

on censorship

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Dietrich A. Loeber^{*}

Samizdat under Soviet law

Publishing is normally performed by state or co-operative agencies in the Soviet Union. Individual citizens are not supposed to engage in such activities. They are barred from acquiring duplicating facilities, from using printing equipment, and from running printing establishments. For persons wishing to reproduce and circulate literary works privately, only a few avenues are open, such as producing handwritten or typewritten copies and distributing them from hand to hand.

This and other forms of private publishing are being used increasingly in the Soviet Union. Colloquially, they are called *samizdat* (self-publishing) and have become known under this name abroad as well. *Samizdat* may be said to constitute a peculiar species of publishing since about 1966, although earlier instances of self-publishing are reported. At first, mainly *belles-lettres* appeared by way of *samizdat*. Later this channel was used for disseminating materials of a political nature. The authors are frequently, but not exclusively, dissidents or persons speaking on behalf of national and religious minorities or of other groups. A common motive of those who engage in *samizdat* is to act independently of the guidance exercised by party and state agencies and to evade the limits imposed by governmental censorship.

Although *samizdat* accounts for only a negligible share of the overall volume of Soviet publications, it has received considerable publicity. Much has been written on the political, social, and cultural significance of this type of literature, but nothing on its legal aspects, neither within nor outside the Soviet Union.

To view *samizdat* in the proper perspective one must first understand the normal procedure for publishing materials.

* The present study revises and expands a paper presented to the Third International Baltic Conference at Toronto in May 1972 and published in *Problems of Mini-Nations: Baltic Perspectives*. A German version appears in *Rabels Zeitschrift für ausländisches und internationales Privatrecht*, XXXVII (1973). The author acknowledges with appreciation the opportunity to work on this study at the Rockefeller Foundation Study and Conference Centre, Villa Serbelloni, Bellagio, Italy. This article will be published, in a slightly more complete form, in *Contemporary Soviet Law: Collected Essays in Honour of J. N. Hazard* (Nijhoff, the Hague, early 1974), ed. D. Barry, W. E. Butler and G. Ginsburgs.

Regular publishing

Regular publishing has several aspects, which will be dealt with here briefly on three levels: (1) on the inter-citizen level, the rights and duties of authors vis-à-vis their fellow citizens are covered by the traditional field of copyright law; (2) with regard to the rights and duties of authors vis-à-vis the party and the state, we shall consider the administrative and labour law aspects; and (3) on the international level, we will examine the status of domestic authors in foreign countries and *vice versa*.

Copyright

Copyrights 'apply to works of science, literature, or art' that are 'published or that are . . . expressed in some kind of objective form making it possible to reproduce the result of the author's creative activity'.¹ No formalities, such as registration, are necessary to effect copyright. A copyright 'belongs to an author for life'. It passes to the author's heirs for a maximum period of twenty-five years;² the payment of royalties to heirs is limited to 50 per cent.³ An author has the 'right to publish, reproduce, and circulate his work'. He has furthermore a right 'to inviolability of the work' and 'to receive royalties for the use of his work'.⁴ Any published work may be translated only with the consent of the author.⁵

International copyright

The Soviet Union grants international copyright protection⁶ in accordance with the Universal Copyright Convention of 1952,⁷ to which it acceded on 27 February 1973.⁸ The Convention, pursuant to Article 9, enters into force 'three months' thereafter, i.e., on 27 May 1973. The Convention obliges each member-state to provide copyright protection equivalent to that enjoyed by its own citizens (national treatment standard). A USSR Edict amending the all-union copyright legislation with a view to adapting it to the requirements of the Convention applies to 'relationships arising after 1 June 1973'.⁹

(a) Works of foreign authors published in the Soviet Union

Works published for the first time in the USSR are recognised as belonging to the author regardless of his citizenship. The same applies to unpublished works available in the Soviet Union.¹⁰ Authors from 'bourgeois' countries whose works are selected for publication in the Soviet Union did not enjoy fully a right to inviolability of their works before the Soviet Union acceded to the Universal Copyright Convention. A 1959 Decree of the CPSU obliged the Publishing House of Foreign Literature to publish works of 'bourgeois authors' in 'limited editions excluding from the text parts not representing scientific or practical interest, to add full prefaces and notes'.¹¹ Soviet publishing practice lived up to these demands.¹²

