

16. Art. 3.

17. Art. 5.

18. Art. 8.

19. Art. 6.

20. Art. 22.

21. Art. 9.

22. Art. 10.

23. Art. 9.

24. Id.

25. Art. 7.

26. Id.

27. Id.

28. Art. 9.

29. Art. 10.

30. Art. 12.

31. Art. 20.

32. Id.

33. Art. 9.

34. at 440.

35. Art. 16.

36. Art. 15.

37. Art. 18.

38. Art. 7.

39. Art. 18.

40. Art. 12.

41. Art. 2.

42. Id., emphasis added.

43. Art. 24.

44. Art. 25.

45. Art. 23.

46. Art. 24.

47. Art. 27.

48. However, many groups that would qualify as independent public associations have been formed without central permission particularly in the Baltic Republics (Estonia, Latvia and Lithuania) and the Caucasian Republics (Georgia, Armenia, Azerbaidjhan) which have been the scene of the most consistent resistance to central Soviet rule. Such groups often act as the focus for local nationalist sentiments.

49. Art. 28.

50. Art. 9.

51. Id.

52. Art. 8.

53. Art. 30.

54. Art. 29.

55. See Interview of A.V. Vlasov, U.S.S.R. Minister of Internal Affairs, by B. Kodratov, Moscow Domestic Service, July 9, 1988, trans. in Internal Affairs Minister on Law, Militia Role, FBIS-SOV-88-132, July 11, 1988, at 74, 76.

56. Id.

57. See generally U.S. Helsinki Watch Committee, USSR: Human Rights Under Glasnost, December 1988-March 1989, at 64-74, hereinafter "Human Rights Under Glasnost".

58. Vedomosti Verkhovnovo Soveta SSSR, no. 31 [2469], July 28, 1988, item 504, reported in Izvestia, July 29, 1988, at 2, trans. in FBIS-SOV-88-146, July 29, 1988, at 40-41.

59. Human Rights Under Glasnost, at 65-66.

60. Sect. 1.

61. Sect. 2.

62. Sect. 3.

63. Sect. 6.

64. Sect. 3.

65. See discussion in Section 1.D above on the problem of appealing collective decisions.

66. Sect. 7.

67. Sect. 8.

68. Sect. 3.

69. Sect. 5.

70. See "Procuracy Official on Law on Demonstrations," Moscow Domestic Service in Russian, Aug. 8, 1988, trans. in FBIS-SOV-88-154, Aug. 10, 1988, at 41-42.

71. See, e.g., id.: "[Question:] Sometimes voices are heard saying that the decree restricts the democratic freedoms of citizens and organizations. What can you say about this? [Answer (by M.N. Vazhenin, assistant to the U.S.S.R. Procurator General):] Democratization has nothing in common with anarchy or complete license....[A]ny attempts to call

this law undemocratic and antipopular are in my view clearly groundless."

72. Vedomosti Verkhovnovo Soveta RSFSR, no. 31 [1553], Aug. 3, 1988, item 1005, reported in Human Rights Under Glasnost, at 64-65.

73. Vedomosti Verkhovnovo Soveta SSSR, no. 31 [2470], July 28, 1988, item 505, reported in Human Rights Under Glasnost, at 67-68.

74. Sect. 2.

75. Sect. 3(b).

76. Sect. 3(h).

77. Sect. 3(g).

78. For a complete summary of the decree, published two months after its effectiveness, and a paean to the internal troops, see Interview of Colonel General Yu. V. Shatalin, Chief of the U.S.S.R. Ministry of Internal Affairs Troops, by V. Astashin and A. Gorlov, "Topical Interview: The Right To Defend the Right," Pravda, October 18, 1988, second ed., at 6, trans. in FBIS-SOV-88-204, October 21, 1988, at 75-77.

79. This contravention of Covenant obligations is not lessened by the laws of other states which may have similar requirements.

80. Nina Belyayeva, "Form Associations According to the Law," Moscow News, p. 12, no. 34.

81. Covenant, ar. 22, para. 2.

82. See generally "Top Secret;" and Nina Belyayeva interview in Izvestia, May 17, 1988.

83. Id., at 62.

84. See "Freedom of Association."

85. The exact citation and the body that passed the law are not known, but it is a fact that a number of groups have managed to obtain legal status by attaching themselves to research

institutes. See also V.V. Igrunov, "From Protest to Political Self-Consciousness," unpublished English translation, Helsinki Watch archives. Igrunov states that "The first informal groups appeared in the summer of 1986, when the `Regulations on Amateur Associations' came into effect. This document liberalized the registration procedure and the activities of voluntary public associations." In practice, most organizations that registered in this manner agreed to attach themselves to research or other official institutions.

86. See id.

87. See "Top Secret," at 62.

88. See generally "Top Secret," at 62-63.

89. Statement on Jan. 30, 1989 in Moscow.

90. A. Roxburgh, "Russia Prevents the Fringe Benefiting from Glasnost," Feb. 7, 1988.

91. Id.

92. News From the USSR, at 15.

93. Covenant, art. 22, para. 2.

94. Statement to Helsinki Watch on Jan. 30, 1989 in Moscow.

95. See Human Rights Under Glasnost, at 70-71.

96. Statement to Helsinki Watch on Feb. 2, 1989.

97. See Human Rights Under Glasnost, at 71-72.

98. See News From the USSR, at 15-18; S. Blagodarov, "Tale of Two Election Campaign Meetings: With Dignity...and Quite the Reverse," Sovetskaya Rossiya, Apr. 15, 1989, second ed., at 2, trans. in FBIS-SOV-89-074, Apr. 19, 1989, at 64, 66.

99. On Aug. 2, 1988, see "Moldavia Adopts Decree on Demonstrations," Sovetskaya Moldaviya, trans. in FBIS-SOV-88-182, Sept. 20, 1988, at 44.

100. On Aug. 3, 1988, see "Ukraine Passes Decree on Rally

Violations," Pravda Ukrainy, trans. in FBIS-SOV-88-154, Aug. 10, 1988, at 38.

101. Human Rights Under Glasnost, at 69.

102. See Fitzpatrick, "The Independent Scene in the USSR," Peace & Democracy News, at 1, 23, Winter 1988-89.

103. See News From the USSR, at 4-6.

104. Id.

105. Sect. 3(g).

4. CRIMINAL JUSTICE SYSTEM

No changes have been made in the Soviet code of criminal procedures at this time. Nevertheless, since the onset of perestroika, legal scholars and law-enforcement officials have vigorously discussed the merits of liberalizing the procedures for arrest and trial.

A. The International Norms

Article 14 of the International Covenant on Civil and Political Rights deals with questions of criminal procedure. Article 14 affirms equality before the law and the independence and impartiality of the courts. It guarantees presumption of innocence, prompt notification of charges, adequate time and facilities to prepare a defense with counsel, a speedy trial, the right to counsel, cross-examination and presentation of witnesses for the defense, the right to remain silent, the right to appeal, and the right against double jeopardy.[1]

B. Background

Problems in the administration of Soviet criminal justice have been the subject of discussion for many years both inside[2] and outside[3] the Soviet Union, primarily because of the methods used to punish dissenters. In the past, the scale of the problems was the subject of speculation by drawing implications from the imprecise and allusive articles published on the subject in scholarly articles in the Soviet Union. With the advent of glasnost, reform of the criminal justice system has been more

openly and vigorously discussed in the mass media.

An impressive array of articles has appeared in the Soviet press beginning in 1986 dealing with gross abuses of the law that are commonplace in Soviet courts. These articles in the Soviet press address in the main procedural deficiencies.[4] Professor Alexander Yakovlev, head of the Department of the Theory and Sociology of Criminal Law at the USSR Academy of Sciences' Institute of State and Law,[5] observed that "[i]ntroducing the defense lawyer in the preliminary investigation would make it possible to avoid many mistakes."[6] (Currently, a defense lawyer may have his first, and often brief, access to his or her client only after the procurator has finished the investigation and formal charges are presented to the defendant. Detention during the investigation may stretch to months at the procurator's discretion. The former Director of the Institute of State and Law, Academician Kudryavtsev, attacked the "very substantial shortcomings in the work of legal agencies" and "outright violations of legality."[7] The then-Chairman of the USSR Supreme Court observed that "the main cause of miscarriages of justice is the violation of the principle of the independence of judges."[8]

These public admissions were followed by the adoption in late November 1986 by the Communist Party's Central Committee of a resolution "On Further Strengthening Socialist Legality and Law and Order and Increasing the Protection of Citizens' Rights and Legitimate Interests" which emphasized that perestroika

(restructuring) was needed in the legal system.[9] The resolution noted that "strict observance of laws, stronger guarantees of citizens' rights, and the protection of their legitimate interests [are] the necessary condition for the normal functioning of the Soviet political system." The resolution also stated that "[c]ases of unsubstantiated detentions and arrests and of unlawful criminal indictment of citizens must be eliminated from the work of law enforcement agencies", and directed that "no interference will be tolerated from any quarter in the investigation and court examination of specific cases."[10]

Immediately after the adoption of the Central Committee resolution, one of the first references to reform of the criminal justice system was made by Academician Kudryavtsev in an article in Pravda.[11] The USSR Supreme Court then took the initiative and rebuked judges and courts for "serious shortcomings" and "outright violation[s] of the law."[12] Arkady Vaksberg, a frequent contributor to Literaturnaya gazeta on legal matters, reporting on this plenary session of the Supreme Court, outlined five reasons for "open [judicial] lawlessness": first, "presumption of the defendant's guilt"; second, "blind and unconditional faith in the preliminary investigation"; third, "the reluctance of some judges to get to the heart, the substance, of a case"; fourth, "haste and nervous irritability during the hearing of cases"; and fifth, "disregard for the law that regulates the procedure for hearing cases."[13]

The Soviet Justice Minister, Boris Kravtsov, mentioned "broadening the rights of lawyers" and "upgrad[ing] the professional qualifications of the [judicial] staff."[14] A larger role for defense counsel and greater respect for their duties was urged by Professor of Jurisprudence Valery Savitsky, who stated that the "court should regard the defense lawyer and the prosecutor as equal parties attempting to prove their case in an open and public adversarial process....[I]n all criminal cases the defense counsel should have the right to participate in the legal proceedings from the moment a charge is brought against a citizen or from the moment of his arrest."[15] A follow-up article to Professor Savitsky's appeal for the defense bar reported that "[a]lmost every letter approves the proposal that the defense attorney be allowed to participate in the case from the outset."[16] Judge Terebilov, then Chairman of the USSR Supreme Court, in an interview with Pravda on December 5, 1987, urged that there be less Party and government interference in the judicial process. He urged that defense lawyers be allowed to participate in a case as soon as a defendant is charged (but with no mention of representation at the time of initial detention, arrest, or the procurator's filing of a charge). Terebilov advocated that pre-trial detention be limited to six months and then only for serious offenses; and that the courts be given the power to annul "resolutions or legally binding acts issued by ministries or departments [that] are at variance with the law."[17]

The Central Committee of the Communist Party addressed the reform of the criminal justice system at its Plenum on July 29, 1988.[18] The July Plenum emphasized the necessity "to significantly consolidate the guarantees for the implementation of democratic principles of the administration of justice such as the adversarial principle, glasnost, strict adherence to the presumption of innocence, and impermissibility of either bias toward the prosecution or indulgence toward those who have infringed the law ... to enhance the court's prestige, to ensure absolute independence of judges and their subordinates to the law alone, and to define specific penalties for interference in judicial activity and for contempt of court."[19]

In a long interview given to New Times and published in English, USSR Supreme Court Chairman Terebilov reviewed the conditions for creating a "law-based state."[20] He spoke of the need for the presumption of innocence (but not the right of a lawyer to gather evidence to support the defendant's presumed innocence); the genuine independence of the judiciary, both from direct Party interference and from indirect economic pressure arising from dependence for material support on the local Soviets; equality in theory and practice of procurator and defense counsel (but without mentioning an adversarial defense which is a prerequisite for equality); critical review of preliminary investigations; withdrawal of the investigative function from the procurator's office; limited detention before

trial based on judicial decision; access of defense counsel to the accused at the time of initial charge (but not at the time of arrest or detention); increase in the number and salary of lawyers, including the formation of a national union of lawyers (it is not clear whether he meant a union of advocates, or a union of law-enforcement officials and lawyers); and increase in the number and quality of People's Assessors (but not a jury system). No mention is made of the need to establish a constitutional court as a means of enforcing constitutional guarantees and the Covenant's protections in the trial process.

On November 2, 1989, the Supreme Soviet passed a "Law on Liability for Disrespect of the Court," designed to prevent interference in court procedures, which was published in the press.[21] An analysis of this law is beyond the scope of this report. But it is important to stress that while such a law punishing those who put pressure on the courts is welcome, it is not a substitute for a law providing guarantees for an impartial, independent judiciary. Since nearly all judges in the USSR are members of the Communist Party long entrenched in the judicial system, they are capable of bias without any pressure from outsiders. Within a closed judicial system where the roles of judge, investigator and prosecutor are closely intertwined, in the absence of a separation of powers, who will take on the prosecution of those who pressure the courts? As with the law designed to prosecute those who abuse psychiatry, the punitive

approach to human rights protection is meaningless without a vigorous, adversarial bar -- which is still absent in the USSR.

