SOVIET LAW

AND

THE HELSINKI MONITORS

PREPARED BY THE STAFF

OF

THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

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I.

INTRODUCTION

Background

Between February 3, 1977 and June 1, 1978, twenty Soviet citizens active in the defense of human rights in five different Republics were arrested and imprisoned; two others, traveling abroad on Soviet passports, were stripped of their citizenship and denied the right to return to the USSR. All are members of the Public Groups to Promote Observance of the Helsinki Agreement in the USSR (the Soviet Helsinki Watch) or, in the case of two men, of its subsidiary Working Commission to Investigate the Abuse of Psychiatry for Political Purposes.

The twenty-one men and one woman are being punished under a variety of different criminal charges. Their "crime," however, is identical: political dissent, expressed in the non-violent, open effort to spur Soviet authorities to implement the human rights and humanitarian undertakings of the August, 1975 Final Act of the Conference on Security and Cooperation in Europe (the Helsinki accord.)

Intent of the Study

The following study by the staff of the U.S. Commission on Security and Cooperation in Europe examines the workings of Soviet law and criminal procedure as applied in these cases of political dissent. It discusses the guarantees of Soviet law, including international covenants ratified by the USSR, against arbitrary arrest and unfair trial and compares those to the practices used against the Helsinki Watchers.

Summary Conclusion

From the study it is evident that those guarantees -- both substantive and procedural -- have been repeatedly violated in the persecution and prosecution of the twenty-two human rights activists. The violations uncovered range from improper conduct of pre-arrest house searches through illegally prolonged pre-trial detention to unlawful denial of the rights of the defense at the trial.

This pattern of official conduct toward free, but dissenting political expression is not new in the Soviet Union. In the treatment of the Soviet Helsinki Watch, however, it has been systematic and can be termed, without question, a gross and intentional violation of both the pledges in the Final Act and the safeguards promised by the Soviet Constitution, Criminal Codes and Codes of Criminal Procedure.

The Helsinki Ingredient

In signing the Final Act with 32 other European nations, the U.S. and Canada, the Soviet Union added a new dimension to its obligations to its own citizens and invited new international scrutiny into its fulfillment of those obligations. Though the Final Act is not a treaty, but a declaration of high-level political intent and thus has no binding force, it effectively linked a number of discrete

pledges -- respect for sovereignty, territorial integrity, human rights and international obligations and cooperation in economic, scientific, humanitarian, educational and cultural matters -- together as common aspects of common security. The implementation of these pledges by any one signatory became the proper concern for all.

Principle VII of the Final Act's introductory Declaration on Principles Guiding Relations between Participating States injected the special promise of "respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief." Through it the Soviet Union and all the signatories pledged to "promote and encourage the effective exercise of political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development." Principle VII also reaffirmed that respect for human rights "is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and cooperation..." among the signatories. Moreover, it bound them to "act in conformity" with the United Nations Charter and the Universal Declaration of Human Rights as well as to "fulfill their obligations" under such instruments as the International Covenants on Human Rights.

Finally, in Principle VII, the signatories said that "they confirm the right of the individual to know and act upon his rights and duties in this (human rights) field." Under that mandate, Soviet citizens became the first to establish a private watch on their government's own violations of the Final Act. Since the first Public Group was set up in Moscow, May 12, 1976, four others have followed in Ukraine (November 9, 1976), Lithuania (November 25, 1976), and Georgia and Armenia (both in April, 1977.) In all, 58 Soviet citizens have enlisted as members of the Groups or of their subsidiary (the Psychiatric Working Commission) and affiliate (the Christian Committee for the Defense of Believers' Rights in the USSR).

Soviet and International Law

In non-binding terms, the Final Act protects such individual and collective action. The Soviet Constitution, adopted October 7, 1977, protects such endeavor as a matter of fundamental law.

Article 51, for example, gives citizens "the right to associate in public organisations that promote their political activity," just as Article 50 guarantees "freedom of speech, of the press, and of assembly, meetings, street processions and demonstrations." Article 49 assures "every citizen" the "right to submit proposals to state bodies and public organisations for improving their activity, and to criticise shortcomings in their work." It says flatly: "Persecution for criticism is prohibited." Further, Article 57 establishes that "respect for the individual and protection of the rights and freedoms of citizens are the duty of all state bodies, public organisations, and officials."

Of course, these Constitutional promises are set in a context of civic responsibility as well. Thus, Article 59 specifies that "citizens" exercise of their rights and freedoms is inseparable from the performance of their duties and obligations. Citizens of the USSR are obliged to observe the Constitution of the USSR and Soviet laws, comply with the standards of socialist conduct, and uphold the honor and dignity of Soviet citizenship." Moreover, the right to associate is granted "in accordance with the aims of building communism" and freedom of speech, press etc. are to be exercised "in accordance with the interests of the people and in order to strengthen and develop the socialist system."

Inevitably, the rights and companion obligations of Soviet citizens come into conflict, the sort of clash which is regulated by law and courts of law in other societies. As this study demonstrates, however, conflicts of political opinion are too often resolved in the Soviet Union in an illegal and extra-judicial fashion, with the weight of the state overwhelming the right of the individual.

This pattern occurs despite the extra obligations the Soviet Union has assumed under international agreements. In ratifying the International Covenant on Civil and Political Rights October 16, 1973, for example, the USSR gave its provisions the status of domestic law.

Article 19 of the Covenant states flatly in its first paragraph that "everyone shall have the right to hold opinions without interference." In presenting in paragraph two the "right to freedom of expression...to seek, receive and impart information and ideas of all kinds, regardless of frontiers,..." however, the third paragraph of Article 19 conditions the exercise of free expression on special duties and responsibilities." The right "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 and reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health and morals."

In considering the conflict between free expression as sought by the Helsinki monitors and the Soviet law used to punish them, outsiders are entitled to wonder how the Groups' documentation of Helsinki-accord violations could endanger national security or public order. Although the issue has been skirted in the actual trials of the seven Group members already convicted of "anti-Soviet agitiation and propaganda," the presumption in that law (Article 70 of the RSFSR Criminal Code) is that the slander must be disseminated with the intent to subvert the state. Such has not been the intent or the practice of the Helsinki monitors, certainly not in the American legislative understanding of subversion as an attempt at violent overthrow of the government or in the everyday concept of subversion as secretive, conspiratorial activity to supplant one regime with another.

The Work of the Helsinki Watch

Far from assaulting Soviet rule, the Public Groups set out from the beginning only to call it to account. In announcing its formation, the Moscow Group proclaimed that its "aim . . . is to promote observance of the humanitarian provisions of the Final Act" and its "first goal is to inform" signatory heads of state and "the public about cases in direct violation" of Principle VII and the provisions of Basket III on human contacts, information and cooperation in culture and education. The members declared that they "proceed from the conviction that the issues of humanitarianism and free information have a direct relationship to the problem of international security."

By the time the Ukrainian Group was formed six months later, its members were prepared to emphasize in their first announcement the "extremely difficult obstacles" facing those who "attempt to collect on the territory of Ukraine information about violations of human rights and to pass this information on to the public . . ." In their first Declaration, however, the Ukrainians stressed, "In its activity the Group is guided not by political, but by humanitarian and legal considerations." It made information on violations its "prime objective" and posited the strengthening of international law as a prerequisite for "a real relaxation of international tensions."

Similarly, the Lithuanian Group announced its aim "to promote the observation and fulfillment of the humanitarian articles of the Final Act" and simultaneously released its first two reports -- on the arrests of two men for distributing and printing religious literature and on the exiling of two popular Catholic bishops.

Since those first announcements and reports, the work of the Groups has been consistently directed at documenting alleged violations of the Final Act and at disseminating its reports to the widest possible public. For the first few months, the Moscow Group sent copies of all its reports by registered mail to the embassies of CSCE states in Moscow as well as to Soviet President Leonid Brezhnev. Since none of the registered mail copies got through to their non-Soviet addressees, however, the Group took to delivering copies in person when possible and enlisting the aid of others in getting the material delivered outside the Soviet Union.

The CSCE Commission has received nearly 300 such Group documents. Their range and variety is extensive, from single-page appeals for public support of recently arrested members to extremely lengthy listings of names and addresses of over 1,000 Soviet Pentecostalists seeking to emigrate, of Ukrainians imprisoned for their political beliefs, and of titles of books and manuscripts confiscated in house searches of Group members and their families and associates. The majority of the documents has been translated into English and published in three different collections by the Commission. The most recently received document (number 49) on the trial of Yuri Orlov is contained in this study as Appendix II.

An early Moscow Group report (Number 2) simply listed the names and (former) telephone numbers of would-be emigrants whose telephones had been disconnected after they had applied to rejoin family members abroad. The same topic was the subject of Moscow Document 25, reporting as well the effort of a Pentecostalist in Nakhodka to send a Christmas telegram to President Carter. The telegram was rejected by the post office because the message supposedly discredited the Soviet regime.

Other recurring concerns have been the treatment of would-be emigrants -- individuals workers complaining of economic conditions, Jews and Germans seeking forms of repatriation, devout Christians attempting to leave religious persecution -- and of ethnic minorities -- Crimean Tatars and Meskhis seeking to return to lands from which Stalin deported them; Lithuanians, Armenians, Georgians and Ukrainians protesting infringements on their cultural identity and heritage. Occasionally, the complaints have been couched in strong, polemical rhetoric; more often, they are dry, factual accounts of distant and recent history, giving dates, names and statistics with the citation of many different supporting sources.

In sum, the work of the Helsinki Groups has been well within the mainstream of Soviet dissent as it has developed since the first public demands in December, 1965, for an open trial of the writers Andrei Sinyavsky and Yuli Daniel, convicted in 1966 of anti-Soviet agitation and propaganda for writings of fiction and literary criticism published under pseudonyms abroad. Their trial was closed, but its proceedings were reported in detail in a book prepared by Aleksandr Ginzburg -- a volume for which he was arrested in 1967. His trial in turn was documented by Pavel Litvinov, arrested for his efforts in 1968.

The Helsinki Groups represent a continuation and a broadening of that basic tradition. Speaking of all Soviet dissent, Andrei Sakharov observed in January, 1977, "Our main goal as well as our only weapon is public discussion, based on accurate information as complete as possible." In the prosecution and persecution of the Helsinki monitors, as discussed in detail in this study, Soviet authorities have acted to block that goal and blunt that weapon. To do so, they have violated their own laws and procedures and dishonored their international commitments.

The Fate of the Helsinki Watchers

A companion report to this one gives biographies of 58 members of the Public Groups to Promote Observance of the Helsinki Accords in the USSR and its affiliates. For purposes of easy reference, the 19 Group members who have been convicted in the last year or are now awaiting trial are:

Moscow

Aleksandr Ginzburg - arrested February 3, 1977; awaiting trial on a possible charge of anti-Soviet agitation and propaganda (Article 70 RSFSR CC).

Yuri Orlov - arrested February 10, 1977; convicted May 18, 1978, anti-Soviet agitation and propaganda (Article 70); sentenced to seven years in strict regimen labor camp and five years in exile.

Anatoly Shcharansky - arrested March 15, 1977; awaiting trial on a possible charge of treason (Article 64a).

Malva Landa - convicted May 31, 1977 to serve two years internal exile for arson (Articles 99 and 150), setting fire to her own apartment; released under a general amnesty in January, 1978.

Feliks Serebrov - arrested August 22, 1977; convicted October 12, 1977, falsification of documents (irregularities in his work documents not usually punishable under Soviet law) after the statute of limitations had expired (Article 196); sentenced to one year in a strict regimen work camp.

Aleksandr Podrabinek - arrested March 15, 1978; awaiting trial on a possible charge of circulation of anti-Soviet fabrications (Article 190-1).

Vladimir Slepak - arrested June 1, 1978; awaiting trial on a possible charge of malicious hooliganism (Article 206 RSFSR Criminal Code).

Ukraine

Mykola Rudenko - arrested February 5, 1977; convicted July 1, 1977, anti-Soviet agitation and propaganda (Article 62 UKSSR CC); sentenced to seven years strict regimen labor camp, five years exile.

Oleksiy Tykhy - arrested February 5, 1977; convicted in July 1, 1977, anti-Soviet agitation and propaganda (Article 62) and illegal possession of firearms (Article 222), for an old rifle Tykhy claims was planted; sentenced to 10 years special regimen labor camp and five years exile.

Myroslav Marynovych - arrested April 23, 1977; convicted March 29, 1978, anti-Soviet agitation and propaganda (Article 62); sentenced to seven years strict regimen camp and five years exile.

Mykola Matusevych - arrested April 23, 1977; convicted March 29, 1978, anti-Soviet agitation and propaganda (Article 62); sentenced to seven years strict regimen camp and five years exile.

Levko Lukyanenko - arrested December 12, 1977; awaiting trial.

Pyotr Vins - arrested February 21, 1978; convicted April 6, 1978, parasitism (Article 214-1); sentenced to one year in a standard regimen labor camp.

Georgia

Zviad Gamsakhurdia - arrested April 7, 1977; convicted May 19, 1978, anti-Soviet agitation and propaganda (Article 71 GSSR CC); sentenced to three years in labor camp and two years exile.

Merab Kostava - arrested April 7, 1977; convicted May 19, 1978, anti-Soviet agitation and propaganda (Article 71); sentenced to three years in labor camp and two years in exile.

Grigoriy Goldshtein - arrested in January, 1978; convicted March 20, 1978, parasitism (Article 234-1); sentenced to one year in a standard regimen labor camp.

Viktor Rtskhiladze - arrested January 25, 1978; awaiting trial.

