ARTICLES

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THE SOVIET ADVOKATURA: THE 1980 RSFSR STATUTE WITH ANNOTATIONS

This article is part of a larger work in progress concerning the Soviet legal profession as a whole, which includes not only "advocates," who give legal advice to citizens and represent them in criminal and civil cases, but also "jurisconsults," who serve as full-time legal advisors to state economic enterprises and other state organizations, as well as procurators, judges, legal scholars, officials of the all-union and republican ministries of justice, notaries, and various other types of persons trained in law. Indeed, all persons with higher legal education in the Soviet Union are called "jurists" (iuristy) and have a certain community of interests.1 Even the USSR President and Secretary General of the Communist Party, M. S. Gorbachev, who after graduating from the law department of Moscow State University in 1955 went immediately into Party work in agriculture and never practised law, considers himself to be a "jurist."2

Advocates differ from all other types of Soviet jurists not only with respect to the kinds of legal activity in which they engage but also with respect to their relationship to the Soviet state. Other Soviet jurists are usually salaried employees of state agencies and organizations. Advocates, on the other hand, are members of self-governing associations ("colleges of advocates") and are usually employed and paid by the individual citizens who retain them. Moreover, in representing persons accused of crimes, advocates appear as antagonists of state prosecutors. In civil matters as well, advocates must often oppose state organizations and state officials on behalf of individual citizens.

2. This information is based on conversations with fellow alumni of Moscow University who have attended class reunions with Gorbachev over the years.
Therefore the extent of independence of advocates and of associations of advocates is a matter of acute practical and theoretical interest.

In order to understand the nature of the activities of Soviet advocates it is necessary (though not sufficient) to study Soviet legislation on the subject. That legislation includes an all-union law of 1979, which, however, presupposes that it will be amplified in the legislation of the fifteen union republics of the USSR. The 1979 all-union law, which is much shorter than the 1980 RSFSR Statute, has been published previously in English translation. So far as we know, an English translation of the 1980 RSFSR Statute has not previously been published and, in any event, neither the all-union law nor any of the republican statutes have been analyzed and commented upon, article by article, as in the present study.

It is, of course, impossible to understand "the law on paper"—in any system—without an understanding of "the law in action." In the case of the Soviet system, the discrepancy between the two is far more marked than in most countries of Western Europe and North America. In the past, because of Soviet secrecy concerning official abuses of the law, it was difficult to know the extent of such abuses, although much could be learned from publications of former Soviet lawyers who emigrated to the West. Ironically, with the advent of the policy of glasnost' since 1986, much sharper criticisms both of Soviet law and of Soviet abuses of law are to be found in Soviet publications than in many Western publications. In our annotations we have often relied on such Soviet criticisms as well as on the reports of émigré legal scholars. We have also relied on our own experience—in one case, that of one who was a practising advocate in Leningrad for twenty-five years, and in the other case that of one who has been in close contact with Soviet legal personnel in the course of over twenty-five visits to the Soviet Union since 1955.

The Soviet press and Soviet legal scholars in 1986, 1987, and 1988 have published numerous articles on the need for raising the effectiveness, the independence, and the prestige of the Soviet judicial system and, in that connection, for strengthening the independent role of advocates in both criminal and civil cases. In June 1988, the Nineteenth Party Conference adopted a reso-

3. See infra, Annotation to Article 2.