PERESTROIKA AND A "LAW-GOVERNED" SOVIET STATE: CRIMINAL LAW

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Abstract

As an outgrowth of perestroika and glasnost', an astounding, unprecedented debate has surfaced in the Soviet Union on the faults in the Soviet legal system, especially criminal law. Moreover, a draft of Fundamentals of Criminal Legislation of the USSR has been submitted to the new Supreme Soviet, which includes numerous changes in the criminal law system. This essay analyses the debate, especially the commentary of leading Soviet legal specialists, and the proposed legislative changes in view of the impediments to successful criminal law reform. We conclude that the role of the Party, which Gorbachev insists must be strengthened, is an especially insurmountable obstacle to "democratization" and the transformation of the Soviet Union into a "law-governed" society.

1. Introduction

Gorbachev’s introduction of glasnost’ (openness) as a major tool of perestroika (restructuring) has produced an astounding, unprecedented dialogue in the USSR. The rationale behind the discussion is the need to identify and correct what is wrong in the system that has allowed the Soviet economy to slide into a "crisis" state that, if not corrected, could destroy the Soviet socialist system. Arising out of glasnost’ has been the acknowledgment that democratization must play a key role in Soviet society if perestroika is to succeed. Democratization, in turn, can be effected in a society only if that society is guided by the rule-of-law and is not controlled by capricious autocratic rule.
Ironically, although law and order have been emphasized by the Soviet leadership, almost from the beginning, illegality has characterized the law enforcement and judicial systems in the Soviet Union.

Soviet leaders from Stalin on have stressed law and order, demanding that all Soviet citizens obey the law down to the smallest detail. Thus, Gorbachev's campaign for "law and order", launched shortly after he came to power in 1985, was nothing new in itself. What was new, however, was the admission that lawlessness has been a hallmark of Soviet legal institutions and that in order for the Soviet Union to be a truly "law-governed" society, major change must take place. The following statement by V. Guliev, a member of the USSR Academy of Sciences State and Law Institute, is a poignant description of the lawlessness inherited by the Gorbachev leadership.

Let us be frank: There is as of yet no firm legal order in the country, no stable law and order. Today in many aspects we still have the political and legal situation that V. Giliarovskii described at the beginning of the century as follows: "In Russia there are two disasters: below — the power of darkness, above — the darkness of power".  

Although "democratization" and the institution of "rule-of-law" are seen as essential for establishing a "law-governed" state that would allow economic progress to be realized, Gorbachev and his close followers apparently have not faced up to the dilemmas and contradictions that inevitably follow. Specifically, they have been calling for "democratization" and "rule-of-law" while, at the same time, insisting that the role of the Party should be strengthened. Calling for two such incompatible goals has produced some verbal gymnastics. An example of such tight-robe walking can be found in the enigmatic phrasing in an article by V. Kudriavtsev and E. Lukasheva, prominent members of the USSR Academy of Sciences State and Law Institute who, while making clear that they believe legal reform would benefit the Party, write: