



3-1-1991

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Recommended Citation

John Quigley, *Freedom of Expression in the Soviet Media*, 11 Loy. L.A. Ent. L. Rev. 269 (1991).
Available at: <https://digitalcommons.lmu.edu/elr/vol11/iss2/1>

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ARTICLES

FREEDOM OF EXPRESSION IN THE SOVIET MEDIA

John Quigley†

One of the most important features of the reforms that began sweeping the Soviet Union in 1985 is greater freedom of expression. Indeed, it was freedom of expression, under the rubric *glasnost*, that was the first in the series of reforms. All aspects of expressive life in the Soviet Union have been revolutionized. The mass media communicate in a way that would have been unthinkable a few years ago. For example, despite recent reversals, criticism of governmental programs is steadily increasing. The reform in freedom of expression took root in a way that made it unlikely that it could readily be turned back.

This article examines the new philosophy of rights as reflected in the regulation of the mass media. It also explores the legislative changes that have given new latitude to the mass media. Those legislative changes and the new freedoms they involve are only meaningful if there exists as well structural mechanisms that ensure protection of the media's rights. This article also discusses, therefore, the dramatic recent reforms in rights protection that affect the media's ability to take advantage of the rights given it by legislation.

I. SOVIET LEGISLATION ON THE MASS MEDIA

The major piece of reform legislation affecting the media is a 1990 law titled Law on the Press and Other Forms of Mass Information ("Law on the Press").¹ This law covers newspapers, magazines, television and radio programs, film documentaries and "other periodic forms

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1. *The Law on the Press and Other Media*, THE CURRENT DIGEST OF THE SOVIET PRESS, July 25, 1990, Vol. XLII, No. 25 at 16 [hereinafter *Law on the Press*]. For discussion of drafts of this law, see Marsov, *Zhurnalistskie mechtaniia: Kakim by khotelos' videt' proekt Zakona SSSR "O pechati"* [Dreams of a Journalist: What It Would Be Nice to See in the Draft Law of the USSR "On the Press"], *Moskovskie Novosti* [Moscow News] (No. 40), Oct. 1, 1989, at 10, col. 1. V. Dolganov; *Odobren proekt zakona o pechati* [A Draft Law on the Press Has Been Approved], *Izvestia*, Sept. 21, 1989, at 1, col. 2.

of public dissemination of mass information."² It declares, as a general proposition, that "the press and other forms of mass information are free."³ More importantly, it states very clearly that "[c]ensorship of mass information, shall not be permitted."⁴ The freedom to which the law referred was to include "the right of stating one's opinions and convictions,"⁵ in addition to the "seeking out, selection, receipt, and dissemination of information and ideas."⁶

President Gorbachev had previously stated his support for greater press freedom. But he created controversy in 1989 when he denounced editors of leading publications that had been critical of government policy.⁷ The Law on the Press was viewed as a victory for the press insofar as it presaged the elimination of the close central control of the media that formerly prevailed.

The Law on the Press opened media operations to anyone who cared to take the initiative. It stated:

The right to establish media organizations⁸ shall belong to the soviets of people's deputies and other state agencies, political parties, public organizations, mass movements, and artistic unions, and to cooperative, religious, and other organizations of citizens that have been set up in accordance with the law, to labor collectives, and also to citizens of the USSR who have attained the age of eighteen years.⁹

Thus, anyone had a right to establish a newspaper, a magazine, or a radio or television broadcasting station.

The Law on the Press made it clear that the state was relinquishing its monopoly on the mass media. It stated that "monopolization of any form of media [the press, radio, television, etc.] shall not be permitted."¹⁰ This provision seemed directed primarily against the government and Communist Party, which formerly had operated all media outlets.

2. *Law on the Press*, *supra* note 1, art. 2, at 16.

3. *Id.* at art. 1.

4. *Id.*

5. *Id.*

6. *Id.* at art. 1.

7. Keller, *Kremlin Leader Lashes at Press, Raising Its Fears*, N.Y. Times, Oct. 17, 1989, at A1, col. 2.

8. Despite its awkwardness, this article will use the term "media organization" to cover newspapers, magazines, and radio and television broadcasting.

9. *Law on the Press*, *supra* note 1, art. 7.

10. *Id.*, art. 7, at 17.

A. Registration of the Media

Although the Law on the Press allowed anyone to take up publishing or broadcasting, it required registration: "The editorial offices of a media organization shall function after registration of the media organization."¹¹ This obligation applied to anyone interested in founding media operations, unless, in the case of a newspaper or magazine, circulation was less than one thousand copies.¹²

The Law on the Press established the procedure for registration. If the founder contemplates reaching a foreign audience, the application must be made to the Council of Ministers of the USSR or the appropriate republic council of ministers. If the targeted audience is confined to the country only, application is made to the Council of Ministers of the USSR only. For a more local audience (i.e., a single union republic of the Soviet Union), the application is made to the republic council of ministers that will advise on which state organizations should receive the application. For example, if the anticipated audience is in a province, then application is made to the province government, called the province soviet.¹³

To register, an applicant must provide the following: his or her name; the location, language, and name of the organization; the anticipated audience; the programmatic goals; the anticipated frequency of publication; anticipated maximum circulation level; and the sources of financing. The founder may not be forced to provide information other than on these points.¹⁴

The government agency receiving the application is to register the organization unless registration was already granted to an organization with the same name, or the organization has within the past year had its right to operate withdrawn,¹⁵ or has been disallowed.¹⁶ The government agency that issued the registration certificate, or the court, is empowered to withdraw a registration certificate if the media organization is used for one of a number of impermissible purposes twice in the same year.¹⁷

These impermissible purposes are listed in the Law on the Press, which prohibits disclosure of:

information constituting a state secret or other secret specially

11. *Id.*, art. 8.

12. *Id.*, art. 10.

13. *Id.*, art. 8.

14. *Law on the Press*, *supra* note 1, art. 9, at 17.

15. *Id.*, art. 11.

16. *Id.*, art. 5.

17. *Id.*, art. 13.

protected by the law; a call to the violent overthrow or change of the existing government or social order; propaganda of war, of use of violence or cruelty, of racial, national, or religious exclusivity or intolerance; dissemination of pornography; promotion of other criminally punishable acts.¹⁸

On these grounds as well, a government agency may refuse an application for registration, if it appears from the name or programmatic aims that the organization will pursue any of these impermissible purposes.¹⁹ A processing fee is charged for making an application.²⁰

Additional rules govern the handling of the application once it is received. The government agency must act on the application within one month.²¹ If the government agency refuses to register an organization, or if it violates the procedure for handling the application (such as failing to act within one month), the founder of the organization may appeal to the court.²² Appeal may also be taken to the court if registration is granted but is subsequently withdrawn.²³ If the application was refused and the court finds the reasons invalid under the Law on the Press, then the court may order the registration.²⁴ Moreover, if the registration of a functioning media organization is unlawfully revoked, the court may reinstate its registration and order the government agency to pay damages.²⁵

This registration system is mandatory. The Law on the Press provides penalties for operating a media organization without registering. An offender may be fined up to five hundred rubles, imposed by a court in a non-criminal (administrative) proceeding. The court may also confiscate the offending publication.²⁶ If the offense is repeated within one year, it becomes a criminal matter; the offender may be fined in court up to one thousand rubles and the court may seize the organization's pub-

18. *Id.*, art. 5.

