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ARTICLE

PUBLIC DEMONSTRATIONS AND THE RULE OF LAW IN THE AGE OF *GLASNOST* AND *PERESTROIKA*

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INTRODUCTION

It goes without saying that in a democratic society persons who share common interests and goals, whether of political, cultural, ethnic, religious, social, fraternal, benevolent, or any other nature, have the right to form interest groups, engage in private and public assembly, and express themselves publicly on important issues of the day. One commonly recognized mode of expression is that of a public demonstration. It is equally clear that in a democratic society, the role of the government is to respect the right of group association and public expression, not to prohibit or frustrate it; there is little room for governmental interference with this basic right. Can we expect the same standard of free and unregulated, or at the very least, reasonably regulated, exercise of group association and public expression in the Soviet Union?

Part I of this article explores the development of the right of public

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demonstration in the Soviet Union. Part II analyzes recently enacted laws that regulate associational and expressive rights. Part III illustrates how the law is actually carried out. Finally, Part IV compares the Soviet regulatory scheme with the laws and practice of a democratic society, as represented here by the Federal Republic of Germany, France, and the United Kingdom. I chose these models for comparison instead of the United States because Soviet authorities seek to justify the validity of their law on grounds that German, French, and English laws similarly restrict the right of assembly and public demonstration.[1] This article analyzes the right of public demonstration in conjunction with what Soviet authorities urge is a new commitment to the rule of law. Terminology is extremely important in this regard. When I speak of a commitment to the rule of law, it means only that the Soviet leadership is striving to create a law-based state.[2]

With the advent of *perestroika* and *glasnost*, thousands of unofficial or informal organizations have emerged throughout the Soviet Union. On August 20, 1987, a very significant conference, which was officially sanctioned, convened in Moscow.[3] Approximately 600 persons, including party members, writers, workers, former political prisoners, and some well known dissidents and human rights activists, who represented some fifty political, cultural, and ecological groups, met for three days to develop an agenda for reform. The conference delegates reaffirmed the leading role of the Communist Party but criticized it for allowing "[i]ts ranks [to] include people who carry responsibility for the abuses and miscalculations of the past, and who made up the rows

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1. *See* Izvestia, July 30, 1988, at 4 (providing an interview of USSR Minister of Justice B. Kravtsov in which he compares the Soviet decrees with German, French, and English law) [hereinafter Kravtsov Interview].

2. I accept the views of Professor Harold J. Berman, Woodruff Professor of Law, Emory University School of Law, who is recognized as the premier Soviet law scholar in the United States. Professor Berman writes:

> There is a serious problem with respect to the phrase "rule of law." This is a mistranslation of what Gorbachev and his supporters are calling for, namely, a *pravovoe gosudarstvo*, which is a Russian translation of the German *Rechtsstaat*, or law-state, which I would translate "law-based state." Both the Soviet and the American translators say "rule of law" — I don't know who said it first — but it is wrong, even though some Soviet people do think of a law-based state as a state based on the rule, or supremacy, of law. But what it really means is a state that rules *by* law, and that lives up to the law which *it* makes. There is nothing in the concept of a *pravovoe gosudarstvo* to suggest that there is a law that is higher than the legislation which the state has enacted.

Letter from Harold J. Berman to Ralph Ruebner (Apr. 28, 1989) (discussing the Soviet commitment to the rule of law) [hereinafter Berman letter]. I am grateful to Professor Berman for reviewing this manuscript.

3. Steele, *Moscow Opens the Door to Independent Reform Groups*, Manchester Guardian, Sept. 20, 1987, at 1.

of bureaucrats and that oppressive mass of officials, who cut themselves off from the hopes and needs of their people."[4] Out of the conference came the founding of the Federation of Socialist Clubs, whose stated purpose was "to support the healthy and progressive forces in the party's leadership and the rank and file."[5] The Soviet authorities described the Moscow conference as "an informational meeting for dialogue on social initiatives in the context of *perestroika*."[6] But it was more than that, as evidenced by its declaration for "free access for independent citizens to compete against Communist Party members in local elections."[7]

The workings of the conference were published in the Soviet press. For example, *Ogonek* reported that the conference had called for an end to the extremist and nationalistic tenor of some groups.[8] It also stated that the conference had adopted proposals in support of changes in the management of Soviet enterprises and that it was committed to "combat social inequality," "publicize juridical violations," and "democratize the Soviet Union's electoral system."[9] *Moscow News* publicized the conference proposal to build a monument to the victims of repression.[10] But the political aims of the conference, one of which was a call to reform the Criminal Code to allow legitimate public criticism of the shortcomings of the Soviet system, were not disclosed.[11]

Why did the Soviet leadership sanction the Moscow conference? Openness and democratization may explain this. Equally plausible is the recognition that the proliferation of informal groups throughout the USSR, which numbered 30,000 at the time,[12] could endanger the delicate political and governmental structure of the Soviet system. What started a few years earlier as an experiment in group association and public expression on environmental, cultural, or social issues, had developed into a movement of nationalistic expression and political opposi-

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4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. Tolz, *"Informal Groups" Hold First Officially Sanctioned Conference*, Radio Liberty 380, at 2 (1987) (citing Ogonek, No. 36 (1987)) [hereinafter *Informal Groups*].
9. *Id.*
10. *See Informal Groups*, *supra* note 9, at 2 (citing Moscow News, No. 37 (1987)).
11. *Id.* at 3.
12. Tolz, *Informal Groups in the U.S.S.R. in 1988*, Radio Liberty 487, at 1 (1988) [hereinafter *Informal Groups in 1988*] (citing Pravda, Feb. 5, 1988). The number of informal groups had increased to 60,000 in February 1989; *see* Tolz, *Soviet Press and Officials on Informal Activities*, 7 REP. ON THE USSR 38 (Feb. 17, 1989) (citing Pravda, Feb. 10, 1989) (noting the organized efforts of informal groups).

tion. The runaway horse had to be harnessed. Some groups openly challenged the very foundation of the Soviet system. For example, the Party of National Independence of Estonia, the Lithuanian Freedom League, the Ukrainian Helsinki Federation, and the National Self-Determination group in Armenia called for separation or independence for their republics.[13]

The Democratic Union, which emerged first in Moscow and then in Leningrad, declared that its main goal was the development of a multiparty political system.[14] It was ready to stand as an opposition party to the Communist party (CPSU). In contrast, the Memory Russian National Patriotic Front (Pamyat), an extremely conservative, nationalistic, and xenophobic organization, became active in Moscow, Leningrad, and many other cities across the USSR.[15] Pamyat leaders have advanced an ideology of Russian national purity, anti-Semitism, and hatred of non-Russians.[16]

Important cultural groups gained prominence and political strength. For example, the Ukrainian Culturological Club and the Ukrainian Association of Independent Creative Intelligentsia organized in Kiev and Lvov to advance the restoration of the Ukrainian language and cultural heritage and the preservation of historical monuments.[17] The Minsk Talaka group campaigned for the preservation of the Belorussian language and culture.[18] The Soviet news agency Tass reported on December 27, 1988, that an independent All-Union Socio-Ecological Union was established at a meeting which was held in Moscow and attended by delegates of eleven republics and 100 cities.[19] The purpose of the group is to monitor the state of the environment and the enforcement

13. *Informal Groups in 1988*, *supra* note 12, at 2; *see* Nahaylo, *Baltic Echoes in Ukraine*, 2 REP. ON THE USSR 18 (Jan. 13, 1989) (discussing the independence movement of the USSR's non-Russian nationalities).

14. *See* Radio Liberty 445, at 14 (1988) (citing Associated Press report of Oct. 7, 1988).

15. *Informal Groups in 1988*, *supra* note 12, at 4.

16. *See A Dirty Game with Pure Feeling-Into Which Gamblers from Memory Are Trying to Drag People*, Izvestia, Aug. 14, 1988, at 6, *reported in Crackdown on "Pamyat" Nationalists Urged*, 33 CURRENT DIG. SOVIET PRESS 7 (Sept. 14, 1988) (discussing alarming situations of the Memory Russian National Patriotic Front). Pamyat blames Jews, Latvians, and other non-Russians for the repression of the 1920s and 1930s, legal violations during the time of collectivization, and destruction of monuments of Russian culture; it justifies anti-Semitic organizations which were formed after the 1905 Revolution; it resurrects theories of national purity; and it condemns marriages between different nationalities. *Id.*

17. *Informal Groups in 1988*, *supra* note 12, at 3.

18. Mihalisko, *A Profile of Informal Patriotic Youth Groups in Belorussia*, No. 30 (3495), Radio Liberty 318 (1988).

19. Tolz, *All-Union Ecological Group Formed*, 1 REP. ON THE USSR 28 (Jan. 6, 1989).

of environmental laws.[20]

A congress of 2,000 lawyers met in Moscow's House of Political Enlightenment on February 24-25, 1989, and created an all Union association of legal counsel, the Soviet Advocates' Association.[21] The Union of the Soviet Socialist Republic (USSR) Ministry of Justice initially opposed the establishment of this association and frustrated earlier organizational efforts.[22] Under present USSR legislation and practice, legal counsel are organized in collegiums under the authority and control of each republic's ministry of justice or local soviets.[23] The lawyers' association first emerged to support the pledge of Mikhail Gorbachev, made at the 19th Congress of the Communist party, to place the USSR under the rule of law and to raise the status of legal counsel.

Resolution 8 of the Party Congress stated:

> The conference attaches great importance to enhancing the role of the bar as a self-governing association for providing legal assistance to citizens, state enterprises and cooperatives and representing their interests in the courts and other state agencies and in public organizations. The participation of defense attorneys in preliminary investigations and court proceedings should be expanded.[24]

The USSR Ministry of Justice, which was directed to implement these reforms, continued to oppose the creation of an independent bar association.[25] The USSR Ministry of Justice controls or influences many of the 100,000 lawyers in the USSR through employment or through its ties to the procuracy and the Supreme Court.[26] These governmental

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20. *Id.*

21. *See* Burns, *Soviet Lawyers, in Feisty Session, Form Bar Group*, N.Y. Times, Feb. 26, 1989, at 12 (discussing the mixture of enthusiasm and skepticism which arose as a result of the creation of the first Soviet bar association).

22. Wishnevsky, *Association of Legal Counsel to be Established*, 2 REP. ON THE USSR 15 (Jan. 13, 1989) (citing Sovetskaya Kul'tura, Dec. 8, 1988; Ogonek, No. 50, 1988, at 6; Pravda, Dec. 19, 1988).

23. *See* OB ADVOKATURE V SSSR, art. 846, §§ 2-5 1979 Ved. Verkh. Sov. SSSR, No. 49, at 1035; ZAKON ROSSIISKOII SOVETSKOII FEDERATIVNOII SOTSIALISTICHESKOII RESPUBLIKI: OB UTVERGDENII POLOGENIA OB ADVOKATURE RSFSR, art. 1596, 1980 Ved. Verkh. Sov. RSFSR, No. 48, at 1104.

24. *Resolutions of the 19th All-Union CPSU Conference on Legal Reform*, Izvestia, July 5, 1988, at 3, *reported in Party Conference Adopts Resolution III*, 38 CURRENT DIG. SOVIET PRESS 15 (Oct. 19, 1988).

25. *See* Burns, supra note 21 (discussing the meeting).

26. *See* Berman letter, *supra* note 2 (discussing the rule of law in the Soviet Union). Professor Berman suggests that there are approximately 300,000 persons trained in the law. *Id.* He also offers the following observation: "I think it would be helpful to say that the Ministry of Justice directly controls the judiciary and the (27,000) advocates. *Id.* I agree that this means . . . that it has some indirect control over the others as well, but it surely does not have much to say about the work of the investigators and prosecutors who are under the more powerful Procuracy, or about the work of the jurisconsults who are under the various other ministries." *Id.* I concur with Professor Berman's assessment.

agencies have large staffs of lawyers working as investigators, prosecutors, and court officials.[27] The Ministry of Justice wanted to control a unified bar organization, which would include all the state-employed lawyers and the 27,000 independent advocates, who are self-employed defense counsel and litigators.[28] The advocates' group, however, wanted a separate organization.[29] Activists scheduled a congress of advocates to meet in December 1988, in Voronezh, a city 350 miles south of Moscow. When the delegates arrived, they learned that the Ministry of Justice had cancelled their hotel accommodations and their conference hall was assigned to another group.[30] They finally met in Moscow two months later. The delegates to the Moscow advocates' congress addressed judicial reform and ways to guarantee the fairness of criminal trials and the inviolable role of counsel.[31] According to a New York Times report:

> [S]peakers urged that counsel be given access to defendants on arrest, instead of days and sometimes weeks later; that defense counsel be given the right to subpoena witnesses and to gather evidence, a role that is currently circumscribed; and that the attorney-client privilege not be breached by prosecutors who threaten advocates for disclosure of clients' confidences. But at its broadest, what many delegates appeared to want from the new association was something unknown under the Communists or the czars: a guarantee against any state-meddling with justice, and an acceptance of the inviolable role of counsel.[32]

At the conclusion of the congress, the delegates voted to form the first independent Soviet bar association.[33]

Soviet authorities have shown concern as informal groups grow and gain prominence.[34] The initial official reaction was somewhat tolerant, recognizing however the need to establish official control over such groups. In 1987, the Komsomol was assigned that responsibility, but its efforts to control the independent direction of informal groups was not successful.[35] The authorities eventually sought to cooperate with informal groups, and in 1988 they called for the creation of popular fronts to advance the Gorbachev *perestroika* agenda.[36] These fronts were

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27. Burns, *supra* note 21, at 12.
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. *See infra* notes 157-290 and accompanying text (providing examples of growing national group activity).
35. Tolz, *Informal Groups in Soviet Political Life*, 11 WASH. Q. 137, 142 (1988) [hereinafter Tolz, *Soviet Political Life*].
36. *Id.*

designed to unite socially active persons—party members and nonmembers alike—and the various informal groups for the purpose of studying and evaluating the machinery of the Soviet system—government and party—and to make suggestions for reform.[37] The authorities were not tolerant, however, of groups whose agenda advanced nationalism, separatism, autonomy, or political pluralism.[38]

The Soviet leadership faces a dilemma. Obviously it seeks popular support for the *perestroika* process, but it is also mindful that calls from diverse interest groups, individually or collectively, whether espousing nationalism or greater democratization and libertarianism, could threaten the supremacy of the Communist party or the very delicate governmental structure of the Soviet system.[39] Open challenges to the supremacy of the Communist party or the all union Soviet system will not be tolerated. Commentators have noted that:

> The problem of informal groups in the USSR illustrates the tactics of the Gorbachev leadership. In the course of the current liberalization of the political climate in the USSR, public activities by groups formed without official permission have been allowed. The leadership, however, intends to set limits on such activities and attempts to keep them under close scrutiny and control. It seems likely that many informal groups would try to resist this official control, since control would mean the end of their freedom, independence, and spontaneity—everything that brought them into being and made them attractive for many people. That is why informal groups constitute a difficult problem for the authorities, especially since these groups provide Soviet people with a lesson in democracy.[40]

Viktor Chebrikov, the USSR KGB Chairman, articulated an official response. Tolerance ends with "hostile actions by persons of an anti-Soviet and anti-Socialist disposition . . . that are aimed at undermin-

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37. *Informal Groups in 1988*, *supra* note 12, at 6-7.

38. Statement of L. Baranov, Moscow City Prosecutor, *quoted in Provocateurs—They Deliberately Violated Soviet Law to Invite a Conflict*, Komsomolskaya Pravda, Aug. 24, 1988, at 4, *reported in Handling Public Rallies and Protestors*, 34 CURRENT DIG. SOVIET PRESS 1 (Sept. 21, 1988). One such group is the Democratic Union, which, according to official accounts, held 48 "unsanctioned" activities in the first seven months of 1988. *Id.*

39. Newton, *Activists Reported Confined to Psychiatric Hospitals*, 3 REP. ON THE USSR 32 (Jan. 20, 1989). Although Stalinist repression measures are no longer in vogue, we are reminded of the past with the news that two activists were confined to psychiatric hospitals in 1988. *Id.* Anatolii Ilchenko who was accused of anti-Soviet propaganda was confined to a psychiatric hospital in the Ukrainian city of Nikolaev on December 23, 1988. *Id.* He was released in March 1989. Letter from Cathy Fitzpatrick, Research Director of Helsinki Watch, to Ralph Ruebner (Apr. 26, 1989) (discussing that Vyacheslav Cherkashin, a member of Pamyat, was confined to a psychiatric hospital in Novosibirsk on December 17, 1988). The fate of Cherkashin is unknown. *Id.*

40. Tolz, *Soviet Political Life*, *supra* note 36, at 142-43.

ing and eliminating our existing system."[41] Addressing the challenges of group association and public expression, the Presidium of the USSR Supreme Soviet issued a number of decrees in July 1988 that regulate public meetings and demonstrations. These decrees are the subject of this article.

I. LAWS REGULATING PUBLIC DEMONSTRATIONS

A. THE 1988 DECREES

On July 28, 1988, the Presidium of the USSR Supreme Soviet issued three decrees regulating public demonstrations.[42] On October 28, 1988, the USSR Supreme Soviet ratified the decrees.[43] Decree 504 establishes the procedures for organizing and holding meetings, rallies, street processions, and demonstrations.[44] Decree 505 establishes the authority of the internal troops of the USSR Ministry of Internal Affairs (MVD) to protect public order.[45] Decree 506 amends the USSR Code of Administrative Violations and the Criminal Code and grants union republics the authority to legislate in conformity with Decrees 504 and 505.[46] On July 29, 1988, the Supreme Soviet of the RSFSR issued Decree 1005,[47] which enforces public demonstration procedures with administrative and criminal sanctions.

The stated legislative purpose of Decree 504 is to implement the constitutional right of assembly.

> Article 50. In accordance with the interests of the people and in order to

41. Yasmann, *Chebrikov Talks About Perestroika in the KGB*, Radio Liberty 399, at 2 (Sept. 4, 1988).

42. *See Decree of the Presidium of the USSR Supreme Soviet on the Procedure for Organizing and Holding Meetings, Rallies, Street Processions and Demonstrations in the USSR*, Izvestia, July 29, 1988, at 2.

43. 46 CURRENT DIG. SOVIET PRESS 13 (1988), *referring to* Pravda (Oct. 29, 1988) and Izvestia (Oct. 29, 1988).

44. UKAZ PRESIDIUMA VERKHOVNOGO SOVETA SSSR: O PORIADKE ORGANIZATSII I PROVEDENIA SOBRANII, MITINGOV, ULICHNYKH SHESTVII I DEMONSTRATSII V SSSR, Decree No. 504, 1988 Ved. Verkh. Sov. SSSR, No. 31 (2469), at 503 [hereinafter Decree No. 504].