The CPSU Decree is incompatible with the obligations of the Soviet Union under the Universal Copyright Convention. It discriminates against 'bourgeois' authors since other authors protected under Soviet copyright laws enjoy a right to inviolability of their works. This right includes protection against adding a preface or commentaries to the work without the consent of the author.¹³ But the 'state monopoly over all . . . publishing and distribution activities' continues to ensure 'that only foreign works which are ideologically palatable will be imported or locally produced'.¹⁴

The royalties a foreign author earns in the Soviet Union are paid in non-convertible local currency. A transfer of these sums abroad requires the permission of Soviet authorities.¹⁵

¹ Article 96, Fundamental Principles of Civil Legislation of the USSR and Union Republics; Article 475, RSFSR Civil Code; and corresponding articles in the other union republic civil codes. For normative materials and bibliographic data on Soviet copyright law as of 1966, see D. A. Loeber, *Urheberrecht der Sowjet-union: Einführung und Quellen* (Frankfurt, 1966).

² Article 105, Fundamental Principles of Civil Legislation, as amended February 21, 1973. *Vedomosti SSSR* (1973), no. 9, item 138; English translation of Edict of February 21, 1973: 'A Chronicle of Human Rights in the USSR' (New York), no. 1 (1973), pp.74-77; Article 496, RSFSR Civil Code.

³ Article 496, RSFSR Civil Code.

⁴ Article 98, Fundamental Principles of Civil Legislation, as amended, note 2 above; Article 479, RSFSR Civil Code.

⁵ Article 102, Fundamental Principles of Civil Legislation, as amended note 2 above; Articles 489, 491, RSFSR Civil Code. For literature published before the USSR acceded to the Universal Copyright Convention, see G. A. Kudriavtseva, 'The Principle of Freedom of Translation in Soviet Copyright Law', *Soviet Law and Government*, IX, no. 2 (1970), pp.159-171.

⁶ Article 97, Fundamental Principles of Civil Legislation, as amended, note 2 above; Articles 477, 478, RSFSR Civil Code.

⁷ Text in A. Bogsch, *The Law of Copyright Under the Universal Convention* (2nd ed.: Leiden, 1968), pp.153-161. Amendments to the Convention in 1971 granted some privileges to developing countries. Revised text: *Le Droit d'Auteur*, vol. 85 (1972), pp.22-28.

⁸ *Copyright Bulletin* (published by UNESCO), vol. 7 (1973), no. 1, p.39.

⁹ Article 2 of the Edict of February 21, 1973, note 2 above, provides: 'In the event of contractual and other relations arising before June 1, 1973, the rules of the . . . Edict apply to such rights and duties as arise after June 1, 1973.' It is difficult to explain the curious gap of a few days (May 28-31, 1973) during which Soviet legislation fails to provide international copyright protection as required in the Convention.

¹⁰ Article 97, Fundamental Principles of Civil Legislation, as amended, note 2 above; Article 2, Universal Copyright Convention.

¹¹ Paragraph (g), Decree of the Central Committee of the CPSU, June 4, 1959, published in *Voprosy ideologicheskoi raboty; sbornik vazhneishikh reshenii KPSS* (Moscow, 1961), p.276; reprinted in *O partiinnoi i sovetskoi pechati, radioveshchanii i televidenii; sbornik dokumentov i materialov* (Moscow, 1972), p.462; excerpt transl.: *Survey*, XLI (1962), 171-172.

¹² On Soviet translations of 'bourgeois' legal literature, see D. Frenzke, *Osteuropa Recht*, VIII (1962), 121-127; P. Sand, *ibid.*, X (1964), 165.

¹³ Article 98, Fundamental Principles of Civil Legislation, as amended, note 2 above; Article 480, 489, RSFSR Civil Code.