19. *Law on the Press*, *supra* note 1, art. 11 at 17.

20. *Id.*, art. 12. For the Russian Republic, the fee was set at 1000 rubles for a newspaper or magazine (six month wages for the average worker). For a children's magazine, the fee was 500 rubles, for a radio or television station 5000 rubles, for a periodical produced as a joint venture with a foreign firm 10,000 rubles. For a periodical aimed at a foreign audience, the fee was 10,000 rubles, but had to be paid in foreign currency. *O poriadke registratsii sredstv mas-sovoi informatsii v. RSFSR* [*The Procedure for Registering Entities of Mass Information in the RSFSR*], SOBRANIE POSTANOVLENIY PRAVITEL'STVA RSFSR [COLLECTION OF DECREES OF THE GOVERNMENT OF THE RSFSR], No. 19, item 140 (1990).

21. *Law on the Press*, *supra* note 1, at 16.

22. *Id.*, art. 14, at 17.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Law on the Press*, *supra* note 1, at 20.

lishing or broadcast equipment.²⁷

The registration requirement is not out of line with international practice. States typically regulate broadcast media. Many states do not require print media to register, but others do. A right to freedom of the press is found in international human rights instruments, most prominently in the International Covenant on Civil and Political Rights, to which the USSR is a party.²⁸ Article Nineteen of the Covenant states: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."²⁹ A state may, however, impose certain limitations on the press. According to the International Covenant on Civil and Political Rights, it may regulate to ensure respect for the rights or reputations of others, and to protect national security, public order, public health, and public morals.³⁰ A registration scheme that sought to regulate the political content of media communications would violate international standards.³¹ But if a registration scheme does not go beyond the permissible points of regulation, it would seem to be lawful under the Covenant. On its face the registration scheme in the Law on the Press does not violate these standards.

One provision of the Law on the Press puts a limit on the law's reach if internationally protected rights are involved. It provides: "If rules other than those contained in the present law are established by an international treaty of the USSR, the rules of the international treaty shall be applied."³² Thus, if a Soviet court finds any provision of the Law on the Press to be inconsistent with the press freedom provisions of the International Covenant on Civil and Political Rights, the Covenant provisions would prevail. As a consequence, a journalist or media organization is free to challenge provisions of the Law on the Press in a Soviet court on the basis of the International Covenant.

The Law on the Press contains no requirement of periodic renewal. Thus, once registration has been effected, the media organization may operate indefinitely. If periodic renewal were required, there would cer-

27. *Id.*

28. International Covenant on Civil and Political Rights, Dec. 16, 1966 [hereinafter International Covenant], entered into force March 23, 1976, 999 UNTS 171, reprinted in 6 INT'L LEG. MAT. 368 (1967).

29. *Id.*, art. 19(2).

30. *Id.*, art. 19(3).

31. Paust, *International Law and Control of the Media: Terror, Repression and the Alternatives*, 53 IND. L.J. 621, 629 (1978).

32. *Law on the Press*, *supra* note 1, art. 33, at 19.

tainly be heightened concern for possible abuse of the registration system.

However, the government agency that registers a media organization does have ready access to the work that is produced. Regarding a newspaper or magazine, the Law on the Press requires the editor to send a copy of each issue to the government agency that registered it (as well as other organizations such as libraries and public depositories).³³ This allows the agency to determine whether there is any reason to revoke the registration. Radio and television broadcasters are not required to submit copies, but they must keep a tape of all broadcasts for one month after airing, and must preserve a log for one year.³⁴ The Law on the Press did not specifically provide that the government agency may compel the production of these tapes or logs, but a court might find such an obligation to be implied.

Prior restraint of an individual issue or broadcast is not permitted, unless by court order.³⁵ The law does not indicate the grounds for such prior restraint, but presumably they are the same as those for denial of a permit or revocation of a registration certificate.³⁶ The Law on the Press sets up a procedure for accreditation of journalists.³⁷ A media organization may "by agreement with government agencies and public agencies" arrange accreditation of its journalists with these agencies.³⁸ If a journalist is accredited, the agency must inform the organization of meetings and provide documents issued by the agency.³⁹ However, this provision does not require accreditation in order to function as a journalist. Neither here nor elsewhere does the Law on the Press require the registration of a journalist even though laws in certain states require journalists to register and to meet certain qualifications as a condition of being registered.⁴⁰

33. *Id.*, art. 19, at 18.

34. *Id.*, art. 20.

35. *Id.*, art. 22.

36. *Id.*, art. 5, at 17. *See supra* text accompanying note 16.

37. *Law on the Press, supra* note 1, art. 31, at 19.

38. *Id.*

39. *Id.*

40. *See, e.g.*, Costa Rica Law No. 4420, Sept. 22, 1969, *considered in Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (American Convention on Human Rights, Arts. 13 & 29), *adv. op.*, OC-5/85, Nov. 13, 1985, 1985 INTER-AMERICAN YEARBOOK ON HUMAN RIGHTS 1148, *reprinted in* 25 INT'L LEG. MAT. 123 (1986) (holding Law No. 4420 incompatible with the American Convention on Human Rights because it exceedingly limited the circle of persons who might be admitted to practice as journalists).

B. Freedom of Information

The Law on the Press also contains a freedom of information provision. It proclaims that “[c]itizens have a right to timely receipt through media organizations of reliable information about the activity of state agencies, public agencies, and officials.”⁴¹ This right is implemented by the media. The law states that “[m]edia organizations shall have a right to receive such [reliable] information from state agencies, public agencies, and officials. State agencies, public agencies, and officials shall give media organizations available information and the opportunity to peruse documents.”⁴² “Public agency” in this context would include the Communist Party.

If the information is withheld, the media organization may appeal. “A refusal to provide requested information may be appealed by a representative of a media organization to the superior agency or official.”⁴³ If such measures fail to produce results, the media organization may sue in court.⁴⁴ The Law on the Press provides that such suits shall be conducted on the basis of an earlier statute that allows any citizen to sue an agency or official who violates the citizen’s rights.⁴⁵ Procedures under that law are discussed below.⁴⁶

The above provision, curiously, provides no exceptions. It does not permit the agency to withhold any particular types of information. Presumably, however, a court would not force an agency to disclose the types of information that media organizations are not supposed to disseminate under the Law on the Press.⁴⁷

C. A Right of Retraction or Reply

The Law on the Press gives rights to members of the public about whom negative information is published or broadcast. If false information is published or broadcast that demeans a citizen or an organization,

41. *Law on the Press*, *supra* note 1, art. 24, at 18.

42. *Id.*

43. *Id.*

44. *Id.*

45. *O poriadke obzhalovaniia v sud nepravomernykh deistvii dolzhnostnykh lits, ushchemliaiushchikh prava grazhdan* [Procedure for Appealing in Court Against the Unlawful Actions of Officials that Infringe upon The Rights of Citizens], *Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoy Sovieta SSSR* [Gazette of the Congress of People’s Deputies of the USSR and of the Supreme Soviet of the USSR], No. 22, item 416 (1989), *reprinted in* *Izvestia*, Nov. 12, 1989, at 2, col. 1.