45. UKAZ PRESIDIUMA VERKHOVNOGO SOVETA SSSR: OB OBIAZANNOSTIAKH I PRAVAKH VNUTRENNYKH VOISK MINISTERSTVA VNUTRENNYKH DEL SSSR PRI OKHRANE OBSCHESTVENNOGO PORIADKA, Decree No. 505, 1988 Ved. Verkh. Sov. SSSR, No. 31 (2469), at 566 [hereinafter Decree No. 505].

46. UKAZ PRESIDIUMA VERKHOVNOGO SOVETA SSSR: OB VNESENII IZMENENI V NEKOTORIE ZAKONODATELNIE AKTI SSSR, Decree No. 506, 1988 Ved. Verkh. Sov. SSSR, No. 31 (2469), at 568 [hereinafter Decree No. 506].

47. UKAZ PRESIDIUMA VERKHOVNOGO SOVETA RSFSR: OB OTVETSTVENNOSTI ZA NARUSHENIE USTANOVLENNOGO PORIADKA ORGANIZATSII I PROVEDENIIA SOBRANII, MITINGOV, ULICHNYKH SHESTVII I DEMONSTRATSII, Decree No. 1005, 1988 Ved. Verkh. Sov. RSFSR, No. 31 (1553), at 655-57 [hereinafter Decree No. 1005].

strengthen and develop the socialist system, citizens of the USSR are guaranteed freedom of speech, of the press, and of assembly, meetings, street processions and demonstrations.

Exercise of these political freedoms is ensured by putting public buildings, streets and squares at the disposal of the working people and their organizations, by broad dissemination of information, and by the opportunity to use the press, television, and radio.[48]

Traditionally, the constitutional right to demonstrate has meant that citizens have the right to demonstrate in support of the Soviet State and the Communist party. Commentators have observed that:

Freedom to demonstrate does not mean freedom to demonstrate publicly against the policies of the Soviet government or of the CPSU. Rather, it means freedom to join with one's fellow workers to manifest public support for the policies of the state and Party. Very simply, Soviet law stresses an elementary fact of any Marxian socialist legal system: the Bill of Rights in the Constitution is not a suicide pact; its guarantees do not extend to those who oppose the government of the state.[49]

The decree provides the following procedures.[50] A written application

48. KONST. SSSR (Constitution) art. 50 (USSR).

49. Osakwe, *The Theories and Realities of Modern Soviet Constitutional Law: An Analysis of the 1977 USSR Constitution*, 127 U. PA. L. REV. 1350, 1401-02 (1979) [hereinafter Osakwe, *Modern Soviet Constitutional Law*].

50. *Guidelines for Rallies, Demonstrations Set*, 40 CURRENT DIG. SOVIET PRESS 15-16 (Aug. 24, 1988) [hereinafter *Guidelines for Rallies, Demonstrations*] (translating *Decree of the Presidium of the USSR Supreme Soviet on the Procedure for Organizing and Holding Meetings, Rallies, Street Processions and Demonstrations in the USSR*, Izvestia, July 30, 1988, at 2 [hereinafter *Decree 504 of the Presidium* (complete text)]. The Decree states in full:

In accordance with the interests of the people and for the purpose of strengthening and developing the socialist system, the USSR Constitution guarantees USSR citizens the freedom to hold meetings, rallies, street processions and demonstrations. The exercise of these political freedoms is ensured by making available to the working people and their organizations public buildings, streets, squares and other facilities. With a view to regulating the procedure for organizing and holding meetings, rallies, street processions and demonstrations, the Presidium of the USSR Supreme Soviet resolves:

1. An application to hold a meeting, rally, street procession or demonstration is to be submitted to the executive committee of the appropriate local Soviet.

An application to hold a meeting, rally, street procession or demonstration may be submitted by authorized representatives, who are at least 18 years of age, of the labor collectives of enterprises, institutions and organizations, of agencies of cooperative and other public organizations, of public grass-roots agencies and of certain groups of citizens.

2. An application to hold a meeting, rally, street procession or demonstration is to be submitted in written form no later than 10 days prior to the planned date of the event. The application is to indicate the purpose and form of the event and the place where it is to be held or its route, the time it is to begin and end, the expected number of participants, the last names, first names and patronymics of the authorized representatives (organizers), their places of residence and work (or study), and the date on which the application is submitted.

to hold a meeting, rally, street procession, or demonstration must be submitted to the executive committee of the local Soviet by an authorized representative of the group who is at least 18 years of age.[51] The application must be in writing and submitted no more than 10 days

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3. The Soviet executive committee is to examine the application and inform the authorized representatives (organizers) of its decision no later than five days prior to the time the event is to be held, as indicated in the application. The executive committee has the right, when necessary, to suggest another time and place for the event to those who have submitted the application. The decision can be appealed to a higher-level executive or administrative agency, in accordance with the procedure established by legislation currently in effect. The Soviet executive committee ensures the necessary conditions for holding the meeting, rally, street procession or demonstration.
4. Meetings, rallies, street processions and demonstrations are held in accordance with the purposes indicated in the application, as well as at the specified time and in the stipulated place. When meetings, rallies, street processions and demonstrations are held, the authorized representatives (organizers), as well as other participants, must observe Soviet laws and maintain public order. The participants are prohibited from carrying weapons, as well as specially prepared or adapted objects that could be used against people's lives and health or to cause material damage to state and public organizations or citizens.
5. State and public organizations and officials, as well as citizens, have no right to obstruct meetings, rallies, street processions and demonstrations that are conducted in accordance with established procedure.
6. The Soviet executive committee prohibits a meeting, rally, street procession or demonstration if the purpose of holding it is at variance with the USSR Constitution or Union- and autonomous-republic Constitutions or if it threatens public order and the safety of citizens.
7. Meetings, rallies, street processions and demonstrations are to be stopped at the request of representatives of bodies of power if no application has been submitted, if it has been decided to prohibit the event, and also if the procedure for holding the event, as stipulated in article 4 of this decree, is violated, if there is danger to the lives and health of citizens, or if public order is disrupted.
8. Persons who violate the established procedure for organizing and holding meetings, rallies, street processions and demonstrations bear liability in accordance with USSR and Union-republic legislation. Compensation is to be paid for material damage caused to the state, cooperative or other public organizations or citizens during meetings, rallies, street processions and demonstrations by the participants in such events, in accordance with the procedure established by law.
9. The Presidiums of the Union- and autonomous-republic Supreme Soviets and the territory, province, region, district and city Soviets may take additional measures to regulate the procedure for holding meetings, rallies, street processions and demonstrations with consideration for local conditions, on the basis of the Union- and autonomous-republic Constitutions and in accordance with the requirements of this decree.
10. The procedure for organizing and holding meetings and rallies established by this decree does not extend to meetings and rallies of labor collectives and public organizations that are held in accordance with legislation and their charters and statutes.

Id.

51. *Decree 504 of the Presidium*, *supra* note 50, para. 1. The application may be submitted by the labor collectives of enterprises, institutions, organizations, cooperative agencies, other public organizations, grass-roots agencies, and citizen groups. *Id.*; *Decree No. 504*, *supra* note 44, at 564, para. 1.

prior to the planned event. It must indicate the purpose of the event; place where it is to be held or its route; time it is to begin and end; the expected number of participants; last names, first names, and patronymics of the organizers; and the organizers' places of residence and work or study.[52] The Soviet executive committee must then examine the application and inform the organizers of its decision no later than five days prior to an event. It has the right, when necessary, to suggest another time and place for an event. The decision of the executive committee can be appealed to a higher-level executive or administrative agency. The Soviet executive committee must ensure the necessary conditions for holding an event.[53]

The event must be held in accordance with the purposes indicated in the application and at the specified time and place. Organizers and participants have to observe Soviet laws and maintain public order and are prohibited from carrying weapons or objects which may endanger the safety of persons or cause damage to property.[54] No one may interfere with a sanctioned demonstration. State and public organizations and their officials, as well as citizens, may not obstruct a demonstration which is carried out in accordance with approved procedures.[55] The Soviet executive committee has the authority to prohibit a public demonstration if the purpose of the event contravenes the Constitution or if it threatens public order or the safety of citizens.[56] Public officials shall stop an unauthorized event in progress.[57] Moreover, if public officials determine that there is danger to the health or safety of citizens, or public order is disrupted, an on-going demonstration will be stopped.[58]

USSR Minister of Justice B. Kravtsov explained the need for this legislation in an *Izvestia* interview, stating:

> In recent years, instances of the group disruption of public order and antisocial manifestations have become more frequent. In Moscow, Leningrad, Sverdlovsk and several other cities, there have been more than 250 unauthorized sizable rallies, processions and demonstrations in 1986-1988. As you know, there have been both nationalistic and extremist manifestations.[59]

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52. *Id.* para. 2.
53. *Id.* para. 3.
54. *Id.* para. 4.
55. *Id.* para. 5.
56. *Id.* para. 6.
57. *Id.* para. 7.
58. *Id.*
59. *Guidelines for Rallies, Demonstrations, supra* note 50, at 15-16. Kravtsov also stated in the interview:

> The democratization of all aspects of the life of our society, the course aimed at expanding openness and the growing public activeness of citizens in the new atmosphere have made it necessary, as practice shows, for such an important citi-

Kravtsov discounted the possibility that local authorities would arbitrarily interfere with the exercise of the right to demonstrate. He assured that given the present conditions of *glasnost* and Soviet democracy, local officials will not willfully defeat or distort the purposes of the legislation.[60]

In a subsequent *Izvestia* interview, Kravtsov elaborated on the procedures. He indicated that the order authorizing or prohibiting a certain activity "must be made by the [executive] committee as a body."[61] According to Kravtsov, the legislation provides for administrative review of an order prohibiting a public gathering. He acknowledged that the legislation presently provides no recourse for appeals to local courts noting, "It's possible that practical experience will suggest that course of action as well."[62] *Izvestia* also asked whether "an incidental passerby who has stopped to listen to the speakers at a rally whose legality is unclear to him; is this person a participant in the rally? Can the measures taken against a rally participant be taken against him?" Kravtsov replied:

> If a representative of the authorities has issued a clearly audible order to disperse and set a deadline for complying with it, the incidental passerby, of course, should leave. And a person who fails to comply with the order and wants to remain must be viewed as a participant in the illegal activity.[63]

Kravtsov conceded that the legislation does not clearly define a

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zens' right to be backed up with additional legal regulation. Local Soviet executive committees have adopted various kinds of normative acts in the form of "model statutes" and "provisional rules" concerning the procedure for organizing and holding meetings, rallies, street processions, demonstrations and other mass events. However, these acts did not contain any precise regulations, and they did not define liability for disrupting order . . . .

We lack experience [in maintaining order], of course. I will say more: The "forces of order," let's call them that, are sometimes defenseless in the face of a crowd. We have no special equipment, we have no practice in handling these situations. This applies more to the prerogatives of the Minstry of Internal Affairs. Equipment is not all that is needed here. Appropriate legal norms are needed as well . . . .

The activity of internal affairs agencies in preventing and eliminating mass disturbances and other dangerous group antisocial manifestations indicates that existing legislation does not fully ensure the reliability of protection for the population and the police [*militsia*] and internal troops. In 1986-1988, six staff members of internal affairs agencies and servicemen have been killed and more than 1,000 wounded while stopping unlawful actions.

Id.

60. *Id.* at 16.

61. *Handling Public Rallies and Protesters*, 34 CURRENT DIG. SOVIET PRESS 4 (Sept. 21, 1988) (translating *Defense Lawyers and Bureaucrats*, Izvestia, Aug. 27, 1988, at 1, 3)(condensed text).

62. *Id.* at 4.

63. *Id.* at 5.

"rally."[64]

T. N. Menteshashvili, Secretary of the Presidium of the USSR Supreme Soviet, presented the decrees to the USSR Supreme Soviet on October 28, 1988. He explained that the legislation addresses the needs of public order and respect for the institutions of a law-based society.[65] He anticipated the arguments of those who would oppose the legislation on grounds that the USSR Constitution provides adequate limitations on the right to demonstrate and that local Soviet executive committees should not be allowed to make decisions (whether to grant or deny a

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64. *Id.* The dialogue continued:

> Q. [by E. Parkhomovsky, staff correspondent] In a state based on the rule of law, everything subject to state regulation should be clearly spelled out. I would like to clarify the concept "rally." A small group of people discussing political, social, economic or any other problems in a public place—does this constitute a rally? Shouldn't there be a clear-cut definition to distinguish between a rally and an exchange of views among people?
>
> A. [by Kravtsov] The law doesn't provide any such definition as yet, but I think the distinguishing characteristics of a rally would be speakers, slogans, appeals and, of course, a mass audience.
>
> Q. It seems to me that such a definition or something close to it ought to be codified legally. But the definition should also clarify what "mass audience" means; a police officer safeguarding public order has to have an accurate understanding of this.
>
> A. I appreciate your irony. It is indeed difficult to define this notion. The new circumstances of our public political life confront us with a number of totally new and unexpected tasks. As we create new legal acts, we often see within a short time that they require clarification and refinement . . . .

Id.

65. *See The Supreme Soviet Session - IV*, 46 CURRENT DIG. SOVIET PRESS 11, 13 (Dec. 14, 1988) (translating *On the Ratification of Decrees of the Presidium of the USSR Supreme Soviet: Report by T.N. Menteshashvili, Secretary of the Presidium of the USSR Supreme Soviet*, Pravda, Oct. 29, 1988, at 2; Izvestia, Oct. 29, 1988, at 5-6 (condensed text)) (reporting on Menteshashvili's report to the Presidium of the USSR Supreme Soviet) [hereinafter *Report on the Supreme Soviet Session - IV*]
The legislation

> establishes democratic procedures for organizing such activities, and it spells out in concrete terms the rights and duties both of their organizers and of the local Soviets of People's Deputies. It stipulates directly that Soviet executive committees are to ensure the necessary conditions for holding meetings, rallies, street processions or demonstrations. State and public organizations and officials, as well as citizens, have no right to obstruct these activities if the procedure set by legislation is being observed.
>
> At the same time, the decree proceeds from the premise that the implementation of democracy is inconceivable without firm legality and discipline. In this connection, the organizers of and participants in meetings and rallies are required to take a respectful attitude toward Soviet laws and to maintain public order.
>
> As practice shows, a large percentage of proposals for holding rallies, meetings and demonstrations receive the support of the Soviets. But it must be said that there are instances of refusal, when a request conflicts with the law or violates established regulations.

Id.

request to hold a demonstration), but rather these committees should be limited to registering applications according to the requirements of the law. He rejected such objections summarily:

> It would seem that sensible regulation always has some elements of order and good organization. This, as practice shows, is a necessary condition for the organized holding of such activities and serves the interests both of their initiators and of society as a whole.
>
> As far as local Soviets are concerned, they probably cannot let matters take their own course, allowing natural forces to take control. The procedure that has been established for examining applications and adopting decisions on them in accordance with legislation serves this very purpose.[66]

President Mikhail Gorbachev explained that the new demonstrations legislation represents one example of Soviet commitment to the rule of law. In his United Nations General Assembly speech on December 7, 1988, he said:

> We have become thoroughly absorbed in the construction of a socialist state based on the rule of law. An entire series of new laws have been prepared or are in the final stages of drafting.
>
> Many of these laws will go into effect in 1989, and we hope that they will meet the highest standards from the standpoint of safeguarding the rights of the individual.
>
> Soviet democracy will gain a solid normative base. I am referring to such acts as the laws on freedom of conscience, on *glasnost*, on public associations and organizations, and much more.[67]

On July 29, 1988, the Presidium of the Supreme Soviet of the RSFSR issued Decree 1005,[68] amending the RSFSR Code on Administrative Violations and the RSFSR Criminal Code. Section 166 of the RSFSR Code on Administrative Violations[69] authorizes the imposition of administrative sanctions (in a nonjudicial setting) for holding unauthorized or prohibited demonstrations as follows: A first time violation by a demonstration participant is subject to a warning or a fine of up to 300 rubles and, in exceptional cases, an administrative arrest for up to fifteen days.[70] For repeated violations (within one year of the first sanction), a participant is subject to a fine of up to 1,000 rubles, and/or

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66. *Id.*

67. *At U.N., Gorbachev Pledges Military Cuts*, 40 CURRENT DIG. SOVIET PRESS 1 (Jan. 4, 1989) (translating *Speech by M.S. Gorbachev at the United Nations*, Pravda, Dec. 8, 1988, at 1-2; Izvestia, Dec. 8, 1988, at 1-2 (condensed text)).

68. *Decree No. 1005*, *supra* note 47, at 655.

69. KODEKS RSFSR OB ADMINISTRATIVNICH PRAVNARUSHENIACH, 1984 Ved. Verkh. Sov. RSFSR, No. 27, § 909 (1984) (as amended), § 166 (amending §§ 24, 27, 165, 202, 241, 242, 247, 257, and 305 (1988)) [hereinafter KODEKS RSFSR].

70. *Id.* The statute does not define what is an "exceptional case," yet another example of the law's vagueness.

corrective labor for a term of one to two months and the withholding of twenty percent of his earnings, and/or administrative arrest of up to fifteen days.[71] An organizer of an unauthorized or prohibited demonstration is subject to the same administrative sanctions which are provided for repeated violations by a demonstration participant. Repeated violations by a demonstration organizer subject the person to Criminal Code sanctions. Section 200 of the RSFSR Criminal Code now provides the following criminal sanctions: incarceration of up to six months, corrective labor of up to one year, and/or a fine of up to 2,000 rubles.[72] According to the United States State Department:

> The ensuing R.S.F.S.R. law of July 29 set stiff penalties: participation in unauthorized demonstrations is punishable by fines of up to $495 (at the December 1988 official exchange rate) and/or administrative arrest for up to 15 days. Repeat offenders may be fined up to $1,650, arrested for up to 15 days per offense, and/or sentenced to corrective labor for 30 to 60 days with a deduction of 20 percent of their earnings. If criminal responsibility is established, the law provides for deprivation of freedom for up to 6 months, corrective labor for up to 1 year, and a fine of up to $3,300. While many persons received fines of up to $495 and sentences of up to 15 days, no one is reported to have been sentenced under the stiffer penalties.[73]

On July 28, 1988, the Presidium of the USSR Supreme Soviet also decreed the responsibilities and rights of the internal troops of the USSR Ministry of Internal Affairs (MVD).[74] The internal troops are an integral part of the USSR Armed Forces. The Decree 505 grants these troops broad powers to deal with unauthorized or prohibited demonstrations and public disorders.[75] Their conduct is not subject to any judicial review.[76] Article 2 of the Decree charges the internal troops

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71. *Id.*

72. UK RSFSR (CRIMINAL CODE), 1988 Ved. Verkh. Sov. RSFSR, No. 40, § 591 (1960) (as amended), § 200 (amending §§ 30, 191, and 192).

73. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1988, REPORT TO THE SENATE COMM. ON FOREIGN RELATIONS AND HOUSE COMM. ON FOREIGN AFFAIRS, 101st Cong., 1st Sess. 1222 (1989) [hereinafter DEPARTMENT OF STATE REPORTS].
The report states that:

> According to the Soviet state statistical committee, the average monthly wage for blue- and white-collar workers in mid-1988 was $350 and for collective farm workers $250 at the December 1988 official exchange rate. (The ruble is not a convertible currency, and its value here in terms of the U.S. dollar does not represent actual purchasing power for international comparison.) The mean wage, however, is estimated by Western observers to be in the area of $200-250 per month, and a third of all Soviet families get by on less than $165 per month.

Id. at 1234-35.

74. Decree No. 505, *supra* note 45, at 566.

75. *Id.*

76. O PORIADKE OBJALOVANIA V SUD NEPRAVOMERNICH DEISTVII DOLJNOSTICH

with the responsibility of securing public order.[77] Article 3 implements that responsibility by authorizing the MVD to: (a) provide motorized patrols, and if the need arises, to deploy troops; (b) provide security during mass political public gatherings; and (c) prevent violations of public order when a public demonstration presents a threat to the health and safety of citizens or harm to property, or when it endangers the Soviet state.[78] Article 4 recognizes the need to provide special equipment and arms to the internal troops.[79] Article 5 allows internal troops, inter alia, to: (a) check passports or other identification documents of persons suspected of violating the law and to detain persons who violate administrative orders, (b) enter private dwellings and business premises to pursue persons suspected of committing crimes or to prevent the commission of crimes or administrative violations which threaten public order or the safety of citizens,[80] and (c) seize automobiles and communications equipment.[81] Article 6 recognizes that in exceptional situations internal forces may use weapons.[82] T.N. Menteshashvili, Secretary of the Presidium of USSR Supreme Soviet, explained that these troops are essential in protecting the "interests of the Soviet state, to strictly observe socialist legality and to protect the personal dignity, rights and freedoms of Soviet citizens against criminal and other encroachments—in short, essentially to exercise the powers that are granted to policemen (*rabotniki militsiia*) in accordance with legislation."[83] He emphasized that the decree is a codification of prior departmental regulations. By placing MVD troops under the authority of the new law, the rule of law is enhanced.[84] In a *Pravda* interview,

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LITS, USCHEMLIAUSCHICH PRAVA GRAJDAN, Decree No. 388, 1987 Ved. Verkh. Sov. SSSR, No. 26, § 3, at 470-73; *See* Yasmann, *Reform of the Soviet Political System: The KGB Calls for a Law on State Security*, Radio Liberty 358, at 1, 7 (1988) (discussing that although a citizen may have legal recourse against actions of public officials, judicial process is not available to review the conduct of the KGB).

77. Decree No. 505, *supra* note 45, at 566, para. 2.

78. *Id.* para. 3.

79. *Id.* at 567, para. 4.

80. *Id.* para. 5; *see also* DEPARTMENT OF STATE REPORTS, *supra* note 73, at 1218 (stating that "there were virtually no house searches for political materials reported in 1988 until the end of the year, when house searches were conducted in Leningrad, Tbilisi, Saratov, and Sverdlovsk").

81. Decree No. 505, *supra* note 45, at 566.

82. *Id.* at 567-68, para. 6.

83. *Report on the Supreme Soviet Session - IV*, *supra* note 65.

84. *See id.* (discussing that the change in the law is in the citizen's interests because it enhances significantly the guarantees of lawfulness and *glasnost* in the activity of the internal troops and sets forth its legislative limits). Menteshashvili stated that:

> [This] orientation is linked inseparably to the formation of a socialist state based on the rule of law. Moreover, it is intended that the provisions contained in this decree will later be reflected, taking into account the practice of its application,

Colonel General Yu. V. Shatalin, Commander of the MVD Internal Troops, explained that the decree was a product of "legal reform that is supposed to ensure the supremacy of the law in all spheres of the life of society and to ensure the further strengthening of socialist law and order."[85]

B. THE DECREES DO NOT ADVANCE THE RULE OF LAW

The decrees on public demonstration purportedly represent a new commitment to the rule of law. Yet, "The rule of law is a stated goal, not a reality."[86] The legislation as a whole does not go far enough to assure Soviet citizens or the world community that association and assembly rights can be exercised freely or that the rule of law is meant to protect these fundamental rights. I will first summarize the deficiencies of the legislation and then elaborate on each point.

The most glaring deficiency in the legislation is the allocation of immense administrative power to public officials, civilian and military, who are charged with the responsibility of controlling every aspect of public assembly. Public officials can prohibit or restrict the exercise of these fundamental rights in an unfettered fashion because the regulatory criteria are intentionally vague. In addition, alleged violators are subjected to very severe consequences, namely, limitless searches of dwellings and confiscation of property, detention and arrest, incarceration, and stiff fines. Lastly, there is no judicial review mechanism available to contest the regulatory decisions or administrative acts of public officials who exceed their authority to ban, condition, or break up public demonstrations. Nor is there judicial review under these decrees of

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in the Law on the Soviet Police [*militsia*] that is now in preparation.
Id.

85. *Powers of Internal Troops Newly Defined*, 42 CURRENT DIG. SOVIET PRESS 8 (Nov. 16, 1988) (translating *Timely Interview: The Right to Defend Our Rights*, Pravda, Oct. 18, 1988, at 6 (condensed text)). The report notes that:

> [I]n an interview published in *Krasnaya Zvezda*, Nov. 3, pp. 1-2, Maj. Gen. A. Griyenko, Director of the Political Administration of the Internal Troops, notes that internal troops are also authorized to check the documents of persons suspected of having committed crimes; to take to the police station persons who have committed administrative offenses; to enter residential buildings and enterprises in hot pursuit of crime suspects or to stop crimes in progress; to enter a home if they have seen a person who has committed a crime hide there or if someone inside is calling for help; and to cordon off areas and individual buildings and facilities.

Id. at 9.

86. *Country Reports on Human Rights Practices for 1988: Testimony Before the House Comm. on Foreign Affairs*, 101st Cong., 1st Sess. 3 (1989) (testimony of Richard Schifter, Assistant Secretary of State for Human Rights and Humanitarian Affairs).

MVD, KGB, or police search and seizure practices. Finally, persons who are charged criminally of violating the demonstration laws find that the judiciary is incapable of adjudicating these cases fairly. Soviet courts are not independent; they are subjected to encroachment and interference by the same public officials who administer the demonstration laws.

Vague terms and regulatory criteria invite abuse. For example, article 1 of Decree 504 allows "authorized representatives" of an organization or of a group of citizens to submit a permit application to hold a meeting or demonstration.[87] The law, however, fails to define who is an authorized representative. This ambiguity raises a serious problem, such as "[w]hom will the authorities recognize as the 'authorized representatives' of groups applying for permits?"[88] Similarly, article 6 empowers local authorities to prohibit a demonstration if the purpose of holding it is at variance with the USSR Constitution or Union- and autonomous-republic Constitutions or if it threatens public order and the safety of citizens.[89] This vague language invites public officials to make subjective determinations without the benefit of an objective standard or proof. This in turn creates arbitrariness.

The vague criteria suggest that:

> [T]he Soviet Executive Committee can deny without appeal an application if it determines that the meeting's aims violate constitutional precepts, which include a litany of vaguely defined party and "working people's interests." As a result, this last provision of the penalties decree provides the Committee with convenient justifications for withholding permission for demonstrations deemed undesirable by the Government.[90]

Article 7, which requires the authorities to stop a demonstration in progress "if there is danger to the lives and health of citizens," is similarly vague and, therefore, invites abuse.[91]

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87. *Decree 504 of the Presidium, supra* note 50, at 566, para. 1.

88. *Soviets Issue New Decrees on Demonstrations, Comm'n. on Security & Cooperation in Europe Digest*, at 2 (Aug.-Sept. 1988) [hereinafter *Soviet Issues New Decrees*].

89. *Decree 504 of the Presidium, supra* note 50, at 565, para. 6.

90. *Soviets Issue New Decrees, supra* note 88, at 2.

91. *Decree 504 of the Presidium, supra* note 50, at 565, para. 7; *see also Lawyers Challenge Decrees on Demonstrations, MVD Troops, reported in* Radio Liberty 472, at 10-11 (1988) (noting that on October 27, 1988 seven Soviet lawyers published an article in *Sovetskaya Kul'tura* criticizing the decrees). The lawyers argued that the decree regulating demonstrations violates the Soviet Constitution. *Id.* They stated that Soviet citizens have the right to demonstrate and that the decree should not force organizers to ask local authorities for permission to exercise this right. *Id.* The article said local authorities should be able to ban a rally on specific grounds but the decree should be changed to allow organizers to challenge such a ban in the courts. *Id.* The lawyers said the other decree issued in July gives too much power to the special MVD

No one can quarrel with the proposition that a state has a legitimate interest in maintaining public order. Therefore, reasonable restrictions on the time, place, and manner of demonstrating may condition the exercise of this fundamental right.[92] But an outright prohibition should never be tolerated in a democratic and law abiding state. When a state bans a public demonstration it is ultimately regulating and censoring the content of speech and expression.[93] Public officials should be allowed to stop a public demonstration when it *becomes* violent.[94] But public officials should not be given unlimited discretion to deny a permit to hold a demonstration or to disperse an ongoing demonstration because they believe that the demonstration will incite public disor-

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troops assigned to break up unauthorized demonstrations. *Id.* The lawyers also complained that the decrees were adopted in secret without any consultation with legal scholars. *Id.*

92. *See, e.g.*, Cox v. New Hampshire, 312 U.S. 569, 574 (1941) (examining various United States Supreme Court interpretations of the First Amendment right to freedom of association). Although this paper limits the comparative analysis to German, French, and English laws (which is dictated by Soviet reliance on these particular nations' laws, *infra* note 293), I thought it important to examine the views of the United States Supreme Court in its interpretation of the first amendment to the United States Constitution, which guarantees the rights of association and public expression and, thus, the following notes from leading cases include such comparison. The Court in *Cox* wrote:

> Civil liberties, as guaranteed by the [United States] Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions. As regulation of the use of the streets for parades and processions is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions, immemorially associated with resort to public places . . . .
>
> If a municipality has authority to control the use of its public streets for parades or processions, as it undoubtedly has, it cannot be denied authority to give consideration, without unfair discrimination, to time, place and manner in relation to the other proper uses of the streets.

Id. at 576.

93. Police Dep't of Chicago v. Mosley, 408 U.S. 92, 99 (1972).

94. Cox v. Louisiana, 379 U.S. 559, 573 (1965).

der.[95] The state's interest in maintaining public order is better served by the imposition of reasonable sanctions after the fact, if the right to demonstrate was in fact abused. However, prior restraint of political expression is intolerable.[96] Nor should a state be permitted to make the peaceful expression of unpopular views criminal.[97]

The Soviet law requires applicants to disclose burdensome information about themselves, including the identity of their place of work or study.[98] This requirement has an obvious chilling effect on the exercise of assembly and demonstration rights. Armed with this knowledge, public officials could inform a university employer of the activities of an employee or student. The consequences of such disclosure are easily imaginable.[99]

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95. Gregory v. Chicago, 394 U.S. 111, 120 (1969) (Black, J., concurring); *see* Shuttleworth v. Birmingham, 394 U.S. 147, 153 (1969) (discussing freedom of association in the United States). In *Shuttleworth* the Court asserted:

> Even when the use of its public streets and sidewalks is involved, therefore, a municipality may not empower its licensing officials to roam essentially at will, dispensing or withholding permission to speak, assemble, picket, or parade, according to their own opinions regarding the potential effect of the activity in question on the "welfare," "decency," or "morals" of the community.

Id.

96. Carroll v. Princess Anne, 393 U.S. 175, 180-81 (1968).

97. *See* Terminiello v. Chicago, 337 U.S. 1, 4-5 (1949) (examining freedom of speech as a protected right). The Court stated:

> A function of free speech . . . is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech . . . is . . . protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest . . . . There is no room . . . for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.

Id.

98. Decree No. 505, *supra* note 46, at 566-68.

99. HUMAN RIGHTS WATCH AND LAWYERS' COMMITTEE FOR HUMAN RIGHTS, THE REAGAN ADMINISTRATION'S RECORD ON HUMAN RIGHTS IN 1988 201 (Jan. 1989). When President Ronald Reagan held a reception in Moscow during the June 1988 summit, he met with refuseniks, leading civil rights activists, and former political prisoners. *Id.* "One veteran human-rights leader, biologist Sergei Kovalyov, was penalized for speaking at the reception: a job offer at an Academy of Sciences institute was withdrawn explicitly because of the Reagan meeting." *Id.*; *see also* NAACP v. Alabama, 357 U.S. 449, 462-63 (1953) (offering a leading Supreme Court case discussing the effects of disclosure of a group's membership list on that group's freedoms).

> It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective . . . restraint on freedom of assocation . . . . Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs . . . [Disclosure of a group's mem-

The statutorily authorized penalties are extremely severe. The RSFSR Administrative Violations Code provides for varying administrative dispositions from a mere warning up to a fine of 1,000 rubles, two months of corrective labor, and/or administrative arrest of up to fifteen days.[100] The latter requires judicial action. The RSFSR Criminal Code sanctions repeat offenders for up to six months of incarceration, one year of corrective labor, and/or a fine of 2,000 rubles.[101]

The law fails to provide for any judicial review of administrative decisions or acts regulating public demonstrations. Article 58 of the USSR Constitution grants citizens the right to contest the actions of public officials. Article 58 states:

> Citizens of the USSR have the right to lodge a complaint against the actions of officials, state bodies and public bodies. Complaints shall be examined according to the procedure and within the time-limit established by law.
>
> Actions by officials that contravene the law or exceed their powers, and infringe the rights of citizens, may be appealed against in a court in the manner prescribed by law.
>
> Citizens of the USSR have the right to compensation for damage resulting from unlawful actions by state organizations and public organizations, or by officials in the performance of their duties.[102]

The demonstration decrees establish administrative review procedures.[103] An order which conditions or bans a demonstration may be appealed to a higher executive or administrative body.[104] Judicial review is implicitly removed.[105]

Moreover, the courts which have the power to impose administrative arrest sanctions and criminal sanctions[106] lack independence and are

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bership list] must be regarded as entailing the likelihood of a substantial restraint upon the exercise by . . . members of their right to freedom of association . . . [Disclosure can expose] members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility. *Id.*

100. KODEKS RSFSR OB ADMINISTRATIVNICH PRAVNARUSHENIACH, 1984 Ved. Verkh. Sov. RSFSR, No. 27, § 909 (1984) (as amended), § 166 (amending §§ 24, 27, 165, 202, 241, 242, 247, 257, and 305 (1988)).

101. UGOLOVNI KODEKS RSFSR (CRIMINAL CODE), 1960 Ved. Verkh. Sov. RSFSR, No. 40, § 591 (as amended), § 200 (amending §§ 30, 191, and 192 (1988)).

102. Konst. SSSR (CONSTITUTION), art. 58 (USSR); *see also* Drimak, *Human Rights and the USSR Constitution*, 2 TEMP. INT'L & COMP. L.J. 79, 96 (1987-1988) (discussing a citizen's right to present complaints and criticisms against the government).

103. Decree No. 504, *supra* note 44, at 564-65.

104. *Id.*

105. O PORIADKE OBJALOVANIA V SUD NEPRAVOMERNICH DEISTVII DOLJNOSTICH LITS, USCHEMLIAUSCHICH PRAVA GRAJDAN, art. 388, 1987 Ved. Verkh. Sov. SSSR, No. 26(3), at 470-73.

106. OSNOVI ZAKONODATELSTVA SOUZA SSR I SOUZNICH RESPOOBLIK: OB AD-

therefore incapable of assuring just and fair adjudication proceedings for alleged violators.[107] The following incident is a good illustration. On December 16, 1988, *Izvestia* reported the prosecution of certain Sverdlovsk demonstrators and noted that public officials interfered with the judicial proceedings.[108] On August 28, 1988, the Sverdlovsk police detained members of the local Democratic Union who allegedly engaged in an unauthorized rally.[109] The city soviet executive committee had initially authorized the rally but banned it a few days later.[110] Three persons were subsequently charged with administrative offenses.[111] The city's Chief Judge Nikitin assigned the case to trial Judge Kudrin, with

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MINISTRATIVNICH PRAVONAROOSHANIACH, art. 909, 1980 Ved. Verkh. Sov. SSSR, No. 44, § 18, at 931-32 (as amended). Article 26, section 3 of the USSR Administrative Violations Code empowers the following agencies to consider cases of administrative violations:

> (1) administrative commissions attached to executive committees of district, city, district in city, settlement, and rural soviets of people's deputies;
>
> (2) executive committees of settlement and rural soviets of people's deputies;
>
> (3) district (or city) and district in city commissions for cases of minors;
>
> (4) district (or city) people's courts (or people's judges);
>
> (5) agencies of internal affairs, agencies of state inspectorates, and other agencies (or officials) duly empowered by USSR legislative acts.

Id.; *see also* Butler, 4 *Collected Legislation of the Union of Soviet Socialist Republics and the Constituent Union Republics* 12-13 (1983) (listing agencies empowered to consider cases of administrative violations pursuant to article 26).

Administrative arrest sanctions shall be imposed by the courts. Article 19 provides:

> Administrative arrest shall be established and applied only in exceptional instances for individual types of administrative violations for a term of up to fifteen days. Administrative arrest shall be assigned by a district (or city) people's court (or people's judge).
>
> Administrative arrest may not be applied to pregnant women, to women who have children up to twelve years of age, to persons who have not attained eighteen years of age, and to first and second group invalids.

Id. at 9.

Article 32 of the USSR Criminal Code, places the responsibility of imposing criminal sanctions in the courts. UK RSFSR (CRIMINAL CODE), art. 32, 1959 Ved. Verkh. Sov. SSSR, No. 7, § 60 (as amended).

107. ZAKON SOUZA SOVETSKICH SOCIALISTICHESKICH RESPUBLIK O VNESENII IZMENENII I DOPOLNENII V OSNOVNIE ZAKONODATELSTVA O SUDOUSTROISTVE SOUZA SSR, SOUZNICHI AVTONOMNICH RESPUBLIK: OSNOVI ZAKONODATELSTVA SOUZA SSSR I SOUZNICH RESPUBLIK O SUDOUSTROISTVE V SSSR, art. 545, 1980 Ved. Verkh. Sov. SSSR, No. 27, § 10, at 560. Soviet legislation provides for the independence of the judiciary. *Id.* at 563. "Judges and people's assessors shall be independent and subordinate only to law." *Id.* "The USSR Procuracy must strictly observe the independence of the judiciary." *Id.* § 15, at 563. "The USSR Ministry of Justice has the same duty." *Id.* § 18, at 564-65.