¹⁴ S. Pisar, *Coexistence and Commerce* (New York, 1970), p.378. This is corroborated by B. Stukalin, the Chairman of the State Committee of the USSR for Publishing (see note 51), who proclaimed in 1973: 'writings advocating . . . ways of life alien to us will not be disseminated' in the Soviet Union (*New Times*, Moscow, quoted from the *New York Times*, May 28, 1973, p.6 col. 2).

¹⁵ A transfer of sums inherited from Soviet citizens by foreigners living abroad is generally permitted, according to an USSR Decree of April 21, 1955. The Decree has not been published in the legal gazette, but appeared in *Sbornik postanovlenii . . . po finansovo-khoziaistvennym voprosam* 1959 no. 11, p.31 (quoted from Rubanov A., *Nasledovanie v mezhdunarodnom chastnom prave*, Moscow, 1966, p.70, note 49).

¹⁶ A. N. Bykov, 'Voprosy avtorskogo prava vo vneshnei torgovle SSSR', in *Pravovoe regulirovanie vneshnei torgovli SSSR* (Moscow, 1961), p.358. This chapter and others were omitted from a German translation: *Der Aussenhandel und seine rechtliche Regelung in der UdSSR* (Berlin, 1963).

¹⁷ Articles 14, 77, USSR Constitution; Articles 3, 124-126, Fundamental Principles of Civil Legislation; Articles 3, 564-566, RSFSR Civil Code.

¹⁸ Bykov, note 16 above, p.359.

In practice, it has been difficult to obtain such permission.

(b) Soviet works published abroad

Soviet authors are free to deal with foreign publishers so long as these relations lack a commercial character. That is said to be the case, so far, in relations between Soviet authors and publishers in the socialist countries.¹⁶ Publishing contracts with publishers in capitalist countries, on the other hand, which provide for royalties are considered to have a commercial character. Since physical and judicial persons may not perform commercial transactions abroad without permission,¹⁷ the USSR Ministry of Foreign Trade has empowered a special agency to handle relations connected with the publication of Soviet works abroad.¹⁸ It is the foreign trade combine *Mezhdunarodnaia kniga* (International Book) in Moscow.¹⁹

The main function of *Mezhdunarodnaia kniga* is to import and to export books. In addition, it concludes contracts with publishers in capitalist countries for the translation or other use of Soviet works abroad.²⁰ In doing so, *Mezhdunarodnaia kniga* acts in its own name. It usually assumes the obligation not to transfer the same right to other publishers. The foreign publisher acquires an exclusive right (licence) in such case²¹ and undertakes, 'as a rule', to pay royalties to the Soviet author.²² Of the sums actually received from abroad 75 per cent are paid to the author. The rest is withheld by *Mezhdunarodnaia kniga* as a commission fee. This is stipulated in a little known USSR Decree of 1944²³ which never appeared in the official legal gazette.²⁴

The procedure for the transfer by a Soviet author of his right to use a work abroad will be regulated by all-union legislation.²⁵ No pertinent statute had been published by May 1973. It is likely to provide an obligation for Soviet authors willing to transfer publishing rights abroad to use the services of a central governmental agency specialising in international copyright relations.²⁶

Sanctions for not observing the transfer procedure could, perhaps, include such measures as confiscation²⁷ or compulsory purchase of the work in question.²⁸ Confiscation may be ordered as a criminal sanction²⁹ or as a measure of civil law responsibility.³⁰ A fine as a measure of administrative responsibility would presuppose a statute expressly providing for such sanction.³¹ Compulsory purchase by the state of an author's right requires in the RSFSR a decree of the Council of Ministers for each individual case.³²

Concentrating relations with foreign publishers in the hands of one specialised governmental agency has definite advantages for those in control of Soviet publications. It permits guidance in conformity with the political aims of the CPSU, 'showing solicitude for the correct orientation of the development of literature and art and for their ideological and artistic standards'.³³ The advantages were already apparent when the use of Soviet works abroad was legally free. This was so because a number of foreign publishers chose to seek the consent of the Soviet author. The need for a centralisation of relations with foreign publishers is even more urgent in the eyes of the Soviet cultural bureaucracy now that the

Soviet Union has joined the Universal Copyright Convention. Foreign publishers must secure the consent of a Soviet author if they wish to use his work.³⁴