Lithuania

Viktoras Petkus - arrested August 24, 1977; awaiting trial under a possible charge of anti-Soviet agitation and propaganda (Article 68, LithSSR CC).

Armenia

Shagen Arutyunyan - arrested December 23, 1977, convicted January 18, 1978, resisting a representative of authority (Article 218 ArmSSR CC); sentenced to three years standard regimen camp.

Robert Nazaryan - arrested December 23, 1977; awaiting trial.

Two other members of the Helsinki Monitoring Groups, Tomas Venclova (Lithuania) and Major General Pyotr Grigorenko (Moscow and Ukraine), have been stripped of their Soviet citizenship while visiting abroad on temporary visas. Venclova, who had accepted a one-year teaching assignment at the University of California, was informed of the June 14, 1978 Supreme Soviet Decree on August 23, only after the end of the Belgrade Conference's preparatory meeting. Similarly, the decree stripping Grigorenko of his citizenship while he was in the U.S. for medical care was announced after the close of the main Belgrade meeting on March 8, 1978, although it had gone into effect nearly a month before.

II.

THE CHARGES AGAINST THE HELSINKI WATCHERS

LEGAL AND PROCEDURAL BACKGROUND

In the Fundamentals of Criminal Legislation of the USSR and the Union Republics, the tasks of Soviet criminal law and procedure are defined: the protection of the state, socialist property, the person and rights of citizens, and the socialist legal order. The republican codes of criminal law and criminal procedure, statutes, decrees, edicts, regulations, and judicial opinions form the legislative and administrative basis for the implementation of these tasks. A large system of legal institutions including the police, the Committee for State Security (KGB), the Ministry of Justice, the Ministry of Internal Affairs, the procuracy, the courts and the legal profession actually enforce the criminal law and procedure.

The Soviet system of preliminary investigation, indictment, trial, judgement and appeal is similar to both that of pre-revolutionary Russia and of most continental European systems. It provides for the investigation of major crimes by an impartial official who examines the accused and the witnesses and prepares the materials on which the indictment is based. At the trial, the prosecutor -- known as the procurator -- is required to prove the charges contained in the indictment on the basis of the evidence contained in the record of the preliminary investigation. The fact that the accused admits his guilt does not eliminate this requirement; such an admission is to be weighed with the other evidence in the case.

However, according to Professor Harold Berman in his authoritative work, _Soviet Criminal Law and Procedure_ (p. 68), behind this European character, "...there lies a peculiarly 'Soviet' quality in the trial proceedings, as well as in the proceedings prior to trial -- a quality that has persisted through the five decades of Soviet history. This quality manifests itself in the provisions for participation of representatives of 'social organizations' in criminal proceedings, as well as in the provision for two laymen (people's assessors) sitting as co-judges in the three-judge trial court."

The most notable difference between European and Anglo-American criminal law and its counterpart in the Soviet Union is the fact that actions not considered criminal in the West are punishable as crimes in the USSR. Another noted specialist in Soviet law, Professor Leon Lipson, in a discussion on political prosecution, observes: "...it would be over-simple just to point to bad administration of good laws: even with a more enlightened and humane caste of officials in the public prosecutors' offices (procuracy), security-police (KGB), and administration of penal institutions (Ministry of Internal Affairs MVD), and even with a genuinely independent and impartial judiciary, Soviet legislation would permit the state to imprison, for rather long terms, persons who in other countries would be thought to be no more than active citizens."

TYPES OF CHARGES

The charges leveled against the various members of the Public Groups to Promote Observance of the Helsinki Agreement in the USSR fall into two broad categories: those of an overtly political nature and those with an element of common criminality.

Political Charges

This category includes Article 70 of the RSFSR Criminal Code and the corresponding articles in the republican criminal codes, 62 of the Ukrainian, 71 of the Georgian and 68 of the Lithuanian, anti-Soviet agitation and progaganda, under which Yuri Orlov, Mykola Rudenko, Oleksiy Tykhy, Myroslav Matuseyvch, Mykola Marynovch, Zviad Gamsakhurdia and Merab Kostava have been convicted and with which it is anticipated that Aleksandr Ginzburg, Viktoras Petkus and Levko Lukyanenko will be charged. This provision, introduced in the 1960 revision of the RSFSR Criminal Code differs only slightly from the provisions on counter-revolutionary agitation and propaganda which were applicable in earlier periods of Soviet history. According to Professor Berman (p. 81):

> "Its scope is sufficiently broad to include the circulation, or indeed the mere possession, of literature containing statements defamatory of the Soviet political or social system. However, a direct (subjective) anti-Soviet intent is required; in the words of a Soviet commentary, a person is guilty of violating Article 70 only if he 'knows or foresees that his acts can produce in other persons a hostile attitude to Soviet authority or instigate them to commit particular, especially dangerous crimes against the state, and he desires such result of his acts'. Another Soviet commentary puts the matter in these terms: 'To be guilty under Article 70 the actor must have a desire to undermine or weaken Soviet authority, and in case of possession of anti-Soviet literature such possession must be for the purpose of using the literature in the future to accomplish that desire'".

The crime of anti-Soviet agitation and propaganda is punishable by up to 7 years deprivation of freedom and up to 5 years in exile.

Article 190-1 of the RSFSR Criminal Code, under which Aleksandr Podrabinek, arrested in Moscow May 15 during the Orlov trial, is likely to be charged, is also a political crime, introduced into the criminal code in 1966 after the trial of writers Andrei Sinyavsky and Yuli Daniel. Like Article 70, Article 190-1 makes it a crime to circulate statements known to be false which are defamatory of the Soviet system. However, there need not be the intent to subvert or weaken Soviet authority. The mere possession of defamatory statements is not punishable under Article 190-1 although the preparation of such statements is. Article 190-1 carries a maximum punishment of three years deprivation of freedom.

Professor Berman (p. 83) compares Articles 70 and 190-1:

> "...The wording of both Article 70 and Article 190-1 is so broad that it is possible in practice to catch almost any strong expression of political dissent within the ambit of either. ...It may be that Article 70 is more apt to be applied to those who advocate fundamental change in the Soviet political structure such as the granting of independence to national minorities (Ukrainians, Latvians, etc.), while Article 190-1 is more apt to be applied to those who advocate change within the existing political structure (e.g., more freedom of speech, greater protection of civil rights, etc.). Judging, however, from unofficial eyewitness reports of political cases, it is at least almost as easy to convict under Article 70 as under Article 190-1, ...since an anti-Soviet intent may be inferred from the defamatory character of the statement. Moreover, the argument that the accused believed the defamatory statement to be true -- which is theoretically a complete defense under both Article 70 and Article 190-1 -- has been ineffectual in practice, except possibly as a basis for commitment to a psychiatric hospital. Soviet courts will apparently not admit that any sane Soviet citizen can honestly make a statement attacking the Soviet political or social system."

The most serious and the only capital offense facing Group members is set out in Article 64 of the RSFSR Criminal Code -- treason. It is expected that Anatoly Shcharansky will be brought to trial on this charge. Article 64 sets the death penalty or ten-to-fifteen years' deprivation of freedom plus exile for two to five years for acts "intentionally committed by a citizen of the USSR to the detriment of the state independence, the territorial inviolability, or the military might of the USSR". Specifically. espionage, transmitting state secrets to a foreign state, rendering aid to a hostile foreign state, going over to the side of the enemy, conspiring to seize power and defecting are considered treasonous acts.

Criminal Charges

Among those charges carrying no overt political overtones is Article 209-1 of the RSFSR Criminal Code -- "malicious evasion of performance of decision concerning arrangement of work and discontinuance of parasitic existence," otherwise known as "parasitism". Parasitism is a charge commonly leveled against human rights activists who have lost their jobs or been expelled from school because of their activism and cannot find other employment. Two young Public Group members, Pyotr Vins and Grigory Goldshtein were convicted under Articles 214-1 and 234-1 of the Ukrainian and Georgian Criminal Codes, respectively, the corresponding parasitism articles in the republican codes. The maximum sentence for this crime is one year's deprivation of freedom.

Helsinki Group members have been accused of a number of other crimes. Conviction under Articles 99 and 150 of the RSFSR Criminal Code, for negligent destruction of state or social property and of personal property, brought Malva Landa two years of internal exile, after a fire broke out in her Moscow apartment. Oleksiy Tykhy was accused and convicted of illegal possession of firearms under Article 222 of the Ukrainian Criminal Code and Shagen Arutyunyan was sentenced in January, 1978, to three years deprivation of freedom under Article 218 of the Armenian Criminal Code for resisting a representative of authority. Feliks Serebrov was convicted under Article 196 of the RSFSR Criminal Code -- forging documents -- and received a sentence of one year's deprivation of freedom.

Most recently, Moscow Group member Vladimir Slepak was arrested on June 1, 1978, after hanging a banner which declared his family's desire to emigrate from the balcony of his apartment. Slepak, who first applied to emigrate to Israel eight years ago and whose son lives there now, will apparently be charged under Article 206 of the RSFSR Criminal Code with "malicious hooliganism". The term "hooliganism"--which refers to a notorious Irishman living in London during the nineteenth century--was, according to Professor Berman, popularized by Russian legal scholars before the revolution as a characterization of "lawless, disorderly and purposeless misconduct". It was, however, not introduced into the criminal code until 1922. According to Professor Walter Connor, in his Deviance in Soviet Society: Crime, Delinquency and Alcoholism, it was and is the most frequently committed crime in the USSR.

Article 206 defines "malicious hooliganism" as any intentional act violating public order and expressing "clear disrepect for society" which is committed with "exceptional cynicism or special impudence". It is punishable by up to five years deprivation of freedom.

INITIATION OF A CRIMINAL CASE, INQUIRY AND PRELIMINARY INVESTIGATION

INITIATION OF A CASE AND INQUIRY

Article 108 of the Soviet Code of Criminal Procedure provides the following grounds for setting a criminal case in motion:

1. Declarations and letters of citizens;
2. Communications of trade union and Communist Youth League organizations, people's guards for the protection of public order, comrades' courts, and other social organizations;
3. Communications of institutions, enterprises, organizations, and officials;
4. Articles, notices, and letters published in the press;
5. Giving oneself up;
6. Direct discovery of indicia of a crime by an agency of inquiry, investigator, procurator, or court. A case may be initiated only in instances when there exist sufficient data indicating the indicia of a crime.

It is most likely that the fourth item provided legal justification for the start of criminal proceedings against two Moscow Group members, Anatoly Shcharansky and Aleksandr Ginzburg. As mentioned earlier, articles appeared in the Soviet press on March 4 and 5, 1977 accusing Shcharansky of treasonous activities in collusion with U.S. diplomats and journalists alleged to be C.I.A. agents. It appears likely that the authorities used these articles as the pretext for starting a preliminary investigation -- under Article 64 (treason) -- against him since ten days later, on March 15, Shcharansky was arrested. He has been held in the KGB's investigative prison, Lefortovo, ever since.

Similarly, a letter appeared in Literaturnaya Gazeta on February 2, 1977 in which a former cell-mate accused Aleksandr Ginzburg of illegal currency dealings and anti-Soviet activities. The next day, February 3, 1977, Ginzburg was arrested. Although the formal charge against him has not yet been made known, he could be charged under Article 88, violations of rules for currency transactions, and/or Article 70, anti-Soviet agitation and propaganda.

Under Article 109 of the Code of Criminal Procedure, either the police, the KGB or a judge can initiate a criminal case within 10 days of the receipt of a declaration or communication as cited above. In most instances, according to Dina Kaminskaya, an experienced Soviet criminal defense attorney, either the police or the procuracy start such proceedings. Under Article 112 of the CCP, their action takes the form of a decree indicating the time, place, the person drawing it up, the reason and grounds for initiating the case and the article of criminal law believed to be violated. This decree establishes the framework within which an inquiry is conducted. Article 121 of the CCP provides that the inquiry must be completed within 10 days of the date the case was initiated, but it enables the procurator to prolong the inquiry up to a month and, in "exceptional cases" even longer. It is during this period that the "agencies of inquiry" -- either the police or KGB -- perform what Article 119 of the CCP terms "urgent investigative actions" such as interrogations, detentions, searches and seizures.

It is at this stage in the case that the procedural rights guaranteed to persons of crimes are frequently violated. Under Soviet law, (Procedural Code Articles 20, 52, 123 and 150), suspects must be informed of their rights -- to give explanations, submit petitions, appeal decisions -- and must be presented with an accusation before interrogation. They cannot be compelled to testify against themselves.

However, during the inquiry stage, a person can be summoned for interrogation, told that the person responsible for the crime has not yet been determined, and be compelled to give testimony which can later be used against him should he become accused. Not only is such compulsion in violation of the RSFSR Code of Criminal Procedure but also of Article 14 of the International Covenant on Civil and Political Rights:

> 3. In determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:...
>
> (g) Not to be compelled to testify against himself or to confess guilt.

PRELIMINARY INVESTIGATION

As soon as the inquiry or the "urgent investigative actions" are complete, Articles 119 and 124 of the CCP provide for the case to be transferred to an investigator and what is known as the preliminary investigation begins.

According to the nature of the crime, the preliminary investigation may be conducted by investigators of either the procuracy, the KGB, or the Ministry of Internal Affairs (MVD). Of those crimes of which the Helsinki Group members have been or are expected to be accused, only Articles 64 and 70 of the RSFSR Criminal Code, treason and anti-Soviet agitation and propaganda, respectively, are, by law, to be investigated by the KGB. The others, Article 196 (forging of documents), Article 99 (negligent destruction of state or social property) and Article 150 (negligent destruction of personal property), are to be investigated by the MVD, while Articles 190-1 (slander or defamation of the Soviet State) and 191 (resisting a representative of authority), are investigated by the Procuracy under provisions of CCP Article 126.