C. Analysis

No public work whatsoever has been undertaken by the government towards formulating revised Fundamentals of a Code of Criminal Procedure, much less the revised Code itself which will only follow approval of the Fundamentals.[22] Professor Savitsky of the Institute of State and Law has correctly pointed out that "lack of coordination in the drafting of criminal laws and laws on criminal procedure is a serious flaw in the way we organize crime control, and this defect will repeatedly make itself felt."[23]

Without a new code of criminal procedures, analysis is not yet possible. But consideration should be given to the independence of judges and lawyers, the failure to admit defense counsel early in the judicial process (at the time of detention) and the limitations placed on mounting an effective defense, excessive pretrial confinement without judicial review[24] and harsh interrogation techniques (including beatings and solitary confinement) practiced by the police, procuracy and KGB.

There has been much resistance from the Ministry of Justice, which supervises the collegiums of advocates, to the formation of an All-Union Union of Advocates.[25] (The Soviet advocate can be either a defense attorney or a lawyer with a private practice. The Soviet jurist can be either a legal scholar or a law-

enforcement official with legal training, i.e. a militiaman, procurator or judge.) The Ministry of Justice went so far as to cancel an organizational meeting for the independent association of advocates and to declare that a group under its control would instead represent the bar.[26] In defiance of the Ministry, on February 25, 1989, approximately 20,000 of the Soviet Union's 27,000 advocates formed an independent USSR Advocates' Union.[27] While the new association is not under Ministry of Justice supervision, its organizers recognize that there are limits to its actions.[28] Recently, the Ministry of Justice intervened to prevent the new Union from convening its annual meeting before February 1990; an earlier meeting would have meant that the Union, as a "public organization," could have nominated its own candidates to local elections to the soviets.

An important question here is to what extent these organizations will press for their members' professional rights, and for legal reform, rather than merely becoming pressure groups for better status in society.

The highest levels of government have recognized "the judiciary's increased role in determining standards of legality and social justice and in defending citizens' rights and the interests of the state."[29] The draft Principles of USSR and Union-Republic Legislation on the Judicial System and the Law on the Status of Judges in the USSR have just recently been adopted,[30] but the time-table for ratification is uncertain.

The strengthening of the bar through the formation of an independent Advocates' Union of the USSR was vigorously opposed by the Ministry of Justice, and the effectiveness of that new organization as well as other independent legal groups has yet to be tested. Draft amendments to the Law on the Legal Profession in the USSR and draft directives on the legal profession in the various Republics have not been finished.[31]

D. Penal Code

For all the discussion in the official press and the statements by prominent officials, only a few concrete items relating to reform of criminal justice have been made public. Of these, one is a draft of guiding principles of penal legislation, while the others are the amendment to the Law on State Crimes and new penalties for unauthorized assemblies.

1. Background

Until 1987, little public attention was paid to reform of the penal law itself, as opposed to the procedures by which the substantive law is applied, although scholars at the Institute of State and Law had prepared a draft Theoretical Model Penal Code which was published in Russian and also outside the Soviet Union in 1987.[32]

During 1987 the fundamental premises of the criminal code began to be actively re-examined. Sofya Kelina, researcher with the Institute of State and Law, demonstrated the sweeping nature

of the discussions being held at that time in the special commission preparing the Fundamentals of the Criminal Code when she said: "Had we not done away with axioms, or (to put it bluntly) prejudices, what would all this fuss be about anyway?" [33] Kelina went on to say that she believed that Article 70 of the RSFSR Criminal Code, on agitation and propaganda aimed at subverting or undermining the Soviet regime, should be kept the way it was, but that Article 190-1, covering prosecution for deliberate dissemination of fabrications defaming the Soviet state, was redundant.[34] Articles 70 and 190-1 have been the primary, although by no means only, lightning rod of Western criticism of Soviet criminal law because of their use against dissenters. Professor Alexander Yakovlev of the Institute of State and Law told the Washington Post that Article 190-1 was "outdated" and "contradicts the whole spirit of glasnost".[35] By omission, Yakovlev implied that Article 70 would remain on the law books. None of the commentators explained why Article 70 would be consistent with glasnost while Article 190-1 would be inconsistent.

In his review of the new criminal code then being drafted, the Soviet Justice Minister, Boris Kravtsov, did not refer to either Article 190-1 or Article 70 and instead advocated "reducing the scope of crimes to be punished by death, abolish[ing] exile and banishment provisions, and slash[ing] maximum prison terms to ten years from the current fifteen."[36]

In his interview in New Times,[37] Supreme Court Chairman Terebilov addressed questions of criminal procedure, but missing from his otherwise comprehensive blueprint was any mention of change in the substantive provisions of the criminal law and reduction in the scope of application (but not abolition) of the death penalty and of imprisonment as a form of punishment.

Correctional system reform was addressed in detail by the head of the USSR Ministry of Internal Affairs Main Administration of Correctional Affairs.[38] He stated in Sovietskaya Rossiya that "[i]t is planned in general to considerably reduce the use of deprivation of liberty as a measure of punishment. Sanctions ... are being reviewed with the aim of reducing their severity....Internal and external exile is being abolished as inexpedient....[N]ew types of sanctions are being introduced [such as] [r]estriction of liberty instead of suspended sentences of deprivation of liberty or release on probation from correctional labor colonies subject to a compulsory labor order, which is being abolished."

Because the Fundamentals have not yet been ratified, in theory, the system of exile is still legal in the USSR. Legal scholars have confirmed this in conversations with Helsinki Watch staff. But in practice, apparently amendments to the existing Corrective Labor Code (also not yet overhauled) replace the system of exile by probation from correctional labor colonies subject to a compulsory labor assignment.[39] This means that

prisoners sentenced in the past to terms of labor camp to be followed by exile are now sent to compulsory work sites (as distinguished from labor colonies under armed guard) where they are compelled to work and reside in a certain area, but are more free to make their own living arrangements. In practice, compulsory work sites in remote areas are hardly distinguishable from labor colonies; convicts say that only the barbed wire is missing. Because of housing shortages and the requirements of the internal passport system, often these persons must live in dormitories, which have their own restrictive regulations. If they are detained for misdemeanors at the work site, they can wind up back in the labor colony. Although the abolition of exile was greeted as a great liberalization by the Western press, in fact, Soviet criminologists and officials had devised its abolition as a means of replacing a lighter regimen with the greater degree of control at compulsory work sites.[40]

2. Draft Fundamentals of Criminal Legislation

The completion of the draft Fundamentals of Criminal Legislation was announced on May 30, 1988[41] and it was finally published on December 17, 1988.[42] The Fundamentals are the legal and ideological framework for the penal code; they are not the penal code itself. They set out the categories and types of crime and punishment and the goals of the criminal justice system. It should be noted that in the Soviet Union "the central authorities lay down basic provisions applicable throughout the

country, and the union republics develop and elaborate these in their criminal codes."[43]22 Once the Fundamentals are approved by the Supreme Soviet of the USSR, the Russian Republic Supreme Soviet approves the amended Criminal Code containing the substantive criminal law. Meanwhile, the previously adopted Penal Code with all subsequent amendments passed by the Supreme Soviet make up the Penal Code currently in force.

In the past, the Russian Republic Criminal Code has been the model for the criminal codes of the 14 other constituent Republics. Each republic is supposed to confirm the changes made by the center. However, this can no longer be assumed as the Baltic Republics have begun to reject legislation adopted in Moscow, not by vetoing central legislation, but merely by failing to confirm it. In a few instances, the Baltic Republics have eliminated criminal code articles at their own discretion.[44]22

The Fundamentals have still not been ratified as of this writing, and some scholars have said that the published draft is now a dead letter. The fact that the Fundamentals, which reformers said would be speedily ratified, are still languishing in the Supreme Soviet illustrates the ineffectiveness of reform initiatives.

The Fundamentals provide that "[t]he criminal legislation of the USSR and union republics must be brought into line with the provisions of international treaties concluded by the USSR."[45] Article 7 of the Fundamentals would prohibit retrospective

application of a law which makes an action criminal or makes punishment more severe, while also requiring that any decriminalization or reduction of sentences be applied retrospectively.[46] This would be in keeping with Art. 15 of the Covenant, which stipulates that retroactive punishment cannot be applied.[47] Four categories of offenses are contemplated by the Fundamentals: not constituting great danger to society, less grave, grave, very grave.[48] A crime is classified according to the duration of deprivation of freedom by which it may be punished.[49] An action will not be considered a crime if it "represents a professional risk justified by the pursuit of a socially useful objective."[50] This provision is directed at the problem of managers who run afoul of excessive government regulation in the operation of an efficient enterprise.[51] The concept of group culpability, or conspiracy, is introduced in the Fundamentals.[52]

The types of punishment to be applied to crimes are revised in the Fundamentals. Corrective labor would continue as a form of punishment,[53] as would deprivation of freedom.[54] Banishment and internal exile would be eliminated. The current punishment of "suspended sentence of imprisonment with mandatory assignment of the convicted person to labor," also known as khimiya (chemistry), because the convicts often build chemical plants, would be renamed "restriction of freedom."[55] "Restriction of freedom," which could be imposed for from six months to five

years, would require the convict to work under supervision at the place to which he or she is sent.[56] A new form of punishment, "arrest,"[57] would consist of strict isolation for up to three months in cases of crimes not of great danger to society or less grave crimes where the criminal "does not require prolonged deprivation of freedom."[58]22 The scope of application of the death penalty would be reduced. Under the Fundamentals, it may only be carried out as the penalty for high treason, espionage, terrorist acts, sabotage, premeditated murder under aggravated circumstances, and rape of a minor.[59] The crimes to which the death penalty can be applied, along with large-scale theft of state or public property, large scale bribe-taking, hijacking of an aircraft or vessel if death occurs, war crimes and genocide, constitute the complete list of "very grave crimes."[60] Only these crimes are punishable by maximum terms of 15 years deprivation of freedom. For all other categories of crimes, deprivation of freedom may not exceed ten years.[61]

3. Criminal Restraint on Freedom of Speech

Free speech is curtailed in the Soviet Union in a number of ways, both legal and extra-legal. In general, speech is curbed by unpublished Party directives requiring ideological discipline; by secret administrative statutes; by prior censorship (said to be abolished in the glasnost era as far as prior submission to Glavlit, the state censor, is concerned but not as far as to end

instructive "chats" at the Central Committee ideology department); by editors and "responsible secretaries" (i.e. policy watchdogs in every publication) who reject or withdraw material in compliance with unwritten or unpublished political guidelines; and by administrative action whereby print runs are destroyed, etc. Restraints are also placed on free speech through the criminal code. Since this report is primarily studying changes in the criminal justice system, we have not provided a separate section on freedom of expression, but will discuss here only those developments relevant to free speech that have occurred by changes in the Penal Code.

4. International Law

The Covenant articles relevant to freedom of speech are set forth below.

Article 19 provides:

> 1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression: this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
>
> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Art. 20 provides:

> 1. Any propaganda for war shall be prohibited by law.
>
> 2. Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

5. Amendment to the Law on State Crimes

The "Law on State Crimes" (i.e., the law on anti-state acts) is a special feature of the Soviet criminal justice system. It was originally adopted and later amended executively by the Supreme Soviet Presidium separately from the Penal Code. The Soviet Yuridicheskiy entsiklopedicheskiy slovar' (Juridical

Encyclopedia)[62] explains that the "Law on Criminal Liability for State Crimes" passed on December 25, 1958, set forth two types of "crimes against the state": "especially dangerous" and "other." In describing the pre-perestroika history of the law, the Encyclopedia states that "In consideration of the social and political changes which took place in the USSR [i.e. after Stalin], the law substantially narrowed the range of especially dangerous state crimes in comparison to the Statute on State Crimes (1927) previously in force and rejected the term 'counter-revolutionary crimes.'" With additions, the Law on State Crimes was incorporated into the Penal Code in 1962 as a separate chapter of the Code entitled, "Especially Dangerous State Crimes."[63] The preamble of the Penal Code explains that "All-Union laws on criminal liability for state crimes... are incorporated into the Code. Prior to incorporation in the RSFSR Penal Code, All-Union criminal laws are directly enforced on the territory of the RSFSR."[64]

The history of the Law on State Crimes helps to explain why the Supreme Soviet Presidium suddenly amended this law even as scholars continued to work on redrafting the Penal Code, presumably in a more liberal direction, with removal of certain articles that had restricted free speech.

For two years, those persons who addressed the issue had predicted that Article 70 of the RSFSR Penal Code, on agitation and propaganda aimed at subverting or undermining the Soviet

regime, would be retained in a limited form in the revision of the criminal law, but that Article 190-1, covering prosecution for deliberate dissemination of fabrications defaming the Soviet state, would be eliminated as inconsistent with glasnost.[65] Without exception, all the officials and legal scholars interviewed by Helsinki Watch during its visit to the Soviet Union from January 25 through February 4, 1989 concurred with this view.

On April 8, 1989, the day before the attack in Tbilisi by internal troops (described in Section 3.D above), the USSR Supreme Soviet Presidium unexpectedly amended the "Law on Criminal Liability for State Crimes." The decree was published under the signature of Supreme Soviet Chairman Mikhail Gorbachev[66] and immediately went into force as law. The amendment was one of the Presidium's final acts before the first meeting of the newly-elected Congress of People's Deputies.