A centralised agency for a transfer of copyright would bring advantages to both the Soviet author and the foreign publisher. The Soviet author is likely to work through the governmental agency if he is interested in royalties of the foreign publisher, since the contract involving foreign royalties affects the foreign trade monopoly of the USSR³⁵ and requires a permit.³⁶ Theoretically, the Soviet author could apply for the permit on his own initiative. Statutes of the early years specifically envisaged applications of 'private citizens' for licensing foreign trade transactions.³⁷ But these regulations are either repealed or obsolete today.³⁸ A Soviet citizen stands no chance of obtaining the permit for a publishing contract involving royalties of a foreign publisher unless the governmental agency administering international copyright relations approves of such transaction and supports the application.

A Soviet author also requires the permit in view of the foreign exchange monopoly exercised by the USSR. Foreign exchange transactions may be performed in the Soviet Union only with permission of and through the State Bank of the USSR (Gosbank).³⁹ Violation of this monopoly entails criminal responsibility.⁴⁰ The wording of the criminal provision in question also would cover violations of the foreign trade monopoly.⁴¹

The incentive for a foreign publisher to follow the established procedure for a transfer of the right to use a Soviet work may be equally strong. He will enjoy copyright protection in the Soviet Union for his publication only if he works through the governmental agency administering the transfer.⁴² Of greater consequence may be commercial considerations. If the foreign publisher is interested in continuing to publish works of Soviet authors, he would be well advised to cultivate his relations with the Soviet governmental agency. If he publishes a Soviet work and bypasses that agency, he will have little chance to conclude subsequent contracts.

The Soviet Union is obliged under the Universal Copyright Convention to protect not only works of Soviet authors published abroad but also works of foreign authors.⁴³

(c) *Bilateral copyright agreements of the Soviet Union*

The Soviet government has entered into bilateral copyright agreements with Hungary (1967)⁴⁴ and Bulgaria (1971).⁴⁵ The contracting parties mutually recognise copyright of their authors. The protection is limited, however, personally and in substance. Copyrights are recognised only for citizens of the other party residing on its territory and only if their work has been first made available in the territory of the other party. Emigrés⁴⁶ and citizens of third states are thus excluded. The effect is limited in substance inasmuch no minimum rights are envisaged; it is rather the standard of the party providing the least protection which prevails. This applies, for example, to the obligation to pay royalties. The duration of pro-

³⁴ *Mezhdunarodnaia kniga* was established in 1923 (cf. reports in *Vneshniaia torgovlia*, no. 14 (1923), p.24; no. 24, p.26). Until 1951 its functions in the publishing field were performed by the *Literaturno-muzykal'noe agentstvo*. The Charter of *Mezhdunarodnaia kniga* has been confirmed by the USSR Ministry of Foreign Trade, but not published. See Bykov, note 16 above, p.358. Six administrative regulations on *Mezhdunarodnaia kniga* are collected in L. G. Fogelevich, *Deistvuiushchee zakonodatel'stvo o pechatii; sistematicheskii sbornik* (3rd ed.; Moscow, 1931), pp.167-171, but only one such regulation appeared in the sixth edition, published under the title: *Osnovnye direktivy i zakonodatel'stvo o pechatii* (Moscow, 1937), p.243. Bykov's is a revealing and apparently the only published study in Soviet legal literature on the activities of *Mezhdunarodnaia kniga*, (note 16). For articles on the occasion of its 50th anniversary see *Novye Knigi* (1973), no. 15, pp.70-80 and *Vneshniaia torgovlia*, no. 4 (1973), pp.24-27. For literature in English, see B. Gorokhoff, *Publishing in the USSR* (Bloomington, 1959), pp.180-183.

³⁵ Bykov, note 16 above, pp.360-362. The functions of *Mezhdunarodnaia kniga* should be distinguished from those of the foreign trade combine *Vneshstorgizdat*. The latter is entitled to place orders 'for the printing of literature abroad', presumably to serve the needs of the USSR Ministry of Foreign Trade. See Article 6, Charter of *Vneshstorgizdat*, in *Vneshniaia torgovlia*, no. 4 (1961), pp.45-46.