A preliminary investigation is not obligatory under Article 209-1, the crime of parasitism, for which 2 Helsinki members have been convicted. (The 2 Group members, Grigory Goldshtein of Tblisi and Pyotr Vins of Kiev, were convicted under the corresponding articles of the republic criminal codes -- Article 234-1 of the Georgian and Article 214-1 of the Ukrainian).

For the most part, Article 127 of the CCP gives the investigator a free rein to conduct the preliminary investigation and full responsibility for it. The procurator, however, oversees the legality of the investigation and must authorize certain acts, such as searches, and arrests, performed by the investigator.

Searches and Confiscation of Property

The investigator is empowered by Article 167 of the CCP -- without the sanction of the procurator -- to seize documents and articles of significance to a case if he knows precisely where they are and who has them. If the investigator believes that articles or documents of significance to a case may be in someone's possession or on some premises, he may conduct a search to find and remove such material. However, Article 168 of the CCP requires that a search must be authorized by the procurator.

CCP Article 169 also provides that such searches must be witnessed by both the resident and an observer, and CCP Article 171 stipulates that only those articles having direct relation to the case may be removed. Further, CCP Articles 176 and 177 require that a record and description of those materials seized during a search must be compiled and that a copy of that record must be given to the person at whose home the search has taken place. In addition, CCP Article 169 establishes that the person whose home is being searched and any witnesses must be informed of their right to be present during the entire search and to make statements for entry into the record of the search.

According to the testimony of Moscow Group members, these provisions were repeatedly violated during the searches, January 4, 1977, of the apartments of Yuri Orlov, Aleksandr Ginzburg, Lidia Voronina and Lyudmila Alekseeva. (Cf. Volume Two -- June 3, 1977 -- of the CSCE Commission translations of USSR Helsinki-Accord Monitors' Reports, pp. 7-19.) Books printed in the Soviet Union were confiscated in Orlov's apartment; blank Helsinki Watch stationery was seized from Alekseeva; personal funds (Soviet rubles), photos and correspondence were taken from Ginzburg; and the searchers in Voronina's apartment not only took personal letters she was keeping for Anatoly Shcharansky but, she reported, "described the confiscated documents in such a way as to make it impossible to identify them at a later date."

Similar violations of procedural safeguards were repeated two months later during searches carred out in connection with the investigation of Shcharansky himself. The Moscow apartments of refuseniks Aleksandr Lerner, Mikhail Kremen, Dina Beilina, Ida Nudel, and Boris Chernobilsky were searched on March 4, 1977. According to reports printed by the Union of Councils for Soviet Jews in The Case Against Anatoly Shcharansky (December, 1977), papers and materials confiscated during the searches were not properly identified in the record, the protests of those searched were not entered into the record, and the individuals witnessing the search -- who had been brought along by the investigator -- signed the record without reading it. A month later, the apartment of Shcharansky's parents was searched and, despite the law's limitation on removing only articles which related to the case, the investigators confiscated the originals and copies of the diploma, birth certificate and marriage license of Lidia Voronina, Shcharansky's friend.

Reports from the Ukrainian Group describe waves of searches before and after the arrests of five Group members, Oleksiy Tykhy and Mykola Rudenko, (on February 5, 1977) Mykola Matusevych and Myroslav Marynovych, (April 23, 1977) and Levko Lukyanenko (December 12, 1977). The manner in which these searches were conducted also reveal violations of procedural safeguards established under Soviet law. Thus, to start

the search of Group member Oksana Meshko's apartment in December, 1976, investigating Officer Pankov of the Kiev Procuracy broke a window and climbed in. Investigator Pankov did not confiscate only materials having a direct relation to the case, rather, he took all handwritten or typed materials he found, or, to quote Officer Pankov, "all the trash". During a search of Group member Ivan Kandyba's apartment in December, 1976, a copy of the Universal Declaration of Human Rights was confiscated. When the investigators searched the home of Matusevych's parents-in-law on February 5, 1977, the mother, Anna Sushan fainted. As a result, the search was conducted without the presentation of a warrant and without a record of the proceedings.

According to CCP Article 186, there are specific procedures for conducting a personal search. Such searches may be conducted without a separate warrant, only if there is reason to think that someone is concealing on his person articles or documents which may be of significance for the case. During the house search of the Rudenko apartment, Raisa Rudenko, her son Yuri, and Group member Oles Berdnyk were subjected to rough personal searches without any special personal search warrants. Similar violations have twice occurred during the personal search of the 72-year-old Group member, Oksana Meshko.

Interrogation of Witnesses

According to Article 72, the investigator may summon "any person who may have knowledge of any circumstances to be established in a given case" to give testimony. The witness under CCP Article 73, "shall be obliged to appear when summoned,... to give truthful testimony; to communicate everything known to him about the case and to reply to questions put to him." Refusal to give testimony or giving false testimony is punishable under Articles 181 and 182 of the RSFSR Criminal Code by as much as a year in jail or as little as a 50 ruble fine or "social censure."

A record must be kept of the interrogation of a witness -- and "as far as possible", it shall be recorded word for word. After the interrogation, the witness is to read the record and attest, by signature, to its accuracy. CCP Article 160 gives the witness the right to correct the record and to make additions and specifically obliges the investigator to enter any corrections or additions in the record.

A witness interrogated on May 10 and 12, 1977, in connection with the case against Anatoly Shcharansky, Professor Mark Azbel, reported in the Union of Councils publication that there were attempts to change his answers and that he, therefore, refused to sign the record of interrogation. During the interrogation of Azbel, as well as those of two other Jewish scientist-refuseniks, Victor Brailovsky and Veniamin Fain on May 11 and 13 and May 12 and 16, respectively, the witnesses were alternately threatened with imprisonment and cajoled to testify by promises of emigration visas, in obvious violation of Article 179 of the RSFSR Criminal Code which makes it illegal for an investigator to compel someone to give testimony.

On January 12, 1977 -- before the arrests of any Helsinki Group members -- Lyudmila Alekseeva was called in for questioning by the Moscow Procuracy. In violation of procedural safeguards, Mrs. Alekseeva was not informed of the nature of the case under investigation, only that it was #46012/18-76. Therefore, she refused to answer any questions put to her.

According to reports from the Ukraine, all members of the Ukrainian Public Group have been subjected to questioning by the KGB and the Procuracy. On Christmas Eve, 1976, Mykola Rudenko received an urgent telegram supposedly from relatives in the city of Kommunarsk. When he arrived there, he was subjected to many hours of interrogation by the KGB. On September 23, 1977 Ivan Kandyba was picked up on the street and taken to local KGB headquarters for questioning. After he refused to make a public denunciation of the Group, KGB General Poluden first swore at him and then, trying another tactic, promised him a residence permit for Lvov.

Members of the Lithuanian Helsinki Group have also been repeatedly summoned for questioning. In the last 6 months, 72-year-old poet Ona Lukaskaite-Poskiene, has been questioned three times. Her most recent interrogation session occured on April 14, 1978 at which time it was suggested that she publicly renounce her Group activities.

In short, interrogation has been used repeatedly against Helsinki monitors not just to gather evidence -- even improperly -- but also to intimidate and attempt extra-judicial cajolery.

Arrest and Detention

CCP Article 127 empowers the investigator to detain and interrogate persons suspected of committing crimes in accordance with the provisions of Articles 122, 123 of the Code of Criminal Procedure; that is, when a person is caught "red-handed" in the act of committing a crime, when eyewitnesses indicate the person as one who has committed a crime, when obvious traces of a crime are discovered as a result of a search, or when there is reason to believe the person will escape. However, CCP Article 89 applies more liberal grounds for detaining a suspect in cases for which the punishment is deprivation of freedom. If there exist sufficient grounds for supposing the accused will "hide,...hinder the establishment of truth or...engage in criminal activity" he may be subject to "confinement under guard."

The time limits on both the preliminary investigation and the period of detention -- "confinement under guard" -- are defined in law. The former is limited in ordinary cases to two months; the procurator of the region may extend this period by another two months. The maximum time period, however, is vague -- the procurator of the Republic or the Procurator General of the USSR may "in exceptional circumstances" prolong the period for preliminary investigation indefinitely.

The period of time a suspect may be detained is more clearly defined. CCP Article provides that:

> Confinement under guard in connection with the investigation of a case may not continue for more than two months. Only by reason of the special complexity of the case may this period by prolonged up to three months from the day of confinement under guard by a procurator of an autonomous republic, territory, region, autonomous region, or national area, or by a military procurator of a military region or fleet, or up to six months by the RSFSR Procurator or the Chief Military Procurator. Further prolongation of a period of confinement under guard may be carried out only in exceptional instances by the USSR Procurator General for a period of not more than an additional three months.

Thus, although the investigation may continue, nine months is the maximum period of detention permissible under Soviet law.

However, in the cases of at least six Helsinki watchers this provision of the law has been violated. In Moscow, Group leader Yuri Orlov was held for 15 months before being brought to trial and Anatoly Shcharansky and Aleksandr Ginzburg have been held 14 and 15 months, respectively, awaiting trial. In Ukraine, Group members Mykola Matusevych and Myroslav Marynovych were held eleven months before being tried in March of this year. Two Georgian Helsinki watchers, Zviad Gamsakhurdia and Merab Kostava were also held more than a year before their trials -- from April 1977 to May 1978.

Apparently, the sanction for extending the term of preliminary detention beyond the legal limit of nine months is established by unpublished decrees, issued on an individual basis, by the Presidium of the Supreme Soviet of the USSR. Although the Presidium is empowered by Article 122 of the Soviet Constitution to amend existing legislative acts "when necessary" and, under the Constitution's Article 123, to "promulgate decrees and adopt decisions", nowhere in either the Constitution or in any published legislation is the Presidium or any other body specifically authorized to prolong the period of preliminary confinement.

The practice is, therefore, not only not provided for in published law; it also violates the Code of Criminal Procedure and may, in itself, be considered a crime: Article 178 of the RSFSR Criminal Code makes arrest or detention known to be illegal, punishable by one year of either correctional tasks or deprivation of freedom or dismissal from office.

During this period of preliminary confinement, as a matter of practice but not of law, the accused can be denied the right to have visitors, to send or receive letters or telephone calls, or to have any contact with family or friends. The Procurator has the discretion to hold suspects literally incommunicado, and as demonstrated above, for an indefinite time. In addition, the right of the accused to counsel does not apply until the investigation is almost complete. In fact, the accused may not even be informed of the charges and evidence against him until the near completion of the preliminary investigation -- in the case of some Helsinki watchers, after a year or more in prison -- despite the guarantee in Article 9 of the International Covenant on Civil and Political Rights that:

> 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
>
> 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge of other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

Presentation of Accusation and Interrogation of Suspect

Once the investigator has gathered what CCP Article 143 calls "sufficient evidence to provide a basis for presenting an accusation of the commission of a crime", a decree to prosecute the person as the accused is rendered. Under CCP Articles 145, 146 and 147, the accused is summoned by the investigator for a compulsory appearance. The investigator is obliged to announce to the defendant the formal decision to prosecute and under CCP Article 148, to explain "the nature of the accusation", that is, the articles of the Criminal Code allegedly violated, including indication of the time, place and other circumstances of the alleged commission of the crime. The accused is then interrogated by the investigator. At the beginning of the interrogation, CCP Article 150 requires the investigator to ask the accused for an admission of guilt. Then, the defendant is questioned, in detail, about each point of the charge.

A record of the interrogation is drawn up, and procedures similar to those applicable during the interrogation of witnesses are to be observed. CCP Article 151 provides that the testimony entered should be, "as far as possible," word for word; the accused has the right to demand additions and corrections to the record; and the accuracy of the record must be attested to by the signature of the accused.

When presenting the accusation, the investigator is obliged to explain to the accused his rights as provided in CCP Article 46: the right to know what he is accused of and to give explanations concerning the accusation; to present evidence and submit petitions; to become acquainted with all the materials in the case; the right to defense counsel after the completion of the preliminary investigation; the right to participate in the trial and to appeal decisions; and the right to have the "last word" at the trial, that is, to make a final statement.

Although the formal presentation of the accusation, in many instances, immediately precedes the completion of the preliminary investigation, the investigator may continue to interrogate witnesses, conduct expert examinations and searches until he has compiled all necessary information. If, during the preliminary investigation, grounds for changing or adding to the accusation are found, then CCP Article 154 obliges the investigator to present a new accusation to the defendant and conduct another interrogation based on this change.

Completion of Preliminary Investigation

Once the investigator feels he has sufficient evidence, CCP Article 201 requires him to announce to the accused that the investigation is completed. At this point, the same article gives the defendant the right to examine all the evidence and materials of the case both on his own and with a defense counsel of his choice.

Since the accused -- in the cases of the Helsinki watchers, at least -- is barred from outside contact during his imprisonment, it is difficult for him to name a particular lawyer. According to Ms. Kaminskaya, investigators often inform the relatives of the accused that the defendant requests a certain attorney or that he entrusts the relatives to choose the lawyer. However, CCP Article 201 allows the accused or his relatives only five days to find a lawyer, after which the investigator is empowered to choose the defense counsel. In addition, although without basis in the law, in cases in which the investigation has been conducted by the KGB, the attorney must have a _dopusk_ -- a special clearance granted by the KGB -- which relatively few lawyers have. Thus, although Article 158 of the Soviet

Constitution grants the defendant the right to legal assistance, the right freely to choose one's counsel is not guaranteed, and often in practice not honored. In the cases of Group members Rudenko and Tykhy, at least, defense lawyers were assigned by the investigator, despite the assurance in Article 14 of the International Covenant on Civil and Political Rights that everyone has the minimum right "to defend himself in person or <u>through legal assistance of his own choosing</u>." (emphasis added)

After counsel has been summoned he and the defendant are presented with all the materials of the case, including films and tape recordings, in order for them to familiarize themselves with the evidence. The lawyer and the accused can familiarize themselves with the details of the case both on their own and together. CCP Article 202 obliges the investigator to provide the opportunity for the two to meet alone so that the issues of the defense can be discussed.