108. Izvestia, Dec. 16, 1988, at 3, *reported in* 50 CURRENT DIG. SOVIET PRESS 20 (1988).

109. *Id.*

110. *Id.*

111. *Id.*

instructions to give each offender five days.[112] When the case of the first defendant was called, the trial judge granted a defense motion for a continuance.[113] The defense wished to examine the committee's ban order and to determine whether the committee had complied with the five-days notice of cancellation provision of the law.

> At that, Judge Kudrin was summoned to a "consultation" with V.P. Kuznetsov, head of the city Party committee's department of administrative agencies, the borough prosecutor and police chief, and Judge Nikitin. There Kuznetsov berated Kudrin for having granted the postponement and persuaded him that the ban did provide sufficient notice, though Kudrin was not allowed to see the actual document. (A secretary in the Soviet executive committee offices vouched for the document's precision: "We draw up such documents with special care, so that nobody can find fault with a single letter—we know what it's like to tangle with unofficial organizations.") And Kuznetsov repeated the demand that each defendant be sentenced to five days in jail.[114]

The trial resumed two days later. The trial judge dismissed the charges finding that no rally had taken place—there were no speakers or slogans, just a group of people holding a discussion. The report continues:

> That same day Kudrin was visited by an angry G.P. Dmitriyev, head of the Sverdlovsk Province Justice Department. The next day Kudrin resigned his judgeship, stating in his resignation that any illusions he had about the independence of the judiciary had been dispelled once and for all. Kudrin also resigned his Party membership. He now makes a living unloading railroad cars.
>
> The province court subsequently overturned Kudrin's decision and ordered a retrial; the defendant was given a five-day jail sentence.
>
> Kudrin's colleagues supported his action. A special commission concluded that the Party and Soviet officials involved had violated the constitutional principle of judicial independence. The Russian Republic Ministry of Justice reprimanded Dmitriyev and refused to accept Kudrin's resignation. But Kudrin refuses to return to work.[115]

The clear message of the *Izvestia* article is that the current judiciary is not independent and there is a need to reform the judicial system. The article concludes:

> Unfortunately, the only thing unusual about this incident is Judge Kudrin's resignation, not the fact that he was pressured or that the principle of independence of the judiciary was openly flouted. It is also disturbing that those who pressure judges are generally able to get off the hook quite easily, even in the rare cases where such incidents become public knowledge.[116]

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112. *Id.*
113. *Id.*
114. *Id.*
115. *Id.* at 21.
116. *Id.* On September 29, 1988, a Vilnius judge acquitted eight persons of charges brought against them for a September 28 demonstration, and a judge in Sverdlovsk

The recent XIX All-Union CPSU Congress recognized the need for judicial reform. Resolution 4 states:

> The conference considers the enhancement of the role of the courts in the system of socialist democracy to be one of the important tasks of restructuring. It is necessary to significantly strengthen guarantees of the implementation of such principles of Soviet legal procedure as the adversarial system, openness, unswerving observance of the presumption of innocence, and the impermissiblity both of prosecutorial bias and of connivance with respect to those who have infringed Soviet law. It is necessary to increase the authority of the court, to ensure the unconditional independence of judges and their subordination to the law alone, and to set specific sanctions for interference in their activity and for contempt of court . . . .[117]

E. Smolentsen, the chief justice of the Supreme Court of the RSFSR, has complained that the functions of judges are frustrated by the interference of local authorities.[118] He explained that the judiciary is not independent and its judicial activities are directed by the Ministry of Justice and its agencies.[119] One Soviet scholar has argued that judicial remedies, such as civil appeals, are needed to review decisions of public officials.[120] Judicial review is an indispensable procedure to protect a citizen's fundamental right to demonstrate. The United States Supreme Court has upheld this notion, stating that "respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom."[121]

If the Soviet leadership is truly committed to a law-based society, it must restructure the legal system so as to provide for an independent judiciary and judicial remedies. Public officials must be educated to respect the law and to administer it fairly. Only an independent judiciary can guarantee this goal.

II. EXPERIENCES UNDER THE NEW DECREES

The Soviet record of practice under the new decrees shows that Soviet authorities will not tolerate any group that engages in violent demonstration activities. Nor will the Soviet authorities tolerate the peaceful demonstration activities of a group that challenges the supremacy

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dismissed similar charges against a group there in September. *Id.*; *see* DEPARTMENT OF STATE REPORTS, *supra* note 73, at 1218 (noting additional facts about this case).

117. Pravda, July 5, 1988, at 3; Izvestia, July 5, 1988, at 3, *both reported in* 38 CURRENT DIG. SOVIET PRESS 15 (1988).

118. Izvestia, Nov. 19, 1988, at 2.

119. *Id.*

120. Chkhikvadze, *Concerning Some International Aspects of Human Rights Problems*, 7 SOV. GOS. & PRAVO 85, 85-92 (1987).

121. Walker v. City of Birmingham, 388 U.S. 307, 321 (1967).

of the Communist party or whose goals threaten the unity of the all union structure. It seems that permits to hold demonstrations are being denied arbitrarily. Military forces and MVD internal riot troops are employed selectively to disperse unannounced or prohibited demonstrations. The imposition of maximum jail sentences is common. Outrageously high fines are levied. It is true that the Soviet authorities have demonstrated tolerance toward public demonstrations in the Baltic republics. However, the experiences under the new decrees which I describe in this section do not buttress the view of the United States State Department, which finds that the Soviet "Government's toleration of demonstrations and unauthorized meetings made a quantum leap in 1988."[122] In the following subsections, I illustrate some of these experiences, although it is not my intention to develop a complete historical record.

A. THE DEMOCRATIC UNION

One group which has experienced substantial repression under the new decrees is the Democratic Union, a fact illustrated by a particular incident. The Moscow chapter of the Democratic Union sought permission to hold a demonstration in Moscow's Pushkin Square on August 21, 1988.[123] Its organizers submitted a permit application to the Moscow City Soviet Executive Committee on August 4, 1988. The application stated that the purpose of the rally was "to mark the 20th anniversary of the introduction of Warsaw Treaty member-States' troops into Czechoslovakia."[124] The application was denied "[i]n view of the anti-Soviet and antisocialist thrust of the slogans for the impending rally."[125] The executive committee justified the permit denial on the authority of article 50 of the USSR Constitution and the Decree on the Procedure for Organizing and Holding Meetings, Rallies, Street Processions and Demonstrations in the USSR.[126] The Democratic Union nevertheless held the rally on August 21, 1988. It was broken up by armed MVD troops.[127] Ninety-six people were detained.[128] The unofficial journal *Glasnost* reported that the troops had beaten and kicked

122. DEPARTMENT OF STATE REPORTS, *supra* note 73, at 1221.
123. Komsomolskaya Pravda, Aug. 24, 1989, at 4, *reported in* 34 CURRENT DIG. SOVIET PRESS 1 (1988).
124. *Id.*
125. *Id.*
126. *Id.*
127. Tolz, *The USSR This Week*, Radio Liberty 381, at 4 (Aug. 26, 1988).
128. *See id.* (stating that Tass announced the news on Aug. 22, 1988).

about thirty participants in the demonstration.[129] Sergei Grigoryants, the editor of *Glasnost*, demanded an investigation of the police actions against some of the demonstrators.[130]

On August 24, 1988, *Pravda* reported on the Pushkin Square rally.[131] It was very critical of the demonstration organizers and defended the police action. It was also critical of the Democratic Union platform, which *Pravda* characterized as seeking changes in the USSR social system, condemning the postrevolutionary political system, opposing the leading role of the Communist party, and urging people to refuse compulsory military service. The article reported that two organizers (Novodvorskaya and Montulin) were placed under administrative arrest for fifteen days, two others (Skuratov and Podoltseva) for five days, and a fifth (Glizer) for two days. Fifteen people were fined 100 rubles each.[132] Similar criticism of the Democratic Union demonstration was voiced by *Izvestia*[133] and *Vechernyaya Moskva*.[134] A *Pravda* commentary on August 26, 1988, condemned the Pushkin Square rally and the aims of the Democratic Union. It went on to stress the need for strict law enforcement against illegal demonstrators.[135] On September 4, 1988, MVD internal riot troops were called in

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129. *Id.* The Associated Press quoted the editor of the unofficial journal. *Id.*

130. *Id.*

131. Pravda, Aug. 24, 1988, at 6, *reported in* 34 CURRENT DIG. SOVIET PRESS 1, 1-3 (1988).

132. *Id.* at 3. The authorities also claimed that twenty-eight police officers were injured. *Id.*

133. *See Komsomolskaya Pravda*, *supra* note 124, at 4 (citing Izvestia, Aug. 24, 1988).

134. *See id.* (citing Vechernyaya Moskva, Aug. 22, 1988).

135. Pravda, Aug. 26, 1988, at 1, *reported in* 34 CURRENT DIG. SOVIET UNION 4 (1988). The commentary stated:

> We will reach the level of a state truly based on the rule of law only when all our endeavors, all our actions and decisions are carried out on a strictly legal basis. Obeying the law is the way of life in a state based on the rule of law.
>
> Why then do many readers link the expansion of the limits of democracy and of citizens' rights and freedoms with an increase in antisocialist, hooligan acts and other violations of the law? There's no simple answer to this question. But one thing is beyond question: Some citizens view expanded democracy as meaning "anything goes," as the right to disregard the law and resist the authorities. Anti-Soviet and antisocialist elements have also stepped up their activities lately. Under cover of the slogans of restructuring, these elements—like the leaders of the so-called Democratic Union, for example—deliberately exceed the bounds of the socialist pluralism of opinions and seek to provoke violations of law and order and police intervention. This is what happened, for example, on August 21, when, as *Pravda* has reported, a rally on Moscow's Pushkin Square for which the Democratic Union had been refused permission had to be stopped by police forces.
>
> Attempts to inflame emotions, to sow national or social suspicion and dissension and to pit various groups of people against one another, and instances of

to break up a Democratic Union demonstration in Moscow.[136] The Democratic Union had staged the demonstration on Moscow's Pushkin Square to mark the 20th anniversary of the "Red Terror."[137] Seventeen demonstrators were detained.[138]

Another Pushkin Square Democratic Union demonstration, which was banned by the authorities, was held on October 7, 1988.[139] It coincided with the National Constitution Day holiday. The organizers of the rally had called for constitutional changes and an end to the monopoly of the Communist party.[140] They also protested against the new demonstration decrees.[141] Thirty people were detained and four organizers were jailed.[142] A fifth person, Valeriya Novodvorskaya, who had been jailed previously for fifteen days for her activities in a previous demonstration, was fined 1,000 rubles.[143]

On December 10, 1988, Human Rights Day, 300 persons attended a Democratic Union rally in Pushkin Square to mark the 40th anniversary of the Universal Declaration of Human Rights. Four demonstrators were arrested and sentenced to fifteen-day jail terms.[144]

The Leningrad chapter of the Democratic Union has had similar experiences. On August 1, 1988, police authorities broke up a Democratic Union demonstration protesting Soviet policy toward national minorities. Twenty-seven persons were arrested.[145] On October 28, 1988, the

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outright hooliganism and refusal to obey authorities have absolutely no place in the process of democratization. And to try to conceal such actions behind restructuring and *glasnost* is blasphemous, to say the least. We are dealing here with a direct violation of socialist legality. Democratization without legality runs the risk of becoming anarchy.

And what about law-enforcement agencies? There's no disagreeing with the letter writers on this point: Fearing charges of excesses, police officers, prosecutors and judges have recently grown lax in combating violations of law and order. This position is diametrically opposed to the principles of a state based on the rule of law. A law that has been enacted but is not enforced spawns a feeling of impunity and cultivates legal nihilism. . . .

The primacy of laws that express the people's will—that's what genuine democracy is.

Id.

136. Tolz, *The USSR This Week*, *supra* note 127, at 6-7. The Associated Press announced that the newly formed group of riot troops halted the protest. *Id.*

137. *Id.*

138. *Id.* at 6.

139. *See* Radio Liberty 445, at 14 (1988) (citing an Associated Press report of Oct. 7, 1988).

140. *Id.*

141. *Id.*

142. *See* Radio Liberty 454, at 12 (1988)(citing Reuters, Oct. 14, 1988).

143. *Id.* There is no international exchange rate for the Ruble. But the USSR official rate of exchange as of May 1989 was 1 Ruble = U.S. $1.55.

144. *See* Radio Liberty 552, at 2 (1988) (citing Reuters, Dec. 11, 1988).

145. *See* Radio Liberty 350, at 6 (1988) (citing United Press International, Aug. 2,

Democratic Union announced that the police had searched the apartments of three Democratic Union members.[146] Apparently this was their first experience with home searches in Leningrad in two years.[147]

Tass reported on December 27, 1988, that Leningrad authorities were investigating five Democratic Union members but saw no reason then to arrest them.[148] The police authorities had searched the apartments of Democratic Union members and seized materials; they claimed that the seized materials called for the destruction of the socialist state.[149] According to a Reuters report, the KGB had threatened to invoke article 70 prosecution against the five.[150]

On March 12, 1989, the Democratic Union staged a demonstration in Moscow's Mayakovsky Square.[151] A crowd of 1,000 to 2,000 persons participated in this unauthorized gathering.[152] The government prevented three of its leaders from leaving their homes to attend the demonstration and detained forty people.[153] On the same day, sixty-five DU members were arrested at an official election campaign meeting which was held in Leningrad.[154] The State Department reported that the Soviet authorities have allowed some Democratic Union members to emigrate.[155] It also found that despite the Government's continued harassment of the group, the authorities have not moved forcibly to suppress it.[156]

B. POLITICAL DEMONSTRATIONS IN MOSCOW BY OTHER GROUPS

1. Yeltsin Supporters

Thousands of Boris Yeltsin[157] supporters, who were banned from a Gorky Park election rally on March 19, 1989, marched three miles to the Moscow City Council building under the watchful eye of riot troops.[158] They were finally allowed to hold a public meeting without

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1988).

146. *See* Radio Liberty 472, at 13 (1988) (citing AFP, Oct. 28, 1988).

147. *Id.*

148. *Leningrad Dissidents Under Investigation*, 1 REP. ON THE USSR 28 (1989).

149. *Id.*

150. *Id.*

151. *See Soviet Rally Honors Regime Lenin Ousted*, N.Y. Times, Mar. 13, 1989, at A9 (offering a Reuters report).

152. *Id.*

153. *Id.*

154. *Id.*

155. DEPARTMENT OF STATE REPORTS, *supra* note 73, at 1223.

156. *Id.*

157. Keller, *Marchers in Moscow Cheer Maverick*, N.Y. Times, Mar. 20, 1989, at 3.

158. *Id.*

further interference.[159]

2. *Crimean Tatars*

On January 12, 1989, Moscow police authorities broke up a demonstration of Crimean Tatars,[160] which was held on the steps of the Lenin Library at the Kremlin.[161] The demonstrators unfurled red protest banners demanding the right of Crimean Tatars to return to their homeland on the Black Sea peninsula.[162] Approximately a dozen persons were detained.[163] Previously, on June 27, 1988, 900 Crimean Tatars were expelled from Moscow because of their public demonstration activities.[164]

3. *Refuseniks*

On June 26, 1988, a group of Jewish refuseniks demonstrated in Moscow demanding the right to emigrate.[165] The police detained Yurii

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159. *Id.*

160. *See* DEPARTMENT OF STATE REPORTS, *supra* note 73, at 1220-31 (discussing the fate of the Crimean Tatars after they were forced from their homeland).

> The Crimean Tatars, a Muslim minority forcibly deported from their historic Crimean homeland to Central Asia in 1944, continued to seek repatriation and the reestablishment of a Crimean autonomous region. After major Crimean Tatar demonstrations in Moscow in 1987, the Soviets established a commission headed by Andrei Gromyko to study their grievances. Parallel commissions were established at lower levels in areas with compact Crimean Tatar populations, such as Uzbekistan and the Kuban. The Gromyko commission issued a statement in June rejecting Tatar demands for the reestablishment of a Crimean autonomous region as unfounded and approving only limited opportunities for return to the Crimea. On the other hand, the commission recommended that more be done at the local level to meet Crimean Tatar national and cultural demands. Accordingly, Tatar-language newspapers and radio and television broadcasts were increased at the local level, and instruction in Crimean Tatar was made available at a number of schools.
>
> Crimean Tatar activists, however, remained dissatisfied with the Government's response. Demonstrations and meetings were held frequently in and around Tashkent and in Krasnodar Kray to press demands. Most of these proceeded peacefully. The authorities, however, thwarted Tatar attempts to stage major demonstrations in Moscow throughout the year, principally by deporting activists from Moscow back to their places of residence. Tatar activists' efforts to call a general strike among Tatar workers to press their demands in June and July were met with responsiveness only in Krasnodar Kray, although even there activists judged the strike itself a failure.

Id.

161. *Police Detain Crimean Tatars Demonstrating in Moscow*, 3 REPORT ON THE USSR 33 (1989).

162. *Id.*

163. *Id.*

164. *Crimean Tatars Demonstrate in Tashkent*, Radio Liberty 291, at 4 (1988).

165. Radio Liberty 291, at 5 (1988) (citing Associated Press, *Refuseniks Demon-*

Semenovsky, the organizer of the demonstration.[166] Seven Jews who were seeking permission to emigrate were arrested in Moscow during a public demonstration on August 8, 1988.[167] Police authorities broke up the demonstration after only two minutes.[168] The protestors were sentenced to varying jail terms of five to fifteen days and were heavily fined.[169] Vladimir Kislik, a Jewish activist, reported that the group had previously submitted an application for a permit to hold the demonstration but received no official rejection of their request.[170] Approximately twenty Soviet Jews demonstrated near the Kremlin on March 2, 1989.[171] Security officials requested the group to leave but did not use force against them.[172]

C. PAMYAT

Pamyat is an ultra-conservative, nationalistic, racist organization.[173] It appears that Soviet authorities do little, or nothing, to discourage Pamyat rallies. At one August 1988 rally in Leningrad, a Pamyat speaker called for the immediate deportation of Jews and other alien races.[174] There is some evidence that Pamyat enjoys protection in high places.[175] In contrast, official attitude toward organizations which op-

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strate in Moscow, June 26, 1988).

166. *Id.*

167. DEPARTMENT OF STATE REPORTS, *supra* note 73, at 1222.

168. *Id.*

169. *Id.*

170. *See* Radio Liberty 361, at 6 (1988) (citing Associated Press, *Soviet Jews Reported Punished in Protest*, Aug. 9, 1988).