³⁶ Bykov, note 16 above, p.362.

³⁷ *Ibid.*, p.359, and information based on a contract of *Mezhdunarodnaia kniga* with a Western publisher. The contract, concluded in 1966, consists of thirty articles; a copy is in the possession of the present author. On the relations of the 'Econ' publishing firm in Düsseldorf with *Mezhdunarodnaia kniga*, see Italiaander R., 'USSR - About the Necessity of a Copyright Agreement', *GEMA News*, no. 7 (1967), p.44; versions were published in French and Spanish, and in *GEMA Nachrichten*, no. 71 (1966).

³⁸ USSR Decree of December 13, 1944, published in *Sbornik normativnykh materialov po voprosam vneshnei torgovli SSSR* (Moscow, 1956), p. 436.

³⁹ Failure to publish the decree in the official legal gazette does not preclude its being in force according to Soviet law. See Loeber, 'Legal Rules' "For Internal Use Only", *International and Comparative Law Quarterly*, XIX (1970), 76-77.

⁴⁰ Article 98, Fundamental Principles of Civil Legislation, as amended, note 2 above. A Rumanian law of 1971 prohibits to export, to circulate or to publish abroad manuscripts or works which may harm the interests of the Rumanian state (*Law on State Secrets* of December 17, 1971, Art. 5, *Buletinul oficial* 1971, Part 1, no. 157, pp.1126-1133; excerpts in German translation: *Osteuropa*, vol. 22, 1972, no. 9, p.A633-A634.

⁴¹ The Writers' Union and its All-Union Administration for the Protection of Authors' Rights may be called upon to co-operate. On the functions of these bodies see the Statute of the Writers' Union of 1967 (sec. 27) (text: *Cheivertyi s'ezd pisatelei SSSR, Stenograficheskii otchet*, Moscow, 1968, pp.287-288) and the Statute of the All-Union Administration for the Protection of Authors' Rights of 1956 (excerpt in: Zil'bershtein N., *Avtorskoe pravo na muzykal'nye proizvedeniia*, Moscow, 1960, pp.185-186). For literature see Chertkov V., *Rol' tvorcheskikh soiuзов v okhrane avtorskikh prav ikh chlenov*, in: *Tvorcheskii soiuzy v SSSR*, Moscow, 1970, pp.216-252. Before the Soviet Union joined the Universal Copyright Convention the activities of these institutions in protecting authors' rights were limited, in practice, to the territory of the USSR (cf. Chertkov, *ibid.*, p.250).

⁴² Article 31, Fundamental Principles of Civil Legislation; Article 149, RSFSR Civil Code.

⁴³ Article 106, Fundamental Principles of Civil Legislation; Article 501, RSFSR Civil Code.

⁴⁴ Article 21, para. 10, RSFSR Criminal Code. Confiscation may be applied only as a supplementary punishment (Article 22) and only for crimes against the state or grave mercenary crimes (Article 35).

⁴⁵ Under Article 149, RSFSR Civil Code, confiscation is permitted only in cases provided for in all-union or RSFSR legislation. One example is transactions whose purpose 'deliberately conflicts with the interest of the socialist state and society'. Article 49, *ibid.*; Article 14, Fundamental Principles of Civil Legislation.

tection has been set at fifteen years after the death of the author, although it is twenty-five years under the Universal Copyright Convention⁴⁷ now binding for both the Soviet Union and Hungary.⁴⁸

In 1972 the Soviet Union and Czechoslovakia agreed to work out a system of copyright protection facilitating a broad popularisation of the cultural values of both parties.⁴⁹

Administrative law

A Soviet author wishing to make use of his manuscript has to approach a publishing house. Legally, the author and the representative of the state agency meet as equals. In fact, however, they negotiate from rather unequal positions because the state holds an actual monopoly of all 'material requisites' necessary for the exercise of the rights of an author.⁵⁰ This monopoly is effectively used to direct and to guide the political and cultural life of the country.