Both the defendant and his attorney are also allowed under CCP Articles 201 and 202 to copy information from the materials of the case yet, in practice in political cases, the lawyer cannot remove his notes from the prison. According to Ms. Kaminskaya, defense lawyers in political cases -- those requiring KGB clearances -- are forced to leave their notes with the investigator, although in all other cases -- even closed-door proceedings meant to protect a defendant's or witness' privacy -- lawyers can take their notes home with them.

After the attorney and defendant have acquainted themselves with the materials of the case, they are entitled by CCP Article 204 to petition the investigator to conduct additional interrogations or gather supplemental materials in order to augment the preliminary investigation. The investigator is not required to grant the petition, but the fact that it was filed must be included in the record of the case.

Once the defendant and his counsel have signed a notice to the effect that they have been allowed to familiarize themselves with the materials of the case, they are not permitted to see each other or be in contact again until the trial date is set. The law does not provide for the accused to consult an attorney during this period.

The preliminary investigation is formally complete when the investigator draws up what CCP Article 199 calls a "conclusion to indict" -- an indictment -- and under CCP Article 207, refers the case to the procurator. The indictment contains the methods, motives, circumstances, time and place of the crime; evidence confirming the existence of the crime and guilt of the accused; any mitigating or aggravating circumstances; arguments advanced by the defense and the results of verification of these arguments; information concerning the personality of the defendant; and the articles of criminal law covering the crime. Under CCP Article 205, the indictment must contain reference to pages of the file of the case. In addition, under CCP Article 206, the investigator attaches to the indictment a list of the names and addresses of those persons he believes should be called upon to testify in court.

The procurator, who has supervised the legality of the investigation since its inception, is obliged by CCP Article 214 to take action on the indictment within five days. The procurator is also responsible for determining whether the crime actually took place, whether the accusation is founded on the evidence,

and whether the conclusion to indict has been drawn up in conformity with the Code of Criminal Procedure. Most significantly, the procurator is required to verify whether the "preliminary investigation has been conducted thoroughly, completely, and objectively" (emphasis added). Professor Harold J. Berman in his authoritative 1972 study, Soviet Criminal Law and Procedure, has observed (p. 53): "The Soviet system of procedure prior to trial purports to secure an indictment only after an impartial investigation; the indictment therefore carries more weight, psychologically at trial" (than an indictment in an American court - Ed.)

If the procurator confirms the indictment, the case is referred to the court in whose jurisdiction it lies. The procurator is obliged under CCP Article 217 to inform the accused of this confirmation, and from this point on all petitions and complaints in the case are referred to the court.

IV.

COURT PROCEEDINGS

"In the USSR, justice is administered only by the courts," according to Article 151 of the USSR Constitution. The present structure of the Soviet court system is three-layered: people's courts, regional courts, and Supreme Courts. A case may be tried at any level of the court system from the people's court to the USSR Supreme Court. The majority of cases however -- both criminal and civil -- is dealt with in the people's courts.

ADMINISTRATIVE SESSION

Once the procurator has referred a case, the court -- usually the chairman -- examines the statement of formal charges -- the indictment -- and decides whether the case will be accepted. If he notes any obvious inconsistencies with the law he can reject the case and return it to the procurator. If, however, all seems in order, the chairman signs the indictment and designates a judge to handle the case. Any judge from the region may be assigned. However, in practice, according to Ms. Kaminskaya, there is a select group of judges who preside over political cases and those cases investigated by the KGB. In fact, the larger courts -- such as the Moscow municipal court -- in addition to the two offices every court has in order to handle civil and criminal cases, have a special office for political cases. Allegedly, the special office only handles cases for which a "dopusk" is necessary, but in practice, according to Ms. Kaminskaya, any political case, regardless of clearance, may be handled by this office.

CCP Article 221 requires the judge to whom a case is assigned to decide within 14 days whether or not the case will be tried. The judge may decide this on his own, but in cases involving minors, capital crimes, or when the judge disagrees with the findings of the procurator, the court is to hold an administrative session -- a hearing -- with the participation of two people's assessors, the procurator and others (such as a defendant applying for provisional release or further investigation) summoned by the court.

In accordance with CCP Article 222, there are nine issues that must be addressed by the judge or the court in administrative session when resolving the question of bringing the accused to trial. These include whether the case is within the court's jurisdiction; whether the criminal procedure has been observed; and whether the accused should be released, if in custody. Probably the most important issue in political cases, according to Ms. Kaminskaya, is the determination of whether the act of which the suspect is accused actually constitutes a crime. She says, "This major point is quite important in political cases because once the court decides that a certain act is considered criminal, and the accused does not deny performing a certain act, then this session is actually deciding a person's guilt."

If the judge or the court in administrative session determines that there exist sufficient grounds, a decree to bring the accused to trial is issued. At this point, the organizational questions such as the time and place of the trial, whether to permit the defense counsel selected by the accused or whether to appoint defense counsel, and the participants in the trial -- witnesses and experts -- must also be resolved, in accordance with CCP Article 228.

Once the trial date has been set, the court is obliged by CCP Article 237, to give a copy of the indictment to the accused and, at this point, the services of defense counsel are again made available to the defendant. The defendant and his lawyer are allowed once more, in accordance with Article 236 of the RSFSR Code on Criminal Procedure, to become acquaintedwith and copy information from the documents of the case.

The trial, under CCP Article 239, must begin no later than fourteen days after the decision to bring the accused to trial is formally rendered, but may not begin until three days after the defendant has been given a copy of the indictment, according to CCP Article 237.

TRIAL

Impartiality of Judge

According to CCP Article 243, the judge presiding over the trial shall take "all measures" to insure a "thorough, complete and objective analysis of the circumstances of the case" to establish "the truth, eliminating from judicial examination all that does not have a relation to the case," and to secure "the educational influence of the trial." The objectivity of the trial under Article 243 may be limited by its very requirement that the judge conduct the trial in a manner which insures its educational influence.

Article 240 of the Code of Criminal Procedure sets out the requirement that the judge and the people's assessors examine first-hand all the evidence of the case. They must "interrogate persons brought to trial, victims and witnesses, hear opinions of experts, view real evidence, and publicly disclose records and other documents." Conclusions based on someone else's examination of a witness, for example, are not permissible. The judge must have direct personal contact with each witness. Yet, as the Moscow Group reports in its May 18 Document 49 on the Orlov trial, the court spent "only three days (of trial) in examining the 58 volumes of investigative material, "gathered over a 15-month period.

CCP Article 245 grants all the principals in the trial -- defendant, and defense counsel, as well as procurator and (where applicable) plaintiff) -- equal rights in presenting evidence, participating in the analysis of evidence and submitting petitions. However, in political cases, these rights are routinely not observed. According to Ms. Kaminskaya, "It would not be an exaggeration to say that in political cases, the court and the procurator act according to an earlier coordinated plan in which the defense and the accused participate simply as 'show' elements of observing democratic norms of the courts...."

Testimony of Defendant and Witnesses

The presiding judge must, according to CCP Article 278, open the trial by stating and, if necessary, explaining to the accused the charges against him and asking him whether or not he admits his guilt. An admission of guilt in Soviet criminal procedure is not the same as a plea of "guilty". According to Berman (p. 48n) the latter, in English and American law, results in a verdict of guilty usually followed by a hearing on the sentence without a trial. In the USSR, the accused does not "plead" at all; he is asked at the beginning of the trial whether

or not he acknowledges his guilt, but his answer is only evidentiary and has no bearing on the procedure. CCP Article 77 provides that an acknowledgement of guilty may not serve as the basis of the accusation unless it is confirmed by all the evidence in the case.

The presentation of evidence normally begins with the questioning of the defendant by the court after which the accused undergoes cross examination by the prosecutor -- the procurator -- and the defense counsel, according to CCP Article 280. Under the same provision, the judge is allowed to question the defendant "at any moment" of the trial. Witnesses are then called and, under CCP Article 282, they are warned of their responsibility to tell the truth. Although they are not required to take an oath, witnesses must sign a statement attesting to the fact that this responsibility was explained. Witnesses are interrogated by the court, the procurator, the defendant and his counsel. A witness is not admitted to the courtroom before his appearance to testify, according to CCP Article 283, apparently so that he may not hear any prior testimony.

Since CCP Article 46 grants the defendant the right to "participate in the judicial examination in the court of first instance" -- the trial -- and CCP Article 283 grants the accused the right to question witnesses, it is apparent that Soviet law in this regard, at least, was violated in the May, 1978 trials of Zviad Gamsakurdia and Merab Kostava. According to Agence France Presse reports of May 19, 1978, both defendants were denied the right to call any witnesses.

Nearly a year before, according to an unofficial record of the June, 1977 trial of Rudenko and Tykhy, the latter specifically requested that a person by the name of Andros be called as a witness, however, this request was denied. Again, in May 1978, Irina Orlov told Western reporters and the Moscow Group that the list of witnesses presented by her husband at his trial was rejected on the first day of the trial. No defense witnesses were permitted to testify at the Orlov trial.

Examination of Evidence

CCP Article 69 defines evidence in a criminal case as "any factual data on the basis of which...the agencies of inquiry, investigator, and court establish the presence or absence of a socially dangerous act, the guilt of the person who has committed such act, and any other circumstances that are of significance for the correct resolution of the case." Another Article, 291 of the RSFSR Code of Criminal Procedure, requires that such evidence used during the trial be "presented to the person brought to trial and to defense counsel." The rights of the defendant in this regard are further bolstered by the provisions in CCP Article 46 that allow him "to become acquainted with all the materials of the case", "to present evidence", and "to participate" in the trial.

Despite those guarantees, at the recent trial of Yuri Orlov in Moscow on charges of anti-Soviet agitation and propaganda, the defense was not allowed to view at least one piece of evidence -- a film -- submitted to the court. In Ukraine, during the trial of Rudenko and Tykhy, according to a document published by the Committee for the Defense of Soviet Political Prisoners, The Rudenko-Tykhy Trial Record, evidence was submitted that had not been part of the materials of the case at the completion of the preliminary investigation and, apparently, at least one defendant Tykhy had not had the opportunity to view this evidence prior to the trial.

Public Character

According to Article 157 of the Soviet Constitution:

> Proceedings in all courts shall be open to the public. Hearings in camera are only allowed in cases provided for by law, with observance of all rules of judicial procedure.

The public nature of hearings and trials is further guaranteed in Article 18 of the RSFSR Code of Criminal Procedure: "The examination of cases in all courts shall be open, except in instances when this contradicts the interests of protecting a state secret." In addition, CCP Article 18 provides that judicial proceedings may be closed in juvenile cases or those of a sexual or private nature.

Valery Chalidze, a Soviet legal specialist in U.S. exile, notes in The Soviet Court and Human Rights that "in common criminal cases the public character of proceedings is more or less observed." Yet in the trials of the Helsinki monitors this safeguard has been almost uniformly violated. At the Moscow trial of Yuri Orlov last month, only Orlov's wife and sons were allowed to attend. Despite the fact that scores of friends and supporters showed up, they were all turned away under the pretext that there was no room in the courtroom, and several were arrested and sentenced for "hooliganism" outside it. A U.S. diplomat sent by the Embassy in Moscow to observe the trial was kept out of the court for the same reason although he had arrived at the courthouse hours before anyone else.

In Ukraine, during the trial of Mykola Rudenko and Oleksiy Tykhy last summer, not only were friends and relatives kept out of the courtroom, but they did not even learn of the trial until it was in its fifth day in a commercial building in a small town far from the defendants' homes. Tykhy, according to the unofficial trial record mentioned above, commented on the "openness" of his trial: "The first trial (in 1957 on charges of counterrevolutionary acts - Ed.) was closed. This one is open. However, I believe that this is not a chance 'public'. Just as it is no mere chance that my relatives appeared in the courtroom only on the sixth day of the trial." The more recent trial of Ukrainian Group Members Mykola Matusevych and Myroslav Marynovych in March 1978 followed the same pattern; neither family nor friends were admitted to the courtroom.

Soviet jurists tend to excuse these gross violations of criminal procedure by focusing on the "educational" purpose of criminal proceedings as described in Article 2 of the Code of Criminal Procedure: "Criminal proceedings must facilitate the strengthening of socialist legality, the prevention and eradication of crimes and the education of citizens in the spirit of undeviating execution of Soviet laws and respect for rules of socialist communal life." (emphasis added)

According to Chalidze:

"The thesis about the educational role of the law and the court is an essential element of Soviet legal doctrine. Great importance is attached to it, and in the attitude of Soviet court officials towards safeguarding the principle of public

court procedure one can notice much greater concern for assuring the educational role of a court session than for protecting the defendant's right to open trial. A Soviet jurist writes:

> 'To achieve the required educational impact of court proceedings during a homicide trial the composition of the court audience is important. Of course, it is impossible to prevent the presence in the court of close relatives of the defendant and the victim or limit their number in some way. If the court visitors consist predominantly of these persons, then there is always the danger, first, that they will spread incorrect information about the trial, with the result that other citizens will be misinformed. Secondly, the educational impact of the court procedure is considerably diminished. Therefore, if need be, the judge must take measures to assure the presence of public representatives at the court and, consequently, the correct interpretation of the trial among other citizens.'"