In the decree, Article 70 was replaced with a new article which, until it is incorporated into the Russian Republic Criminal Code, must be identified by its number in the Law on State Crimes, i.e., Article 7. New Article 7, entitled "Calls for the Overthrow or Change of the Soviet State and Social System," made criminal "[p]ublic calls for the overthrow of the Soviet state and social system or for its change by methods contrary to the USSR Constitution, or for obstructing the execution of Soviet laws for the purpose of undermining the USSR

political and economic system, and equally the preparation for purposes of dissemination of materials containing such calls." These same actions were subject to stronger penalties if "committed repeatedly either by an organized group of persons or involving the use of technical means designed or adapted for large print runs" or "committed on instructions from organizations abroad or their representatives or involving the use of material assets or technical means received from the aforementioned organizations." The Congress of People's Deputies, in its July 1989 session, amended the article to specify violent overthrow, and removed the extra penalties for using technical devices.

New Article 11, which is to replace Article 74 of the current code on "Propaganda or Agitation with the Purpose of Inciting Racial or National Enmity or Dissension," is entitled "Infringement of National or Racial Equality." It criminalizes "[d]eliberate actions aimed at inciting national or racial enmity or dissension, degrading national honor and dignity, and any direct or indirect restriction on the rights of, or the establishment of direct or indirect privileges for, citizens depending on their race or nationality." The same actions carry a more serious punishment "when combined with violence, fraud, or threats or when committed by officials" or "when committed by a group of persons or when involving loss of human life or other grave consequences."

New Article 7(1) will apparently be included in the existing penal code statute dealing with "treason against the Motherland," Art. 64. Entitled "Calls for Commission of Crimes Against the Motherland," new Article 7(1) prohibits "[p]ublic appeals to betray the Motherland or to commit a terrorist act or sabotage."

New Article 11(1), entitled "Insulting or Discrediting State Organs and Public Organizations," was perhaps the most troubling of these new provisions and was unprecedented in criminalizing "[t]he public insulting or discreditation of the USSR supreme organs of state power and government, other state organs constituted or elected by the USSR Congress of People's Deputies or the USSR Supreme Soviet, or officials appointed, elected, or approved in office by the USSR Congress of People's Deputies or the USSR Supreme Soviet, or public organizations and their All-Union organs constituted according to law and acting in conformity with the USSR Constitution." In June, the Congress of People's Deputies repealed this article, which had drawn considerable criticism from liberal officials as well as political activists. In August 1989, the Supreme Soviet confirmed that the Congress had repealed the article from the Law on State Crimes. While the criminal code is still to be amended and ratified by the Supreme Soviet, under new conditions, the Congress or Supreme Soviet could modify the draft when it comes up for ratification.

E. Analysis and Implementation

1. Draft Fundamentals of Criminal Legislation

In the absence of concrete revisions to the penal code, it is difficult to say to what extent the concepts embodied in the draft Fundamentals or the amended Decree on State Crimes will be carried through. Certainly the reduction in maximum terms of imprisonment and the limitations on the imposition of the death penalty are all to the good. The provision that would require the criminal legislation of the USSR and the Republics to be "brought into line with the provisions of international treaties concluded by the USSR"[67]22 bears brief examination, even in the absence of an actual revised code. Some liberal legal scholars are aware that certain existing provisions of the penal law conflict with their treaty obligations and have cited examples of those they would like to see abolished. For example, with the effort to liberalize the economy under perestroika, the inconsistency of Soviet laws on "parasitism" with the International Labor Organization's treaties prohibiting forced labor has been cited, as has the inconsistency of the internal passport system with the Helsinki Accords.[68] To date, however, these laws remain on the books. The expressed intent to conform with international law is admirable, but it has not yet been ratified as law, nor has it been fully outlined in the statement of intent.

2. Amendments to Law on State Crimes

Foreign observers and Soviet citizens have taken heart at the great reduction in political arrests and prosecutions. Helsinki Watch has noted that virtually no trials under Art. 70, 190-1, 142, and 227 have taken place since the end of 1986, although a few investigations have been opened under these articles and new political arrests have taken place under other criminal code articles such as Art. 190-3 and 200-1, which respectively penalize "group actions that disturb public order" and unauthorized demonstrations, for example. Hopes had arisen that free speech might be more tolerated in the Soviet Union. The adoption of new Articles 7, 11, 7(1) and 11(1) of the Law on State Crimes by the "old" Supreme Soviet Presidium as one of its last acts before the convening of the Congress of People's Deputies (and the election of the current Supreme Soviet by the Congress) therefore was a surprise to both outside observers and Soviet legal experts. The drafting of these provisions in secret, outside of the legal review commission which ordinarily vets revisions of the criminal code, contributed to the shocked reaction that greeted their announcement.

The new laws were presented to the Soviet people as assisting in "the current restructuring of the country and the establishment of glasnost and democracy."[69] Letters were published showing the support of citizens "for a new legislative act aimed at protecting socialism and restructuring from

encroachments by various kinds of unscrupulous political extremists....The new legislative act ... is another step along the path to law-based state, the path to the further establishment of democracy and glasnost."[70] Soviet apologists incorrectly cited foreign legislation such as the U.S. 1940 Smith Act -- that was long ago nullified, in effect, by decisions of the U.S. Supreme Soviet -- to bolster the claim that the decrees conformed to international practice.[71]

In the April 8 Decree, Article 7 prohibited "[p]ublic calls for the overthrow of the Soviet state and social system", public calls for "its change by methods contrary to the USSR Constitution" and "obstructing the execution of Soviet laws for the purpose of undermining the USSR political and economic system." To qualify as a crime under this law, no action need be taken, nor need the public call be to imminent violent action. The absence of a constitutional court or other qualified body makes it impossible, or at least dangerous, to guess what is a "method contrary to the USSR Constitution." Moreover, the formulation "obstructing the execution" of laws is so vague it may include mere criticism of those laws.

Article 19 of the Covenant, which otherwise protects speech and expression of ideas, permits "certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; [or] (b) For the protection of national security or of public order (ordre

public), or of public health or morals." The breadth and uncertainty of the provisions of Article 7 place them beyond the scope of the kind that are "necessary" to protect national security. In addition, it is not "necessary" to prosecute mere speech, as opposed to action, to protect national security or public order, which are broad and elastic concepts in Soviet practice.

While Article 20, paragraph 2, of the Covenant provides that "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law," new Article 11 on "Infringement of National or Racial Equality" goes beyond these areas into the rights protected by Articles 19 and 27 of the Covenant. The terms of Article 20 must be read carefully: "hatred" must be advocated, and this hatred must amount to "incitement to discrimination, hostility or violence." In contrast, Art. 11 of the law on state crimes deals with "deliberate actions aimed at incitement," a more vague formulation than the Covenant that criminalizes intent or preparation rather than the actual action. To the extent that new Article 11 addresses actions "degrading national honor and dignity" it treads on protected freedoms, since no "advocacy of hatred" need be present here. It should also be recalled that Article 27 of the Covenant guarantees "ethnic, religious or linguistic minorities" "the right, in community with the other members of their group, to enjoy their

own culture, to profess and practice their religion, or to use their own language."[72]

New Article 7(1) is most difficult to defend, especially in light of Article 7 of the Decree. Article 7(1) prohibited "[p]ublic calls for betrayal of the Motherland," while Article 7 has already prohibited "[p]ublic calls for the overthrow of the Soviet state." How "the Motherland" differs from "the Soviet state" is a puzzle, as is the meaning of "betrayal." The same concerns as to vagueness and "necessity" in the light of Article 19 of the Covenant apply to Article 7(1).

The most unsettling of the changes to the Law on State Crimes was Article 11(1). At its first meeting on May 6, 1989, the newly-formed Union of Advocates condemned the April 8 decree,[73] and scholars at the Institute of State and Law as well as unofficial activists attacked the decree publicly. This provision introduced the concept of "discreditation" into All-Union Soviet criminal law,[74] although slander[75] and insult[76]22 are already prohibited by law. Nonetheless, Article 11(1) would have penalized "[t]he public ... discreditation" of officials or state organs, or of "public organizations and their All-Union organs," if they are "constituted according to law and acting in conformity with the USSR Constitution." Article 19 of the Covenant does permit restrictions on expression "necessary ... [f]or respect of the ... reputations of others." Again, the issue of just how broad a prohibition may be before it exceeds

the limits of "necessity" was raised by this new law. Given the existing laws of slander and insult, Article 11(1) was apparently intended to supplement the substantive law.

Because of the vigorous public resistance to Article 11(1), the USSR Supreme Court issued a clarification of the law. It stated that "[g]rounded, well-argued criticism of the actions and decisions of organizations and institutions as well as officials on the part of individual citizens in the framework of socialist legality cannot be viewed as a criminally punishable act."[77] This interpretation, which added further complicating factors such as a requirement that a criticism be "well-argued," that it be made by "individual citizens" and that it be made "in the framework of socialist legality," did not quell the resistance to the law. During its first session the newly-elected Congress of People's Deputies repealed Article 11(1) as "unnecessary."[78] This was among the first indications that the new Congress has the power to render a decree of the Supreme Soviet Presidium a nullity. On paper, the Congress of People's Deputies, scheduled to meet twice a year, is a body superior to the Supreme Soviet. But its actual political powers remain uncertain. While this question is pending, the newly-elected Supreme Soviet, at its first session in July-August 1989, decided not to press the issue and removed Art. 11(1) from the law. A. Lukyanov, Vice President of the Supreme Soviet, in a speech on July 25, 1989, said that henceforth, the Presidium would not issue laws, since the new

Constitution envisioned handing these powers over to the Congress and the Supreme Soviet plenary. (See annex). Laws are not the same thing as decrees, but if the statement is taken in good faith, it may mean that the Presidium is ceding some of its legislative power to the experienced legislative bodies.

When the amendments to the Law on State Crimes took effect on April 8, 1989, the Republics were, by the terms of the decree, instructed to conform their laws to the changes. Given the attention focused on these matters and the strong feelings on all sides, the speed and manner with which the amendments are incorporated into the laws of the Republics and the nature of the prosecutions that follow will bear close examination. The Baltic Republics, for example, in effect rejected these articles as part of their criminal codes by failing to confirm them. As of this writing, the Supreme Soviet has decided, by decision of the deputies, to table the ratification of the April 8 decree until the next session of the Supreme Soviet in 1990.[79] While technically still not incorporated into the RSFSR Penal Code, the decree still has the force of law, since under the terms of the RSFSR Penal Code, amendments to the "Law on State Crimes" are immediately effective in the RSFSR even before inclusion in the Penal Code.[80]

3. Other Provisions of Criminal Law

This report does not go beyond the foregoing analysis of the changes actually incorporated into the Soviet criminal justice

system to date. A review of the conformity of the system as a whole with international law is beyond the scope of this report, whose focus is the changes under glasnost. Such a review would deal with such matters as Articles 64 (Treason Against the Motherland, which includes refusal to return from abroad and illegal crossing of the Soviet border); 72 (Organizational Activity Directed to Commission of Especially Dangerous Crimes Against the State and Participation in Anti-Soviet Organizations, an article frequently used in the past in tandem with Article 70 to prosecute unofficial groups like the Helsinki monitoring groups), 83 (Illegal Exit Abroad and Illegal Entry into the USSR), 142 (Violation of Laws on Separation of Church and State and of Church and School), 162 (Engaging in Prohibited Enterprise), 188-3 (Malicious Disobedience to the Legitimate Demands of the Administration of a Corrective Labor Institution), 190-3 (Organization of, or Active Participation in, Group Actions which Violate Public Order, an article now frequently used to suppress dissenters who assemble peacefully, 191 (Resisting a Representative of Authority or a Representative of Public Fulfilling Duties of Protection of Public Order), 191-1 (Resisting a Militiaman or Auxiliary Militia), 192 (Insulting a Representative of Authority or Representative of Public Fulfilling Duties of Protection of Public Order), 192-1 (Insulting a Militiaman or Auxiliary Militia), 206 (Hooliganism), 209-1 (Malicious Evasion of Performance of Order Concerning

Arrangement of Work and Discontinuance of Parasitic Existence), and 227 (Infringement of the Person and Rights of Citizens Under Guise of Performing Religious Ceremonies).

The Soviet Union's ability to address its own perceived needs in timely fashion must be considered critically in light of the conflicts inherent in the reform process and the difficulties of making a dramatic break with the past. Five primary areas of concern have been identified by Soviet officials and scholars: substantive criminal law; criminal procedure; independence and quality of the judiciary; creation of a jury system; and strengthening the defense bar.

The revision of the Criminal Code by the Russian Republic has not been completed. In the interim, the previous Criminal Code, with all its subsequent amendments passed by decree, is in effect. Since the draft Fundamentals have not yet been formally adopted, the actual revised Criminal Code is likely to be far in the future. The only revisions in the substantive law to date -- the amendments to the USSR Law on State Crimes and the new law on unauthorized demonstrations -- were made by decree without public involvement. Such arbitrary acts of law-making throw into serious doubt the deep-rootedness and reliability of legal perestroika. Once the revised substantive criminal law is published it will be some time before it is adopted in all fifteen constituent Republics, and in the new climate, reform movements in some republics may redraft their local criminal justice systems in

their own way.

1. The complete text of Art. 14 of the International Covenant on Civil and Political Rights follows:

> 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal establishied by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order ("ordre public") or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juveniles otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
>
> 2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
>
> 3. In the determination of any criminal charge against him, everyone shall be entitled to the following minumum guarantees, in full equality:
>
> (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
>
> (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
>
> (c) To be tried without undue delay;
>
> (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself, or to confess guilt.