46. *See infra* notes 116-21 and accompanying text.

47. *Law on the Press*, *supra* note 1, art. 5, at 17. *See supra* note 16 and accompanying text.

the citizen or organization may demand a retraction.⁴⁸ If information is published or broadcast that is not necessarily false but which violates the "rights or lawful interests"⁴⁹ of a citizen or organization, the media organization must publish or broadcast a reply if the citizen or organization so desires.⁵⁰

The retraction or reply must be published or broadcast within one month after it is demanded, or, in the case of periodical publications, in the following issue.⁵¹ In the case of a newspaper or magazine, the retraction or reply must appear either in a special section for such items, or in the same column and same type size as the original story.⁵² In the case of radio or television, the retraction or reply must be read in the same program at the same time of day as the original story. Alternatively, the station may allow the citizen or an organization representative to read the item on the air.⁵³ A reply written by a citizen or organization may be up to one typewritten page in length, and the media organization is not permitted to edit it.⁵⁴

If the media organization refuses to publish a retraction or reply, or fails to do so within one month, the citizen or organization may sue in court before the expiration of the one-year statute of limitations.⁵⁵ The court decides whether the citizen or organization is entitled to a retraction or response. Although a citizen's right to retraction or reply limits press freedom to some degree, it is not considered incompatible with freedom of the press as defined internationally. The International Covenant on Civil and Political Rights states that freedom of the press may be subjected to restrictions necessary to ensure "respect for the rights or reputations of others."⁵⁶

The American Convention on Human Rights amplifies this protection of reputation to specifically provide for redress: "Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish."⁵⁷

48. *Law on the Press*, *supra* note 1, art. 26, at 19.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Law on the Press*, *supra* note 1, art. 26, at 19.

54. *Id.*

55. *Id.*, art. 27.

56. International Covenant, *supra* note 28, art. 19(3)(a).

57. American Convention on Human Rights, art. 14, Nov. 22, 1969, *entered into force*

This right was tested by a Costa Rican newspaper, which challenged a provision of a Costa Rican law that gave a citizen the right of a retraction or reply before the Inter-American Court of Human Rights. It argued that such a right violated freedom of the press. The Court held that the citizen right to a reply or retraction was intended by the American Convention on Human Rights as a limitation on the press but that it did not violate freedom of the press. It upheld the citizen right to a reply or retraction.⁵⁸

D. Information Prohibited from Publication

The Law on the Press states that a journalist may not publish information that falls into one of four categories. These categories are: (1) the naming of a person who gave a statement on a promise of anonymity, unless ordered to do so by a court; (2) information uncovered in a criminal case by the pre-trial investigation, unless the appropriate investigating official consents; (3) the identity of a juvenile charged with or convicted of an offense, without the consent of the juvenile or the juvenile's legal representative; (4) information that "pre-decides" the results of a court trial in a pending case or that otherwise puts pressure on a court to decide a case in a particular way.⁵⁹ This latter kind of information has on occasion appeared in the government and Communist Party newspapers. The stories, written while criminal charges were pending, would typically depict the accused as guilty and might call on the court to convict.

The Law on the Press establishes criminal liability for a journalist who publishes information in one of the four prohibited categories. "Mis-use of freedom of speech, or the dissemination of false information impugning the honor or dignity of a citizen or organization, or the exertion by journalists of pressure on a court shall entail criminal, administrative, or other liability as provided by the legislation of the USSR and the union republics."⁶⁰ This provision does not specifically list the penalties, which are to be included in criminal legislation. In addition to the journalist involved, the editor also is subject to criminal liability for the publication of such prohibited information.⁶¹

June 1978, Organization of American States, *Official Records* OEA/SER.K/XVI/1.1, Document 65, Rev. 1, Corr. 1, Jan. 7, 1970, reprinted in 9 INT'L LEG. MAT. 673 (1970).

58. Enforceability of the Right of Reply or Correction, American Convention on Human Rights (arts. 14(1), 1(1), 2), Inter-American Court of Human Rights, adv. op. OC-7/86, Aug. 29, 1986, 1986 INTER-AMERICAN YEARBOOK ON HUMAN RIGHTS 364.

59. *Law on the Press*, *supra* note 1, art. 28, at 19.

60. *Id.*, art. 35, at 19-20.

61. *Id.*

Government officials who violate the press law are also held responsible.⁶² An official is criminally liable for obstructing a journalist's work, for pressuring a journalist to publish particular information, or for withholding information from a journalist. The penalty is, however, rather minor — a fine that may not exceed five hundred rubles.⁶³

In addition to criminal liability, journalists, editors, and government officials may be civilly liable to a person injured by the publication of "false information that impugns the honor or dignity of a citizen or causes him other non-material injury."⁶⁴ The law calls this "moral damage."⁶⁵ A court sets the monetary value of the damages in the context of a civil suit.⁶⁶

E. Broadcast Regulation

In July 1990, President Mikhail Gorbachev issued a decree supplementing the Law on the Press to provide more detailed regulation for the broadcast industry. Titled "The Democratization and Development of Television and Radio in the USSR," the decree called for less central control of television and radio.⁶⁷ It stated that local Soviets should have more say in how television and radio are run, on such issues as the allocation of air time and the hiring of personnel.⁶⁸

The decree allowed local Soviets or citizen organizations the right to start their own broadcasting, either independently or by leasing air time from the government agency that runs the existing network. The decree prescribed that, as in other countries, a licensing system should be established to allocate channels and frequencies.⁶⁹

At the same time, the decree reflected a fear that local authorities might take over the existing facilities. It warned that it would be unlawful for local governments to "change the legal or ownership status"⁷⁰ of the existing central network without the consent of the Council of Ministers of the USSR.⁷¹

62. *Id.*

63. *Id.*, art. 36, at 20.

64. *Law on the Press*, *supra* note 1, art. 39, at 20.

65. *Id.*

66. *Id.*

67. *O demokratizatsii i razvitiu televideniia i radioveshchaniia v SSSR* [*The Democratization and Development of Television and Radio in the USSR*], *Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoy Sovieta SSSR*, No. 29, item 550 (1990) [hereinafter *Democratization and Development*].

68. *Id.*, art. 2.

69. *Id.*

70. *Id.*

71. *Id.*

The decree sharply criticized political censorship in broadcasting. It firmly established that broadcast agencies must be independent of "political and public organizations."⁷² This would include the Communist Party, although it was not mentioned by name. The decree explained that programming must inform the public in an objective manner, and must consider issues from all angles.⁷³ This provision read like the embryo of a "fairness doctrine," but it failed to fully elaborate upon its mandate.

The decree stated that air time should not be monopolized by a particular party or particular political tendency. At the same time, state television and radio should not be "a means of propaganda for the personal political views of its staff."⁷⁴

In this vein, the decree recommended that the State Committee on Television and Radio Broadcasting, which runs the state-owned network, should reorganize itself to allow staff workers to be more creative. One suggestion was that staff should be hired on a contractual basis rather than on the civil service system traditionally used.⁷⁵ Under such a system, pay would be structured more adequately to reward good work.⁷⁶ Some outlets, the decree stated, might be permitted to go onto a self-financing system of operation, rather than take funds from the central government.⁷⁷ In order to increase broadcast capacity, the decree mentioned that military satellite systems should be converted for television transmission.⁷⁸ It should be noted that the decree was interpreted as precatory in nature, and was not deemed an operational enactment.