Those "representatives of the public" in attendance at the trials of the Helsinki watchers were not casual observers there by chance. In the Rudenko-Tykhy trial which took place in the isolated Ukrainian town of Druzhkivka, many of those admitted to the courtroom were staying at the same hotel as the judges and security personnel. According to the Committee for the Defense of Soviet Political Prisoners' publication, "This indicates that they (the public) had been brought in from elsewhere especially for the trial..."

In Crlov's case, press reports indicate that the spectators admitted to the courtroom were permitted to taunt and insult Orlov -- shouting "Traitor!" and "Spy!" -- in violation of the spirit, at least, if not the letter of CCP Articles 26 and 63 which call for the observance of order during a trial.

Defense Counsel

CCP Article 19 guarantees the right of the accused to defense. The law provides, in CCP Article 47, for the participation of a defense counsel in the court proceedings. Yet, in the cases of several Helsinki watchers, as discussed in an earlier chapter, the defense counsels assigned were not of their choosing. Although CCP Article 50 provides for the accused to dismiss his counsel at "any moment in the conduct of a case", in the cases of at least two Group members, Rudenko and Tykhy, this right was denied. Tykhy, according to an unofficial court record, remarks: "Now about my right to defense. I was refused the right to have the lawyer assigned to me by the President of the International Association of Democratic Lawyers (a foreign attorney who volunteered to defend Tykhy - Ed.) to defend me. I was refused the right to have my son defend me. Instead I was appointed a 'defense counsel' against whom I am forced to defend myself. Both this defense counsel and the court pay no heed to my dismissal of him, which constitutes a violation of Articles 45 and 46 of the Criminal Procedure Code of the Ukrainian SSR." (Articles 45 and 46 of the Ukrainian CCP correspond to Articles 47, 48 and 50 of the RSFSR CCP.)

Language of the Trial

That the court proceedings will be conducted in the language of the "majority of the local population" is guaranteed by RSFSR CCP Article 17 and by Ukrainian CCP Article 19. This provision of law was violated in at least one trial -- again that of Rudenko and Tykhy -- as reported in The Rudenko-Tykhy Trial Record. According to the defendant, Tykhy,: "All my complaints were answered in Russian...(and) the record of the proceedings is being kept in Russian."

Last Word

After the evidence in the case has been examined and once all the witnesses have testified, according to CCP Articles 294 and 295, oral arguments by the participants in the trial are heard. At this point, the prosecutor and the defense counsel put forward their final arguments. Each speaker is allowed the opportunity to rebut what has been said by others in final arguments.

The defendant, in accordance with CCP Articles 46 and 297, is also guaranteed the right to have what is known as the "last word". By law, this speech should be the last one heard by the court before it retires to consider the case. The court may not limit the duration of this speech nor may questions be put during it. The court has the right to stop the speech only if the defendant "touches on circumstances clearly having no relation to the case." Thus the "last word" of the accused may not be interrupted by the court or anyone else. Immediately after hearing the last word, the court retires to a conference room in order to arrive at a judgment in accordance with CCP Article 299.

During Orlov's trial, however, according to his wife, the judge interrupted the defendant during his final statement, in violation of CCP Article 297, and allowed spectators in the courtroom to hinder Orlov's speech by calling out and shouting during it.

In the case of Ukrainian Group member Oleksiy Tykhy, the presiding judge frequently interrupted Tykhy while he was making his final statement, in violation of Article 319 of the Ukrainian CCP (the same as 297 RSFSR CCP) and even went so far as to adjourn the proceedings in the middle of a sentence.

APPEAL

The Soviet Union has a dual system of appeal -- cassational and supervisory. The former covers all cases in which the sentence has not yet been executed and the latter, when it has.

A cassational appeal must be filed within seven days of the day the judgement is announced, in accordance with CCP Article 328. There is a limit of one such appeal -- known as a cassational protest if brought by the procurator -- to each party. Those eligible to file such an appeal are the defendant, defense counsel, the plaintiff and the procurator. However, in cases originally tried in the republican Supreme Court or in USSR Supreme Courts, the judgements are final and may not be appealed, in accordance with CCP Article 325.

Appeals "by way of supervision" may be brought for cases tried in any court. However, a supervisory appeal may only be brought by the Procuracy or by the officials of high courts, according to Article 371. Thus, beyond the first level of regional cassational appeal, no defendant may appeal to a higher court unless the procurator at that court level agrees that the case should be reviewed.

A cassational appeal is, in effect, a second trial of the case. The appellate court "verifies the legality and the well-founded nature of the judgement" according to CCP Article 332, by examining the materials in the case. In such a proceeding, new written testimony may be presented, in accordance with CCP Article 337. The procurator and defense counsel under CCP Article 335 are also accorded the right to present arguments, and, the defendant and witnesses may be permitted to testify. A court must consider a case on cassational appeal within ten days from the receipt of the case, according to CCP Article 333.

In a supervisory appeal, CCP Article 337 requires that the case must be considered within fifteen days of its receipt. The court considers questions both of fact and of law, but it confines itself to the record of the case. Under the same article, the defense counsel or the defendant may only appear if summoned by the court, although the procurator participates in the proceeding.

There is a third, little-used form of appeal: what is known as reopening a case on the basis of newly discovered circumstances. The grounds for reopening a case in this way are enumerated in CCP Article 384: false evidence on which the sentence was based; criminal abuse of their functions by the judges who delivered the judgement, and any other freshly ascertained circumstances which prove the innocence of the accused or his participation in a crime either more or less serious than that for which he was sentenced.

No convicted Helsinki monitor has had his conviction overturned or sentence changed on appeal.

V.

SENTENCING

THE COURT'S INDEPENDENCE

Article 155 of the Soviet Constitution provides that : "Judges and peoples' assessors are independent and subject only to the law." This guiding principle is likewise reflected in the Basic Law on Court Organization and the Criminal Codes of the USSR and Union Republics. Article 16 of the RSFSR Criminal Code states for example, that "In administering justice in criminal cases, judges and people's assessors shall be independent and subordinate only to law. Judges and people's assessors shall decide criminal cases on the basis of law in conformity with socialist legal consciousness under conditions excluding outside pressure upon them."

According to experts on Soviet law, however, judges' actual independence from state and party organs is limited by the procedural and organizational character of the judicial system. This lack of real independence is imposed at several levels beginning with judges' and assessors' elections to office.

As with candidates for other public offices, Soviet judges are nominated for election by party organs and can be recalled by their 'electorate' before the expiration of their five-year terms. Those who wish to remain in their posts beyond one term must be renominated by the party, which considers candidates' previous job performance in awarding nominations.

In addition, all judges in the Soviet Union are members of the Communist Party and subject to its directives, including the statute which binds members to "implement firmly and undeviatingly party decisions." Failure to do so carries the threat of expulsion and a corresponding loss of professional status.

From another angle, the USSR Ministry of Justice, and the corresponding republic ministries, are charged with the exercise of organizational control over the courts, directing the work of cadres of court organs, inspecting the organization of their work, etc. According to Dina Kaminskaya, this supervisory function includes the responsibility to conduct six-month reviews of the sentences handed down by individual judges. If sentences deviate from legal or party norms, the judge in question may be subject to recall.

While the court's two lay members, the people's assessors, are not formally subjected to the same strictures as their professional colleague, Valery Chalidze, in his 1975 ABA pamphlet, The Soviet Court and Human Rights, reports that practice has shown that the peoples' assessors usually yield to the judge's greater authority. The method of electing public assessors may also play a certain role in guaranteeing their fidelity to this higher authority, inasmuch as Article 19 of the Basic Law on Court Organization provides that they be selected, not by secret ballot, but in open meetings of "workers, employees and peasants held at their place of work or residence, and by servicemen in their army units." People's assessors are likewise subject to recall before the expiration of their two year term.

THE DECREE OF JUDGEMENT

Determining the Verdict and Sentence

After hearing the evidence and summations in a trial, the judge and assessors meet in camera to reach their judgment. CCP Article 301 requires that verdicts be "legal and well-founded" and based "only on evidence which has been considered at the trial." Thus, even before the court begins its deliberations, Helsinki monitors, who have been denied the right to call witnesses in their defense, as was Yuri Orlov, for example, are placed at a disadvantage.

Under CCP Article 303, the first task facing court members is the determination, of "whether the act which the person brought to trial is accused of committing has taken place" and "whether such act contains the elements of a crime and exactly which criminal law provides for it." The resolution of these questions has assumed particular importance in the trials of Helsinki monitors charged under Article 70, which presumes a defendant's intent to subvert the Soviet regime by disseminating materials of an anti-Soviet nature. The court must, therefore, decide not only whether the materials in question were indeed "slanderous fabrications which defame the Soviet state and social system" but also whether the purpose of their dissemination was the subversion of the Soviet state. If such intent is not present, a defendant may be punishable instead under Article 190-1 of the RSFSR Criminal Code. For example, Yuri Orlov, while not denying that he had assisted in the compilation of the Group Documents used as evidence against him, maintained that he had done so for humanitarian purposes, not to subvert the state.

Only upon determining that a criminal act has been committed and the law under which it is punishable does the court judge the guilt or innocence of the accused. If the defendant is found guilty, the court members then decide what sentence to impose, taking into consideration whether the guilty party is a recidivist (second-time offender), or whether there are any mitigating or aggravating circumstances surrounding the case. For individuals sentenced to deprivation of freedom, the court decides the term of the sentence and the camp or prison regimen to be imposed.

Under Article 21 of the RSFSR Criminal Code, there are 11 types of punishment which may be applied to convicted persons. These include deprivation of freedom (incarceration), exile to a particular place, banishment from one, or social censure. The type of punishment to be imposed for a specific crime is established by the Criminal Code provision covering that crime. Thus in passing sentence, the court is normally empowered to determine only the length of sentences, and whether any supplementary punishments provided in the code, such as exile or fines, should be added to the primary sentence.

Deprivation of liberty (incarceration in a corrective labor colony or prison) with an additional sentence of exile has been the most common form of punishment imposed on Helsinki monitors convicted on political (as opposed to purely criminal) charges. Terms of imprisonment range from one to 15 years. In addition, the supplementary punishment of exile, a 1962 innovation in Soviet criminal justice, serves to extend, for a period of two to five years, the maximum terms for all the "especially dangerous crimes against the state" (Articles 64-73), with which most Helsinki monitors have been or can be expected to be charged.

In setting a deprivation of freedom sentence, the court must also decide which camp or prison regimen (conditions of imprisonment) to impose. There are four grades of corrective labor camp regimen: standard, intensified, strict and special; and two prison regimens: standard and strict. Each regimen (from standard in camps to strict in prisons) provides progressively more severe conditions of confinement, with prisoners assigned to regimens on the basis of the degree of seriousness of their crime and their previous criminal records.

According to Article 24 of the RSFSR Criminal Code, terms in standard camp regimens are served by first-time male offenders who are sentenced for petty crimes or for serious crimes that carry a sentence of three years or less. Several of the Helsinki monitors tried on criminal charges, including Pyotr Vins (one year for parasitism), and Shagen Arutyunyan (three years for resisting arrest) have been sentenced to the standard camp regimen.

The second class of camp regimen, intensified, holds male first-time offenders convicted of serious crimes that carry a penalty of more than three years imprisonment.

A note to the 1969 version of Article 24 of the RSFSR Criminal Code, identified serious crimes as including murder, rape, robbery, assault and battery, and others. (Article 24, as amended in 1977, now provides no guidelines for determining what constitutes a serious crime.) No Helsinki monitors are eligible for internment under this regimen.

Most convicted Public Group members have been assigned to strict regimen labor colonies, which provide harsher conditions than standard or intensified camps, and which are reserved for political offenders convicted of especially dangerous crimes against the state (Articles 64-73) or prisoners who have served previous sentences under other regimens. Thus, by its imposition of harsher regimens Soviet law provides that political prisoners receive more severe penalties than individuals convicted of violent crimes such as murder and rape. Of 12 Helsinki monitors already convicted, three -- Yuri Orlov, Mykola Rudenko, and Feliks Serebrov (although the latter was convicted on criminal charges) -- have been sentenced to terms in strict regimen camps. In addition, four other Group members, Myroslav Marynovych, Mykola Matusevych, Zviad Gamsakhurdia and Merab Kostava are thought to have been assigned to such regimens.

Special regimen camps are reserved for individuals who have been declared 'especially dangerous recidivists' or, according to Article 65 of the RSFSR Code of Corrective Labor, have a death sentence commuted. Oleksiy Tykhy of the Ukrainian monitoring group is currently serving his 10 year sentence under the special regimen, a decision that was probably influenced more by his status as a second-time political offender, than by his conviction under a second charge (Article 222 UK SSR CC, illegal possession of firearms). Aleksandr Ginzburg, as another second-time political offender may also be sentenced to a special regimen camp, as may Levko Lukyanenko (Ukraine) and Viktoras Petkus (Lithuania).

Recidivists

As is evident, Soviet criminal justice metes out particularly harsh punishment to individuals the court deems to be particularly dangerous recidivists. Article 24-1 of the RSFSR Criminal Code provides that especially dangerous recidivists include persons previously convicted of "especially dangerous crimes against the state" (Articles 64-73), robbery, some forms of intentional homicide, making or passing counterfeit money, stealing of state or social property on a particularly large scale, aggravated rape, and other charges. In lieu of confining recidivists to the harsh conditions of a special regimen camp, the court may decide to stiffen sentences by assignment to the even harsher conditions of prison regimens. As a rule, only recidivists and prisoners transferred from labor camps as a disciplinary measure serve sentences in prisons, where conditions are particularly severe (see below). Recidivists are furthermore not eligible for conditional early release. For violations of camp or prison regulations, moreover, they face harsher disciplinary measures than first offenders.