4. In the case of juveniles, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

2. See generally B. Wrobel, Glasnost and Soviet Criminal Trials (All-Party British Parliamentary Human Rights Group, 1987).

3. See generally L. Shelley, "Criminal Law and Justice Since Brezhnev," in Law and the Gorbachev Era 183 (D.D. Barry et al. eds. 1988).

4. See generally J. Quiqley, Soviet Courts Undergoing Major Reforms, 22 Int'l Law. 459 (1988).

5. Prof. A.M. Yakovlev was recently elected to the Congress of People's Deputies and the Supreme Soviet and is a member of

that' body's legislative drafting commission.

6. Interview by I. Gamayunov, "Morality and the Law: for the Benefit of Justice," Literaturnaya gazeta, Sept. 24, 1986, at 13, trans. in XXXVIII CDSP 1986, no. 42, at 3,4.

7. Interview by Yury Feofanov, "Legal Dialogues: Law and Democracy," Izvestiya, Oct. 4, 1986, at 3, trans. in XXXVIII CDSP 1986, no. 42, at 1, 1.

8. Interview of V. Terebilov by Y. Feofanov, "Legal Dialogues: Justice and the Times," Izvestiya, Oct. 25, 1986, at 3, trans. in XXXVIII CDSP 1986, no. 43, at 5, 6. It is interesting to note in this context that former Chairman Terebilov recently resigned from the Supreme Court, apparently under duress because of allegations of corruption.

9. Pravda, Nov. 30, 1986, at 1-2, Izvestiya, Nov. 30, 1986, at 1, trans. in XXXVIII CDSP 1986, no. 48, at 8-9.

10. Id.

11. "The Citizen, Society and the Law: Ways of Restructuring the Legal System," Dec. 5, 1986, at 3, trans. in XXXVIII CDSP 1986, no. 49, at 20-21.

12. "Plenary Session of the USSR Supreme Court," Izvestiya, Dec. 12, 1986, at 3, trans. in XXXVIII CDSP 1986, no. 50, at 1,1.

13. "Morality and the Law: Look Truth in the Eye," Literaturnaya gazeta, Dec. 17, 1986, at 13, trans. in XXXVIII CDSP 1986, no. 50, at 3, 4-5.

14. "Justice Minister on 'Reform' of Criminal Code," Moscow Tass in English, Nov. 9, 1987, reported in FBIS-SOV-87-220, Nov. 16, at 44.

15. "Ways of Restructuring the Legal System: The Prestige of the Bar," Pravda, Mar. 22, 1987, at 3, trans. in XXXIX, CDSP 1987, no. 12, at 7-8.

16. "Returning to a Subject: Defender's Reputation," Pravda, Nov. 15, 1987, at 3, trans. in XXXIX CSDP 1987, no. 46, at 24.

17. Interview by G. Ovcharenko and A. Chernyak, "Soviet Justice is 70 Years Old: the Law and Only the Law," at 3, trans. in XXXIX CDSP 1987, no. 49, at 14, 23-24.

18. See interview of B.V. Kravtsov, USSR Minister of Justice, "Way of Life and Letter of the Law," Sovetskaya Rossiya, July 31, 1988, second ed., at 3, trans. in FBIS-SOV-88-150, Aug. 4, 1988, at 58-59, hereinafter "Way of Life."

19. Id.

20. Interview by L. Yelin, "Terebilov Offers Plan for 'Law-Governed State,'" New Times, no. 44, Oct. 1988, at 25, reported in FBIS-SOV-88-235, Dec. 7, 1988, at 89. Hereinafter "Terebilov Offers Plan."

21. Izvestiya, November 12, 1989, at 2. See also "interference in Court Procedure Becomes Crime in Soviet Union," Toronto Globe and Mail, November 14, 1989, at A4.

22. See "Way of Life," at 60.

23. See V. Savitsky, "What to Punish and How," New Times, no. 8.89, Feb. 21-27, 1989, at 27, 28, hereinafter "What to Punish."

24. See, e.g., Yu. Feofanov, "The Case," Izvestiya, Sept. 26, 1987, at 3, trans. in XXXIX CDSP 1987, no. 41, at 13.

25. See "Discussion Platform: Lawyers' Association," Moscow Pravda, Dec. 19, 198, second ed., at 3, trans. in FBIS-SOV-88-249, Dec. 28, 1988, at 46, 46; J. Wishnevsky, "Association of Legal Counsel to Be Established," Radio Liberty Report on the USSR 19/89, Jan. 13, 1989, at 15.

26. Id.

27. M. Dobbs, "You May Someday Have the right to an Attorney, Comrade," The Washington Post, Feb. 26, 1989, at A32. It has been reported that an independent union of advocates has also been formed in Lithuania, and apparently are being formed in the other Baltic republics.

28. See Id. The confusion in the terms "advocate" and "jurist" is discussed, along with the difficulties the Union of Advocates has had in distinguishing its professionals from law-enforcement officials with legal training, in an article by L. Nikitinsky, "Grimasy yuridicheskogo litsa," Komsomolskaya pravda, June 26, 1986, at .

29. "In the Politburo of the CPSU Central Committee," Pravda, Nov. 3, 1988, at 1, trans. in XL CDSP 1988, no. 44, at 20.

30. See the All-Union Law on the Status of Judges in the USSR, reported in Pravda, Aug. 12, 1989, effective Dec. 1, 1989.

31. See "Way of Life," at 60.

32. Trans. in Justice and Comparative Law 193 (W.E. Butler ed. 1987).

33. Interview by A. Alove and M. Polyachek, "Law in the Court of Time," Moscow News (in English), no. 34, at 13, 1987, hereinafter "In the Court of Time."

34. Id. In order to make references simpler, the numbers for articles of the RSFSR (Russian Republic) Criminal Code are used herein, although the numbering of the non-Russian Republic criminal code articles in fact differs slightly.

35. C. Bohlen, "Soviets Would Drop Law Used to Jail Dissidents," The Washington Post, Sept. 22, 1987, at A15.

36. "Justice Minister on 'Reform' of Criminal Code," Moscow Tass in English, Nov. 9, 1987, reported in FBIS-SOV-87-220, Nov. 16, 1987, at 44.

37. "Terebilov Offers Plan," at 89.

38. Interview of Lieutenant General I.N. Katargin by V. Itkin, "Deprived of Liberty But Not of Rights," Sovetskaya Rossiya, Dec. 2, 1988, at 6, trans. in FBIS-SOV-88-236, Dec. 8, 1988, at 76.

39. Maggs, at 287.

40. Ibid.

41. "New Draft Penal Code Formulated," Moscow Tass in English, May 30, 1988, reported in FBIS-SOV-88-106, June 2, 1988, at 37-38.

42. "Draft Fundamentals of Criminal Legislation of the USSR and Union Republics," Moscow Izvestiya, morning ed., at 1, trans. in FBIS-SOV-88-243, Dec. 19, 1988, at 28.

43. W.E. Butler, "Legal Reform in the Soviet Union," Harriman Institute Forum, Sept. 1988, at 1, 4.

44. See "Lithuania Abolishes Anti-State Slander Law," USSR: Human Rights Under Glasnost, a Helsinki Watch report,

December 1988-March 1989.

45. Art. 1, para. 3.

46. See V. Savitsky, "What to Punish and How," New Times, no. 8.89, Feb. 21-27, 1989, at 27, 28, hereinafter "What to Punish."

47. The complete text of Art. 15 of the Covenant on Civil and Political Rights is as follows:

> 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequently to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
>
> 2. Nothing in this article shall prejudice the trial and punishment of any person for any act or ommission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

48. Art. 9.

49. Id.

50. Art. 20, para. 1.

51. See J. Wishnevsky, "Draft Principals of Soviet Criminal Legislation Published," Radio Liberty Report on the USSR, 12/89, Jan. 2, 1989, at 1, 3, hereinafter "Draft Principles"; "What to Punish," at 28.

52. Art. 24. This refers to group culpability or conspiracy for types of crimes other than those characterized as "especially dangerous state crimes," which are provided for in the current RSFSR Criminal Code under Art. 72, dealing with "organized activity directed towards commission of especially dangerous state crimes, as well as participation in an anti-Soviet organization."

53. Art. 31, para. (1)(d).

54. Id., para. (1) (g).

55. Id., para. (1) (e); see "Draft Principles," at 2.

56. Art. 36.

57. Art. 31, para. (1) (f).

58. Art. 37.

59. Art. 41.

60. See "Draft Principles," at 2.

61. Id.

62. Yuridicheskiy entsiklopedicheskiy slovar', ed. by A.Ya. Sukharev et. al., Moscow, Sovetskaya entsiklopediya, 1987, at 129.

63. For information generally on the "Law on Criminal Liability for State Crimes," see Z. Butkus, Major Crimes Against the Soviet State (Library of Congress Law Library 1985).

64. Art. 2, para. 2 in Kommentariy k ugolovnomu kodeksu RSFSR, ed. Yu. D. Severin et. al., Moscow, Yuridicheskaya literatura, 1984, at 5.

65. See, e.g., "In the Court of Time."

66. "USSR Supreme Soviet Presidium Decree on the Introduction of Amendments and Addenda to the USSR Law 'On Criminal Liability for State Crimes' and Certain Other USSR Legislative Acts," Izvestiya, Apr. 11, 1989, morning ed., at 3, trans. in FBIS-SOV-89-068, Apr. 11, 1989.

67. Art. 1, para. 3.

68. Interview of A. Yakovlev by A. Romanov, "It is Impossible Not to Punish, But...," Moscow News (in English), no. 4, Jan. 22, 1989, at 15.

67. "Democracy and Responsibility," Krasnaya zvezda, Apr. 13, 19889, first e., at 1, trans. in FBIS-SOV-88-073, Apr. 18, 189, at 79, 79.

70. Id., at 79-80.

71. See USSR: Human Rights Under Glasnost. For a complete analysis of the April 8 decree in light of international law and U.S. civil rights doctrine, see "April 8 Decree on Amendments to Law on State Crimes," by Leon Lipson and Catherine Fizpatrick, unpublished paper by the Human Rights Project Group of the Human Rights Committee of the International Foundation for the Survival and Development of Humanity, New York, May 1989.

72. The international obligations of the Soviet Union in the area of racial and national discrimination may also be found, in a somewhat different and broader formulation, in the International Convention on the Elimination of All Forms of Racial Discrimination, Annex to G.A. Res. 2106, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1965); 660 U.N.T.S. 195; 5 Int'l Leg. Mat. 352 (1966). Article 4 of this convention requires its parties, including the Soviet Union, to "declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination [defined in art. 1, para. 1, to include national or ethnic discrimination], as well as all acts of violence or incitement to such acts." (Emphasis added.) Acts "degrading national honor and dignity," which are prohibited by the new Soviet law, still would fall outside the condemnation of this convention.

73. Unpublished and undated (c. September 1989) typed information sheet prepared by Pyotr D. Barenboim, member of the board of the Soviet Advocates' Union, at 3, Helsinki Watch archives.

74. The idea is only found in the Kazakh Criminal Code referring to officials who discredit themselves through malfeasance.

75. RSFSR Criminal Code, Art. 130.

76. Id., Art. 131.

77. TASS report trans. in U.S. Helsinki Watch Committee, "News from Helsinki Watch/News from the USSR," May 1989, at. 3.

78. Pravda, June 25, 1989.

79. Pravda, October 28, 1989, at 3.

80. Art. 2, Chapter 1, Kommentariy k ugolovnomu kodeksu RSFSR, Severin et. al, Yuridicheskaya literatura, 1984.

5. Emigration

A. The International Norms

> Article 12 of the Covenant states, in part:
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the protection of the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

B. Background

Soviet emigration policies have long been a source of friction between the USSR and the West, in particular the United States. Indeed, U.S. law prohibits normal trade relations between the Soviet Union and the United States until Soviet emigration policies are liberalized.[1] In November 1989 Soviet officials announced a new draft emigration law that they said would be passed soon. Helsinki Watch obtained the text of this draft and an analysis appears at the end of this chapter.

For some time, Soviet officials have claimed that very few applications for exit visas are denied.[2] This may be in part because vast numbers of Soviet citizens could not have their visa applications even accepted for consideration by the Visa and Registration Administration (known by its Soviet acronym, UVIR) or its local departments (OVIR) of the Ministry of Internal Affairs, the Soviet governmental agency which is responsible for processing exit visa applications.[3] Practice seems to indicate

that only Jews, Armenians, ethnic Germans and Pentacostals receive exit visas in any significant numbers[4] and that OVIR routinely refuses to accept applications from members of other ethnic, national or religious groups since they cannot supply required invitations from abroad. The new law may not change this situation since a new restriction, namely proof of entry permission into a foreign country, will now be required.

Notwithstanding this supposedly small percentage of denials, in the past thousands of Soviet citizens have applied for a permanent exit visa, either under the current law or under the prior de facto regime, and were refused ("refuseniks"). Many thousands of others certainly refrained from applying in fear of the repercussions of doing so.[5] Moreover, people are still prosecuted and imprisoned or incarcerated in psychiatric hospitals for attempting to leave the Soviet Union without permission.