171. *See Refuseniks Stage Protest Near Kremlin*, 10 REP. ON THE USSR 55 (1989) (offering Associated Press and Reuters reports from Mar. 2, 1989).

172. *Id.*

173. *See infra* notes 174-80 and accompanying text (discussing various incidents involving Pamyat).

174. *See* Radio Liberty 350, at 13 (1988) (citing Moscow News, Aug. 5, 1988). Pamyat leader Dmitri Vasilev has been warned by the KGB in Moscow to refrain from "antisocial activities tending to incite national enmity." Yasmann, *The KGB and Perestroika*, Radio Liberty 382, at 4 (1988); *see also*, Konovalov, *Neo-Nazis in the USSR: More "Mindless Childish Games,"* Radio Liberty 394, at 1-5 (1988).

175. *See* Brumberg, *Moscow: The Struggle for Reform*, N.Y. Rev., Mar. 30, 1989, at 34, 42 (discussing whether Pamyat is unofficially sanctioned by the state).

> Does Pamyat enjoy support from higher up? Most of my informants believe so. Otherwise, they say, why do the police allow it to hold meetings while other organizations, such as the "Democratic Front," "a pitifully small group" the *Ogonek* editor Vitaly Korotich told me, can't? No one knows exactly who its protectors are. What is clear is that some well-known Soviet writers, including Valentin Rasputin, Viktor Astafyev, and Yuri Bondarev—the latter the head of the powerful RFSFR Writers' Union—as well as journals such as *Nash Sovremennik* (Our Contemporary), have espoused some of the most virulent views of the ultranationalists and anti-Semites, and have viciously attacked as decadent and unpatriotic Soviet radicals such as Lev Timofeyev, editor of the

pose Pamyat is stern. One such organization is the Leningrad Group for Trust, a reform, democratic, progressive organization.[176] Five members of the Leningrad Group for Trust were detained by the police when they counter-demonstrated at a Pamyat rally on August 10, 1988.[177] Aleksandr Bogdanov, who unfurled banners at a Pamyat meeting, was sentenced to fifteen days in jail.[178] Abram Demin who was accused of agitating was also detained.[179]

D. BELORUSSIAN DEMONSTRATIONS

On August 20, 1988, members of various informal groups met in a private residence in Minsk.[180] It was brought to an end by the arrival of the police who claimed that an "anonymous caller had complained that they were disturbing the peace."[181] Leaders of Talaka, the most prominent unofficial youth association in Belorussia, and members of the informal literary group Tuteishyya, journalists, artists, and scientists, and others had been in attendance.[182] They were taken to the Frunze Raion Department of the Ministry of Internal Affairs and "politely" informed that they had violated the law regulating assemblies, rallies, street marches, and demonstrations.[183] They were informed that their case would be reviewed by the administrative commission of the Minsk City Executive Committee and were then released. This was apparently the first application of the USSR Supreme Soviet decree on public assembly in the Belorussian Republic.[184]

On October 30, 1988, tens of thousands of persons participated in the Dzyady (All Souls) demonstration in the Belorussian capital of Minsk. The rally was organized by local groups to commemorate the victims of Stalin's terror and the massacre of thousands in Kurapaty

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samizdat publication *Referendum*, and Sergei Grigoryants, editor of the *samizdat* journal *Glasnost*.

Id; J. Wishnevsky, *Ligachev, "Pamyat," and Conservative Writers*, 10 REP. ON THE USSR 12, 12-15 (1989) (stating that the Soviet media claims that Pamyat enjoys protection in high places).

176. *See* Radio Liberty 361, at 7 (1988) (citing Reuters, *Anti-Pamyat Demonstrator Jailed Again in Leningrad*, Aug. 10, 1988; Associated Press, Aug. 11, 1988).

177. *Id.*

178. *Id.*

179. *Id.*

180. Mihalisko, *Belorussian Activists Charged With Violating Law of Assembly*, Radio Liberty 418, at 1 (1988).

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.* at 2.

Woods near Minsk.[185] MVD internal riot troops broke up the demonstration by dispersing the crowd with tear gas and water cannons. Public reaction to the police methods was swift and harsh. On November 4, 1988, the Presidium of the Belorussian Supreme Soviet formed a commission to investigate the disturbances.[186] The Tuteishyya Society of Young Literati, with active support from the Martyrology of Belorussia Association, organized the All Souls commemoration.[187] Organizers of the demonstration had first obtained official approval for the rally, and a notice of the forthcoming event was published in the press.[188] Two to three days before the rally, some of the organizers were summoned to appear at various police stations and were warned against holding the demonstration, which the authorities considered to be officially "banned."[189] On October 28, 1988, *Vechernii Minsk* published an announcement stating that the planned demonstration was prohibited.[190] Apparently, the city officials revoked the permit for the gathering at the last moment because they feared that the rally would serve to publicize the platform of the Initiative Group of the Belorussian Popular Front, which was formed in October under the auspices of Martyrology.[191]

The authorities detained Zyanon Paznyak, chairman of Martyrology, after breaking up the demonstration.[192] He later filed a complaint against the police.[193] On December 7, 1988, the court continued his case pending a more thorough investigation by the prosecutor's office to determine why he had been singled out for prosecution for organizing an unauthorized public meeting.

Tamara Roman'kova, a teacher in the city of Mogilev, was charged with a violation of the public meetings act for organizing a November 27, 1988, organizational meeting of a local chapter of Martyrology.[194] She was arrested in the presence of her students, and, subsequently, the

185. *See* Radio Liberty 485, at 7 (1988) (citing Reuters, Nov. 1, 1988) (noting that this was the second demonstration since the Kurapaty grave find); Mihalisko, *Rival Anti-Stalin Demonstrations in Minsk Prompted by Kurapaty Grave Find*, Radio Liberty 315, at 1-4 (1988) (reporting the June 19, 1988, Kurapaty Woods demonstration which was not hindered by the police).

186. Mihalisko, *Police Crack Down on Demonstration in Minsk*, Radio Liberty 510, at 1 (1988).

187. *Id.* at 2.

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.* at 3.

192. Mihalisko, *Moscow News Defends Belorussian Activists*, 3 REP. ON THE USSR 18 (1989). Martyrology was not named as a sponsor of the demonstration. *Id.*

193. *Id.*

194. *Id.*

court imposed a 100 ruble fine against her.[195]

The first authorized Belorussian demonstration, which was organized by the Renewal Belorussian Popular Front, with 30,000-50,000 people in attendance, was held in Minsk's Dynamo Stadium on February 19, 1989.[196] The demonstrators carried placards bearing nationalistic slogans and the Belorussian emblem, and the pre-Soviet flag was displayed.[197]

E. Georgian Demonstrations

On September 21, 1988, more than 100 persons attempted to hold a demonstration in Tbilisi, the Georgian capital, to demand preservation of the Georgian language.[198] KGB officials and uniformed police used force to disperse the crowd and detained fifteen people.[199]

On November 11-12, 1988, 200,000 people demonstrated in Tbilisi in opposition to the proposed Soviet constitutional changes.[200] Several hundred people also held a week-long protest hunger strike. The organizers of the demonstration claimed that the proposed changes in the USSR Constitution would violate the rights of the republics. The police did not try to stop the rallies.[201] *Pravda*, however, was critical of the demonstration organizers; it accused them of inciting disorders, urging people to hand in their CPSU and Komsomol membership cards and to strike, and demanding that Georgia secede from the Union.[202]

On February 25, 1989, about 15,000 persons demonstrated in Tbilisi.[203] The marchers demanded independence for the Republic of Georgia on the 68th anniversary of the establishment of Soviet control in Georgia. They tried to converge on a city park but were dispersed by riot troops. Approximately 200 demonstrators were briefly detained.[204]

Violence broke out during a large demonstration in Tbilisi on April 9, 1989.[205] Soviet military troops and tanks were involved. Eighteen

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195. *Id.*
196. Mihalisko, *Popular Front Permitted to Hold Rally in Minsk*, 10 REP. ON THE USSR 28-30 (1989).
197. *Id.* at 29.
198. *See* Radio Liberty 422, at 10-11 (1988) (citing Associated Press, Sept. 22, 1988).
199. *Id.*
200. Radio Liberty 507, at 5 (1988).
201. *Id.*
202. Pravda, Jan. 3, 1989, *reported in Pravda Criticizes Georgian Protests*, 2 REP. ON THE USSR 28 (1989).
203. N.Y. Times, Feb. 27, 1989, at 6.
204. *Id.*
205. Fein, *At Least 16 Killed as Protesters Battle the Police in Soviet Georgia*, N.Y. Times, Apr. 10, 1989, at A1.

civilians were killed and over 100 civilians were injured. Ninety-one soldiers were also injured. *Tass* reported that the protest organizers "began to declare plans to seize power [and] [t]hey . . . kindled inter-ethnic strife and called for the elimination of Soviet power in Georgia, the creation of a provisional government of the republic and its withdrawal from the U.S.S.R."[206] The authorities arrested at least five activists.[207] The Presidium of the USSR Supreme Soviet reacted quickly. It issued a decree "reaffirming that there are heavy penalties for 'kindling inter-ethnic or racial hostility.' "[208] The decree imposes fines and prison terms on persons who call for the overthrow of the government.[209] Mikhail Gorbachev announced that the Soviet leadership was "determined to put down 'extremism, anti-Soviet displays and the destructive actions of adventurist elements.' "[210] Gorbachev acknowledged the "sacred" right of persons to "express their opinions freely, but the law . . . set limits on their actions."[211]

F. ARMENIA-AZERBAIJAN UNREST

Traditional ethnic animosity and tension, coupled with expressions of Armenian and Azerbaijani nationalism, exploded over the status of the Nagorno-Karabakh Autonomous Oblast (NKAO) that is situated in Azerbaijan.[212] It is beyond the scope of this paper to recount the events which transpired daily during a year-long period. Mass public demonstrations, strikes, and inter-ethnic violence erupted in Armenia and in Azerbaijan following the February 20, 1988, declaration of the Nagorno-Karabakh Oblast Soviet that had called for the incorporation of the region into Armenia.[213] The Soviet army and MVD troops eventually restored public order in the two republics.[214] According to a re-

206. *Soviet Troops Battle Georgia Riot: 16 Dead*, Chicago Sun-Times, Apr. 10, 1989, at 2 [hereinafter *Soviet Troops Battle*].

207. Schodolski, *Hundreds Detained in Soviet Georgia*, Chicago Tribune, Apr. 12, 1989, sec. 1 at 8. Zviad Gamsakhurdia, head of the Georgian Helsinki Watch Committee, and leaders of the Georgian Nationalist Movement, an umbrella group which includes the Society of St. Ilya the Just, Helsinki Watch Group, and the National Democratic Party, remain in prison. *Id.*

208. Fein, *supra* note 205, at 4.

209. *Soviet Troops Battle*, *supra* note 206, at 2.

210. Schodolski, *supra* note 207, at 8.

211. *Id.*

212. *See generally* Fuller, *Nagorno-Karabakh: The Death and Casualty Toll to Date*, Radio Liberty 531, at 1-4 (1988) (offering an excellent summary of the events).

213. *Id.*

214. *See* Radio Liberty 434, at 5 (1988) (noting that 15,000 troops were deployed as of September 27, 1988). For example, troops of the Ministry of Internal Affairs were used to break up the occupation of Erevan's Zvartnots Airport on July 5, 1988. *Id.*; Fuller, *Recent Developments in the Nagorno-Karabakh Dispute*, Radio Liberty

port that was issued by the Ministry of Internal Affairs, the toll of ethnic violence was very high.[215] In a twelve-month period (February 1988-January 1989), ninety-one persons were killed, including four Soviet army soldiers and MVD troops, and 1,649 were injured (1,500 civilians, 117 soldiers, and 32 policemen).[216]

In Armenia, the Karabakh Committee organized mass public demonstrations and strikes. Few demonstrations were sanctioned by the authorities.[217] In November 1988, however, a state of emergency was declared in Yerevan and all demonstrations were banned.[218] The Soviet authorities used the law to curb peaceful expressions of nationalism and military might to put down violent protests.[219] Parvir Airikyan, one of the founders of the Armenian Committee to Defend Political Prisoners and an editor of the Armenian edition of *Glasnost* magazine, tested the limits of *glasnost* and Soviet law.[220] On March 22, 1988, authorities detained him in Moscow for his open challenge to a *Pravda* article which attacked the Armenian nationalist movement. He was ordered to return to Yerevan and was then arrested.[221] Subsequently, authorities brought criminal charges against him for anti-Soviet slander found in

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312, at 1-2 (1988) (stating that two organizers were sentenced to eighteen month prison terms by the Armenian Supreme Court); *Two Armenians Jailed for Airport Disturbances*, 11 REP. ON THE USSR 40 (1989) (reporting that the two activists were Albrik Gevoyan and Artur Pogosyan).

215. *See Soviets Say 91 Died in Ethnic Strife in '88*, Chicago Tribune, Feb. 8, 1989, sec. 1, at 5 (citing Tass, Feb. 7, 1989, as quoting Major General Nikolai Vasko); *Nagorno-Karabakh Toll*, 7 REP. ON THE USSR 33 (1989) (stating that the total number of dead and wounded has risen in the past year).

216. *Id.*

217. DEPARTMENT OF STATE REPORTS, *supra* note 73, at 1223.

218. *Id.*

219. *See generally* Fuller, *Nagorno-Karabakh: The Death and Casualty to Date*, *supra* note 212, at 2 (noting that between February 27 and 29, crowds of Azerbaijani youths conducted what the Soviet media later allude to as "an anti-Armenian pogrom" in the industrial city of Sumgait, near Baku). The timing of the attacks indicates that they may have been in reprisal for the deaths of the young Azerbaijanis from Agdam. *Id.* A total of twenty-six Armenians and six Azerbaijanis were killed, and over 200 people were injured. *Id.* Western correspondents who covered the trial of three of the participants in Moscow confirmed some of the reports of atrocities. *Id.* Some Armenians contended that the Sumgait death toll was far higher than admitted. *Id.* Adducing as evidence death certificates issued in Sumgait on March 4 and 5 with the numbers 182 and 187 respectively (certificates issued on any given day are numbered consecutively starting with "1"), they argued that a total of 369 deaths must have been registered within those two days, compared with the usual daily average of three to five deaths. *Id.*

220. HUMAN RIGHTS WATCH, THE PERSECUTION OF HUMAN RIGHTS MONITORS, DECEMBER 1987 TO DECEMBER 1988, A WORLDWIDE SURVEY 201-202 (1988); *see also* DEPARTMENT OF STATE REPORTS, *supra* note 73, at 1216 (discussing Airikyan's case).

221. *Id.*

his political writing and for generating a list of Armenian victims of the 1988 Sumgait Massacre.[222] On July 23, 1988, he was transferred to Moscow for interrogation. Although he was not tried, Airikyan was stripped of his Soviet citizenship and expelled from the USSR.[223] Authorities also arrested leaders of the outlawed Armenian Karabakh Committee in December 1988. Five persons were sentenced to thirty-day jail terms.[224] Twelve persons were transferred to Moscow on January 10, 1989, for investigation and prosecution.[225]

Nemat Panakhov, who organized a number of unauthorized demonstrations in Baku, Azerbaijan, in November 1988, in protest against Armenian calls to transfer the NKAO from Azerbaijan to Armenia, was arrested on December 8, 1988.[226] On November 28, 1988, *Izvestia* identified him as one of the leaders of the demonstrations at Baku's Lenin Square where green Islamic flags and portraits of Khomeini were carried by some of the demonstrators.[227]

The official attitude of the Soviet judiciary is clear. At the December 1988 plenary session of the USSR Supreme Court, the court addressed the ramifications of public demonstrations and public unrest in Armenia and Azerbaijan. The court observed:

> [C]ertain nationalistically inclined circles . . . are trying to exacerbate relations between nationalities. To this end, they are spreading provocative fabrications and rumors meant to whip up national enmity and discord and are making fre-

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222. *Id.*

223. *Id.*

224. *Armenian Activist Arrested*, 3 REP. ON THE USSR 25 (1989).

225. *See Human Rights Watch*, No. 1, at 10-11 (Feb. 1989) (discussing the treatment of the Karabakh Committee). Eleven members of the Armenian Karabakh Committee . . . Rafayel Khazaryan, Vano Siradegyan, Hambartzum Galstyan, Vazgen Manukyan, Davit Vardanyan, Samson Khazaryan, Babgen Araktzyan, Aleksan Hakobian, Ashot Manucharyan, Samvel Gevorkyan, and Levon Ter-Petrosyan, along with Khachik Stamboltsyan, the Charity Fund distributor, were detained in December and January. *Id.* Karabakh Committee documents were seized in searches of apartments, including a list of candidates nominated by the Committee for election to the Congress of People's Deputies. *Id.* On January 10, 1989, tanks, armored troop carriers and soldiers sealed off the roads leading to the Yerevan Investigation Isolation Prison and transferred the entire Karabakh Committee and the Charity Fund manager under armed guard to Moscow for further investigation. *Id.* As of this writing, all . . . continue to be held in pretrial investigation in Moscow at either Butyrka or Matrosskaya Tishina Prison. *Id.* All twelve are charged with article 190-3 ("organizing or participating in group actions disturbing the public order"), article 74 ("violating equal rights of nationalities"), and article 200-1 ("violating the law on street demonstrations"). *Id.*; *see also* Letter from Cathy Fitzpatrick, Research Director of Helsinki Watch to author (Apr. 26, 1989) (notifying him that the February 1989 report was wrong in reporting the release of Khazaryan).

226. *Situation in Transcaucasia*, 1 REP. ON THE USSR 34, 35 (1989).

227. Michaeli & Reese, *Azerbaijani Dissident Reveals Arrest of Nemat Panakhov*, 2 REP. ON THE USSR 14 (1989).

> quent appeals to citizens to disregard the law and disobey the authorities. Under these conditions, the courts' key task is to ensure that the state's interests and citizens' rights and legitimate interests are safely protected, to administer just punishment to the guilty and to take all necessary steps to fully compensate for the material damage resulting from the crimes.[228]

The Supreme Court explained that lower courts should treat "provocative" expression as "propaganda and agitation for the purpose of inciting racial or national hatred or discord" under article 11 of the Law on Criminal Liability for State Crimes. The court noted:

> The actions committed for this purpose may take the form of public speeches and appeals, including statements in the press and other mass media, and the printing, distribution, or posting of leaflets, posters, slogans, etc., as well as the organization of meetings, rallies and demonstrations, and active participation in them for the aforementioned purposes.[229]

G. UKRAINIAN DISSIDENTS

Soviet authorities have shown little tolerance for Ukrainian dissidents.[230] On April 26, 1988, the anniversary of the Chernobyl disaster, an ecological demonstration was held in Kiev.[231] Oles' Shevchenko, a member of the Culturological (Culture and Ecology) Club and of the Ukrainian Helsinki Union (and a former political prisoner), and others carried banners that called for a nuclear-free Ukraine. The police used force to break up the demonstration. Some fifty demonstrators were detained. Shevchenko received a fifteen day jail sentence.