In determining the type of regimen under which a sentence to deprivation of freedom is to be served, the court is accorded some discretionary power by Article 24 of the RSFSR Criminal Code which states in part:

> "Depending on the character and degree of social danger of the crime committed, the personality of the guilty person, and any other circumstances of the case, the court may, with an indication of reasons for the decision taken, assign deprivation of freedom to convicts not deemed especially dangerous recidivists in correctional labor colonies of any type other than colonies of special regimen..."

Although the thrust of this article is directed toward granting courts the right to assign lesser conditions of punishment than those proscribed by law, courts have been known to utilize their discretionary powers to sentence political offenders to harsher regimen camps than otherwise required. This has been particularly true in cases where persons sentenced under Article 190-1, "Circulation of fabrications known to be false which defame the Soviet state and social system," and who would normally be assigned to standard regimen camps have been sentenced to the strict regimen.

Other Forms of Punishment

Although most Helsinki monitors have been sentenced to deprivation of freedom with an additional term in exile, the court may impose exile alone as the primary punishment in some cases. A member of the Moscow Public Group, Malva Landa, received a term of two years in exile for arson, setting fire to her own apartment. That she was sentenced to exile, under an article which permits a term of imprisonment, is indicative of the traditionally more lenient attitude Soviet courts take toward female offenders.

The court may also decide, under Article 58 of the RSFSR Criminal Code to confine "persons who have committed socially dangerous acts while not in their right minds or who have committed such acts while in their right minds, but who, before judgment is rendered...have contracted a mental illness depriving them of the possibility of realizing the significance of their actions or of controlling them..." to special or general psychiatric hospitals. Article 59 reserves special psychiatric incarceration for persons, "who by reason of (their) mental condition and the character of the socially dangerous act (they have) committed represent a special danger for society."

These articles of the Soviet criminal code have often been used by courts to impose psychiatric confinement on persons who, by Western standards, are sane. In such cases, the mental illness have consisted of a person's espousal of opinions considered to be anti-Soviet, opinions which apparently no sane Soviet citizen could hold. Although this form of "punishment" has not yet been imposed by courts in cases against Helsinki monitors, two members of the Georgian group reportedly spent part of their preliminary confinement in Moscow's Serbsky Institute, a special psychiatric hospital known for its treatment of dissidents. Another Helsinki monitor, General Pyotr Grigorenko was committed to a special psychiatric hospital in the late sixties as a result of his activities in defense of Crimean Tatars and others. Lukyanenko (Ukraine) is reportedly threatened with psychiatric incarceration.

The court is also charged with determining the length of sentences, taking into consideration 'aggravating' or 'mitigating' circumstances surrounding the case. For individuals charged with political crimes, one of the factors apparently influencing the length of sentences is the defendent's attitude during trial. Helsinki monitors who have maintained their innocence throughout the court proceedings against them (as have Orlov, Tykhy, Rudenko, Matusevych and Marynovych) have been sentenced to at least seven years in labor camps and five years in exile. Those who have acknowledged guilt, as Gamsakhurdia and Kostava reportedly did in Georgia, have accordingly been sentenced to lighter terms. The Georgian case demonstrates another consideration which may influence the court. Although Gamsakhurdia was the more prominent and presumably more serious offender, he allegedly expressed regret for his actions, which Kostava did not. The two men received identical sentences. Mrs. Gamsakhurdia, present at her husband's trial, denies he "repented" at all.

If a defendent is charged with more than one crime, Article 303 of the RSFSR CCP instructs the court to consider each charge separately. In the case of Okelsiy Tykhy, who was accused of illegally possessing a firearm, in addition to anti-Soviet agitation, the court imposed a 10-year sentence to confinement in a labor camp.

Legal Action Taken Against Helsinki Monitors Outside the Courts

In addition to instituting court proceedings with corresponding sentences of imprisonment or exile against Helsinki monitors, the USSR Supreme Soviet has acted to strip two Group members, Tomas Venclova and General Pyotr Grigorenko, of their citizenship. This action has proven a convenient mechanism for ridding the country of troublesome Group members who have managed to obtain visas to travel abroad, but it is an action that is currently not subject to court proceedings.

Compared to the 1936 version, the new Soviet Constitution concentrates more attention on the issue of citizenship. Article 59 obliges citizens "to observe the Constitution and laws, comply with the standards of socialist conduct and uphold the honor and dignity of Soviet citizenship." In Article 62, citizens of the USSR are "obliged to safeguard the interests of the Soviet state and to enhance its power and prestige." While Article 33 states that "the grounds and procedure for acquiring or forfeiting Soviet citizenship are defined by the Law on Citizenship of the USSR", Article 121 charges the Presidium of the Supreme Soviet of the USSR with the sole authority to "grant citizenship of the USSR and rule on matters of the renunciation or deprivation of citizenship..."

Originally, the 1938 Law on Citizenship allowed for forfeiture of Soviet citizenship either by a sentence of a court or by an executive decree of the Presidium. However, the Fundamental Principles of the Criminal Legislation of the USSR, promulgated in 1959 and still in effect, no longer even mention the judicial sanction. That part of the Citizenship Law was formally repealed by a decree in 1961. The loss of citizenship by an executive decree of the Supreme Soviet remains very much a part of the Soviet legal scene.

Although Article 33 of the Constitution claims that the "grounds...for forfeiting...citizenship" are found in the Law on Citizenship, nowhere in the legislation are the offenses specified which could justify such punishment. Indeed, the decrees revoking the two Helsinki monitors' citizenship have not detailed the acts which have made such recourse necessary. They have rather presented vague charges, as in the case of General Grigorenko, who was accused of "systematically committing acts which are incompatible with Soviet citizenship and by his conduct causes harm to the prestige of the USSR."

Announcing the Verdict and Sentence

Having reached decisions on the defendant's guilt or innocence and sentence, the members of the court draft the decree of judgment to be read in the courtroom. Article 314 of the RSFSR CCP requires that every decree of judgment include a description of the case and the basis for conviction. It must also under Article 314 of the RSFSR CCP, indicate the verdict, the sentence, including the assigned regimen of camp or prison, whether the guilty party has been declared an especially dangerous recidivist, and whether the sentence may be suspended. In addition, the decree must indicate how much time is to be deducted from the length of the sentence to compensate for pre-trial confinement. Article 47 of the RSFSR CCP provides that one day of the term of imprisonment shall be deducted for each day of pre-trial detention; in the case of exile each day of preliminary detention cuts the term by three days. The decree of judgment must also indicate the procedure and time limit for appealing the court's decision.

In the courtroom, the presiding judge proclaims the judgment and the defendant is either released or remanded for transfer to his place of punishment. The convicted or acquitted person must be provided with a copy of the judgment decree no later than three days after judgment is proclaimed.

Execution of the Judgment

According to Article 356 of the RSFSR CCP, a judgment takes legal effect upon the expiration of the appeal period or after consideration of the case by a higher court. The court which decreed judgment is responsible for sending an order to execute the judgment to the agency responsible for its execution. In most cases, the Ministry of Internal Affairs (MVD), which administers Soviet prisons and labor camps, is the department involved.

Before the court issues its order for execution of the judgment, however, it must, under Article 360 of the RSFSR CCP, grant close relatives the right to meet with the convicted person. Under Soviet law, this meeting in most cases represents the first opportunity relatives will have had to meet with the prisoner since his arrest. Mrs. Irina Orlov has reported to Western newsmen, however, that she has not yet been allowed to meet with her recently sentenced husband, an action her lawyer has termed a violation of Article 360.

After the judgment enters into effect, the administration of the institution of preliminary confinement must inform the convicted person's family where he is being sent to serve his sentence. The prisoner is then transferred to the appropriate labor colony, prison or place of exile.

VI.

PUNISHMENT OF POLITICAL OFFENDERS

CORRECTIVE LABOR THEORY

In theory, Soviet corrective labor legislation has a two-fold purpose: to punish individuals for offenses they have committed, and to reform and reeducate offenders.

According to official writing on the subject (p. 8 of the RSFSR Commentary to the Corrective Labor Code), the penalty aspect of any sentence is considered secondary to and, along with labor and educational activity, a means of furthering reform — the primary goal of Soviet corrective labor legislation. This logic asserts that "subjecting a person to unpleasant conditions, deprivations and even suffering...his punishment forces him to mull over his fate and to avoid committing acts that lead to such punishment".

This principle is a not uncommon basis for much of the penal correctional legislation in the world. What distinguishes Soviet corrective labor legislation, however, is that its implied goal with regard to political prisoners, particularly those like the Helsinki monitors, is to force them to change their views on political and moral issues. In this respect, Soviet corrective labor legislation is contrary to international rights standards (set out in part in the Helsinki accords), which guarantee freedom of conscience and belief. Article 19 of the Civil and Political Rights Covenant, for instance, guarantees "everyone...the right to hold opinions without interference".

Another important tenet of the corrective labor legislation of the USSR is stated in Article 1 of the Corrective Labor Code of the RSFSR: "The execution of a sentence shall not aim at inflicting physical suffering or degrading human dignity". That this principle is not stated as an absolute, i.e., "shall not inflict...", is explained by Soviet commentators as a recognition that the mere deprivation of an individual's freedom in itself causes a certain degree of moral and physical suffering. On the other hand, the actual application of Soviet corrective labor legislation, particularly with regard to the amount of food prisoners receive, seems in some respects to cause a degree of suffering far out of proportion to the unavoidable consequences of mere incarceration.

CORRECTIVE LABOR LEGISLATION

Penal conditions in the Soviet Union are established by four sets of legislation and instructions. The first of these, the Fundamentals of Corrective Labor Legislation in the USSR and Union Republics, was issued by a decree of the Supreme Soviet of the USSR in November, 1969, to replace the mass of previous legislation and subsequent, superceding regulations issued by the MVD, during and after the Stalin era. The Fundamentals which establish the principles of the Soviet penal system serve as the basis for the second major body of corrective labor legislation, the

individual republic codes which delineate the specific provisions of corrective labor legislation in each republic. While the codes may differ slightly in formulation from republic to republic, they are identical in substance and the articles cited below are taken, for the sake of simplicity from the RSFSR Code. The third group of regulations governing penal conditions are instructions issued by the Council of Ministers of the USSR and the republics but are, for the most part, treated as classified documents and not available even for lawyers advising clients. The final group of regulations include those issued by the Ministry of Internal Affairs (MVD), which is largely responsible for the daily administration of the penal system. Again many of these instructions are subject to restricted distribution, with even the prisoners whose lives they govern barred from seeing them. This practice in effect makes prisoners dependent on camp and jail administrators for any knowledge of their rights and obligations under Soviet law.

TYPES OF PUNISHMENT

To date, the Soviet Helsinki monitors have been sentenced to two forms of punishment, exile and incarceration. Exile, under Soviet law, can be applied as a primary (as in the case of Malva Landa) or supplementary (Orlov, Rudenko, Tykhy, Marynovych, Matusevych, Gamsakhurdia, and Kostava) punishment. Sentenced to exile, an individual is required to take up residence in a location (usually Siberia) specified by the MVD, usually in consultation with the KGB. The 'prisoner' must register with the local MVD office, -- the police station in most areas -- and take up residence under that office's surveillance, including formal weekly registration with the police and secret observation by neighbors and informers. In political cases, a sentence of exile is normally imposed in addition to a term of confinement and is served upon release from a labor colony. One Moscow Helsinki monitor, Malva Landa, however, did receive a two-year exile sentence on criminal arson charges but was freed under an amnesty after eight months.

Regimes of Confinement

As mentioned above, persons sentenced to deprivation of freedom serve their terms under one of four corrective labor colony regimes or in standard or strict prison regimens. The regimens differ in the degree of punishment inflicted upon the prisoner as well as in the rights he is accorded. The material provisions of prisoners also become progressively harsher from regimen to regimen.

Standard regimen camps, in which Helsinki monitors Pyotr Vins, Grigory Goldshtein and Shagen Arutyunyan are currently serving their sentences, provide prisoners with the most lenient conditions. Inmates live in barracks-type dwellings and receive more and better quality food than under other regimens. In addition, they enjoy a broader variety of rights, ranging from permission to receive three short visits (up to four hours) and two long visits (up to three days) per year, to the right to send an unlimited number of letters. Prisoners under this regimen are also entitled to spend up to seven rubles from their personal accounts a month on additional foodstuffs and personal items. (These accounts consist of not less than ten percent of the funds earned at hard labor during imprisonment, with the bulk of a prisoner's wage assessed to pay his maintenance.) After he has served half his sentence, the inmate also is accorded the right to receive three five-kilo

packages (usually containing foodstuffs) per year. Certain types of high calorie or particuarly nutritional foods are not permitted prisoners. For example, packages may include margarine, but not butter. Moreover, prisoners on good behavior and who have demonstrated an "honest attitude toward work", may be granted further rights upon completing half their terms. Practice has shown, however, that political prisoners, with the few exceptions of those who have collaborated with camp authorities, seldom benefit from such provisions.

In intensified regimen camps living conditions are much the same as under the standard regimen, but with additional restrictions on prisoners' rights. In these camps, prisoners may receive two short and two long visits each year, may send no more than three letters a month and are permitted to spend six rubles a month in the camp store. Upon serving half their sentence inmates are entitled to receive two five-kilo packages a year.