C. The 1987 Law

Although the new draft law will improve some practices, it retains some features of past legislation. Therefore, a discussion of past legislation is needed to assess how much change has been made.

In 1986 the Soviet Union adopted for the first time a law regulating emigration and travel. Effective January 1, 1987, the "Law on the Consideration of Requests to Enter or Leave the USSR on Private Business"[6] broadly sketche the procedures for

application for an exit visa and the grounds upon which such an application shall or may be denied, and the requirement of invitation from abroad.[7] Section 21 provided that travel applications are submitted to the internal affairs agencies of the applicant's place of residence. In the case of a family reunification, the applicant must submit statements from family members remaining in the Soviet Union that the applicant has "no unfulfilled obligations to them as provided by the legislation of the USSR."[8] Applications are to be considered "within the shortest possible terms, and, as a rule, within one month...; in case further examination is required, this term may be extended, but not to more than six months."[9] The law provides that permanent exit shall be denied if, among other reasons, the applicant "is privy to state secrets or if there are other reasons involving state security--until the circumstances which prevent exit have become ineffective" or if exit "would affect significant rights and legitimate interests of other citizens of the USSR."[10] Unfortunately, the law does not describe the circumstances under which an application for exit should be granted. The decision on an application and the grounds for refusal should be "brought to the notice of the applicant."[11] In the event of a refusal, renewal of the application may be made no sooner than six months after the refusal.[12]

The usual practice of OVIR has been to inform an applicant orally of the denial of a visa. Applicants are usually not

informed of the reason for the denial of their application or of the availability of any appeal process. When applicants are informed of a reason for denial, it is often due to alleged access to state secrets[13] or because relatives have not provided statements that the applicant has no unfulfilled obligations towards them.[14] Ironically, because of the complete absence of official reports of emigration decisions by Soviet agencies, the best information available is in the files of Western organizations containing the reports of many individual refuseniks.[15]

Shortly after the 1987 law on emigration went into effect, representatives of OVIR and other Soviet officials began to refer to a commission within the Presidium of the Supreme Soviet with the power to review OVIR's decisions to deny exit visa applications.[16] This commission has been variously referred to as the "Commission on Security Appeals" and the "Commission on Citizenship."[17] The very existence of the commission has been the subject of some controversy, with certain knowledgeable members of the Soviet elite stating that there is no such commission.[18] Izvestia has reported that "no one has the right to review" a case where a person has been denied an exit visa because of access to state secrets.[19] On the other hand, interviews with the deputy head of the All-Union OVIR, A.V. Luzinovich,[20] and with officials of the Ministry of Foreign Affairs[21] have confirmed that such a commission exists, and the

new law explicitly mentions it.

Certain limited information concerning the composition of the commission and its procedures has been obtained. The Commission on Questions of Citizenship, which is a standing committee of the Presidium of the Supreme Soviet, was headed by Pyotr Demichev,[22] Deputy Chair of the Presidium of the Supreme Soviet, and it has been reported that another of its members was a certain Sabayev, Deputy Chief of the Juridical Section of the Supreme Soviet. The commission reportedly is composed of deputies of state agencies, including the Deputy Foreign Minister and persons drawn from the KGB, the USSR Supreme Court, the Office of the USSR Procurator General, etc.[23]

The methods by which the commission works are similarly shrouded in secrecy. The commission has no regulations which are printed and none are likely to be printed.[24] Officials at the Ministry of Foreign Affairs have confirmed that each investigation is directed by a set of secret instructions.[25] It reportedly meets approximately once a month.[26] Three years ago, i.e., 1985-1986, it received a new mandate concerning review of refusenik cases, but this was not made public.[27] Rudolf Kuznetsov, head of the All-Union UVIR, has provided some insight into the review process. He has described the process as follows:

> First there is the application for the visa. The second stage is a decision which is reached by the local district authorities working through the Ministry of Internal Affairs. The third stage is that if the local authorities make a negative decision based on Article 25 [of the Soviet

> law on emigration], the person can address the Commission after a period of six months has elapsed for a review of their case. While that period of six months passes certain limitations expire and this enables the Commission to take a favorable approach to the applications which are made to it....[W]hen a case is debated before the Commission of the Supreme Soviet the representatives of the particular department or industry where the applicant worked has [sic] to answer many careful enquiries as to why they are refusing to allow an applicant to leave the country and if the Supreme Soviet does not find their case acceptable they will rule in favor of the applicant.[28]

Soviet officials claim that the commission has reversed some decisions of OVIR.[29] Kuznetsov, in an English language interview, stated that certain decisions have been reversed, although "not for being wrong. It was simply that some of the restrictions we had gone by had in the meantime become outdated or had been lifted, thus making a number of applicants eligible for exit visas."[30] However, there are no known cases where the commission has reversed the denial of an exit visa.

D. Analysis and Implementation

The legal right to emigrate is well-recognized.[31] The restrictions on the right to emigrate enumerated in Article 12, paragraph 3, of the Covenant are meant to be limited and exceptional in nature.[32] Those restrictions must meet four essential requirements: that there be a legal basis for a restriction; that the limitation be necessary, i.e., not merely desirable or politically expedient; that the restriction be in furtherance of a specific state concern enumerated in Article 12, paragraph 3, i.e., national security, ordre public, public health

or morals, or the rights and freedoms of others; and that the limitation be consistent with the other rights recognized in the Covenant.

As described in Section 1.A above with reference to the Appeals Law, Article 2 of the Covenant requires that States parties to the Covenant, including the Soviet Union, provide "an effective remedy" for violations of the rights protected by the Covenant, such as the right to leave one's country freely.[33]

In addition to the Covenant, the Soviet Union has signed the Helsinki Accords in which the Soviet Union has pledged itself to "deal in a positive and humanitarian spirit with the application of persons who wish to be reunited with members of their family."[34]

The 1987 Soviet law on emigration fails to satisfy the tests for acceptable limitations on emigration contained in Article 12, paragraph 3, of the Covenant. While the emigration law does set forth certain bases for denial of an exit visa,[35] the international legal requirement that exit restrictions be "provided by law" evidently is directed not just at the formal adoption of a statute on the matter, but that the restrictions be applied as "part of a rule of general application and not in an arbitrary or discriminatory way.... [U]nfettered administrative discretion ... without clear legislative directives and adequate notice to an applicant of the grounds on which a request is to be granted or denied would not be sufficient to meet the

requirements that limitations be `provided by law.'"[36] Further, the Soviet government should be obliged to provide written notice of refusal and the grounds for refusal. Although having made an attempt to comply

-- barely -- with the letter of the Covenant by adopting a "law" which contains broad restrictions on exit, the Soviet government has not "provided [those restrictions] by law" as required by the spirit of the Covenant.

It is doubtful that the Soviet Union can meet the burden specified in the Covenant to prove that the restrictions it places on travel or permanent exit are necessary to further national security, ordre public, public health or morals, or the rights and freedoms of others. The "state secret" basis for denying exit has been ill-defined and inconsistently applied. Moreover, many refuseniks ceased having access to "state secrets" years before they were denied exit visas. On this point, it is also at best uncertain that "state secrets," as either explicitly or implicitly invoked by the Soviet government, may be equated with "national security" as provided in the Covenant. "State secrets" in a one-party communist state can mean military matters as well as proprietary information such as patents. Exit visas have also been denied because family members have not signed a statement that the person desiring to leave the Soviet Union no longer owes them any obligation.

> While ensuring that legal support or maintenance obligations are met prior to departure would appear to be justifiable, it is difficult to accept any other circumstance under which

> approval of family members ... could be imposed as a legitimate qualification on the right to leave, at least without a clear showing of how 'the rights of others' would be adversely affected by the departure to which every individual has a basic right. This practice is not common and may be unique to the Soviet Union.[37]

Finally, limitations on exit must be "consistent with the other rights and freedoms recognized" in the Covenant.[38] It is evident from even a superficial reading of Article 12 that a requirement of an invitation to emigrate is completely inconsistent with the Covenant. Although other provisions of the Covenant would also apply here, it is sufficient to point out that the restrictions applied by the Soviet government on emigration, whereby few persons other than Jews, Armenians, ethnic Germans or Pentacostals receive exit visas, violate the provision of Section 2 of the Covenant that there be no discrimination on the grounds of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[39] Though the Soviet government does not explicitly favor these three ethnic groups, by requiring that anyone who wishes to emigrate must supply a certified invitation from a relative abroad, they are essentially favoring those ethnic groups which, because of a history of migration, pogroms and displacement, in fact have relatives abroad.

It is unclear whether this is de jure or de facto discrimination, i.e., whether only members of these three groups receive exit visas because it has been decided that only they may emigrate; or because only members of these groups are likely to

receive an invitation from abroad to emigrate. Either form of discrimination is prohibited by the Covenant.

It is clear from the practice of the Soviet judicial system that the courts have not, to date, played a role in addressing the concerns of refuseniks,[40] or for that matter, those barred from even applying to emigrate because they cannot supply an invitation from abroad. Interviews by Helsinki Watch in the Soviet Union with government officials and leaders of the Bar have not revealed any cases accepted for review by a judge that were brought under the Appeals Law for a review of a decision by OVIR. The review commission's role in examining emigration cases, even though secret, is therefore crucial in determining compliance by the Soviet Union with its international obligations.

The history of the action (or perhaps, more accurately, inaction) of the commission in reviewing the denial of visas indicates that the exception to the right to leave one's own country set out in paragraph 3 of Article 12 of the Covenant has been grossly abused by the Soviet Union. The mere announcement that an application to leave the Soviet Union has been denied without further explanation, perhaps with merely an oral report that the applicant has had access to state secrets in the past, does not begin to meet the requirements of the Covenant.

Soviet officials realize that they are not in compliance with international law.[41] In an interview published just before

the fortieth anniversary of the adoption of the Universal Declaration of Human Rights, a member of the Burlatsky Commission stated that "[u]nfortunately, [the right to leave any country, including one's own,] did not operate in our country for a long time."[42] This expert discussed a draft law "On the Procedure for Exit from and Entry to the USSR by Soviet Citizens" then being debated, but would not provide an estimate of when the law might be adopted. As the reason for this uncertainty he cited the fears of "the conservatively minded bureaucracy ... that the adoption of such a law could lead to a substantial increase in the number of Soviet citizens wishing to leave the Soviet Union permanently."[43] Reportedly, the "majority of scientists and lawyers" do not share this fear.[44]

A representative of the USSR Ministry of Foreign Affairs addressed himself to the issue of a new law on exit visas during interviews in Moscow on January 26, 1989 by Helsinki Watch. Consistent with comments made by General Secretary Gorbachev on French television at that time,[45] he stated that limitations on emigration based on access to state secrets would be for a specified duration, probably five years, and that before undertaking employment, individuals would be informed in writing of the length of time emigration would be denied because of their access to state secrets. As for the problem of the absence of certificates from family members concerning unfulfilled obligations, he stated that if the parties could not agree among

themselves on the extent of obligations, a court would be empowered to resolve the matter in accordance with alimony laws but that other provisions of Soviet family law would not be applicable. Finally, he expressed the view that the method for appealing refusals of permanent exit visas would be addressed in the new law.[46]

At the time of this writing the new law on exit from the Soviet Union has not been published officially in draft form, although it is circulating unofficially. The new draft law appears to fulfill many of the predictions made nearly a year ago by Soviet officials. Some Soviet officials claim that the law will be adopted by the beginning of 1990, but the past track record of draft laws counsels caution. It still remains to be seen whether the "conservatively minded bureaucracy" criticized by officially-recognized Soviet human rights advocates will block the adoption of an acceptable law on freedom to travel and emigrate.

E. The 1989 Draft Law

As this report was going to press, Soviet officials announced that a new emigration and travel bill was soon to be adopted by the Supreme Soviet.[47] The revised emigration law was long in coming, and has been a source of frequent, anxious inquiries by both Soviet "refuseniks" denied permission to travel or emigrate as well as by various Western leaders and human rights organizations. For better or worse, emigration numbers

are seen in the public mind as a barometer of actual human rights conditions in the USSR. Rightly rightly or wrongly, hopes for the institutionalization of Gorbachev's reforms have largely been pinned on a new emigration and travel law.

Although Soviet officials have denied the link, no doubt the recent flood of travellers and refugees from East Germany, the partial dismantling of the Berlin Wall (which was shown on Soviet television), and the easing of travel restrictions in Czechoslovakia prompted Soviet authorities to make an announcement about forthcoming changes in their own exit and entry procedures. But even now, when it appears that the draft law will soon be adopted, a long history of delays and reversals in this legislation means that caution is in order. Although some U.S. officials and legislators greeted the news of the new law enthusiastically, some U.S. Jewish organizations expressed fear that waiver of Jackson-Vanik may be premature.[48] It is emblematic of the vicissitudes of the Soviet legislative process that the actual text of the greatly-anticipated new draft law was not released at the time the announcements of changes were made, so that hopeful reactions were not grounded in a reading of a text. As with many bills in the past, at this writing the draft law has still not been published in any form. Helsinki Watch has obtained from reliable sources a text of the draft law passed by the Supreme Soviet "in the first reading."