The Democratic Front to Promote Perestroika was formed in Lvov on July 7, 1988, at a public gathering of 10,000-20,000 persons.[232] A similar front was formed in Kiev on June 9, 1988.[233] Two of the leading groups in the front are the Ukrainian Culturological Club, which is based in Kiev and founded in August 1987, and the Lion Society which

228. Izvestia, Dec. 29, 1988, at 6, *reported in* 52 CURRENT DIG. SOVIET PRESS 29 (1989).

229. *Id.*

230. *See generally*, Nahaylo, *Lvov Authorities Resort to Old Methods in Breaking Up Authorized Meetings and Religious Services*, Radio Liberty 355, at 1-3 (1988) (stating that authorities have resorted to force to break up meetings); Solchanyk, *Lvov Authorities Begin Criminal Proceedings Against Ukrainian Activists*, Radio Liberty 327, at 1-3 (1988) (discussing individual criminal cases against activists); Nahaylo, *Independent Groups in the Ukraine Under Attack*, Radio Liberty 417, at 1-5 (1988) (offering an examination of Soviet government crackdowns on Ukranian groups).

231. Marples, *Some Interviews in the USSR*, 1 REP. ON THE USSR 18, 19 (1989).

232. Solchanyk, *Democratic Front to Promote Perestroika Formed in the Ukraine*, Radio Liberty 324, at 1-5 (1988).

233. *Id.*

was formed in Lvov, October 1987.[234]

On November 13, 1988, 10,000 persons attended a major demonstration in Kiev entitled "Ecology and Us."[235] One of the speakers was Yurii Shcherbak, chairman of the Zelenyi Svit (Green World) Ecological Commission of the Ukrainian Writers' Union; he wrote two books on the 1986 Chernobyl disaster. The ecological demonstration also advanced the political demands of the Democratic Front to Promote Perestroika in the Ukraine.[236] Apparently, the police did not interfere in this demonstration.

Ten thousand persons demonstrated in Lvov, on December 10, 1988, in an unofficial observance of the 40th anniversary of the Universal Declaration of Human Rights.[237] Days prior to the demonstration, scores of Ukrainian human rights activists and demonstration organizers in Kiev and Lvov were detained or given administrative warnings.[238] Stepan Khmara, a former political prisoner, was detained and sentenced to fifteen days in jail.[239] In Kiev, a group of dissidents staged a symbolic presence in the Central Square under the watchful eye of policemen. The Kiev group spoke to those passing by about the Declaration of Human Rights and of human rights conditions in the Ukraine. Four Estonian representatives who came to Kiev and Lvov were detained and sent home. Ivan Sokul's'kyi, a former political prisoner, and his colleagues held a small meeting to observe Human Rights Day in the central Ukrainian city of Dnepropetrovsk. Authorities also detained Oleh Kodemchuk, a former political prisoner, who organized a small gathering in Odessa.[240]

On January 21, 1989, dozens of Democratic Union members were arrested in Kiev.[241] They arrived in Kiev from various parts of the country to participate in an organizational meeting. Fourteen persons were released by the evening. Nonresidents of Kiev were forced to leave the city.

On February 12, 1989, the founding conference of the Taras Shevchenko Language Society met without incident in Kiev.[242] Confer-

234. *See* Drohobycky, *The Lion Society: Profile of a Ukrainian Patriotic "Informal Group,"* Radio Liberty 325, at 1-5 (1988).
235. Marples, *supra* note 232, at 19.
236. *Id.*
237. Nahaylo, *10,000 Attend Unofficial Human-Rights Gathering in Lvov*, 1 REP. ON THE USSR 16 (1989).
238. *Id.*
239. *Id.*
240. *Id.*
241. *Authorities Round Up Ukrainian Activists to Prevent Meetings*, 5 REP. ON THE USSR 34 (1989).
242. *Ukranians Call for Restoration of Ukranian as State Language*, 8 REP. ON

ence organizers called for the restoration of the Ukrainian language as the official language.

H. Moldavian Activists

The Alexei Mateevici Club, a literary and musical club, and one of the principal informal groups in Moldavia, held an unauthorized demonstration in the capital of Kishinev on January 22, 1989.[243] According to the authorities, "provocative slogans" were shouted at Moldavian officials. Although the police did not interfere, the party press condemned the rally.[244]

On February 14, 1989, 10,000 people demonstrated in Kishinev. They demanded official status for the Moldavian language and introduction of the Latin script. The police authorities dispersed the rally and arrested several demonstrators.[245]

I. The Baltic Republics: Nationalism and Public Gatherings

Soviet authorities have generally demonstrated a surprisingly tolerant attitude toward public demonstrations in the Baltic Republics. The Baltic Republics have continued to seek greater political and economic independence from Moscow. A discussion of the Baltic experience in the Republics of Lithuania, Latvia, and Estonia follows.

1. Lithuania

On June 24, 1988, 10,000 Lithuanians demonstrated in the capital city of Vilnius. The Movement to Support Perestroika organized the demonstration to urge Lithuanian delegates to the 19th Party Congress to seek greater political and economic independence for Lithuania and to press for the advancement of Lithuanian culture, language, history, and ecology.[246]

On September 28, 1988, several thousand people gathered in Vilnius to protest against the incorporation of Lithuania into the USSR and the 1939 Soviet-German Non-Aggression Pact. Armed police forces dispersed the crowd and in the process beat a number of demonstrators. Some demonstrators fought back by throwing stones at the police. Approximately twenty persons were arrested and charged with hooligan-

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THE USSR 53 (1989).

243. *Demonstration Reported in Kishinev*, 5 REP. ON THE USSR 42 (1989).

244. Sovestskaya Moldaviya, Jan. 27, 1989, *reported in* 8 REP. ON THE USSR 51 (1989).

245. *Id.*

246. *See* Radio Liberty 291, at 1 (1988) (citing Tass, June 25, 1988).

ism and disobeying police orders. In the evening, 5,000 people rallied to protest the police action.[247]

On October 22, 1988, the Lithuanian Movement for *Perestroika* opened its inaugural congress in Vilnius.[248] Over 1,100 delegates and 5,000 observers attended the meeting, which was broadcast live on Lithuanian television throughout the weekend. A crowd of more than 200,000 gathered outside. Lithuanian Party First Secretary, Algirdas Brazauskas, addressed the congress. Tass reported that "[t]he debates . . . were very stormy with some delegates criticizing almost every aspect of Soviet rule in Lithuania and even calling for secession from the USSR. In the end, however, the most radical positions were rejected."[249] The next day, forty resolutions were adopted, some calling for reassertion of sovereignty over the "economy, political system, natural resources, and educational and cultural institutions."[250]

On November 18, 1988, 100,000 people rallied in Vilnius to protest the action of the Lithuanian Supreme Soviet which had failed to vote for the republic's sovereignty.[251] On that day, Sajudis, the Reconstruction Movement, called for a ten minute strike for November 21, 1988.[252] *Pravda* criticized the actions of the Reconstruction Movement on November 22, 1988.[253] The same day, 1,000 people demonstrated in Vilnius calling on the Supreme Soviet to declare sovereignty.[254]

Fifty-thousand people held a lawful demonstration in Vilnius on January 10, 1989, the 38th anniversary of the signing of the third protocol to the Molotov-Ribbentrop Pact.[255] The police did not interfere.[256] Approximately twenty representatives of various unofficial groups spoke at the rally and called for Lithuanian independence and the withdrawal of the "Soviet occupation army."[257] The demonstration participants ap-

247. *See* Radio Liberty 434, at 6 (1988) (citing Tass, Associated Press, and United Press International reports from Sept. 28, 1988).
248. *See* Radio Liberty 472, at 1 (1988) (citing Tass, Oct. 22, 23, 1988).
249. *Id.*
250. *Id.*
251. *See* Radio Liberty 507, at 13 (1988) (citing Reuters and Tass, Nov. 18, 1988). The Lithuanian Supreme Soviet passed three amendments to the Lithuanian Constitution. *Id.* These amendments made Lithuanian the official language of the republic, changed the official flag of Lithuania to the yellow, green, and dark red tricolor (which was the flag of independent Lithuania), and made the national anthem of independent Lithuania the official anthem of Soviet Lithuania. *Id.*
252. *Id.*
253. *See* Radio Liberty 518 at 9 (1988) (citing Pravda and Reuters, Nov. 22, 1988).
254. *Id.*
255. *Demonstrations in Lithuania*, 3 REP. ON THE USSR 30 (1989).
256. *Id.*
257. *Id.*

proved by acclamation a resolution asking the United Nations General Assembly to address the "continuing colonization of the three Baltic states."[258]

On February 14, 1989, *Pravda* reported that 100,000 persons, mostly Russians and Poles, rallied in Vilnius two days earlier to protest the January 26, 1989, decree of the Lithuanian Supreme Soviet that declared the Lithuanian language the official language of the republic.[259] *Pravda* also accused Sajudis of promoting the separation of the republic from the USSR.[260]

On February 16, 1989, 100,000 Lithuanians demonstrated with official approval in Vilnius outside the Roman Catholic Cathedral on the anniversary of the 1918 Lithuanian Declaration of Independence.[261] They waived the newly legalized flag of pre-World War II independent Lithuania. Virgil Cepaitas, Sajudis' secretary, recited an oath and the crowd joined him.[262] They swore: "Let there be a kind of Lithuania that her people want. Our goal: a free Lithuania. Our destiny: Lithuania. May God and all people of good will in the world help us."[263] A similar number of Lithuanians met in Kaunas, the Lithuanian capital from 1920 to 1939, and swore the freedom oath earlier in the day.[264]

2. *Latvia*

The founding congress of the Latvian Popular Front met in Riga on October 9, 1988.[265] A number of informal groups had called for its creation to press for Latvian sovereignty, economic autonomy, and veto power over USSR legislation and governmental decisions affecting Lat-

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258. *Id.*

259. *Lithuanian Action Protested*, Chicago Sun-Times, Feb. 15, 1989, at 44. The decree requires non-Lithuanians to learn the Lithuanian language. *Id.* Eighty percent of the republic's population of 3.5 million is Lithuanian; Russians make up 8% and Poles 7%. *Id.*

260. *Id.*

261. *Lithuanians Demand Freedom*, Chicago Sun-Times, Feb. 17, 1989, at 8.

262. *Id.*

263. *Id.*

264. *Id.*

265. *See* Radio Liberty 454, at 2 (1988) (citing Tass and Radio Moscow, Oct. 9, 1988). The report stated that:

> [T]he Party's First Secretary, Janis Vagris, addressed the congress and said that the Front could help the Party solve such problems as the food shortage in Latvia and could act as a link between the Party and people.

Id. The new President of Latvia, Anatoljis Gorbunovs, also attended the congress. *Id.* Many speakers criticized the Latvian Communist Party and the government, and condemned the Soviet takeover of Latvia in 1940. *Id.* The charter adopted by the congress urged domestic reforms in Latvia. *Id.* The congress elected Dainis Ivans, a writer from Riga, president of the Front and chose a 100-member ruling council. *Id.*

vian interests.[266] The Riga congress received the support of the Latvian Communist Party.[267] On November 11, 1988, a series of demonstrations and commemorations were held in honor of the heroes of Latvia's War of Independence (1918-1919).[268] Two-hundred thousand people participated in the largest commemoration held in Riga.[269] The flag of independent Latvia was raised from the Tower of the Holy Ghost at Riga Castle.[270]

On November 22, 1988, the Latvian Supreme Soviet gave its conditional approval to the proposed amendments to the USSR Constitution.[271] It rejected, however, a proposal to grant it the right to veto USSR Supreme Soviet legislation.[272] The same day, the Latvian Popular Front called for massive protests against the Latvian Supreme Soviet for refusing to approve sovereignty for Latvia.[273] It is important to note that a special "Black Berets" security force of the MVD was formed in Riga in the beginning of 1989.[274]

3. *Estonia*

On August 20, 1988, the Estonian National Independence Party held its first formal meeting in the town of Pilistvere.[275] The declared purpose of the party was "the restoration of a democratic and independent Estonia according to international legal principles."[276]

On September 21, 1988, Arnold Ruutel, the Chairman of the Presidium of the Estonian Supreme Soviet criticized the new USSR laws on

266. *See* Radio Liberty 412, at 4 (1988) (citing Sovetskaya Molodezh, Sept. 8, 1988).

267. *See* Radio Liberty 454, at 2 (1988) (citing Tass, Radio Moscow, Reuters, Oct. 9, 1988). The report noted that the Party's First Secretary, Janis Vagris, spoke to the congress stating that the Front could help the Party solve problems such as food shortages in Latvia and could act as a link between the Party and people. *Id.* Anatoljis Gorbunovs, Latvia's new president, also attended the congress. *Id.* Many speakers criticized the Latvian Communist party and government, condemning the Soviet takeover of Latvia in 1940. *Id.* The charter adopted by the congress urged domestic reforms in Latvia. *Id.* The congress elected Dainis Ivans, a writer from Riga, president of the Front and chose a 100-member ruling council. *Id.*

268. *See* Radio Liberty 496, at 13 (1988) (citing Reuters and Associated Press, Nov. 11, 1988).

269. *Id.*

270. *Id.*

271. *See* Radio Liberty 518, at 2 (1988) (citing Reuters, Nov. 22, 1988).

272. *Id.*

273. *See id.* (citing Associated Press, Nov. 22, 1988).

274. Bungs, *"Black Berets" in Riga*, 10 REP. ON THE USSR 27, 28 (1989). This is a harsh reminder to the Baltic states that they, too, are subject to the regulations provided in Decree 505. *Id.*

275. *See* Radio Liberty 381, at 10 (1988) (citing Reuters, Aug. 24, 1988).

276. *Id.*

public demonstrations.[277] He declared that the decree was "too tough" and that "there was no need to use MVD troops in Estonia to ensure order during mass public and political gatherings."[278] He also said that the "new law would have to be adopted and then publicly discussed before it could be introduced in Estonia."[279]

On October 1, 1988, the Estonian Popular Front opened a two-day congress in Tallinn.[280] The front, established in April 1988, seeks more local autonomy and support for the policy of *Perestroika*.[281] The same day, a rally was held in Tallinn to support Soviet reform policies.[282] On October 2, 1988, the congress passed a number of resolutions with the hope of democratizing life in Estonia.[283] It urged the Estonian government and Communist Party to stop the flow of immigration of other nationalities into Estonia.[284] It also urged "punishment of those who had committed 'Stalinist crimes' [and] called on the Estonian authorities to condemn as 'crimes against humanity' the exiling and execution of Estonians under Stalin."[285] The congress adopted a resolution which "called for young Estonians to do [their] military service inside the republic, using the Estonian language."[286]

On November 16, 1988, the Estonian Supreme Soviet declared the republic "sovereign" with the right to veto USSR legislation.[287] It declared that "Soviet laws would take effect in Estonia only upon their registration by the Presidium of the Estonian Supreme Soviet in a way regulated by it."[288] Within days, the Presidium of the USSR Supreme Soviet rejected Estonia's proclamation of sovereignty.[289] Protest rallies followed, and on November 27, 1988, the Estonian Popular Front held an emergency session and criticized the Presidium of the USSR Supreme Soviet for rejecting Estonia's claim of sovereignty.[290] Apparently, these activities were carried out without interference from police authorities.[291]

277. *See* Radio Liberty 434, at 2 (1988) (citing Molodezh Estonii, Sept. 21, 1988).
278. *Id.*
279. *Id.*
280. *See* Radio Liberty 445, at 2 (1988) (citing Reuters and Associated Press, Oct. 1, 1988).
281. *Id.*
282. *Id.*
283. *See id.* (citing Reuters, Oct. 2, 1988).
284. *Id.*
285. *Id.*
286. *Id.*
287. Radio Liberty 507, at 10 (1988).
288. *Id.*
289. Radio Tallinn, Nov. 27, 1988, *reported in* Radio Liberty 529, at 2 (1988).
290. *Id.*
291. *Id.*

III. COMPARATIVE LAW ANALYSIS

The drafters of the Soviet demonstration decrees sought legitimacy for their legislation by pointing to the demonstration laws of West Germany, France, and England.[292] Indeed, there are certain similarities between the Soviet Decrees and the public demonstration laws of these Western European states. A closer analysis, however, of the German, French, and English legislation belies the purported justification for the Soviet law on the basis of comparative law.

A. THE FEDERAL REPUBLIC OF GERMANY

Under the laws of the Federal Republic of Germany, the rights of assembly and public demonstration are firmly rooted. The Basic Law of the Federal Republic of Germany, *Grundgesetz*, guarantees the right of peaceful assembly "without prior notification or permission."[293] Open-air meetings, however, may be conditioned by law.[294]

The federal law of November 15, 1978, *Versammlungsgesetz*, governs assembly and demonstration rights.[295] The right to organize public meetings or demonstrations is universal except for organizations previously adjudged to be unconstitutional.[296] One who invites others to par-

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292. *See* Kravtsov Interview, *supra* note 2, at 4 (comparing the Soviet Decrees with French, German, and English law). In his comparison of the foreign law, Kravtsov neglects to discuss the absence of judicial review in the USSR legislation. The presence of judicial review in the foreign law, which serves as a check on abusive administrative conduct, distinguishes the foreign law from the Russian decrees.

293. GRUNDGESETZ [GG] art. 8(1) (W. Ger.) *reprinted in* GERMAN (WEST) FUNDAMENTAL LAW 6. "All Germans shall have the right to assemble peaceably and unarmed without prior notification or permission." *Id.*

294. *Id.* art. 8(2). "With regard to open-air meetings this right may be restricted by or pursuant to a law." *Id.*

295. VersammlG, idF v. 15.11.1978 (BGBl. I S. 1789), AndG v. 18.7.1985 (BGBl. I 1511); 10 E. DREHER & H. TRÖNDLE, STRAFGESETZBUCH UND NEBENGESETZE 1767-73 (1988).