II. A NEW EMPHASIS ON INDIVIDUAL RIGHTS

The democratization in the Soviet media is part of a broader process in the Soviet Union. Civil rights are gaining increased attention.⁷⁹ President Gorbachev said that previously the Soviet government promoted "the primacy of the interests of the state over the interests of people."⁸⁰

72. *Democratization and Development*, *supra* note 67, at art. 3.

73. *Id.*

74. *Id.*

75. *Id.*, art. 4.

76. *Id.*

77. *Democratization and Development*, *supra* note 67, at art. 4.

78. *Id.*, art. 5.

79. Quigley, *Human Rights Study in Soviet Academia*, 11 HUMAN RIGHTS Q. 452 (1989); *Lichnost' v sotsialisticheskoy pravovoy gosudarstve* [*The Individual in the Socialist State Under the Rule of Law*], 1989(9) SOVETSKOE GOSUDARSTVO I PRAVO [SOVIET STATE & LAW] 45.

80. *Ob osnovnykh napravleniyakh vnutrennei i vneshnei politiki SSSR* [*Basic Directions of the Domestic and Foreign Policy of the USSR*] (report of M. Gorbachev, President of the Supreme Soviet of the USSR, to the Congress of People's Deputies of the USSR, May 30,

This led, he said, to arbitrariness and "the violation of the constitutional rights of citizens."⁸¹ Previously the official position was that rights, along with law in general, were transitory phenomena, dependent on the particular requirements of the time. The view that would predominate after 1985 was that rights are an enduring phenomenon.⁸² A Soviet lawyer wrote that "[u]ntil recently in the Soviet doctrine of socialist democracy, inalienable rights were recognized only for social groupings, but not for an individual person."⁸³ The "natural law doctrine" of individual rights, he said, was declared "an idealistic fiction" that was not based on a class analysis.⁸⁴ However, this lawyer now believes Soviet doctrine accepts the proposition that certain rights are "axiomatic,"⁸⁵ a formulation similar to that of rights as "inalienable." The emphasis on rights in the 1990 legislation on the media is thus in keeping with a more general re-orientation in the Soviet philosophy of rights.

A continuing theme of the Soviet reform process has been the standards set in international human rights instruments.⁸⁶ "[O]ur legal standards," Gorbachev said, "must comply with international treaties."⁸⁷ Since the reform process started, the Soviet government has overcome its long-time reluctance towards the monitoring by outside agencies of human rights in the Soviet Union. Previously, at the United Nations, Soviet representatives had consistently refused to discuss in any detail allegations of human rights violations in the Soviet Union. They typically argued that such matters were internal and therefore not subject to foreign scrutiny. Now they enter into those discussions regularly.⁸⁸

Formerly, the Soviet government avoided international dispute resolution processes that dealt with allegations of human rights violations. It filed objections to the jurisdiction of the International Court of Justice in disputes arising under a number of human rights treaties. But by 1989,

1989), *Pravda*, May 31, 1989, at 1, col. 3 [hereinafter *Basic Directions*]. See also *Ekonomicheskaya gazeta* [Economic News] 1989(23) 1, at 4, col. 4.

81. *Id.*

82. Drzewicki & Eide, *Perestroika and Glasnost — the Changing Profile of the Soviet Union Towards International Law and Human Rights*, 4 *NORDIC J. HUMAN RIGHTS* 3 (1988).

83. Manov, *Sotsialisticheskoe pravovoe gosudarstvo: problemy i perspektivy* [A Socialist State Under the Rule of Law: Issues and Prospects], 1989(6) *SOVETSKOE GOSUDARSTVO I PRAVO* [SOVIET STATE & LAW] 3, 9.

84. *Id.*

85. *Id.*

86. *Zakonodatel'noe obespechenie perestroiki* [Ensuring Reconstruction through Legislation], 1989(17) *SOVETSKAYA IUSTITSIYA* [SOVIET JUSTICE] 2, 3.

87. *Basic Directions*, *supra* note 80, at 4, col. 3.

88. Schifter, *Witnessing the Changes in Human Rights*, Address, Int'l Human Rights Symposium, Georgetown Univ., Dec. 8, 1988, published as U.S. Dept. of State, *Current Policy No. 1142*, at 1 (Jan. 1989).

the USSR by special declaration subjected itself to the fact-finding procedures of the Protocol I to the 1949 Geneva conventions on warfare. This means that if another state party alleges a Soviet violation of the conventions or of the Protocol, an international fact-finding commission is authorized to investigate.⁸⁹ The provision in the Law on the Press mentioned above, stating that international treaties override it,⁹⁰ thus reflects a renewed willingness on the part of the Soviet government to subject its domestic political processes to the standards of international human rights law.

III. NEW LEGISLATION PROTECTING RIGHTS

New legislation has removed a number of prohibitions on freedom of speech. This new legislation broadens the scope of information that is lawful for the media to disseminate. In particular, it gives the media greater latitude in program content.

Prior criminal legislation prohibited anti-government speech. Until 1989, a statute existed that penalized "agitation or propaganda undertaken to undermine or weaken Soviet authority" or to "disseminate for such purposes defamatory fabrications besmirching the Soviet state or social system."⁹¹ In 1989 this was narrowed to prohibit only "public calls for the overthrow of the Soviet state or social system or for its change by methods that violate the Constitution of the USSR, or for blocking the implementation of Soviet laws for the purpose of undermin-

89. Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 90, para. 2; *O ratifikatsii Dopolnitel'nogo protokola k Zhenevskim konventsiiam ot 12 avgusta 1949 goda, kasaiushchegosia zashchity zherty mezhduNarodnykh vooruzhennykh konfliktov (Protokol I), i Dopolnitel'nogo protokola k Zhenevskim konventsiiam ot 12 avgusta 1949 goda, kasaiushchegosia zashchity zherty vooruzhennykh konfliktov nemezhdunarodnogo kharaktera (Protokol II)* [Ratification of the Protocol Additional to the Geneva Conventions of Aug. 12, 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), and of the Protocol Additional to the Geneva Conventions of Aug. 12, 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)], *Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoy Sovieta SSSR*, No. 9, item 225 (1989).

90. *Law on the Press*, *supra* note 1, art. 33, at 19. See *supra* text and accompanying note 30.