At a November 16 press conference about the new law in

Moscow, Rudolf Kuznetsov, chief of UVIR, (Visa Administration), announced that an estimated half million Soviet citizens would emigrate in 1990 and about five million would travel on business or as tourists. In 1989, approximately 200,000 citizens (mainly Jews, Germans and Armenians) emigrated from the USSR to various countries and about two million temporarily travelled abroad and returned.[49] Also on November 16, Soviet officials in the West said that passports would now be issued for a period of five years and that procedures would be streamlined, leading some Western media to chirp that "the Soviet borders have been opened." Yet in no way can the new regulations be interpreted as "an opening of the borders" similar to what is occurring between the Germanys.

The sheer overload in the refugee and immigrant pipeline means that the U.S. Administration, whatever the obstructions and technicalities in the fine print of the new law, may be inclined to waive or abolish the Jackson-Vanik amendment and other trade restrictions that were based on denial of the right to emigrate. In fact, faced with an enormous pressure to accept hundreds of thousands of refugees and immigrants, the U.S. has responded by restricting the granting of refugee status and has denied travel permission in some cases where it was believed that an applicant would not return to the USSR.

In practical terms, then, the burden of responsibility for Soviet emigration and travel has shifted from the Soviet Internal

Affairs bureaucracy to Western countries. If, for example, only one percent of the estimated number of travellers for 1990 were to ask for political asylum in the West, Western nations would be swamped with 50,000 applicants. Most likely, the heaviest burden would fall on the United States, where Soviet citizens are most likely to have family and friends, and where there are Russian-speaking communities. A number of those who are currently travelling in the U.S. are either overstaying their visas or applying for political asylum, concerned that the situation in the USSR could take a turn for the worse. But none of these factors should distract from the fact that the new draft law contains a number of serious flaws and obstructions to freedom of movement which place in serious doubt Soviet compliance with international agreements. If the Soviet government continues to process travel and emigration applications favorably, these restrictions may not matter. But if the situation changes radically for the worse in the USSR, the existing draft law could easily be used to prevent all but the most loyal cadres from travelling, and could once again erect an insurmountable barrier to emigration. In sum, travel and emigration are still privileges granted by the Soviet state, not rights enjoyed by Soviet citizens.

Under the 1974 Trade Act as amended (Jackson-Vanik Amendment), preferential trade benefits may not be granted to countries with non-market economies that deny citizens the right

to emigrate or reunite with close relatives or that impose more than a nominal fee or tax on visas or other exit papers. As long as the Soviet Union maintains its passport fee of 200 rubles (one month's average salary) or any other similar fee, it will be in violation of Jackson-Vanik. If the Soviet Union institutionalizes in law the right to leave and return, it will largely be in compliance with Jackson-Vanik as concerns the right of emigration. But it will violate Jackson-Vanik if the restrictions contained in the draft law are interpreted in such a way as to deny arbitrarily travel and emigration on technicalities involving financial or other claims from relatives or the state, or if applicants are denied exit for political reasons allegedly at variance with state interests, which may in fact involve the legitimate exercise of freedom of expression and peaceful assembly. Full compliance is lacking, however,

The new draft law recognizes that Soviet citizens have the right to leave and to return to the USSR, but also states that this right is regulated by the law itself as well as by unspecified ministerial instructions, which are to be published.[50]

Passports will be issued for five years. But citizens may not obtain passports on demand; as before, they must petition for their use, and pay an unspecified fee (at present, this is 200 rubles, about one month's salary).[51] To obtain a passport for personal travel, a citizen must submit an application for review

by the local internal affairs agencies (i.e. the visa department, which is part of the Ministry of Internal Affairs).[52] Ministerial instructions will govern the manner in which such petitions are reviewed: "The rules for review of these applications, the preparing and issuance of foreign passports for travel outside the USSR are established by this Law, and acts published in accordance with it by the Soviet of Ministers of the USSR and by instruction of the Ministry of Internal Affairs, which must be published."[53] If a citizen is travelling on business or "public affairs" on behalf of an official ministry, state committee, office, enterprise, institution, or organization, those agencies must apply on behalf of the individual citizen according to unspecified procedures established by the Soviet of Ministries.[54]

To obtain permission to emigrate, that is, in the words of the new law, to obtain permission for "permanent residence abroad," a citizen must submit a document which confirms that permission for entry to a foreign state has already been obtained.[55] In other words, while the requirement of an invitation from a relative or friend abroad appears to have been dropped (unless it is contained in one of the unspecified ministerial instructions), the prospective emigrant must nevertheless obtain a statement from a foreign government that permanent residence will be allowed in that country -- that is, prior proof that refugee, immigrant or resident alien status will

be granted. In many ways, such a document will be far more difficult to obtain than an invitation from a relative. Moreover, it raises the possibility of discriminating treatment by Soviet authorities depending on which state has granted entry.

The inclusion of this requirement means that the Soviet Union is still imposing restrictions on emigration which violate both the Covenant (see Section D above) and Jackson-Vanik. Unfortunately, it is a requirement that Western nations are not likely to criticize, given the flood of Soviet refugees coming to their countries. (Recently the U.S. adopted procedures whereby all applications to emigrate must be submitted to the U.S. consulate in Moscow and forwarded to Washington, D.C. for processing. Responses will be sent to individual applicants from the U.S. to the USSR by regular mail -- which itself has caused great concern to prospective emigrants, since the Soviet mail is highly unreliable.)

Another article of the new law provides for the granting of trips on personal business "connected with professional activity" upon submission of an application. Residence abroad would be allowed for a period of three years, renewable at the Soviet consulate in a foreign country. This law still contains a clause concerning the "tax, residential, property and other relations" of such persons, which will be regulated by other legislation.[56]22 It is likely that some Soviet professionals will make use of this clause to emigrate, since no proof of

acceptance for residency from a foreign government is required by the Soviet government.

Under the 1987 law, the way in which travel abroad was actually restricted was by limits on the amount of rubles that could be changed into foreign currency, as well as by limiting the purchase of airline tickets. (Most Soviet citizens are not permitted to possess more than $50.00 in foreign currency, and must purchase tickets in rubles. The waiting lines and the scalping of air tickets on the black market have created substantial barriers to travel.) The new law has not changed this: citizens travelling on personal business must pay for their own expenses, and the amount they can exchange will be established by other regulations issued by the Council of Ministers.[57] As of this writing, the amount that may be changed by Soviet travelers is 200 rubles, which, under the new, reduced conversion rate, is equal to about $32.00. Thus in practice, only citizens with an invitation from a relative or institution abroad willing to cover their expenses will be able to travel.

The new law forbids those leaving the USSR for permanent residence abroad from converting any amount of their personal savings into foreign currency,[58] a practice designed to keep highly-valued foreign currency inside the USSR.

One of the most frequent criticisms made of the 1987 exit and entry legislation was that citizens -- no matter what their age -- were essentially required to ask permission from their

parents, children or divorced spouses to emigrate. This created the phenomenon known as the "poor relatives," that is, people denied permission to emigrate because their relatives refused to sign statements releasing them from financial obligation, even when there was no evidence of financial need. Under Soviet conditions, emigration is still viewed by many, especially among the older generation in the provinces, as a form of treason. Some parents or ex-spouses feared signing a waiver of obligation because they were afraid of becoming involved with the authorities, or held responsible for contributing to treason. Even in the glasnost era, there are a number of well-documented cases of people harassed at their workplaces or accused of treasonous intent merely for having relatives abroad.

The new law does not remove this requirement: "Citizens of the USSR, leaving to go abroad for permanent residence, and the members of their families, in order to receive foreign passports, must submit a notarized statement of the absence of demands to sue for alimony payments from persons who have the right under the law to receive alimony [support payments] from the person leaving." [59] But under the new law, citizens who fail to obtain a waiver from relatives may take the case to court "which will review the question of the presence or absence of alimony obligations according to the procedure provided for the review of cases to determine facts of a judicial nature."[60] Given the difficulties of court appeals procedures in general as noted

above (see Chapters 1 and 4), this remedy, while welcome in principle, is not likely to resolve the "poor relatives" issue speedily.

A number of other limitations are included in the new draft law which create substantial opportunities for restriction of movement. No permission will be granted for travel if there are reasons "affecting the interests of USSR state security -- until the circumstances preventing travel have ceased to be in effect."[61] As we have noted, "state security" is broadly interpreted in the one-party Soviet state, and may include matters which would be in the public domain or would be only of proprietary interest in Western countries. The new law would also deny travel permission "in the interests of preserving public order, health and morals -- until circumstances preventing exit have ceased to be in effect."[62] This is technically in keeping with the exceptions provided for in the Covenant, but as we have noted, the notion of "public order" may be interpreted broadly in the USSR.

Worse, the draft law also provides for refusal of travel permission if a citizen has unspecified "unfilled responsibilities before the state or financial obligations before state, cooperative, or public organizations, or citizens of the USSR or other persons" until such responsibilities or obligations are fulfilled or waived.[63] Again, depending on the government's good faith, opportunities for abuse are unlimited. The "unfilled

responsibility before the state" is not at all defined, and in a nation where most citizens work for the state, could be interpreted to mean anything from the fulfillment of compulsory military service to the finishing of a job assignment in a government institution. (The requirement to meet financial obligations could also conceivably mean repayment of state loans to cooperatives -- which are mentioned specifically -- before travel is permitted.)

The draft law would also deny travel permission for those for whom there are "legal grounds for criminal liability -- until court proceedings are finished."[64] A subsequent separate clause would prevent the travel of those tried for crimes "until the serving of the sentence or release from punishment,"[65] thus distinguishing "legal grounds" from actual conviction. This wording could be interpreted so as to affect anyone under any stage of criminal investigation, whether or not they have been notified of the charges.

Most disconcertingly, travel would also be denied "if during a previous stay abroad [a citizen] committed actions that violate the interests of the state, or if facts of violation of customs or currency legislations are determined -- for a period of up to two years from the moment these violations are established."[66] This reason for refusal implies that Soviet embassies, consulates and other representations abroad intend to keep track of their citizens' activities while they are travelling in foreign

countries. Yugoslavia, for example, restricts travel in this way -- which is tantamount to an admission of secret police monitoring of its citizens who are politically outspoken abroad.

Most of the improvements in the new legislation relate to the question of access to state secrets -- a point that was particularly worrisome for applicants employed in jobs related to the hard sciences. Under the terms of the new law, the period of "secrecy" (or the period during which emigration may be denied because of exposure to classified information) may not exceed five years unless an employer decides to petition authorities to extend that period:

> In exceptional instances, when the information constituting a state secret does not lose its timeliness even after the expiration of the established period, the Citizenship Commission of the Presidium of the USSR Supreme Soviet, upon petitioning by the directors of the ministries, state committees, and institutions through which USSR citizens had access to such information, may extend the period.[67]

A welcome improvement in the new draft law is the indication that restrictions on emigration for reasons of access to classified information must be provided to a Soviet citizen <u>in writing at the start of work, study or military service</u> [emphasis added].[68] The only difficulty with this formulation is that it does not appear to apply to those who are <u>already</u> employed, enrolled in studies, or performing military service. It is also not certain if the five-year period for secrecy will be applied retroactively.

Other improvements in the draft law include a provision to

review applications for travel connected with medical emergencies or deaths in the family;[69] a guarantee that emigration applications will be reviewed within three months, and most important, that answers will be supplied in writing with an explanation for the reason of refusal under the exit/entry law[70]. Unfortunately, practice has shown that when travel or emigration is denied "for reasons of state security," a more precise formulation is never supplied, so that often, the citizen is not sure what speech or action led to the denial of permission.

As under the old law, if an emigration application is denied, a new application may only be submitted six months after refusal, unless "changes have occurred which may have a substantial significance for a decision on the application."[71] This would apparently relate to the expiration of "secrecy" periods, or presumably a ministerial decision to de-classify information.

In the past, citizens who applied to emigrate were often victimized for their intentions by authorities and employers. The new law seeks to discourage such harassment by specifically stating that applicants are equal before the law, and prohibiting "any arbitrary restriction of their labor, housing or other rights as well as release from obligations."[72] Soviet citizens who have emigrated and decide to return to the USSR will also be treated as equal under the law as far as rights and obligations.[73]

The new law also foresees that re-entry for Soviet citizens permanently residing abroad "may be temporarily denied in exceptional circumstances when necessary for the protection of state security, public order, health and morals and the defense of the rights and legal interests of USSR citizens and other persons."[74] This clause is open to abuse, but the use of the terms "exceptional circumstances" and "necessary" may preclude this, and in fact, the drafters of the new legislation would have done well to include such language in other clauses of the law limiting travel and emigration.

If a citizen is refused permission for travel from or re-entry to the USSR, he may appeal to the superior internal affairs agencies -- but no mention is made of the possibility of appealing to the courts.[75] If a citizen is denied permission to emigrate or to return permanently to the USSR, he may appeal to the Citizen Commission of the Supreme Soviet Presidium,[76] that is the highest government executive body, chaired by Gorbachev.

The new law states that if international agreements signed by the USSR establish other regulations than those contained in the law, the international agreements will supersede Soviet law.[77] But in fact, since international agreements do not specifically forbid such requirements as permission for entry to a foreign country before the granting of exit permission, the Soviet government can claim that it is technically in compliance with all existing international agreements.

1. Amendment to the Trade Act of 1974, Sections 402 and 409, 19 U.S.C. Sections 2432 and 2439, popularly known as the "Jackson-Vanick Amendment".

2. Statement of representative of the U.S.S.R. Ministry of Foreign Affairs to Helsinki Watch on Jan. 26, 1989 in Moscow that less than 1.5% of visa applications are denied.