Offenders sentenced for "especially dangerous crimes against the state" (Articles 64-73) -- the category of offenses used or likely to be used against most Helsinki monitors -- must serve their terms in strict regimen camps. There, prisoners not only receive reduced food rations -- estimated by Amnesty International at 2,600 calories a day -- but are limited to five rubles a month for additional food purchases. The World Health Organization says a very active man needs a daily diet of 3,100 to 3,900 calories. Inmates are entitled to two short visits and one long visit each year and may mail only two letters a month. They may receive one five-kilo package a year after serving half their sentence.

The harshest camp regimen -- and the one to which the Ukrainian Helsinki monitor Oleksei Tykhy has been sentenced and to which Aleksandr Ginzburg could be sentenced -- is called special regimen. Prisoners are confined to cells and provided with especially poor nutrition, an estimated 2,100 calories a day. In addition, Article 37 of the RSFSR Corrective Labor Code singles out these prisoners for particularly harsh labor, such as dangerous copper or uranium mining. Prisoners assigned to such work have frequently complained that basic safety procedures are disregarded.

In addition to these basic material deprivations, prisoners have the right to receive only one short and one long visit each year and to send one letter a month. They may spend up to four rubles each month for supplementary food supplies and upon serving half their sentence are entitled to receive one large package a year.

Conditions for those held in prisons are characterized by the extreme curtailment of prisoner's rights. In prisons individuals were not, until recently, required to work at hard physical labor, but the low nutritional standards (2,100 calories or less a day) maintained in prisons effectively vitiated any benefits of this policy. Amnesty International reports, however, that since early 1975 prisoners have been required to engage in some physical work, which further aggravates the hardship of prison life. Inmates on a standard prison regimen are entitled to two short visits per year, are permitted to spend up to three rubles in the prison store, and may mail one letter a month. Article 70 of the RSFSR Criminal Law Code tacitly recognizes the harshness of the strict prison regimen in its stipulation that prisoners should spend no more than six consecutive months under such conditions. Strict regimen prisoners are permitted to spend up to two rubles a month on foodstuffs and personal items and to mail a letter every other month. They are furthermore deprived of the right to receive any visitors.

Prisoners' Material Provisions

For those Helsinki monitors sentenced either to corrective labor colonies or to prisons, hunger is likely to be a constant companion. Although Article 56 of the RSFSR Corrective Labor Code stipulates that "convicted persons shall receive food to sustain the normal functioning of the human body", Amnesty International has found that other Soviet sources recognize the validity of using hunger as one means of prisoner control. According to an official Soviet corrective labor textbook: "Proceeding from the punitive content of the punishment and the necessity of using it in order to obtain the goals of public deterrence and corrective education, Soviet corrective labor legislation to a certain extent utilizes the daily material maintenance of prisoners as a means of gaining the goals established in Article 20 of the Fundamentals of Criminal Legislation of the USSR and Union Republics." Article 20 defines the purposes of punishment as: "correcting and reeducating convicted persons in the spirit of an honorable attitude toward labor, of strict compliance with the laws, and of respect toward socialist communal life." The same Article again states, however, that "punishment shall not aim at inflicting physical suffering or degrading human dignity."

Thus a contradiction is apparent between the stated principles of Soviet criminal and corrective labor legislation and the application of this legislation in practice. Prisoners are not to be subjected to unusual suffering, but hunger is to be used as a means of forcing a change in their behavior patterns. For the Helsinki monitors, this will mean that hunger can be used to encourage them to recant their previous culpable activity, i.e., urging compliance with the Helsinki accord.

This leverage is applied in a number of ways. Not only are prisoners in varying regimens provided with varying amounts and quality of food (a practice not provided for by law, but widely reported by Soviet prisoners), but camp and prison administrators are broadly empowered to limit prisoners' diets further. Camp or prison inmates can be put on reduced diets for "systematic and malicious" underfulfillment of work norms, a measure whose application is left entirely to the discretion of the camp administration. As a result, prisoners are often caught in a "Catch-22" situation.

The low nutritional level of their diets renders them physically incapable of fulfilling high work quotas, which in turn makes them subject to further disciplinary reductions in their already inadequate rations. According to Konstantin Simis, a recently exiled Moscow jurist, this system causes particular hardships for political prisoners who are largely unprepared for the physical requirements of prison camp hard labor.

The administration may further restrict inmates' food intake by two means: deprivation of a prisoner's right to receive his next food package; or the deprivation of his right to purchase his monthly quota of additional foodstuffs at the camp store.

The camp administration's unrestricted ability to deprive prisoners of their food rations highlights two problems of the Soviet penal system which prisoners characterize as the most severe. These are the contradiction between the content of the published corrective labor legislation and the content of secret internal regulations governing daily camp and prison life; and the wide discretionary powers enjoyed by administrators in implementing these regulations.

According to Aleksei Murzhenko, an inmate of the Mordovian labor camp to which Mykola Rudenko and Oleksiy Tykhy have been confined, "There is an enormous gap between the content of legal norms and their application in practice. This gap is not merely a function of the administration's tyranny, ignorance or disregard for the law, but is also a product of the directives issued by organs responsible for implementing the law. These often contradict not only the spirit but the letter of the law...How does one resolve the contradiction between the self-proclaimed humanitarian content of corrective labor legislation and the inhumanity of individual Articles and directives? The administration doesn't even seek a resolution. It only metes out punishment. It is merciless and unscrupulous." The administration's harassment of political prisoners is reported to be particularly severe. They are the ones most frequently singled our for deprivation of visitng and purchasing rights, confiscation of mail and packages, reduction of rations and repeated, often illegal, confinement to special punishment cells. Only those who collaborate with camp or prison authorities, and there have been few, are likely to escape such measures.

In addition, attempts by prisoners to utilize their legal right of appeal to higher authorities are likely to result in increased harassment by the administration. Although appeals of this nature have sometimes been successful in effecting general improvements in camp conditions, few prisoners are willing to take the personal risk involved.

APPENDIX I

EXTRA-JUDICIAL REPRESSION OR HARASSMENT

INTRODUCTION

In a society in which power is concentrated in one ruling class, in this case the Communist Party of the Soviet Union, a wide range of methods of extra-legal and extra-judicial reprisals is available to the state for use against dissenters. In the USSR such reprisals range from the bugging of telephones and anonymous threats to slanderous articles in the press and "hooligan" attacks on dark streets. In Soviet society where the state is the only employer, pressures against an "unruly" citizen extend also into the economic sphere: people can be demoted, fired, not allowed to work in their chosen professions, or even black-listed from any kind of employment.

A central role in the execution and coordination of such campaigns of extra-legal and extra-judicial methods of reprisal is played by the Committee for State Security, better known as the KGB. Although all government organizations are in one way or another subordinate to the Party, in practice that is not true of the KGB. One might say that the KGB is more equal than any other institution in the Soviet apparatus with the possible exception of the Central Committee of the Party. Since 1918, there has been an implicit policy that the KGB can give orders to any agency or institution, to the press or to an academic institution and such orders will be followed without question. Even the Procuracy follows KGB instructions.

However, in the Soviet system only the courts and the Procuracy are given the power to administer any methods of reprisal and investigation of people who allegedly break Soviet laws. The KGB is not given such power, though it is given legal authority to investigate what are considered "especially dangerous crimes against the state".

The hand of the KGB in campaigns against a dissident can be distinguished in several ways. Often they take the form of a long and systematic orchestration of various methods of repression to frighten the dissident, to intimidate his family, friends, and colleagues. Thus actions can be and often are directed not only against the political activist, but also against his social and emotional milieu.

At other times, the KGB likes to wrap its actions in a cloak of legality. For example, when KGB agents threaten an activist with trial for anti-Soviet activity, they refer to an executive order of December, 1972 which no outsider has ever seen, defining such acts as the area of KGB jurisdiction. In any case, as former Moscow jurist Konstantin Simis noted, this directive is completely illegal; under the Soviet legal system, only a court can decide what is and is not "anti-Soviet activity."

INTERFERENCE WITH POSTAL AND TELEPHONE COMMUNICATION

Probably due to the expanding contacts of Soviet citizens with the outside world, Soviet authorities issued a decree in 1972 stating that "The use of the telephone for purposes contrary to state interests and to public order is forbidden." This decree in effect legalized the already widespread system of tapping telephones of anyone in dissident circles. There are many signs of a bugged phone: it is frequently out of order, international calls are either disconnected or made inaudible by buzzing or other types of jamming. Mrs. Elena Bonner and her husband Dr. Andrei Sakharov often have such troubles with their telephone. Another frequent blocking tactic comes from Moscow telephone operators claiming that a party is not answering even when the caller abroad may briefly hear the voice of the person he is trying to reach speak in puzzlement at the other end of the line.

By tapping a telephone, moreover, the KGB can not only monitor telephone conversations, but also install devices for a 24-hour listening post on any given apartment with a telephone. Numerous anecdotes among Moscow dissidents point to such wide-spread daily monitoring.

Telephones used to communicate with the West or just with other dissenters are also frequently disconnected in reprisal. This has happened to Public Group members Yuri Orlov, Vladimir Slepak, Mrs. Ginzburg, Zviad Gamsakhurdia, Mykola Rudenko; to many Jewish refuseniks; and to unorthodox writers like Vladimir Voinovich.

Another effective way of monitoring and hindering communication between dissidents and of preventing information about them from reaching the outside world, is by the inspection and non-delivery of letters and telegrams. When, for example, Moscow Group member Vladimir Slepak, went on a hunger strike in 1975, he did not receive a single one of the 4,000 telegrams the Moscow Group reported were sent him by American well wishers. After Malva Landa returned from her internal exile in Siberia, in a public statement on March 20, 1978, she said that many letters and several telegrams she sent from exile never reached the addressees and that many important letters had never reached her either.

In an appeal dated November 1, 1977, Mrs. Mykola Rudenko (wife of the imprisoned leader of the Kiev Helsinki Group) states that she has not received a single letter from her husband and that her letters also do not reach her husband, although according to Soviet law a prisoner may receive correspondence after his trial (Rudenko was sentenced to 12 years of imprisonment in July, 1977). Indeed, one letter which Rudenko wrote to his wife was returned to him because it was written in Ukrainian.

These examples bear witness to the widespread violation of the right guaranteed under the Soviet Constitution to the inviolability of the mails. There is one significant restriction on the guarantee of this right, however. Under Article 174 of the Code of Criminal Procedure of the Russian SFSR, "the impounding of correspondence and its seizure at postal and telegraph offices may be carried out

only with the sanction of a procurator or in accordance with a ruling or decree of a court." The formulation of this article states that such confiscation of correspondence is justified under law only in connection with a specific case currently under investigation or in the courts.

SURVEILLANCE

While telephone tapping can constitute an effective method of secret surveillance on a home, an individual's movements about any Soviet city can also be watched by noting the number of his car or taxi and reporting it to the nearest traffic control point. Such traffic control points are located at certain intervals in every city and can transmit such information further. Travelers by bus, tram or subway can easily be followed by agents on foot, either demonstratively or unobtrusively.

Demonstrative surveillance aims at intimidation. It may continue days, weeks or even months. Not only does such surveillance harass the dissident, it also has the effect of isolating him from the people around him, friends he fears to visit in order not to involve them in his trouble. Lydia Voronina, in testimony before the CSCE Commission on June 3, 1977, spoke of the behavior of KGB agents assigned to Shcharansky: "Mr. Shcharansky was under constant surveillance by the Soviet authorities day and night....when /I/ met with Shcharansky, /we/ were followed by two cars, each with four men in it ...and four people across the street held /tape/ recorders."

Fifteen days after the formation of the Moscow Group, Professor Yuri Orlov in an appeal mentioned that his footsteps and those of several other Group members were dogged by the KGB. In a letter dated December 19, 1977 to Andropov, Head of the Soviet KGB, Aleksandr Podrabinek of the Psychiatric Commission, pleads that the KGB provide its agents with skis so that they will no longer have an excuse to order him to stop cross-country-skiing on a Sunday afternoon.

THREATS AND WARNINGS

Intimidation can and does take the form of anonymous threats, sometimes by phone and sometimes by letter. In the Ukrainian Public Group's report on Christmas Repressions (December 28, 1976), for instance, Mykola Rudenko told of receiving a note saying, "We will kill you". Two days after the formation of the Ukrainian Group, people threw rocks through the windows of Mykola Rudenko's apartment, hitting Oksana Meshko. (Appeal from Raisa Rudenko, November 1, 1977)

Different threats come in official form as well, in the formal warnings many Helsinki monitors received from KGB officers or from the Procuracy to stop their "criminal" activity or face arrest and prosecution. For example, three days after the formation (May 12, 1976) of the Moscow Group, Professor Yuri Orlov,

its leader was picked up on the street and taken to the Cheremushkin Borough Offices of the KGB in Moscow. There Orlov was told that in accord with the Decree of December 25, 1972, he might be subject to arrest unless he stopped his "criminal" activities. On the same day, the international service of TASS issued a statement in which the Group was described as an attempt by dissidents to cast doubt on the Soviet fulfillment of its international obligations and to disrupt detente. Similarly, one year after the formation of the Christian Committee to Defend the Rights of Believers in the USSR, Father Gleb Yakunin and Viktor Kapitanchuk were called in to the offices of the KGB on December 16, 1977 and told to stop their activities in the Committee or face criminal prosecution.

Such official warnings to stop "criminal" behavior are not limited to the dissidents, but also sometimes extend to their families. In November and December, 1976, Malva Landa's son was called in for discussions with KGB officers who advised him to persuade his mother to cease her activity in the Helsinki Group, "warning" him that otherwise he might be dismissed from his position as a teacher of physical education.