91. *Ob ugovolnoi otvetstvennosti za gosudarstvennye prestupleniia* [Criminal Liability for Crimes Against the State], art. 7, *Vedomosti Verkhovnoy Sovieta SSSR (Ved. Verkh. Sov. SSSR)* [Gazette of the Supreme Soviet of the USSR], No. 29, item 449 (1962) [hereinafter *Criminal Liability for Crimes Against the State*]. The USSR Supreme Court construed this provision narrowly in a 1988 case in which the accused persons, convicted under it, had written about an "absence of democracy" in the Soviet Union including "sharp criticism of the policies of Stalin and Brezhnev." The Court reversed the conviction on the ground that it had not been proved that the accused had an intent to undermine Soviet authority. Case of F.F. Anadenko and V.S. Volkov, 1989(2) BULLETEN' VERKHOVNOVO SUDA SSSR (BULL. VERKH. SUDA SSSR) [BULLETIN OF THE SUPREME COURT OF THE USSR] 5, 6.

ing the political or economic system of the USSR."⁹²

The narrowing amendment was criticized on the ground that it still prohibited speech too broadly. Later in 1989, a new version was enacted to prohibit only "public calls for the violent overthrow or change of the Soviet state or social structure as consolidated in the Constitution of the USSR, or disseminating for this purpose materials of such content."⁹³ This formulation meant that a person could not be prosecuted simply for criticizing the government. Only if the critic made a public call for the violent overthrow of the government would a crime be committed.

A 1990 law on religious freedom provided new protection for expression with a religious content. The law said that the dissemination of scholarly work may not be curtailed because it either does or does not reflect a religious perspective.⁹⁴ Formerly statements reflecting a religious perspective were not published by the media.

The 1990 law also abolished a long-standing prohibition against the religious education of children.⁹⁵ This will likely engender the formerly unlawful publication of religious literature for children. The 1990 law also confers a right "to acquire and use religious literature."⁹⁶ Religious organizations are thus now given the right "to produce, export, import, and distribute" religious literature.⁹⁷

A major aspect of the reforms is to remove barriers to Soviet participation in international intellectual life. Before the reforms, the Soviet Union was in many ways cut off from intellectual developments abroad. Travel was difficult for Soviet citizens, who were limited by political and financial factors. Access to foreign persons was also limited. Soviet writ-

92. *O vnesenii izmenenii i dopolnenii v Zakon SSSR "Ob ugovolnoi otvetstvennosti za gosudarstvennye prestupleniia" i nekotorye drugie zakonodatel'nye akty SSSR* [Introduction of Changes and Additions in the Law of the USSR "Criminal Liability for Crimes Against the State and Certain Other Legislative Acts of the USSR"], (Ved. Verkh. Sov. SSSR) [Gazette of the Supreme Soviet of the USSR], No. 15, item 106 (1989).

93. *Ob utverzhdenii Ukaza Prezidiuma Verkhovnoho Sovieta SSSR ot 8 aprelia 1989 goda "O vnesenii izmenenii i dopolnenii v Zakon SSSR "Ob ugovolnoi otvetstvennosti za gosudarstvennye prestupleniia" i nekotorye drugie zakonodatel'nye akty SSSR"* [Confirmation of the Decree of the Presidium of the Supreme Soviet of the USSR of April 8, 1989 "Introduction of Changes and Additions in the Law of the USSR 'Criminal Liability for Crimes Against the State' and Certain Other Legislative Acts of the USSR"], *Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoho Sovieta SSSR*, No. 9, item 203 (1989).

94. *O svobode sovesti i religioznykh organizatsiiakh* [Freedom of Conscience and Religious Organizations], *Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoho Sovieta SSSR*, No. 41, item 813, art. 5 (1990) [hereinafter *Freedom of Conscience and Religious Organizations*].

95. *Id.*, art. 6.

96. *Id.*, art. 22.

97. *Id.*

ers did not easily publish in journals abroad, and foreign writers could not easily publish in Soviet journals. This situation has changed significantly. Foreign authors are currently getting their work accepted by Soviet periodicals. Soviet specialists are being published more readily abroad, in part because foreign journals are more inclined to publish the more freely expressed thoughts of Soviet writers. Beginning in the late 1980s, television networks around the world began routinely to interview Soviet experts.

Soviet legislation has traditionally considered unauthorized emigration from the USSR to be treason.⁹⁸ The new emphasis on pluralism brought with it the idea that the individual should be free to choose the country in which he lives.⁹⁹ In 1989 the Supreme Soviet gave preliminary approval to legislation to remove several existing legal obstacles to emigration.¹⁰⁰ The Soviet government has significantly eased the formalities required for emigration and for travel abroad. The 1990 Law on Freedom of Conscience gave religious denominations the right to maintain contact with counterparts abroad, including freedom of transit.¹⁰¹

Significantly, the Law on the Press recognized for citizens the "right of access to information through foreign sources, including direct television and radio broadcasts and the press."¹⁰² This provision implied a government promise to forego the prior practice of jamming foreign radio broadcasts.

IV. INSTITUTIONAL REFORMS TO ENSURE PROTECTION OF RIGHTS

The media, of course, does not operate in a vacuum. In any state, the media functions within the state's particular political and institutional context. Those who express views in the media run the risk of negative reaction. The media is free only to the extent to which governmental institutions protect one who runs afoul of the interests of the powerful elements in a society, whether those elements be governmental

98. Criminal Liability for Crimes Against the State, *supra* note 91, at art. 1; CRIMINAL CODE, RSFSR, art. 64 ("flight abroad" considered treason).

99. Vengerov, *Sotsialisticheskii pliuralizm v kontseptsii pravovogo gosudarstva* [Socialist Pluralism in the Concept of a State under the Rule of Law], 1989(6) SOVETSKOE GOSUDARSTVO I PRAVO [SOVIET STATE & LAW] 11, 14-15.

100. *O proekte Zakona o poriadke vyezda iz Soiuz Sovetskikh Sotsialisticheskikh Respublik i v'ezda v Soiuz Sovetskikh Sotsialisticheskikh Respublik grazhdan SSSR* [The Draft Law on the Procedure for Exiting the Union of Soviet Socialist Republics and for Entering the Union of Soviet Socialist Republics by Citizens of the USSR], *Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoy Sovieta SSSR*, No. 8, item 182 (1989), reprinted in *Izvestia*, Nov. 16, at 5, and 43 CURRENT DIGEST OF THE SOVIET PRESS 31 (No. 46).

101. *Freedom of Conscience and Religious Organizations*, *supra* note 94, at art. 24.

102. *Law on the Press*, *supra* note 1, art. 33, at 19.

or private. Thus, in the Soviet Union, the legislation on media freedom can achieve its intended effect only if the judicial and other relevant institutions of government can ensure that media rights will be enforced in practice.

A major thrust of Soviet post-1985 reform has been to improve the protection provided by governmental institutions for the exercise of rights. The predominant philosophy under which this reform was conducted was the "rule of law." Various pieces of legislation reflected the concept that the government must protect a citizen whose rights are violated by a government official.

The doctrine of governance that formerly prevailed in the Soviet Union stated that the state was a "state of socialist legality" (*gosudarstvo sotsialisticheskoi zakonnosti*). This concept, though now criticized for having given primacy to governmental over individual interests, was justified on the basis that advancing governmental interests would enable the government to improve the life of the citizenry. However, this policy also permitted the government to act in an overbearing manner toward individual citizens. This concept is criticized as a notion appropriate to a "command-administrative system" of governance in which the citizenry is "law-abiding" but exercises little "active influence on social processes."¹⁰³

The post-reform concept in Soviet legal doctrine held that the state should follow the "rule of law." One Soviet jurist described a "state under the rule of law" as having three aspects: (1) the supremacy of the law; (2) a division between legislative, administrative and judicial functions; and (3) the mutuality of rights and obligations between the state and citizens.¹⁰⁴ In keeping with this concept, significant reforms were introduced in the institutions of government. These changes are likely to be felt by persons engaged in expressive work.