3. Soviet law does not indicate which Ministry or department is responsible for exit visa reviews, although sect. 21 of the 1987 emigration law described in Section 5.C directs applications to the "internal affairs agencies."

4. See U.S. Helsinki Watch Committee, USSR: Human Rights Under Glasnost December 1988-March 1989, at 54.

5. D. Arzt, "The New Soviet Emigration Law Revisited: Implementation and Compliance with Other Laws," 18 Soviet Jewish Affairs 17, 25 (1988), hereinafter "Emigration Law Revisited."

6. Decree No. 1064 of the U.S.S.R. Council of Ministers, Sobranie Postanovlenie Prav SSSR, 1986, no. 31, item 163, trans. in F.J.M. Feldbrugge, "The New Soviet Law on Emigration," 17 Soviet Jewish Affairs 9, 21-23 (1987) and in D. Arzt, Due Process in the Appeal of Soviet Emigration Refusals, 1 Touro J. Trans. L. 57, 89 (1988), hereinafter "Due Process".

7. See generally Due Process, at 60-64.

8. Sect. 24.

9. Sect. 28.

10. Sect. 25.

11. Id.

12. Sect. 29.

13. See "Emigration Law Revisited," at 18.

14. See id., at 22.

15. See White & Case, Report to the National Conference on Soviet Jewry--Who May Leave: A Review of Soviet Practice Restricting Emigration on Grounds of Knowledge of "State Secrets" in Comparison with Standards of International Law and the Policies of Other States, 9-11, (Oct. 6, 1987), hereinafter "Who May Leave."

16. Due Process, at 64-65.

17. Id.

18. See letter of Grigory Boruchovich Greenberg, "Test of Soviet Policy for Refuseniks," The Times (London), Mar. 2, 1988, at 11, hereinafter "Greenberg Letter," reporting statement of Academician Kudryavtsev, then Director of the USSR Academy of Sciences' Institute of State and Law, on Soviet television.

19. K. Sorokin, "Performed as Written," Dec. 1, 1987, at 6, trans. in XXXIX CDSP 1987, no. 48, at 15-16.

20. Greenberg letter.

21. Conducted in Moscow on January 26, 1989, by Helsinki Watch; for reports of other meetings, see Due Process, at 65-66.

22. Statement of representative of the USSR Ministry of Foreign Affairs to Helsinki Watch on Jan. 26, 1989 in Moscow.

23. Id.; statement of Dr. Svetlana Polenina, of the USSR Institute of State and Law, made on Nov. 14, 1987, at the University of Bridgeport Law School, in the files of the National Conference on Soviet Jewry.

24. Id.

25. Due Process, at 66.

26. Statement of representative of the USSR Ministry of Foreign Affairs to Helsinki Watch on Jan. 26, 1989 in Moscow.

27. Id.

28. Discussion with Isi J. Leibler, reported in I. Leibler, "Soviet Jewry: Report on Visit to Moscow 20-29th September, 1987," 210, 215-216, reprinted in National Lawyers Committee of the National Conference on Soviet Jewry, Manual on Representing Refuseniks 24-25 (Draft 1988).

29. Statement of representative of the USSR Ministry of Foreign Affairs to Helsinki Watch on Jan. 26, 1989 in Moscow where it was stated that the commission had made "several hundred favorable decisions."

30. Interview by L. Yelin, "Getting an Exit Visa," New Times 28.87, at 24, 26 (1987).

31. See H. Hannum, The Right To Leave and Return in International Law and Practice (1987), hereinafter "Right To Leave"; S. Liskofsky, "The Right to Leave: The Soviet Union in the UN," 12 Human Rights Internet Reporter, no. 2, Winter 1988, at 11 (item 0003.003).

32. See Who May Leave, at 3-5.

33. Covenant, Art. 2. para. 3(a).

34. Basket III, sect. 1(b), "Reunification of Families", 14 Int'l Leg. Mat. 1292, 1314 (1975).

35. Sect. 25.

36. Right to Leave, at 25.

37. Id., at 43 (citations omitted).

38. Covenant, art. 12, para. 3.

39. See Right to Leave, at 44.

40. See "Court Rejects Charges Against Passport Office," Hamburg DPA in German, Jan. 22, 1988, trans. in FBIS-SOV-88-015, Jan. 25, 1988, at 54.

41. U.S. officials agree. It is the official view of the United States that Soviet emigration policies are not sufficiently liberalized that normal trade relations can commence between the Soviet Union and the United States under the Jackson-Vanik Amendment. Some officials have indicated that if new Soviet emigration legislation is passed, waiver of Jackson-Vanik will be considered.

42. Interview of V.A. Kartashkin by V. Kuznetzov, "Everyone's Right," Literaturnaya gazeta, Dec. 7, 1988, at 14, trans. in FBIS-SOV-88-245, Dec. 21, 1988, at 91.

43. Id.

44. Id.

45. See "Emigration Law Revisited," at 20.

46. See also U.S. Helsinki Watch Committee, News from the USSR, May 1989, at 14-15.

47. "Soviets to Liberalize Emigration Hoping to Gain U.S. Trade Deal," The New York Times, November 16, 1989, at 1.

48. Id.

49. AP, November 16, 1989.

50. Art. 1.

51. Art. 2, par. 1.

52. Art. 3, par. 2.

53. Id.

54. Art. 3, par. 1.

55. Art. 7, par. 1.

56. Art. 5.

57. Art. 6, pars. 1 and 2.

58. Art. 7, par. 1.

59. Art. 7, par. 2. Under Soviet family law, "alimony" or support payments are paid to divorced spouses, children, and elderly parents.

60. Art. 7, par. 3.

61. Art. 8, par. 1(1).

62. Art. 8, par. 2(1).

63. Art. 8, par. 1(2).

64. Art. 8, par. 1(3).

65. Art. 8, par. 1(4).

66. Art. 8, par. 2(2).

67. Art. 9, par. 2.

68. Art. 9, par. 3.

69. Art. 10, par. 1.

70. Art. 10, par. 2.

71. Art. 10, par. 3.

72. Art. 11, par. 1.

73. Art. 11, par. 2.

74. Art. 13.

75. Art. 14.

76. Id.

77. Art. 15.

ANNEX A

Members of
Committee of Jurists of
U.S. Helsinki Watch Committee

Chair:
Professor Theodor Meron
New York University School of Law
New York, New York

Rapporteur:
James J. Busuttil, Esq.
Porter & Travers
New York, New York

Alan R. Finberg, Esq.
New York, New York

Professor George Fletcher
Columbia University School of Law
New York, New York

Alice H. Henkin, Esq.
Aspen Institute for Humanistic Studies
New York, New York

Kenneth Roth, Esq.
Human Rights Watch
New York, New York

Professor Louise Shelley
The American University
Washington, D.C.

ANNEX B

Officials Interviewed in Moscow
By Delegation of Helsinki Watch
Committee of Jurists

USSR Ministry of Foreign Affairs

Dr. Yuri A. Reshetov
Acting Chief, Directorate for International Cooperation on Humanitarian Issues and Human Rights

Yevgeny Zaitsev
Deputy Chief of Sub-Department

Public Commission for International Cooperation on Humanitarian Issues and Human Rights ("Burlatsky Commission")

Dr. Yelena Lukashova
(Institute of State and Law)

Prof. Boris Nazarov
(Head, Human Rights Department, All-Union Juridical Correspondence Institute)

Soviet Committee for European Security and Cooperation

Georgy P. Baranovsky
Secretary

Anatoly Lobanov
Member of Soviet CSCE responsible for Burlatsky Commission

USSR Office of the Procurator General

Vladimir Ivanovich Andreyev
Collegium of USSR Procuracy (now Deputy Procurator General of the USSR)

Aleksei Arnadovich Dubinsky
Assistant General Procurator of the USSR

Vladimir Grigorevich Potatov
Senior Procurator, USSR Procuracy

Ivan Romanovich Rakhmanin

Senior Procurator, USSR Procuracy

Presidium of the Moscow City Bar

Georgy A. Voskressensky
Chairman

Feliks S. Heyfetz
First Vice Chairman

Peter D. Barenboim

USSR Ministry of Internal Affairs
All-Union Scientific Research Institute

Prof. Viktor D. Rezvykh
Director

Vladimir M. Burykin
Senior Reseracher and Deputy Head

Vladimir Frankovich Statkus
Senior Researcher and Deputy Head

Aleksander Vladimirovich Brilliantov

Faculty of Law of Moscow State University

Prof. Konstantin Gutsenko

Prof. Yeugeny Voroshilin

Prof. Hamlet A. Atanesyan

Prof. Nikolai Yablokov

Dr. Arkady Kozlov

Institute of State and Law of the USSR Academy of Sciences

Prof. Valery M. Savitsky

Dr. Galina Krieger

Dr. Yury A. Rozenbaum

Dr. Vladimir A. Kartashkin

Dr. Yelena Lukashova

ANNEX C

Officials Interviewed in Kiev
By Delegation of Helsinki Watch
Committee of Jurists

Office of the Procurator General of Ukraine

Mr. Staslavski
First Deputy Procurator of the Ukraine

Anatoliy Myslovsky

Anatoly Poloboshenko

Vladimir M. Lysnoi

Mr. Misiyenko

Office of the Arbitrator of Ukraine

Yuriy Gennadievich Matrev
Chief Arbitrator of Ukraine

Presidium of the Kiev City Bar

Vlaseslav Franovich Kolnoi
Chairman

Institute of State and Law of the Ukrainian Academy of Sciences

Prof. Gleb Ivanovich Changuli
Director

Vladimir Ionnovich Evenkov
Senior Researcher

ANNEX D

Officials Interviewed in Leningrad
By Delegation of Helsinki Watch
Committee of Jurists

Office of the Procurator General of Leningrad

Vladimir Illiyivich Nemshenko
First Deputy Procurator of Leningrad

Inessa Katukova
Senior Assistant Procurator of Leningrad

Leningrad City Court

Vladimir I. Poludnyakov
Chairman

Nina Sidorovna Isaakova
Deputy Chair and Chair of Collegium of Criminal Cases

Ms. Belzhneko
Deputy Chair and Chair of Collegium of Civil Cases

Presidium of the Leningrad City Bar

Yury V. Vvedensky

Ludmila V. Morosova

APPENDIX 1

[unofficial translation]

DRAFT

LAW OF THE USSR

on Voluntary Societies,
Organs of Independent Public Activity and
Independent Public Associations

In conditions of the all-round improvement of socialist society, the further extension of socialist democracy and socialist self-administration of the people, there is an increase in the role of voluntary societies, organs of independent public activity and independent public associations in solving socio-political, economic and socio-cultural questions.

I. GENERAL PROVISIONS

Article 1. Basic Purposes of Voluntary Societies, Organs of Independent Public Activity and Independent Public Associations

Voluntary societies, organs of independent public activity and independent public associations shall be established in line with the objectives of communist construction to meet the multiple spiritual needs and interests of Soviet people; develop their socio-political activity and scientific, technical and artistic creativity; promote the economic and socio-cultural development of the country and the strengthening of its defense capability; promote the maintenance of public order, discipline and self-discipline; observe the rules of the socialist community and engage in other socially useful activities.

Article 2. Right of Citizens of the USSR To Form Voluntary Societies and Independent Public Associations and To Participate in the Work of Organs of Independent Public Activity

In accordance with the Constitution of the USSR, citizens of the USSR have the right to form voluntary societies and independent public associations, and to participate in the formation and work of organs of independent public activity.

Article 3. Principles of the Formation and Activity of Voluntary Societies, Organs of Independent Public Activity and Independent Public Associations

Voluntary societies, organs of independent public activity and independent public associations shall be organized and operate on the basis of the principles of voluntariness, socialist self-administration and democratic centralism, socialist legality, criticism and self-criticism, collegiality, glasnost and respect for public opinion.

Voluntary societies, organs of independent public activity and independent public associations shall be obliged to comply with the Constitution of the USSR and with Soviet legislation. Their activity shall not be detrimental to the interests of socialist society and the State or the rights and lawful interests of citizens and organizations.

Article 4. Promotion By the State of the Activity of Voluntary Societies, Organs of Independent Public Activity and Independent Public Associations

Voluntary societies, organs of independent public activity and independent public associations shall be guaranteed conditions for the successful discharge of their functions. The State shall provide them with material and organizational support, as well as with other assistance in the performance of their functions.

II. VOLUNTARY SOCIETIES

Article 5. Purposes of the Formation of Voluntary Societies

Voluntary societies shall be formed for purposes of:

- Developing the socio-political activism and independent activity of citizens;
- Educating citizens in the spirit of Soviet patriotism and socialist internationalism;
- Promoting the economic and socio-cultural development of the country and the strengthening of its defense capability;
- Providing the necessary support to members of the voluntary societies in meeting their professional and leisure interests in line with the societies' objectives;
- Conducting cultural educational work among citizens;

- Nature conservation and preservation of historical and cultural monuments;

- Development of mass physical culture and sport;

- Engaging in other socially useful activities.

Article 6. Types of Voluntary Societies

Voluntary societies shall be formed and operate in the USSR at the all-Union, Republic-wide (union and autonomous republics) and local levels. Voluntary societies may be established within the system of public organizations.

The organizational structure of voluntary societies shall be determined by their charters, taking into account the nation-state structure of the USSR and the nation-state and administrative-territorial structure of the union republics.