Aleksandr Podrabinek, a member of the Working Commission to Investigate the Abuse of Psychiatry for Political Purposes, faced a variant on this theme of official warnings. On December 1, 1977 he was shoved into a car and taken to the KGB Moscow headquarters on Dzherzhinsky Street where he was told he had 20 days in which to emigrate to Israel or face arrest. Furthermore, Podrabinek was told that he had to emigrate together with his father and his brother Kirill, that an invitation from relatives in Israel and money for an exit visa were not needed and that travel expenses would be provided. Towards the end of December, 1977, Kirill Podrabinek was arrested and in March, 1978, was sentenced to two-and-a-half years in labor camp for owning a harpoon and bullets which Kirill claims were planted by the KGB at his place of work during a search on October 10, 1977. Aleksandr Podrabinek was himself arrested on May 15, 1978 and has reportedly been charged under Article 190.

SLANDER

Another method of reprisal is the spreading of slanderous rumors. For example, in 1976 about 25 people in Moscow received packages from Vienna, containing writings against Dr. Sakharov's wife, Elena Bonner, a member of the Moscow Group.

Sometimes dissidents are falsely accused of criminal acts such as hooliganism, theft, currency speculation, arson, or rape. Such accusations have a dual purpose -- they can serve as the basis for bringing someone to trial, and they can ruin a person's reputation. Such accusations serve also to mask the fact that dissidents are being called to account for their political beliefs.

Amnesty International, in its External Report of January, 1978, detailed the workings of such a technique in the case of Moscow Group member Malva Landa:

"The criminal proceedings which eventually resulted in Malva Landa's being sentenced to exile related to a fire which gutted her flat in the town of Krasnogorsk near Moscow on 18 December, 1976. Malva Landa subsequently described the circumstances of the fire and her views on its causes in a lengthy detailed samizdat report and at her trial in May, 1977. In connection with the fire she was eventually sued for property damages and tried on criminal charges ("causing damage" to public and private property) which ostensibly bore no relation to her human rights activities. She herself maintained that persons unknown had caused the fire and that it was part of an elaborate plan to bring her to trial on account of her human rights activity. According to Malva Landa's account, she had left one room in her flat and gone briefly to the kitchen and the bathroom. She heard "a noise like an explosion" and as she ran back to the room she noticed that the door to the flat was "half-open", a circumstance which at the time she assumed had been caused by the force of the explosion. She found a blaze in the room. When she tried to extinguish it with water the flames only spread faster. She ran out for help, calling "FIRE". However in the staircase a young man, a stranger, took hold of her and held her until the fire brigade came, thus preventing her from continuing her efforts to fight the fire or obtain immediate assistance. At this stage, she said later, the fire could have been easily extinguished.

"When Malva Landa asked the young man who he was he refused to identify himself and said that it was "none of her business". He said that he had been passing by in the street and had gone into her apartment block after he saw the flames. Malva Landa in her subsequent account rejected this explanation, saying that there was no way at this stage that the fire could have been visible from the street. During the police investigation of the fire Malva Landa insisted that the police launch a search for this stranger. However he was never located. In spite of this and of Malva Landa's account of his role at the time of the fire, the prosecution said later at her trial that the stranger had acted "solely to save her life".

"Malva Landa also drew attention in her accounts to the fact that firefighting personnel arrived at the scene of the fire at least one half hour after they had been called. They gave the explanation that they had twice been given the wrong address for the fire, a fact Malva Landa disputed since her address is prominently located. When they did arrive, she said, they fought the fire slowly and ineffectively. The net result was damage much greater than would have been caused if she had been allowed from the outset to obtain assistance from her neighbours. The flat of one of her neighbours was also damaged."

PUBLIC VILIFICATION

Public vilification of well-known dissidents is another tactic which has been frequently employed by the Soviet authorities against members of the Public Groups. Another member of the Moscow Group, Aleksandr Ginzburg, was accused of currency speculation by Aleksandr Petrov-Agatov in an article in the Literary Gazette of February 2, 1977, one day before Ginzburg's arrest. In the same letter, Petrov-Agatov also accused Ginzburg of immorality and drunkeness and attacked the personal life of Yuri Orlov.

Radio Liberty discussed the public treatment of Georgian Group members in a May 15, 1978 report, as follows:

> "Two months after the Georgian monitoring group was formed on January 14, 1977, the authorities suddenly stepped up their campaign against Gamsakhurdia and Kostava as a prelude to their arrest. A series of virulent attacks was made on them in the republican media. Gamsakhurdia was the chief target. An editorial article in Zarya Vostoka on March 23, 1977, described him as an extortioner who traded on the memory of his father. It also accused him of direct links with Radio Liberty, a charge that Gamsakhurdia refuted in "A Statement to the Press" two days later...And, in an article in the literary paper Literaturali Sakartvelo of April 1, 1977, the Patriarch of the Georgian Orthodox Church and three other leading church dignitaries, in the church's first public reaction to Gamsakhurdia's charges, spoke indignantly of his meddling in the church's affairs and of the way he had discredited its good name on the international scene. According to them, every Georgian who knows Zviad Gamsakhurdia, knows that this pseudo-intelligent man is a hopeless hooligan, a well-trained blackmailer and provocateur."

Similarly, two months after the formation of the Armenian Group, a member of the Group, Robert Nazaryan, was attacked in the Sovetakan Aiastan of June 5, 1977. In this article, entitled "False Prophet," Nazaryan's religious convictions were mocked (he is a deacon of the Armenian Apostolic Church), followed by attacks on his personal life. He has since been arrested.

DETENTIONS

Many different types of restraints can be imposed on the freedom of movement of a Soviet citizen. Such restraints can range from house arrests to total isolation from the outside world -- as has been true of the pre-trial investigation periods of all still imprisoned Soviet Helsinki Watchers.

A frequent type of detention is house arrest. On December 21, 1976 an 18-hour long house search was conducted at the apartment of Vladimir Slepak, a member of the Moscow Public Group. A Moscow Group document of December 27, 1976, notes that six days after the search Slepak was still under house arrest, threatened by KGB agents waiting outside the door to his apartment, warning him that an attempt to leave would bring formal arrest.

Sometimes, a dissident is detained for several hours or several days in a local militia station. For example, when Aleksandr Podrabinek went from Moscow to the remote Ukrainian village of Druzhovka to try to attend the trial of Tykhy and Rudenko, the local militia incarcerated Podrabinek for three days. According to Article 122 of the Code of Criminal Procedure of the RSFSR, a suspect can be held without specific charges from the Procuracy for no more than 3 days. Thus, in December, 1977, Ambartsum Khlgatyan, member of the Armenian Public Group, was held for 3 days and then, apparently, released while two other Group members in Erevan were jailed to await trial. If authorities wish to detain someone for 15 days, they can level a charge of "petty hooliganism". The procedure for "deciding" such cases is simple, and can be decided by a judge in 15 minutes. All the judge has to do is to read the protocol drawn up by the police, hear the testimony of the policeman and the accused, and then declare his decision. On December 8, 1977, an action of this type was taken against Pyotr Vins when he was on his way to Moscow to collect documents for emigration. He was beaten at the Kiev railroad station by police and then put under administrative arrest for 15 days for "disobeying the police". The police themselves told Pyotr's mother that they had beaten her son because he refused to submit to a personal search. Vins had insisted that the police must present a warrant.

REPRISALS IN THE AREA OF EMPLOYMENT

Soviet authorities can exercise almost absolute control over the employment possibilities of Soviet citizens. In dealing with members of the Helsinki Watch, they have used this control on occasion for measures of extra-legal reprisal.

Feliks Serebrov, for example, joined the Working Commission to Investigate the Abuse of Psychiatry For Political Purposes in January 5, 1977. A month later the Dawn factory where he had worked for three years demoted him to a job with lower pay.

During a house search at the apartment of Professor Orlov in Moscow, the KGB confiscated documents assembled by Georgian activist Viktor Rtskhiladze with 8,000 signatures from the Meskhi, a Georgian ethnic minority, requesting resettlement to Georgia from the Central Asian regions to which they had been deported under Stalin. Two months after this confiscation -- and one month before the announcement of the formation of the Georgian Helsinki Group which he joined -- Viktor Rtshkiladze was fired as head of the Georgian Culture Ministry's Inspection Unit for the Preservation of Historical Monuments.

Georgian Group founder, Zviad Gamsakhurdia, also suffered for his activism even before the Group came into being. On April 1, 1977, he was expelled from the Georgian Union of Writers and the same day, at a meeting of the administration of Tbilisi State University, (where Gamsakhurdia used to teach) claims were made that he had "carried out the tasks of foreign intelligence services." Such public denunciations of dissidents at meetings of present or former colleagues often accompany expulsions from jobs and/or professional organizations.

Many former political prisoners, even after completing their entire terms, are barred from working in their professions. These restrictions apply to such Ukrainian Public Group members as the lawyers Levko Lukyanenko and Ivan Kandyba.

Very often, former political prisoners who are deemed to have been "especially dangerous state criminals", were charged under Article 70 of the RSFSR Criminal Code or its equivalent in the other republic codes. So far, eight members of the Helsinki Public Groups -- Rudenko, Tykhy, Marynovych, Matusevych (Ukraine) Orlov, (Moscow) Gamsakhurdia and Kostava (Georgia) -- have been sentenced under Article 70. The likelihood of these people again being permitted to work in their chosen professions -- even after serving 12 years of prison and exile -- is slim.

APPENDIX II

(Following is a CSCE Commission staff translation of the most recently received document of the Moscow Helsinki Group -- a first-hand account of the Orlov trial, written the day the trial ended.)

Document No. 49

The Trial of Professor Yuri Orlov

The trial of Yuri Orlov, founder of the Helsinki Group in the Soviet Union, well-known physicist, professor, Corresponding Member of the Armenian Academy of Sciences, took place in Moscow, May 15-18, 1978.

The fabricated nature of the trial is made obvious by the fact that the authorities needed to keep Orlov in preliminary detention for 15 months under the strictest isolation to prepare for the trial, and spent only three days in examining the 58 volumes of investigative materials collected over those fifteen months. The court needed only a few hours to discuss and formulate the sentence -- the maximum punishment under Article 70 of the Criminal Code -- 7 years imprisonment in strict regimen camps followed by 5 years of exile.

The nominally open trial took place behind closed doors. Aside from specially selected individuals, only Orlov's wife and two sons were allowed into the courtroom. Each time they entered, the three were subjected to degrading searches: Orlov's wife was stripped naked in the presence of three men. Orlov's son was struck on the head several times. Orlov's friends, among them Academician Sakharov, were barred from the courtroom.

A series of searches and the arrests of Aleksandr Podrabinek and Iosif Begun took place during the trial. N. Nokin, D. Leontiev and V. Korotich were sentenced to 15 days' detention.

During the trial, the procurator and the court painstakingly avoided any mention of the fact that the documents used to incriminate Yuri Orlov were Moscow Helsinki Group documents.

The court only established the fact that Orlov had participated in compiling documents and cut off all attempts by Orlov and his lawyer to analyze that contents of the documents -- the court had decided beforehand that all the documents were "slanderous."

Furthermore, in violation of the constitutional principles requiring the court's openness, thoroughness and direct acquaintance with all materials pertinent to the trial, the documents were not made public in the course of the trial, and Orlov and his lawyer not only were forbidden to discuss the content of any of the documents, but even to utter the full title of a document.

All of the petitions presented by Orlov and his lawyer in Orlov's defense -- the calling of witnesses, filing of documents, etc. -- were rejected by the court. Orlov's testimony was persistently and repeatedly cut off; his attorney's questions were overruled.

Aware of the fact the Ye. S. Shalman could not present the political aspects of the defense, Yuri Orlov expressed his gratitude to his lawyer for his legal and moral assistance at the end of the trial, excused his lawyer from participating in the final statement, and announced the he himself would give the summing up.

Nevertheless, the final defense statement was broken off by numerous interjections from the judge and hostile shouts from the courtroom filled, as mentioned above, with a specially selected audience.

The judge also interrupted the defendant's "last word." Orlov said, "You should be ashamed for interrupting me. This is, after all, the final statement the law permits me." Even after this, interruptions deprived him of the opportunity to speak unhindered.

Neither the statement of the defense nor Orlov's "last word" were ever finished.

After the court had consented to excuse Orlov's attorney, Ye. S. Shalman, from further participation in the trial, Shalman was forcibly removed from the courtroom and allowed to return only after making a call to the directorate of the Collegium of Attorneys.

At the end of each session of the trial, we recorded everything that had occurred in the courtroom from the words of Irina Orlov.

Therefore, we confirm that Orlov's trial was not an objective and fair examination of the case, but a reprisal for free thought and free speech.

The significance of the trial of Yuri Orlov -- and of earlier political trials and the upcoming trials of his friends, publicist A. Ginzburg and cyberneticist A. Shcharansky, in the Moscow Helsinki Group -- reaches far beyond Soviet borders.

These trials have a direct relationship not only to the human rights issue, but to the issue of relaxation of international tensions.

We appeal to the governments and heads of state of Helsinki signatories, to public organizations in these countries, and to private individuals, especially scientists and writers, to come forward in defense of the Helsinki movement, and thereby the Helsinki Final Act which confirms the indisoluble bond between the issues of human rights and international security.

May 18, 1978

Helsinki Group Members:

Ye. Bonner
S. Kalistratova
M. Landa
N. Meiman
V. Nekipelov
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V. Slepak

Member of the Georgian Helsinki Group:

I. Goldshtein

We fully support the Helsinki Group statement on the trial of Prof. Yuri Orlov:

A. Sakharov
I. Nudel
S. Polikanov
A. Lavut
A. Polikanova
I. Kovalev
Yu. Yarym-Agayev
L. Kopelev
V. Kornilov