296. VersammlG, *supra* note 295, §1(2).

> §1 [Versammlungsrecht]
>
> (1) Jedermann hat das Recht, öffentliche Versammlungen und Aufzüge zu veranstalten und an solchen Veranstaltungen teilzunehmen.
>
> (2) Dieses Recht hat nicht,
>
> 1. wer das Grundrecht der Versammlungsfreiheit gemäss Artikel 18 des Grundgesetzes verwirkt hat,
> 2. wer mit der Durchführung oder Teilnahme an einer solchen Veranstaltung die Ziele einer nach Artikel 21 Abs. 2 des Grundgesetzes durch das Bundesverfassungsgericht für verfassungswidrig erklärten Partei oder Teil- oder Ersatzorganisation einer Partei fördern will,
> 3. eine Partei, die nach Artikel 21 Abs. 2 des Grundgesetzes durch das Bundesverfassungsgericht für verfassungswidrig erklärt worden ist, oder
> 4. eine Vereinigung, die nach Artikel 9 Abs. 2 des Grundgesetzes verboten ist.

Id.

ticipate in a demonstration must list his or her name on an announcement.[297] Organizers and participants must respect the law and maintain public order during a demonstration.[298] Weapons[299] and uniforms are forbidden.[300] Organizers must first submit an announcement of an intended demonstration to police authorities at least forty-eight hours before the event and state its purpose.[301] The names of the organizers must be disclosed.[302] The police authorities may condition or prohibit a demonstration in the interest of public order or safety under "recognizable circumstances."[303] An unannounced or prohibited dem-

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297. *Id.* § 2(1).

§ 2 [Namensangabe des Veranstalters; Störungs- und Waffentragungsverbot]

(1) Wer zu einer öffentlichen Versammlung oder zu einem Aufzug öffentlich einlädt muss als Veranstalter in der Einladung seinen Namen angeben.

(2) Bei öffentlichen Versammlungen und Aufzügen hat jedermann Störungen zu unterlassen, die bezwecken, die ordnungsmässige Durchführung zu verhindern.

(3) Niemand darf bei öffentlichen Versammlungen oder Aufzügen Waffen oder sonstige Gegenstände, die ihrer Art nach zur Verletzung von Personen oder zur Beschädigung von Sachen geeignet und bestimmt sind, mit sich führen, ohne dazu behördlich ermächtigt zu sein. Ebenso ist es verboten, ohne behördliche Ermächtigung Waffen oder die in Satz 1 genannten Gegenstände auf dem Weg zu öffentlichen Versammlungen oder Aufzügen mit sich zu führen, zu derartigen Veranstaltungen hinzuschaffen oder sie zur Verwendung bei derartigen Veranstaltungen bereitzuhalten oder zu verteilen.

Id.

298. *Id.* § 2(2).

299. *Id.* § 2(3).

300. *Id.* § 3(1).

§ 3 [Uniformverbot]

(1) Es ist verboten, öffentlich oder in einer Versammlung Uniformen, Uniformteile oder gleichartige Kleidungsstücke als Ausdruck einer gemeinsamen politischen Gesinnung zu tragen.

301. *Id.* § 14(1).

Abschnitt III. Öffentliche Versammlungen unter freiem Himmel und Aufzüge

§ 14 [Anmeldungspflicht für Versammlungen im Freien und Aufzüge]

(1) Wer die Absicht hat, eine öffentliche Versammlung unter freiem Himmel oder einen Aufzug zu veranstalten, hat dies spätestens 48 Stunden vor der Bekanntgabe der zuständigen Behörde unter Angabe des Gegenstandes der Versammmlung oder des Aufzuges anzumelden.

(2) In der Anmeldung ist anzugeben, welche Person für die Leitung der Versammlung oder des Aufzuges verantwortlich sein soll.

Id.

302. *Id.* § 14(1)-(2).

303. *Id.* § 15(1).

§ 15 [Verbot von Versammlungen im Freien und von Aufzügen; Erhebung von Auflagen; Auflösung]

(1) Die zuständige Behörde kann die Versammlung oder den Aufzug verbieten oder von bestimmten Auflagen abhängig machen, wenn nach den zur Zeit des Erlasses der Verfügung erkennbaren Umständen die öffentliche Sicherheit oder Ordnung bei Durchführung der Versammlung oder des Aufzuges unmittelbar gefährdet ist.

(2) Sie kann eine Versammlung oder einen Aufzug auflösen, wenn sie nicht

onstration in progress may be stopped.[304] The police may exclude participants who disturb public order.[305]

The right to engage in an authorized demonstration cannot be prevented or obstructed by any person.[306] Organizers are forbidden to carry weapons during a demonstration, and violators are subject upon conviction to incarceration of up to one year or a fine.[307] An organizer who, during a demonstration, violates a permit condition or deviates substantially from his or her notification is subject upon conviction to imprisonment of up to six months or a fine of up to 180 daily rated units.[308] An organizer who carries out a prohibited or an unannounced

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angemeldet sind, wenn von den Angaben der Anmeldung abgewichen oder den Auflagen zuwidergehandelt wird oder wenn die Voraussetzungen zu einem Verbot nach Absatz 1 gegeben sind.

(3) Eine verbotene Veranstaltung ist aufzulösen.

Id.

304. *Id.* § 15(2)(3).

305. *Id.* § 19(4).

§ 19 [Ordnungsvorschriften]

(1) Der Leiter des Aufzuges hat für den ordnungsmässigen Ablauf zu sorgen. Er kann sich der Hilfe ehrenamtlicher Ordner bedienen für welche § 9 Abs. 1 und § 18 gelten.

(2) Die Teilnehmer sind verpflichtet, die zur Aufrechterhaltung der Ordnung getroffenen Anordnungen des Leiters oder der von ihm bestellten Ordner zu befolgen.

(3) Vermag der Leiter sich nicht durchzusetzen, so ist er verpflichtet, den Aufzug fur beendet zu erklären.

(4) Die Polizei kann Teilnehmer, welche die Ordnung gröblich stören, von dem Aufzug ausschliessen.

Id.

306. *Id.* Abschnitt IV, §§ 21, 22.

Abschnitt IV. Straf- und Bussgeldvorschriften

§ 21 [Störung von Versammlungen]

Wer in der Absicht, nichtverbotene Versammlungen oder Aufzüge zu verhindern oder zu sprengen oder sonst ihre Durchführung zu vereiteln, Gewalttätigkeiten vornimmt oder androht oder grobe Störungen verursacht, wird mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe bestraft.

§ 22 [Beeinträchtigung und Bedrohung der Versammlungsleitung]

Wer bei einer öffentlichen Versammlung oder einem Aufzug dem Leiter oder einem Ordner in der rechtmässigen Ausübung seiner Ordnungsbefugnisse mit Gewalt oder Drohung mit Gewalt Widerstand leistet oder ihn während der rechtmässigen Ausübung seiner Ordnungsbefugnisse tätlich angreift, wird mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bestraft.

Id.

307. 307. *Id.* § 24.

§ 24 [Verwendung bewaffneter Ordner]

Wer als Leiter einer öffentlichen Versammlung oder eines Aufzuges Ordner verwendet, die Waffen oder sonstige Gegenstände, die ihrer Art nach zur Verletzung von Personen oder Beschädigung von Sachen geeignet und bestimmt sind, mit sich führen, wird mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bestraft.

Id.

308. *Id.* § 25.

demonstration is subject upon conviction to imprisonment of up to one year or a fine.[309]

The law also addresses the consequences of unlawful participation in a demonstration. A mere participant (nonorganizer) is prohibited from carrying a weapon and is subject upon conviction to imprisonment of up to one year or a fine.[310] One who participates in an unauthorized or prohibited demonstration or violates a condition, disobeys police orders, or disturbs the course of a lawful demonstration is subject upon convic-

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§ 25 [Abweichende Durchführung von Versammlungen und Aufzügen]
Wer als Leiter einer öffentlichen Versammlung unter freiem Himmel oder eines Aufzuges
1. die Versammlung oder den Aufzug wesentlich anders durchführt, als die Veranstalter bei der Anmeldung angegeben haben, oder
2. Auflagen nach § 15 Abs. 1 nicht nachkommt,
wird mit Freiheitsstrafe bis zu sechs Monaten oder mit Geldstrafe bis zu einhundertachtzig Tagessätzen bestraft.

§ 40, *StGB*, Imposition of Daily Rated Fines.
(1) Fines shall be imposed in daily rates. A fine shall amount to at least five units of the daily rate and, unless a statute provides otherwise, not more than three hundred sixty daily rate units.
(2) The amount of the daily rate shall be determined by the court with regard to the individual and economic circumstances of the offender. As a general rule this will be the daily net income which the offender earns or could earn. The minimum daily rate shall be two German marks; the maximum ten thousand German marks.
(3) In calculating the amount of the daily rate, estimates of the offender's income, property and other bases may be made.
(4) The sentence of the court shall specify the number and amount of the daily rate.

Trans. by Darby, *The Penal Code of the Federal Republic of Germany*, § 40, at 61 (1987).

309. VersammlG, § 26.
§ 26 [Verbotene und Nichtangemeldete Veranstaltungen]
Wer als Veranstalter oder Leiter
1. eine öffentliche Versammlung oder einen Aufzug trotz vollziehbaren Verbots durchführt oder trotz Auflösung oder Unterbrechung durch die Polizei fortsetzt oder
2. eine öffentliche Versammlung unter freiem Himmel oder einen Aufzug ohne Anmeldung (§ 14) durchführt, wird mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bestraft.

Id.

310. *Id.* § 27.
Wer bei öffentlichen Versammlungen oder Aufzügen Waffen oder sonstige Gegenstände, die ihrer Art nach zur Verletzung von Personen oder Beschädigung von Sachen geeignet und bestimmt sind, mit sich führt, ohne dazu behördlich ermächtigt zu sein, wird mit Freiheitsstrafe bis zu einem Jahr oder mit Gelstrafe bestraft. Ebenso wird bestraft, wer ohne behördliche Ermächtigung Waffen oder sonstige Gegenstände im Sinne des Satzes 1 auf dem Weg zu öffentlichen Versammlungen oder Aufzügen mit sich führt, zu derartigen Veranstaltungen hinschafft oder sie zur Verwendung bei derartigen Veranstaltungen bereithält oder verteilt.

Id.

tion to a fine of up to 1000 marks.[311]

These statutory exceptions to the constitutional right of public assembly and procession are not totally satisfactory from a human rights perspective. Although the law targets criminal behavior which is distinguishable from the mere act of engaging in a peaceful demonstration, there is room for administrative arbitrariness. What distinguishes the German law from the Soviet model, however, is the intervention of judicial review to curb arbitrariness. Article 19, section 4, of the German Basic Law provides for independent judicial review of any administrative decision or act which interferes with the enjoyment of this basic right.[312] The constitution establishes administrative and constitutional courts which may "annul an order issued by local police prohibiting a certain public meeting because the order violates the constitutional right of peaceful assembly."[313] Under the Soviet decrees, there is no mechanism for judicial review of an administrative decision or act which conditions or prohibits a public demonstration.[314] Additionally,

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311. *Id.* § 29.

§ 29 [Verstösse gegen Versammlungsvorschriften]

(1) Ordnungswidrig handelt, wer

1. an einer öffentlichen Versammlung oder einem Aufzug teilnimmt, deren Durchführung durch vollziehbares Verbot untersagt ist,

a. bei einer öffentlichen Versammlung unter freiem Himmel oder einem Aufzug Schutzwaffen geeignet und dazu bestimmt sind, Vollstreckungsmassnahmen eines Trägers von Hoheitsbefugnissen abzuwehren, mit sich führt (prohibits carrying "protective weapons"),

b. bei einer öffentlichen Versammlung unter freiem Himmel oder einem Aufzug in einer Aufmachung, die geeignet und den Umständen nach darauf gerichtet ist, die Festellung der Identität zu verhindern, teilnimmt (disguising identity prohibited).

2. sich trotz Auflösung einer öffentlichen Versammlung oder eines Aufzuges durch die zuständige Behörde nicht unverzüglich entfernt,

3. als Teilnehmer einer öffentlichen Versammlung unter freiem Himmel oder eines Aufzuges einer vollziehbaren Auflage nach § 15 Abs. 1 nicht nachkommt,

4. trotz wiederholter Zurechtweisung durch den Leiter oder einen Ordner fortfährt, den Ablauf einer öffentlichen Versammlung oder eines Aufzuges zu stören,

5. sich nicht unverzüglich nach seiner Ausschliessung aus einer öffentlichen Versammlung oder einem Aufzug entfernt, . . . (paragraphs 6, 7, and 8 are omitted).

(2)Die Ordnungswidrigkeit kann in den Fällen des Absatzes 1 Nr. 1 bis 5 mit einer Geldbusse bis tausend Deutsche Mark . . . geahndet werden.

Id; *see also* THE WORLD ALMANAC AND BOOK OF FACTS 1989 677 (1988) (offering exchange rates stating: 1.72 Mark = U.S. $1.00 (June 1988)). The per capita income is $10,680 (1986). *Id.*

312. GRUNDGESETZ [GG] art. 19(4) (W. Ger.).

313. Rupp, *Judicial Review in the Federal Republic of Germany*, 9 AM. J. COMP. L. 29, 39-40 (1960).

314. *See supra* notes 103-06 and accompanying text (discussing the absence of judicial review under the Soviet decrees).

under the German structure, the prosecution of alleged violations is in the courts. There are no administrative sanctions. Punishment is a judicial function. Lastly, the Federal Republic of Germany is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms and is, therefore, answerable in adjudicative proceedings for its conduct.[315]

B. FRANCE

The present French Constitution does not recognize the right to demonstrate.[316] This right, however, is protected by statute.[317] A public

315. European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221, E.T.S. 5.

316. MORANGE, LIBERTÉS PUBLIQUES, § 147 (*L'Absence de Droit Fondamental*), at 209-210 (1985).

317. C. PÉN., Section VII (*Des associations ou réunions illicites*) *Décret-loi du 23 octobre 1935. Portant réglementation des mesures relatives au renforcement du maintien de l'ordre public* (D.P. 1935. 4. 367).

Art. 1er. Les réunions sur la voie publique sont et demeurent interdites dans les conditions prévues par la loi du 30 juin 1881, article 6.

Sont soumis à l'obligation d'une déclaration préalable tous cortèges, défilés et rassemblements de personnes, et, d'une façon générale, toutes manifestations sur la voie publique.

Toutefois, sont dispensées de cette déclaration les sorties sur la voie publique conformes aux usages locaux.

2. La déclaration sera faite à la mairie de la commune ou aux mairies des différentes communes sur le territoire desquelles la manifestation doit avoir lieu, trois jours francs au moins et quinze jours francs au plus, avant la date de la manifestation. A Paris et pour les communes du département de la Seine, la déclaration est faite à la préfecture de police. Elle est faite au préfet et au sous-préfet en ce qui concerne les communes où est instituée la police d'État.

La déclaration fait connaître les noms, prénoms et domiciles des organisateurs et est signée par trois d'entre eux faisant élection de domicile dans le département; elle indique le but de la manifestation, le lieu, la date et l'heure du rassemblement des groupements invités à y prendre part et, s'il y a lieu, l'itinéraire projeté.

L'autorité qui reçoit la déclaration en délivre immédiatement un récépissé.

3. Si l'autorité investie des pouvoirs de police estime que la manifestation projetée est de nature à troubler l'ordre public, elle l'interdit par un arrêté qu'elle notifie immédiatement aux signataires de la déclaration au domicile élu.

Le maire transmet, dans les vingt-quatre heures, la déclaration au préfet. Il y joint, le cas échéant, une copie de son arrêté d'interdiction.

Le préfet peut, dans les conditions prévues par la loi du 5 avril 1884, soit prendre un arrêté d'interdiction, soit annuler celui qui a été pris.

4. Seront punis d'emprisonnement de quinze jours à six mois et d'une amende de 60 F a 20 000 F:

1. Ceux qui auront fait une déclaration incomplète ou inexacte de nature à tromper sur les conditions de la manifestation projetée ou qui, soit avant le dépôt de la déclaration prescrite à l'article 2, soit après l'interdiction, auront adressé, par un moyen quelconque, une convocation à y prendre part;

2. Ceux qui auront participé à l'organisation d'une manifestation non déclarée

demonstration is presumed to be lawful without prior approval of public officials, but it may be conditioned or prohibited in the interest of public order.[318] The Decree Law of October 23, 1935,[319] is the current legislation regulating public demonstrations.[320]

The decree law provides that a written declaration to hold a public demonstration be executed and delivered to the town or city mayor, or to the local police commissioner, at least three days prior to holding the announced demonstration, but not earlier than fifteen days.[321] The requirement of a written declaration is excused if the activity conforms to local custom.[322] The declaration shall contain the names of the organizers and their home addresses.[323] Unlike the requirement of the Soviet decree, information concerning places of work or study is not required. The declaration must also state the purpose, location, date, time, and itinerary of the demonstration and be signed by at least three organizers.[324]

The authorities may prohibit the proposed demonstration if, in their opinion, the demonstration will disrupt public order.[325] If the decision is to prohibit the proposed demonstration, written notice to desist must be served on the organizers as soon as the decision to prohibit is made.[326] That determination is subject to immediate judicial review.[327] It is common practice for organizers to meet with the authorities to negotiate certain conditions or alternate plans. This, in turn, may avoid the imposition of a ban order.[328]

A person who organizes an unannounced or a prohibited demonstra-

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ou qui a été interdite.

5. *`a 7. Abrogés par Ord. n.* 60-529 *du* 4 *juin* 1960, *art.* 12.

Ce texte a etê dêclarê applicable aux territoires d'outre-mer par Dêcr. n. 47-2211 *du* 19 *nov.* 1947 (J.O. 21 nov.).

318. Morange, *supra* note 316, at 210.

319. *Id.*

320. *Report of the Human Rights Committee*, U.N. GAOR, U.N. Doc. A/43/40, §§ 402-03, at 93-94.

321. D.P. IV, No. 367, Art. 2 (1935); *see also* Morange, *supra* note 316, at 210 (stating the requirements of the decree law).

322. D.P. IV, No. 367, Art. 1 (1935).

323. *Id.* Art. 2.

324. *Id.*

325. *Id.* Art. 3; *see also* Morange, *supra* note 316, at 211 (stating that the administration may prohibit, under judicial control, any march or demonstration that constitutes a risk to public order or a traffic problem).

326. *Id.*, Art. 3.

327. *See* Morange, *supra* 316, at 211 (commenting that judges may pronounce the legality of a prohibition on a demonstration).

328. *See id.* at 210 (commenting that although a demonstration may not be prohibited, negotiations take place because officials make it known that such a demonstration may be forbidden due to time or itinerary problems).

tion is subject to criminal liability and upon conviction to imprisonment from fifteen days up to six months and a fine of 60 up to 20,000 francs.[329] The decree law must be read together[330] with Article 463[331] of the penal code. Article 463 empowers the misdemeanor court judge to impose a jail sentence *or* a fine, substitute a fine for a jail sentence, or set a sentence below the statutory minimum, even in a case of a repeat offender.[332] The decree law exempts the mere participant in an unannounced or prohibited demonstration from criminal liability.