A. Legislature

One important institutional mechanism that assumed new importance was the legislature, which in the Soviet Union is called the Supreme Soviet. As a result of constitutional amendments in 1988, the Supreme Soviet is no longer elected directly. Rather, a Congress of People's Deputies ("Congress") is elected by popular vote. The Congress exercises some legislative functions itself and in turn elects from among its members the Supreme Soviet, which functions as the primary legisla-

103. Manov, *supra* note 83, at 3.

104. *Id.* at 3.

tive body.¹⁰⁵ In elections held for the Congress in 1989, multiple candidacies were the norm, and many government officials who stood for election were defeated by many individuals who had been highly critical of the government.

Legislative activity has been expanded. Under prior practice, the Supreme Soviet met in plenary session only twice per year for one or two weeks, and much legislating was done by the executive branch of government. Now the Supreme Soviet meets most of the year. Service in the Supreme Soviet has been converted from part-time to full-time employment.

The Supreme Soviet has come to play a significant role in governance. It actively debates bills in plenary session. It does not act at the behest of the Communist Party or of the executive branch. It has taken the lead in adopting legislation that protects individual rights.

B. Constitutional Supervision Committee

An additional guarantee of rights that will be important for the media is provided by an agency established in 1989 by the Congress: the Constitutional Supervision Committee ("Committee"). The Committee's function is to review the constitutionality of legislation and of administrative decrees.¹⁰⁶ It has twenty-seven members, chiefly leading lawyers and political scientists, who are selected for ten-year terms by the Congress.¹⁰⁷ It functions as a check on both the legislative and executive branches of government. It has already begun to take an active role in governance.

The Committee takes up issues at the request of various governmental bodies or at its own initiative, though not at the request of an individual citizen.¹⁰⁸ Although it may not nullify a statute, if the Committee decides that a statute of the Congress, or a provision of a constitution of a union republic, violates the Soviet constitution, the Congress must debate the matter at its next session. The provision remains valid only if the Congress, by a vote of two-thirds of its members, overrules the Committee. If the Congress fails to muster a two-thirds vote to override the

105. KONST. SSSR [CONSTITUTION OF THE USSR], arts. 89-91 (as amended Dec. 1, 1988); Ved. Verkh. Sov. SSSR [Gazette of the Supreme Soviet of the USSR], No. 49, item 727 (1988).

106. KONST. SSSR, art. 125 (as amended Dec. 23, 1989); Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoy Sovieta SSSR, No. 29, item 574 (1989); *O konstitutsionnom nadzore v SSSR* [Constitutional Supervision in the USSR], Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoy Sovieta SSSR, No. 29, item 572, art. 10 (1989) [hereinafter *Constitutional Supervision*].

107. *Constitutional Supervision*, *supra* note 106, at arts. 5-6.

108. *Id.*, arts. 12-13.

Committee, the provision loses legal force.¹⁰⁹

If the Committee finds that any other enactment, such as an administrative decree of the Council of Ministers or an edict of the President, violates the constitution or statutes, that finding stays its operation. The enactment may not be enforced unless and until the body that adopted it eliminates the aspect that the Committee ruled unlawful.¹¹⁰

If the Committee finds that a statutory enactment (other than one adopted by the Congress, or a provision of a constitution of a union republic) violates the rights of the individual under the Soviet constitution or human rights treaties to which the USSR is a party, the act loses force from the time the Committee makes the finding.¹¹¹ If the organ that issued the act does not remove the unconstitutional aspect, then the Committee may take the issue to the Congress, and the Committee's annulment stands unless the Congress rejects the Committee's finding by a two-thirds vote.¹¹²

Despite the fact that it may not accept complaints from individual citizens, the Committee has actively pursued issues of individual rights. It has dealt with such matters as the compulsory hospitalization of alcoholics¹¹³ and the conformity of legislation providing for deprivation of citizenship to international human rights norms.¹¹⁴ The Committee held invalid a procedure whereby a criminal defendant could be diverted before trial to non-penal corrective measures, because this procedure involved a finding of guilt without trial. The Committee said that this violated the presumption of innocence as guaranteed by the Soviet constitution and international human rights law.¹¹⁵

109. KONST. SSSR, *supra* note 100, art. 125; *Constitutional Supervision, supra* note 106, at art. 19.

110. *Constitutional Supervision, supra* note 106, at art. 21.

111. *Id.*, art. 21.

112. *Id.*, art. 22.

113. *O priniatii k rassmotreniiu voprosa o konstitutsionnosti zakonodatel'stva o prinuditel'nom lechenii bol'nykh alkogolizmom* [Acceptance for Consideration of the Issue of the Constitutionality of Legislation on the Compulsory Hospitalization of Alcoholics], *Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoho Sovieta SSSR*, No. 40, item 798 (1990).

114. *O priniatii k rassmotreniiu voprosa o lishenii i utrate grazhdanstva* [Acceptance for Consideration of the Issue of the Deprivation or Loss of Citizenship], *Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoho Sovieta SSSR*, No. 40, item 799 (1990).

115. *O nesootvetstvii norm ugolovnoho i ugolovno-protsessual'nogo zakonodatel'stva, opredeliashchikh osnovaniia i poriadok osvobozhdeniia ot ugolovnoi otvetstvennosti s primeneniem mer administrativnogo vzyskaniia ili obshchestvennogo vozdeistviia*, *Konstitutsii SSSR i mezhdunarodnym aktam o pravakh cheloveka* [The Non-Conformity to the Constitution of the USSR and to International Human Rights Instruments of the Norms of Criminal and Criminal-Procedure Legislation Defining the Bases and Procedure for Relief from Criminal Liability with the Application of Measures of Administrative Sanctioning or Public Pressure], *Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoho Sovieta SSSR*, No. 39, item 775 (1990).

Statutes have been adopted for the first time in several cities and republics on procedures for obtaining permits for street demonstrations.¹¹⁶ This legislation brings legal rules, albeit not always very specific ones, to bear on street demonstrations where none had existed previously. In 1990 President Gorbachev issued an edict that permitted the Council of Ministers of the USSR to set the conditions for street demonstrations in downtown Moscow.¹¹⁷ There had been noisy demonstrations in that area where major governmental buildings are located. Gorbachev's rationale was that since demonstrations in that area affect the central governmental organs, the Council of Ministers should have the power of control rather than the local Moscow government. The Constitutional Supervision Commission decided to rule on the edict's constitutionality.¹¹⁸ It held the edict inoperative as an invasion of the normal process whereby local governments control such activities as street demonstrations.¹¹⁹

C. The Courts

If rights are to be protected, citizens must have redress. One major thrust of the post-1985 reform was to strengthen the courts as a check on the executive branch of government. While Soviet courts could not override legislation, they were given broader powers to override unlawful administrative actions. Previously, the courts had jurisdiction over unlawful acts by bureaucrats only if legislation gave jurisdiction for a specific category of acts. The courts had, for example, the power to countermand a decision by a factory manager to dismiss a worker if the dismissal was not based on the grounds specified by law.¹²⁰

116. Foster-Simons, *Towards a More Perfect Union? The "Restructuring" of Soviet Legislation*, 25 STAN. J. INT'L L. 331, 358-59 (1989).