Article 7. Relations of Voluntary Societies with State Organs, Public Organizations and Labor Collectives

Voluntary societies shall conduct their activities in cooperation with State organs, trade-union, Komsomol, cooperative and other public organizations, and labor collectives.

The labor collectives of state and public enterprises, institutions and organizations shall co-operate with the voluntary societies' primary organizations in their socially useful activity and in the development of initiative and creativity among the members of the labor collective.

The Soviets of Peoples' Deputies and their executive and administrative organs shall, in line with their areas of competence, guide the activities of the voluntary societies, ensure that they comply with the law and support their work.

Mass activities organized by voluntary societies in line with their charters and for purposes of strengthening and developing the socialist system shall be conducted in accordance with the procedure established by the local Soviets of Peoples' Deputies.

State organs shall not be entitled to interfere in the activity of voluntary societies unless it constitutes a breach of Soviet law, of the purposes for which they were established or of their charters.

Issues directly relating to the activity of voluntary societies may not be resolved by state organs and public

organizations without the participation or prior consent of the voluntary societies concerned.

Article 8. Founders of Voluntary Societies

Voluntary societies may be founded by State and public organs, enterprises, institutions and organizations, by labor collectives, and also by not less than twenty-five citizens of full legal age.

Article 9. Procedure for Establishment of Voluntary Societies

A proposal for the establishment of an all-Union voluntary society shall be considered by the USSR ministry, State committee or department for the corresponding economic or management sector, and if the voluntary society is established within the framework of a public organization, by the governing body of that organization.

A proposal for the establishment of an all-Union voluntary society whose objectives extend beyond the sphere of competence of individual USSR ministries, State committees or departments shall be considered by the competent state organs on instructions from the Council of Ministers of the USSR.

To establish an all-Union voluntary society or a society within the framework of a public organization, the founders shall submit to the competent bodies an application indicating the purposes for which the voluntary society is established and the composition of the organizing committee, as well as a draft of its charter.

The competent State organ or governing body of a public organization shall review the application, the draft charter and the composition of the organizing committee, and shall communicate its decision to the founders within one month.

If the establishment of the voluntary society is approved the organ so deciding shall, together with the organizing committee, convene a founding congress (conference) or general meeting of the founders at which the charter shall be adopted and the organs of the voluntary society elected.

The charter of an all-Union voluntary society adopted at the founding congress (conference) or general meeting of the founders shall be submitted for registration to the State organ or governing body of a public organization which took the decision regarding the establishment of the voluntary society.

The voluntary society shall be deemed to have been

established and shall commence its activities on the date of registration of its charter.

Subsequent amendments of and additions to the charter shall be introduced following the same procedure.

The amount of the operating costs for the administrative machinery of a voluntary society and the size of that machinery shall be determined by the voluntary society in accordance with the procedure established by the USSR Council of Ministers.

The State organ or governing body of a public organization which registers the charter of an all-Union voluntary society shall monitor compliance by that voluntary society with the requirements of the legislation in force and of its charter.

Article 10. Grounds for Rejection of an Application to Form a Voluntary Society and Appeal Procedure

An application for the establishment of a voluntary society may be rejected if the provision of its charter conflict with the requirements of this Statute or other legislative acts of the USSR and the union republics, or, in the case of a voluntary society within the framework of a public organization, also with the charter of that public organization.

Decisions of State organs with respect to the establishment of voluntary societies, and also decisions taken by such organs in the course of monitoring compliance by voluntary societies with the legislation and with their Charters, may be appealed to the Council of Ministers of the USSR.

Decisions of the governing body of a public organization with respect to the establishment of a voluntary society, and also decisions taken by it in the course of monitoring compliance by the voluntary society with the legislation and its charter, may be appealed to the supreme organ of the public organization concerned.

Article 11. Reorganization of Voluntary Societies

Reorganization of voluntary societies shall take place only at the decision of their congress (conferences) or general meetings.

In the event of reorganization of voluntary societies, the relevant amendments and additions shall be incorporated in their charters, and shall be subject to registration by the State organs or governing bodies of public organizations which had

previously registered the charters of these voluntary societies.

Article 12 Termination of the Activity of Voluntary Societies

The activity of voluntary societies may be terminated;

- at the decision of the congress (conference) or general meeting;

- at the decision of the State organ or governing body of a public organization which registered the charter of the voluntary society, if the activity of the voluntary society contravenes the legislation in force, the purposes for which it was established, or its charter.

Article 13. Membership in Voluntary Societies

Citizens of the USSR who have attained full legal age may be members of voluntary societies.

The charters of voluntary societies may provide for the admission as members of citizens of the USSR who have not attained full legal age, foreign nationals and stateless persons permanently resident in the USSR, and also for the admission of individual State and public enterprises, institutions and organizations as collective members, on condition that the nature of their activity corresponds to the purposes and objectives of the voluntary societies.

Voluntary societies may establish children and youth sections in accordance with the procedure laid down in their charters, and in agreement with the organizations of the Leninist Young Communist League of the Soviet Union.

Article 14. Charters of Voluntary Societies

The charter of a voluntary society shall specify:

1. The procedure for establishment of the society;

2. The name of the society and the territorial scope of its activities;

3. The purposes and objectives, directions and forms of its activities;

4. The conditions and procedure for admission to membership in the society and expulsion from it, and the rights and obligations of members;

5. The organizational structure of the society;

6. The timing, procedure for convening and competence of the congress (conference) or general meeting;

7. The governing bodies of the society and their competence;

8. The grounds and procedure for terminating the society's activities;

9. The location of the central organs;

10. The sources of funding of the society.

The charter of a voluntary society may also include other provisions regarding aspects of the society's organization and activity which do not contravene the requirements of the present Law or other legislative acts of the USSR and the union republics.

Article 15. Resources of Voluntary Societies

The resources of voluntary societies shall comprise:

1. The entrance fees and membership dues of members;

2. Revenues from the holding by voluntary societies in accordance with their charters of lectures, exhibitions, courses requiring payment, study groups, sporting and other events and lotteries, and income from publishing and other economic activity;

3. Revenues from State and public organizations as provided for by the legislation of the USSR and the union republics;

4. Voluntary contributions from citizens;

5. Other revenues

The sources of payment of the entrance fees and membership dues of collective members of voluntary societies shall be determined by the Ministry of Finance of the USSR.

The amounts of the entrance fees and membership dues of collective members of voluntary societies shall be determined by the governing bodies of these societies in agreement with the Ministry of Finance of the USSR.

Article 16. Property of Voluntary Societies

Voluntary societies shall be entitled to possess property, which shall be socialist property.

The property of voluntary societies may include buildings, facilities, equipment and other property required by them for the performance of their charter functions. Property of enterprises, organizations and institutions of voluntary societies shall be the property of the voluntary societies in accordance with the legislation of the USSR and the union republics and the charters of the voluntary societies, and also with the charters (statutes) of such enterprises, organizations or institutions approved by the voluntary societies' governing bodies.

Property questions in the event of reorganization of voluntary societies shall be settled by their congresses (conferences, general meetings).

Where a voluntary society ceases its activity, its

property and resources remaining after property claims have been met in the order established by law shall be, as appropriate, transferred to the state revenue or placed at the disposal of the public organization which registered the charter of the voluntary society.

Article 17. Voluntary Societies As Juridical Persons

Voluntary societies, and in the cases provided by law and their charters, divisions, enterprises and institutions of voluntary societies, shall be juridical persons.

Voluntary societies, and their divisions, enterprises and institutions which are juridical person, shall have a seal and stamp of established pattern bearing their name.

The pattern of the seal and stamp shall be established by the governing body of the voluntary society.

Article 18. Payments By Voluntary Societies To the State Budget

Voluntary societies and their divisions, enterprises and institutions shall make payments to the State budget in the cases, manner and amounts specified by the legislation of the USSR.

Article 19. Unions of Voluntary Societies

To ensure the effectiveness of their activities, voluntary societies having similar purposes and objectives shall be entitled to join together into unions of voluntary societies, the organization of which shall be governed by the provision of the present Law.

The powers of unions of voluntary societies and of the voluntary societies entering into them with respect to the ownership, use and disposal of property belonging to the unions of the voluntary societies and the voluntary societies entering into them shall be governed by the legislation of the USSR and the union republics, and also by the charters of the unions of voluntary societies.

Article 20. International Contacts of Voluntary Societies

Voluntary societies and unions thereof may join international public (non-governmental) organizations and participate in line with their charter objectives in the conduct of activities deriving from international treaties and conventions to which the USSR is a party.

Article 21. Emblems of Voluntary Societies

All-union and republican (union republic) voluntary societies shall be entitled to have flags and pennants, which shall be their emblems.

The flags and pennants of voluntary societies shall be subject to state registration under a procedure determined by the Council of Ministers of the USSR.

Article 22. Legislation of Union Republics Regarding Voluntary Societies

The organization and activity of republican (union and autonomous republics) and local voluntary societies shall be governed by the legislation of the union republics.

III. ORGANS OF INDEPENDENT PUBLIC ACTIVITY

Article 23. Purposes of the Formation of Organs of Independent Public Activity

Organs of Independent public activity shall be formed for purposes of:

- Broad involvement of citizens in the management of State and public affairs and the development of their creative activity;

- Promotion of the application of laws, other acts of State power and management, decisions of local Soviets of Peoples' Deputies and their executive committees, and electoral mandates;

- Provision of assistance to local Soviets of Peoples' Deputies, their executive committees and social organizations in holding mass political and economic events;

- Promotion of the maintenance of public order and the strengthening of discipline and self-discipline;

- Conduct of other socially useful activities.

Article 24. Procedure for Formation of Organs of Independent Public Activity

The procedure for the formation of organs of independent public activity shall be determined by the relevant legislative acts of the USSR and the union republics, and also by provisions approved by the executive and administrative organs of

Soviets of Peoples' Deputies.

Organs of independent public activity formed at enterprises and in institutions and organizations, as well as at places of residence (comrades' courts, councils to combat drunkenness, voluntary people's groups for the maintenance of public order, street and building committees, community facility councils for the maintenance of public order, and other), shall be set up under the established procedure by decision of the labor collectives, state organs and public organizations in the executive committee of the Soviet of Peoples' Deputies for the region, town, urban district, rural district or settlement.

Article 25. Termination of the Activity of Organs of Independent Public Activity

The activity of organs of independent public activity may be terminated:

- By decision of the labor collective, State organ or public organization which set up the organ of independent public activity, or by decision of a meeting of citizens at their place of residence;

- As a result of the closure of the enterprise, institution or organization in which the organ of independent public activity was active.

Article 26. Powers and Mode of Operations of Organs of Independent Public Activity

The powers and mode of operations of organs of independent public activity shall be established by the legislation of the USSR and the union republics.

The activity of the organs of independent public activity shall be under the control of the local Soviets of Peoples' Deputies which registered them, and also of the labor collectives, public organizations or meetings of citizens at their place of residence which took the decision to form them. The local Soviets of Peoples' Deputies, courts and procurator's offices shall ensure the independence of organs of independent public activity in deciding on specific legal questions assigned to the competence of an organ of independent public activity by a legislative act of the USSR or of a union republic, and shall also monitor and supervise compliance with the law in their activities.

IV. INDEPENDENT PUBLIC ASSOCIATIONS

Article 27. Purposes of the Formation of Independent Public Associations

Independent public associations shall be formed for purposes of:

- Satisfying citizen's needs and interests with regard inter alia to the acquisition of knowledge, education, research, artistic and creative endeavor, sports and physical culture;

- Comprehensively promoting the communist education of the workers, inculcating in them high moral and esthetic tastes and spiritual needs;

- Engaging in other socially useful activity.

Article 28. Procedure for Formation of Independent Public Associations

Independent public associations shall be established, recognized and disbanded by decision of the founding organizations. Cultural and sports bodies and institutions, institutions for out-of-school education, youth organizations, libraries, educational establishments, housing management organizations, trade union committees, Komsomol committees, arts and crafts councils and other public organizations may act as founding organizations.

The formation of independent public associations may be initiated by founding organizations or by not less than ten citizens of full legal age.

Each association shall before commencing its activities be subject to registration, upon the representation of the founding organization, by the executive committee of the local Soviet of Peoples' Deputies.

Following registration of the association, the founding organization shall draw up a draft statute for the association and convene a general meeting of citizens wishing to participate in the association's work, at which the statute shall be approved and the Soviet of the association elected.

Article 29. Termination of the Activity of Independent Public Associations

The activity of independent public associations may be terminated:

- By decision of the general meeting of an association;

- By decision of the founding organization or the executive committee of a Soviet of Peoples' Deputies, if the activity of the independent public association contradicts the legislation in force or of the purposes for which it was formed.

A decision to terminate the activity of an independent public association may be appealed, as appropriate, to the supreme organ of the founding organization or to the supreme executive committee of a Soviet of Peoples' Deputies, to the Council of Ministers of an autonomous Soviet socialist republic, or to the Council of Ministers of a union republic not divided into regions.

Article 30. Mode of Operations of Independent Public Associations

The mode of operations of independent public associations shall be established by the legislation of the union republics, and also by the departmental regulations issued by ministries, State committees and departments of the USSR and the union republics.

Founding organizations and executive committees of local Soviets of Peoples' Deputies which registered an independent public association shall monitor compliance by these associations with the requirements of the legislation in force and the provisions governing their activities.