Soviet law makers should find no solace in the French model. Although the right to demonstrate is not fundamental under French law, the legislative history of the French decree illustrates its validity and reasonableness.[333] Moreover, France has acceded to the Optional Protocol to the International Covenant on Civil and Political Rights which requires her to defend against claims brought by individuals alleging human rights violations.[334] Recently, the United Nations Human Rights Committee reviewed France's human rights record and focused, inter alia, on the demonstration decree and its application. The Committee accepted the French reply, which acknowledged that penalties for unannounced demonstrations have "rarely been applied."[335]

The purported legitimacy of the Soviet demonstration decrees cannot be traced to the French legislation. In France, public demonstrations are presumed lawful without prior authorization. An administrative order that conditions or bans a demonstration is subjected to immediate judicial review. The mere participation in an unannounced or prohibited demonstration is not a crime. All sanctions are imposed judicially. There are no administrative sanctions. The statutory penalty provisions are more lenient than those found in Soviet law, and sanctions are rarely imposed.

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329. D.P. IV, No. 367, Art. 4 (1935); *see* WORLD ALMANAC AND BOOK OF FACTS 1989, *supra* note 311, at 674 (noting that Fr 5.82 = U.S. 1.00 (June 1988)). The per capita income is $13,046 (1986).

330. J. Brouchot & F. Hélie, DROIT PÉNAL; PRATIQUE CRIMINELLE DES COURS ET TRIBUNAUX 225 (1954).

331. C. PÉN. Art. 463 (1983).

332. *Id.*

333. *See* J. Brouchot & F. Hélie, *supra* note 330, at 225 (remarking that the attitude of public officials concerning the enforcement of the decree has not been uniform over the years); Morange, *supra* note 316, 210-11 (claiming that prohibitions based on circumstances are normal because the legislature consecrated a freedom to assemble, not to demonstrate).

334. *See* U.N. GAOR, *Report of the Secretary-General*, U.N. Doc. A/42/450, Annex III, at 12 (Aug. 17, 1987) (listing France as acceding to the Protocol on Feb. 17, 1984).

335. *Report of the Human Rights Committee*, *supra* note 321, at 94.

C. THE UNITED KINGDOM

There is no formal recognition of the right of public demonstration in English constitutional law.[336] However, the United Kingdom has an obligation to honor this right pursuant to the European Convention for the Protection of Human Rights and Fundamental Freedoms[337] and to answer violation charges before the European Human Rights Commission.[338] The government White Paper of 1985 recognized the fundamental nature of the right of assembly, stating that the "rights of peaceful protest and assembly are amongst our fundamental freedoms: they are numbered among the touchstones that distinguish a free society from a totalitarian one."[339]

The Public Order Act of 1986 (Act), which recognizes demonstration and assembly rights, regulates public processions and meetings. It was motivated by law enforcement concerns for public violence arising from "inner city riots, industrial disputes and football hooliganism."[340] Unlike the Soviet decrees, the Act, as a whole, cannot be characterized as a governmental attempt to curb the content of peaceful expression. Section 11(1) of the Public Order Act demands advance written notice of public processions.[341] Spontaneous demonstrations are exempt from

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336. Williams, *Processions, Assemblies and the Freedom of the Individual*, CRIM. L. REV. 167, 167 (1987).

337. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 11, 213 U.N.T.S. 221.

> 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Id.

338. *See* Christians Against Racism and Fascism (CRAF) v. The United Kingdom, Application No. 8440/78 (July 16, 1980), 21 *Decisions and Reports* 138-53 (Mar. 1981) (setting forth CRAF's application for relief from a ban on their procession by the Metropolitan Police).

339. *Review of Public Order Law*, Cmnd. 9510 (1985), at 1.7; *see* Williams, *supra* note 336, at 167 (quoting the statement from the government White Paper).

340. Smith, *The Public Order Act 1986 (1) Part I: The New Offences*, CRIM. L. REV. 156, 156 (Mar. 1987).

341. Public Order Act of 1986, § 11.

> (1) Written notice shall be given in accordance with this section of any proposal to hold a public procession intended
>
> (a)to demonstrate support for or opposition to the views or actions of any person or body of persons.
>
> (b)to publicise a cause or campaign, or

the advance notice requirement. Advance notice is required "unless it is not reasonably practicable to give any advance notice of the procession."[342] There is no exception to the permit requirement for a spontaneous demonstration under Soviet law.

> Suggestions of spontaneous demonstrations—within the "reasonably practicable" exemption—include responses to a release of pollutants, a traffic accident, a shipment of nuclear waste or a visit by a political leader. . . . These are uncertain examples, but it is interesting that in the Brixton Report Lord Scarman said that "the procession urgently called without notice in protest against some sudden, unforeseen, event must be protected (if not by law, at least by the exercise of the discretion not to prosecute)."[343]

No advance notice is required "where the procession is one commonly or customarily held in the police area (or areas) in which it is proposed to be held or is a funeral procession organized by a funeral director acting in the normal course of his business."[344]

Under section 11(7), organizers of a public procession are criminally liable if:

> (a)the requirements of this section as to notice have not been satisfied, or
> (b)the date when it is held, the time when it starts, or its route, differs from the

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> (c)to mark or commemorate an event,
> unless it is not reasonably practicable to give any advance notice of the procession.
> * * *
>
> (3) The notice must specify the date when it is intended to hold the procession, the time when it is intended to start it, its proposed route, and the name and address of the person (or of one of the persons) proposing to organise it.
> (4) Notice must be delivered to a police station —
> (a)in the police area in which it is proposed the procession will start, or
> (b)where it is proposed the procession will start in Scotland and cross into England, in the first police area in England on the proposed route.
> (5) If delivered not less than 6 clear days before the date when the procession is intended to be held, the notice may be delivered by post by the recorded delivery service;. . .
> (6) If not delivered in accordance with subsection (5), the notice must be delivered by hand not less than 6 clear days before the date when the procession is intended to be held or, if that is not reasonably practicable, as soon as delivery is reasonably practicable.

Id.

342. *Id.* § 11(1).

343. Williams, *supra* note 336, at 170-71 (referring to Report of the Home Affairs Committee on *The Law Relating To Public Order*, Evidence and Appendices, H.C. 756-II of 1979-80, at 302 and *The Brixton Disorders, April 10-12, 1981*, Cmnd. 8427 of 1981, at 7.45).

344. Public Order Act of 1986, § 11(2). "Processions commonly or customarily held would doubtless include processions arranged by schools, scouts, and (nowadays) the Salvation Army. Funerals not organised in the "normal" course of business would doubtless include those intended to amount to a political demonstration." *Id.*; *see* Williams, *supra* note 337, at 170 n.23.

date, time or route specified in the notice.[345]

A person who is guilty of an offense under subsection (7) is liable on summary conviction to a fine not exceeding £400.[346] Police authorities have the right to impose reasonable time, place, and manner conditions on public processions to ensure public order.[347] An organizer of a public procession who knowingly fails to comply with a permit condition is criminally liable, unless "the failure arose from circumstances beyond his control."[348] He or she is liable on summary conviction to imprisonment of up to three months, a fine not exceeding £1,000, or both.[349] A demonstration participant who knowingly fails to comply with a permit condition is criminally liable, unless "the failure arose from circumstances beyond his control."[350] A demonstration participant who violates a permit condition is subject on summary conviction to a fine not exceeding £400.[351]

The "serious disruption" criterion of section 12(1)(a) was introduced by the government

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345. Public Order Act of 1986, § 11(7). The Act also provides defenses:

(8) It is a defence for the accused to prove that he did not know of, and neither suspected nor had reason to suspect, the failure to satisfy the requirements or (as the case may be) the difference of date, time or route.

(9) To the extent that an alleged offence turns on a difference of date, time or route, it is a defence for the accused to prove that the difference arose from circumstances beyond his control or from something done with the agreement of a police officer or by his direction.

Id. § 11(8)-(9).

346. *Id.* § 11(10), read together with the Criminal Justice Act, 1988, § 52(4) and Criminal Penalties etc. (Increase) Order, SI 1984/447, art. 3(4), Sch 4 (1984); *see*, THE WORLD ALMANAC AND BOOK OF FACTS 1989, *supra* note 312, at 728 (noting that £55 = U.S. $1.00 (June, 1988)). The per capita income = $7,216 (1979).

347. The Public Order Act of 1986, § 12(1). The Act states:

If the senior police officer, having regard to the time or place at which and the circumstances in which any public procession is being held or is intended to be held and to its route or proposed route, reasonably believes that—

(a)it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or

(b)the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do, he may give directions imposing on the persons organising or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption or intimidation, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions.

Id. § 12(4).

348. *Id.* § 12(4).

349. *Id.* § 12(8). This section states that the fine should not exceed level four on the standard scale. *Id.*

350. *Id.* § 12(5).

351. *Id.* § 12(9). This section states that the fine shall not exceed level three on the standard scale. *Id.*

so that the police can re-route a procession "in order to limit traffic congestion, or to prevent a bridge from being blocked, or to reduce the severe disruption sometimes suffered by pedestrians, business and commerce." "A right to demonstrate," claimed Lord Denning in the Second Reading debate in the Lords, "does not carry with it a right to disrupt the life of the community." But the phrase has drawn much criticism, partly because the act of processing or demonstrating is seen as part of the life of the community and partly because of the difficulties of definition. "How can these words be defined in a court of law?" asked Lord Hutchinson of Lullington; and Lord Scarman feared that the new criterion "could lead the police away from the likelihood of disorder and of violence being caused or provoked into a realm where they would be handling values which they are not better able to assess than any other one of us in our individual capacities and which are not values which ought to determine whether restrictions should be put on the right of free speech, of demonstration and of assembly." Lord Denning, on the other hand, spoke of "the sometimes long and tedious processions which obstruct the traffic and life of the community." A Government Minister hoped that the criterion would seldom be used, but he insisted on the need for its introduction . . . .[352]

The intimidation criterion of section 12(1)(b)

was designed to prevent "the coercion of individuals." The government gave examples in the White Paper of National Front marches through Asian districts or of animal rights protesters "who on occasion have marched on furriers' shops or food factories with the intention of preventing the employees from working" or of disproportionately large numbers marching, say, to the house of a planning inspector or local councillor. In short, in the Government's view, this "is a libertarian safeguard designed to prevent demonstrations whose overt purpose is to persuade people, from being used as a cloak by those whose real purpose is to intimidate or coerce."[353]

Under unusual circumstances, a public procession may be banned if the authority to condition a demonstration under section 12 will not adequately prevent serious public disorder. Section 13 of the Public Act grants elected officials the power to ban a demonstration on an application of police authorities.[354]

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352. Williams, *supra* note 336, at 172-73 (referring to the government White Paper, Cmnd. 9510, 4.22; 476 PARL. DEB. H.L., col. 564, 526, 540-41, June 13, 1986; 480 PARL. DEB. H.L., col. 10-11, 13, Oct. 6, 1986).

353. Williams, *supra* note 336, at 173 (referring to the government White Paper, Cmnd. 9510, 4.23).

354. Public Order Act of 1986, § 13. This section states:

(1) If at any time the chief officer of police reasonably believes that, because of particular circumstances existing in any district or part of a district, the powers under section 12 will not be sufficient to prevent the holding of public processions in that district or part from resulting in serious public disorder, he shall apply to the council of the district for an order prohibiting for such period not exceeding 3 months as may be specified in the application the holding of all public processions (or of any class of public procession so specified) in the district or part concerned.

A person who organizes[355] or participates[356] in a prohibited demonstration is criminally liable. An organizer of a banned demonstration is subject on summary conviction to imprisonment up to three months, a fine not to exceed £1,000, or both.[357] A participant in a banned demonstration is subject on summary conviction to a fine not exceeding £400.[358]

The power to ban a demonstration is derived from the 1936 Public Order Act. It was then intended "to be used very sparingly." That is the intent of the 1986 Act as well.[359] Section 14 of the 1986 Public Act also provides for the imposition of reasonable time, place, and manner restrictions on public assemblies.[360] Section 16 of the 1986 Public Act defines "public assembly" as "an assembly of 20 or more persons in a public place which is wholly or partly open to the air."[361] Currently, there is no provision in the 1986 Act for judicial review of an administrative order, which conditions or prohibits the right of procession or assembly.[362] Nor is there judicial review of an Act of Parliament.[363]

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(2) On receiving such an application, a council may with the consent of the Secretary of State make an order either in the terms of the application or with such modifications as may be approved by the Secretary of State.

(3) Subsection (1) does not apply in the City of London or the metropolitan police district.

(4) If at any time the Commissioner of Police for the City of London or the Commissioner of Police of the Metropolis reasonably believes that, because of particular circumstances existing in his police area or part of it, the powers under section 12 will not be sufficient to prevent the holding of public processions in that area or part from resulting in serious public disorder, he may with the consent of the Secretary of State make an order prohibiting for such period not exceeding 3 months as may be specified in the order the holding of all public processions (or of any class of public procession so specified) in the area or part concerned.

(5) An order made under this section may be revoked or varied by a subsequent order made in the same way, that is, in accordance with subsections (1) and (2) or subsection (4), as the case may be.

Id.

355. *Id.* § 13(7). The section finds an organizer of a public demonstration that is statutorily prohibited, guilty of an offense. *Id.*

356. *Id.* § 13(8). This section is similar to § 13(7), but concerns anyone who takes part in a public procession. *Id.*

357. *Id.* § 13(11). The section states that the fine shall not exceed level four on the standard scale. *Id.*

358. *Id.* § 13(12). This section mandates that the fine shall not exceed level three on the standard scale. *Id.*

359. Williams, *supra* note 336, at 174 (referring to PARL. DEB. H.C., col. 1719, Dec. 7, 1936, Sir John Simon (stating that the test of serious public disorder remained which reinforced the assumption of using bans sparingly)).

360. The Public Order Act of 1986, § 14.

361. The Public Order Act of 1986, § 16.

362. *See* Williams, *supra* note 336, at 178-79 (commenting on the new judicial review challenges the Court will receive under the Act).

The English model is markedly different from the Soviet legislation. The power of police authorities to condition or prohibit certain activities is circumscribed by strict legislative criteria. Peaceful public expression is protected from the reach of the criminal laws. There are no administrative sanctions. All violations are prosecuted in the courts. The Act provides meaningful defenses, and only judges can impose penalties. Authorized sanctions under the English law are more moderate. Imprisonment sanctions may be imposed, but only against organizers who violate the law; mere participants are fined. The English judiciary enjoys a long history of independence.[364] Lastly, the United Kingdom is answerable for its conduct in adjudicative proceedings before the European Human Rights Commission.

CONCLUSION

The Soviet record of law and practice in the field of assembly and public demonstration rights does not conform to its claimed commitment to the "binding force" of international law.[365] The USSR is a party to a number of international agreements which already obligate it to respect the right of Soviet citizens to engage in peaceful assembly and public expression.[366] Yet Soviet law and practice fall short of real-

363. *See* Samuel, *Panel Discussion: The Influence Abroad of the United States Constitution on Judicial Review and a Bill of Rights*, 2 TEMP. INT'L. & COMP. L.J. 71, 72 (1987-88) (stating that England has no provisions for judicial review of Acts of Parliament).

364. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 239, 259 (5th ed. 1956) (commenting on Judge Henry de Bracton's taking an independent stance against the King when the King was unjust and remaining neutral during times of political strife in the late 1200s).

365. *See* Address by Mikhail Gorbachev, United Nations General Assembly, Dec. 7, 1988, *reported in* Pravda, Dec. 8, 1988, at 1-2 *reprinted in* 49 CURRENT DIG. SOVIET PRESS 1, 5 (1989) (stating that the ideal of comprehensive international security stems from the binding force of international law on all states).

366. *See* Universal Declaration of Human Rights, Dec. 10, 1948, U.N. GAOR Res. 217 (1948) (containing provisions such as article 20, which states that "[e]veryone has the right to freedom of peaceful assembly and association" and "[n]o one may be compelled to belong to an association"; International Covenant on Civil and Political Rights, U.N. GAOR Res. 2200 (Dec. 16, 1966) (including a section such as article 21).

Article 21 states:

> the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Id.; *see also id.* art. 22 (stating that allowable restrictions such as ones to protect public safety, health, and morals); Conference on Security and on Co-operation in Europe: Final Act, Helsinki (1975) (containing sections pertaining to human rights). The Act

izing that obligation. Soviet citizens are not allowed to associate or express themselves freely.

On March 8, 1989, at a meeting of the United Nations Commission on Human Rights in Geneva, the USSR announced that:

> [The USSR] would accept the World Court's jurisdiction over "interpretation and application" of the 1948 convention condemning genocide, the 1949 convention banning trafficking in prostitutes and similar forms of slavery, a 1952 convention guaranteeing the political rights of women, a 1965 convention banning racism and a 1984 convention outlawing torture.[367]

At that meeting, Anatoly L. Adamishin, the Soviet Deputy Foreign Minister, also predicted that the USSR would soon accede to the Optional Protocol to the International Covenant on Civil and Political Rights.[368] On April 6, 1989, the United Nations received unofficial no-

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states:

> VII. *Respect for Human Rights and Fundamental Freedoms, Including the Freedom of Thought, Conscience, Religion or Belief.*
>
> The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.
>
> In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfill their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Convenants on Human Rights, by which they may be bound.

Id.; CONCLUDING DOCUMENT OF THE VIENNA MEETING 1986 (Jan. 16, 1989).

Principles:

> 11. They confirm that they will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They also confirm the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and security necessary to ensure the development of friendly relations and co-operation among themselves, as among all States.
>
> 21. The participating States will ensure that the exercise of the above mentioned rights shall not be subject to any restrictions except to those which are provided by law and consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights and their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

Id.

367. Lewis, *Soviets to Accept World Court Role in Human Rights*, N.Y. Times, Mar. 9, 1989, at A1.

368. *Id.* at A15; *see generally* OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, U.N. GAOR RES. 2200 (Dec. 19, 1966) (stating that the United Nations Human Rights Committee may consider communications from individuals who claim to be victims of violations of any of the rights set

tice that the USSR has agreed to sign the Protocol.[369] This is a welcoming sign. But it is not a cure for an intolerable situation. The Soviet leadership must take steps to ameliorate the harsh and arbitrary features of the public demonstration decrees. Public officials must be encouraged to administer the law fairly, and if the rule of law is to have any meaning in a restructured Soviet society, an independent judiciary must be promoted and nurtured. It remains to be seen how serious the commitment to the rule of law is and how the Soviet record of law and practice will be judged.

forth in the Covenant).

369. *Soviets Agree to Sign Rights Pact, UN Says*, Chicago Tribune, Apr. 7, 1989, at 20 (stating that such a signing would be an extension of President Gorbachev's intent to emphasize human rights on an international perspective).