117. *O reglamentatsii provedeniia massovykh meropriiatii na territorii Moskvy v predelakh Sadovogo kol'tsa* [The Regulation of Mass Assemblages in the Territory of Moscow Inside the Garden Ring Road], *Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoy Sovieta SSSR*, No. 17, item 301 (1990).

118. *O priniatii k rassmotreniiu voprosa o konstitutsionnosti Ukaza Prezidenta SSSR ot 20 apreliya 1990 goda* [The Assumption of Jurisdiction over the Question of the Constitutionality of the Edict of the President of the USSR of April 20, 1990], *Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoy Sovieta SSSR*, No. 23, item 421 (1990).

119. *Ob Ukaze Prezidenta SSSR ot 20 apreliya 1990 goda "O reglamentatsii provedeniia massovykh meropriiatii na territorii Moskvy v predelakh Sadovogo kol'tsa"* [The Edict of the President of the USSR of April 20, 1990, "The Regulation of Mass Assemblages in the Territory of Moscow Inside the Garden Ring Road"], *Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoy Sovieta SSSR*, No. 39, item 774, art. 1 (1990).

120. See *Administrativnoye Pravo* [Administrative Law] 220-22 (A.E. Lunev ed. 1967); Ginsburgs, *Judicial Controls over Administrative Actions in the Soviet Union—the Current Scene*, 14 OSTEUROPA-RECHT 1 (1968); Barry, *Administrative Justice and Judicial Review in Soviet Ad-*

In a 1987 statute, the Law on Appeals, the Supreme Soviet gave the courts for the first time a general power to countermand the unlawful decision of a bureaucrat.¹²¹ This is the statute which, according to the Law on the Press,¹²² governs media suits against the government to enforce freedom of information rights.¹²³

The 1987 statute was limited, however, because it allowed court review only of the action of an individual bureaucrat, but not of a decision of a governmental body.¹²⁴ That restriction limited the law's utility, because many decisions adversely affecting constitutional or statutory rights are taken not by a single bureaucrat but by a governmental agency.

In 1989 this limitation in the Law on Appeals was removed. The amended version allowed court review not only of decisions of individual bureaucrats but also of decisions of governmental agencies.¹²⁵ This amendment is important for enforcement of the freedom of information provisions of the Law on the Press, since the refusal might come from the government agency holding the information rather than from a particular official within the agency. To improve enforcement against bureaucrats, the amended version introduced a new crime called "intentional non-compliance by an official with a decision, judgment, ruling, or decree of a court or interfering with their execution."¹²⁶

ministrative Law, in "Soviet Law After Stalin, Part II: Social Engineering Through Law" 241-63 (D. Barry, G. Ginsburgs & P. Maggs eds. 1978).

121. *O poriadke obzhalovaniia v sud nepravomernykh deistvii dolzhnostnykh lits, ushchemliaiushchikh prava grazhdan* [Procedure for Appealing in Court against the Unlawful Actions of Officials that Infringe the Rights of Citizens], Ved. Verkh. Sov. SSSR [Gazette of the Supreme Soviet of the USSR], No. 26, item 388 (1987) [hereinafter *Law on Appeals*], analyzed in Quigley, *The New Soviet Law on Appeals: Glasnost in the Soviet Courts*, 37 INT'L & COMP. L.Q. 172 (1988); McGregor, *Judicial Review of Administrative Actions in the USSR: Current Developments*, YEARBOOK ON SOCIALIST LEGAL SYSTEMS: 1989 129 (W.E. Butler ed. 1989).

122. *Law on the Press*, *supra* note 1, art. 24, at 18.

123. See *supra* text accompanying note 45.

124. *Law on Appeals*, *supra* note 121, at art. 1. See also *O Rassmotrenii Sudami Zhalob na Nepravomernye Deistviia Dolzhnostnykh Lits, Ushchemliaiushchie Prava Grazhdan* [Consideration by Courts of Complaints Against the Unlawful Actions of Officials Violating Citizen Rights] (Decree No. 14 of the Plenary Session of the USSR Supreme Court, Dec. 23, 1988), 1989(1) BULL. VERKH. SUDA SSSR [BULLETIN OF THE SUPREME COURT OF THE USSR] 4-6, reprinted in *Izvestia*, Dec. 29, 1988, at 6, col. 5 (the Court found that bureaucrats were disguising decisions they made individually as if they had been made by their agency, in order to avoid the possibility of being sued; the Court held that it would consider such decisions as having been made by the bureaucrat as an individual).

125. *O poriadke obzhalovaniia v sud nepravomernykh deistvii organov gosudarstvennogo upravleniia i dolzhnostnykh lits, ushchemliaiushchikh prava grazhdan* [Procedure for Appealing in Court Against the Unlawful Actions of Government Agencies and Officials that Infringe upon the Rights of Citizens], Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoye Sovieta SSSR, No. 22, item 416, arts. 1-2 (1989), reprinted in *Izvestia*, Nov. 12, 1989, at 2, col. 1.

126. *Ob otvetstvennosti za neuvazhenie k sudu* [Responsibility for Disrespect to a Court],

The Law on Appeals, as amended in 1989, also provided important protections for citizens who express their views in the media. Suppose a citizen writes a letter to the editor of a newspaper criticizing local officials, and the newspaper publishes it. If the citizen is then denied a government apartment because of the letter, the courts could provide redress.

The extent to which the courts will enforce the freedom of expression depends, of course, on whether the courts are independent. This has been a sore point in the Soviet courts, as local Communist Party and government officials have frequently tried to influence the courts.

Formerly, judges of the trial courts (people's courts) were picked at general elections for a five-year term. They were nominated by the local Communist Party organization, which typically nominated only a single individual. To be elected, the candidate needed fifty percent of the votes cast. This system gave local officials substantial influence over judges.¹²⁷

In 1988, this system was changed. Judges of people's courts were to be selected by a council (Soviet) rather than at a popular election.¹²⁸ The idea was to take the nomination process out of the hands of the local officials. At the same time, the term of office of judges was increased from five to ten years.¹²⁹ Here, too, the aim was to increase the independence of judges from the political process.

To improve the quality of judges, the Supreme Soviet created judicial panels to review the qualifications of judicial candidates.¹³⁰ These panels suggest names to the Ministry of Justice and to the Union Republic Supreme Court, which make the final recommendation to the appropriate Soviet.¹³¹ The panel administers a qualifying examination to nominees who have never served as judges.¹³² This recommendation process was intended to take some of the politics out of judicial selection.

Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoy Sovieta SSSR, No. 22, item 418, art. 4 (1989), reprinted in *Izvestia*, Nov. 12, 1989, at 2, col. 1. This offense was to carry a penalty of a fine between 300 and 1000 rubles. *Id.*

127. Borodin, Chief Judge, Voskresensk City People's Court, Moscow Province, *Kogda sud'ia plachet* [*When a Judge Cries*], 1989(7) OGONIOK [SPARK] 16 (a report concerning local officials interfering in a court case).

128. KONST. SSSR, art. 152 (as amended Dec. 1, 1988): Ved. Verkh. Sov. SSSR [*Gazette of the Supreme Soviet of the USSR*], No. 49, item 727 (1988).

129. KONST. SSSR, *supra* note 128, at art. 152.

130. *Zakon o statuse sudei v SSSR* [*Law on the Status of Judges in the USSR*], Vedomosti s'ezda Narodnykh Deputatov SSSR i Verkhovnoy Sovieta SSSR, No. 9, item 223, at arts. 14-15 (1989) [hereinafter *Law on the Status of Judges*], reprinted in *Izvestia*, Aug. 12, 1989, at 1, col. 7.

131. *Id.*, art. 9.

132. *Id.*, art. 16(1).

It was also aimed at attracting better qualified judges who, presumably, would be less likely to be intimidated by government officials.

One reason Soviet judges have been cautious with officials is that judges themselves have been prosecuted on questionable charges after involving themselves in disputes with local officials.¹³³ A 1989 law provided protection, stating that a judge may be prosecuted only with the consent of the Supreme Soviet of the union republic.¹³⁴ A decision to commence a criminal case against a people's court judge may be taken only by the procurator general of the union republic.¹³⁵ If a criminal case against a judge proceeds to trial, the trial may be heard only by the supreme court of the union republic.¹³⁶ These various reforms in judicial selection are likely to produce over time a judiciary that is more attentive to protecting rights and less fearful of offending the government bureaucracy.

D. *The Legal Profession*

Another institutional mechanism that is necessary to the protection of rights is a professional bar association that takes rights seriously and is not afraid to challenge the government.¹³⁷ Soviet attorneys have in the past been disciplined when they took too strong a position in favor of a client who had expressed anti-government views. This meant that an attorney who aggressively pursued the rights of an unpopular client did so at personal risk.

Soviet attorneys have emerged as a major lobby group in support of better protection for individual rights. In 1989 they established for the first time a nationwide bar association, called the Union of Advocates. Its charter stated the goal of promoting the concept of a "socialist state under the rule of law."¹³⁸ The Union's governing board, as one of its first acts, passed a resolution criticizing two decrees of the Supreme Soviet that limited civil rights. These were a 1988 decree on street demonstrations and the first of the two 1989 amendments to the criminal code provision on anti-state speech.¹³⁹ The group thought that neither the 1988 decree nor the first of the two 1989 amendments protected speech

133. Temushkin, *Mysli o pravosudii* [Thoughts on Justice], 1988(16) SOVETSKAIA IUSTITSIIA (SOV. IUST.) [SOVIET JUSTICE] 4 (1988).

134. *Law on the Status of Judges*, *supra* note 130, at art. 6(1).

135. *Id.*, art. 6(2).

136. *Id.*, art. 6(3).

137. Vengerov, *supra* note 99, at 18.

138. See *Ustav Soiuza advokatov SSSR* [Charter of the Union of Advocates of the USSR], art. 4, 1989(14) SOV. IUST. 29.

139. See *supra* note 92.

strongly enough.¹⁴⁰

Another lawyer organization formed in 1989 was the Union of Jurists of the USSR, an organization for all legal professionals, including attorneys, judges, law teachers, research scholars, criminal investigators, and state attorneys.¹⁴¹ It too described the protection of civil rights as a major objective.¹⁴²

Soviet legal scholars have played a significant role in the reform process. They were widely interviewed in the media about the rule of law. They discussed its implications in their professional journals. Their work was strongly in support of rights protection. Their work itself, of course, was one category of expressive activity in the Soviet Union. Clearly the legal community felt freer to express opinions, and those freer opinions were printed in the leading journals.

E. Importance of the Union Republics

Another institutional factor that operated in the direction of improved protection of rights was the weakening of the Soviet Union's federal structure. The prior system of legislation had a strong central element. The federal legislature adopted laws, and the republics were required to follow them. The typical pattern followed had the federal legislature adopting a legislative framework and the republics filling in the detail. Only rarely did a republic depart from the federal outline. In some instances — including legislation on anti-government speech — the federal legislature adopted the precise text of the penal prohibition and the republics incorporated it *verbatim* into the republic penal codes.

Legislation will no longer be adopted by the federal government with the assurance that it will be incorporated into republic law by the republic legislatures. A number of republics have declared themselves independent of the federal government. Some have resolved that their legislation prevails over conflicting federal legislation.

The greater powers at the republic level do not necessarily ensure greater liberality in the regulation of the media. However, they do increase diversity. Many of the republic governments are motivated by a desire to end the authoritarian-style regulation of speech and publication

140. *V Soiuz advokatorov SSSR* [In the Union of Advocates of the USSR], 1989(11) Sov. IUST. 10.

141. *Na s'ezde iuristov SSSR* [At the Congress of Jurists of the USSR], 1989(16) Sov. IUST. 7.

142. *Ustav Soiuzu iuristov SSSR* [Charter of the Union of Jurists of the USSR], art. 1, 1989(16) Sov. IUST. 12. See also interview of A.A. Trebkov, Chair of the Union of Jurists of the USSR, in *Soiuz iuristov SSSR sozdan* [A Union of Jurists of the USSR Has Been Established], 1989(8) KHOZIAISTVO I PRAVO [THE ECONOMY & THE LAW] 3, 4.

that existed formerly. They are likely, therefore, to take a more libertarian approach.

V. THE IMPACT OF THE REFORMS ON THE SOVIET MEDIA

The political and legal reform movement opened the door for Soviet media to operate relatively free of political constraints. The media remained, for the most part, in government ownership. As in any country where that is the case, problems of freedom of action may appear. Private groups are likely, however, to enter into publishing and broadcasting and to serve as a check on the government outlets.

Reforms in the economy may in one respect work against freedom for the media. The move towards profit-making in the state sector may cause problems for free expression. Book publishing, for example, has been put on a for-profit basis. Publishing houses are expected to break even or better. Unlike American universities, Soviet universities do not operate publishing houses to publish books that might not do well in the mass market. Formerly, the government-owned printing houses published the works of scholars even if they would not enjoy a wide market. Now, however, they turn down manuscripts that will not sell well. Authors of scholarly works have complained that publishers pressure them to write in a way that is accessible to a mass audience. This makes it more difficult for scholars to publish works that may advance an intellectual discipline but may not be best-sellers. As in any market economy, similar considerations may affect newspapers, magazines, and the electronic media.

Overall, however, the intellectual climate in the Soviet Union was enlivened by the post-1985 reforms. Discussion in the media has become more vibrant.¹⁴³ The media reported stories that placed the government in an unfavorable light. The media has developed a new and more important role in disseminating information and in providing a forum for public issues. The more liberal legislation has given broad rights to the media. And perhaps most significantly, the improved procedures for the enforcement of rights through judicial institutions has provided a meaningful forum in which to enforce those rights.

143. Robinson, *Chaos, Excitement and Raw Emotion*, N.Y. Times, Sept. 10, 1989, at G13, col. 1.