(a) *Functions of the State Committees for Publishing*

The functions of direction and guidance on the state level are performed by the State Committees for Publishing. They are attached to the Councils of Ministers of the Union and of the union republics. The Statute of the USSR Committee defines the tasks of the agency in the following terms:

'(a) to guide the field of publishing, of printing establishments, and of the book-trade in the country;

(b) to check on an all-state scale the contents and direction of literature of all kinds and to supervise the execution of decisions of the Party and Government in the field of publishing, of printing establishments, and of the book-trade, the safeguarding of military and state secrets in publications'.⁵¹

The Statute has been confirmed by the Council of Ministers of the USSR. It regulates the legal relations of the Committee vis-à-vis other state organs of equal or subordinate status. The Statute is thus addressed to state agencies in various administrative branches. The forms of guidance are manifold.⁵² Its aim is 'to ensure a high ideological-theoretical level of published works'.⁵³

A network of administrative rules serves as a basis for the guidance. It includes regulations on the contents of publications,⁵⁴ as well as instructions on a continuous check of books kept by bookstores or held in libraries.⁵⁵ These rules do not directly bind authors or artists, to be sure. But they clearly affect their rights and duties, since the state agencies are their only partners. The agencies are obliged to live up to the rules addressed to them. They have to follow them not only internally, but also in their dealings with the authors.⁵⁶

(b) *Regulations for editors in publishing houses*

To illustrate the extent and type of guidance in the form of regulations one statute shall be taken here as an example.

Editors are instructed to evaluate manuscripts before they are accepted for publication with regard to 'the theme . . . [and] its treatment (from an ideological, political, scientific, ideological-

artistic point of view) . . .⁵⁷ Once a manuscript is accepted for publication, a standard publishing contract form⁵⁸ is filled out and signed. The manuscript is then edited 'with the aim of advancing the ideological, scientific and literary qualities of the work . . .'⁵⁹ If the editor suggests changes,⁶⁰ the author is granted the right to defend his views. Details are laid down in the 1967 Model Statute on Preparing a Manuscript for Publication as follows:

The author may accept the observations of the publishing house . . . or refuse them . . . The author has a right to defend his conception and views if they are founded scientifically, do not contradict the interests of a socialist state, the principle of party-minded literature, and the task of protecting state secrets . . . If the editorial office and the author do not reach a mutually acceptable solution, differences are decided by the management of the publishing house.⁶¹

The author may appeal the decision to the next higher agency of the publishing house up to the respective ministry. But these organs are part of one and the same departmental (administrative) system. 'Given such a "correlation of forces", the author is not always certain,' a Soviet legal scholar observes, 'that his dispute is considered dispassionately and resolved objectively.'⁶² If the author fails to carry out the suggestions of the publishing house, the latter is entitled to rescind the publishing contract and to reject the manuscript.⁶³

(c) Guidance by higher agencies and the censorship requirement

The work of publishing houses and other enterprises in the field of literature and arts is supervised by a number of agencies, including the next higher administrative body. Publishing houses, for example, are required 'to submit for approval to their higher agency a draft of the annual thematic plan of works to be published'.⁶⁴ The higher agency has far-reaching organisational and financial powers. Among them is the power to hire and fire, as well as to award bonuses to leading personnel.⁶⁵

Works appearing 'in print' are subject to preventive censorship. In the twenties and thirties they used to be examined by an agency commonly known under the Russian abbreviation *Glavlit*. A RSFSR Decree of 1931 made it obligatory for publishing houses to present 'books, brochures, journals, bulletins, newspapers, leaflets . . .' for censorship before publication.⁶⁶ The number of the local *Glavlit* representative had to appear on each published work. The Decree has not been included in a collection of statutes in force as of 1968⁶⁷ and probably has been replaced or repealed by an unpublished decree. Soviet publications continue to appear, however, with censorship numbers, which suggests that censorship is still required. But it is not openly regulated as it was in pre-revolutionary Russia.⁶⁸

Party directives

The Party claims and exercises the right to 'appoint the editorial board of central newspapers and journals operating under its control' and to 'guide the local press, radio and television'.⁶⁹ The

³¹ USSR Edict of June 21, 1961, as amended, in *Sbornik zakonodatel'nykh i normativnykh aktov ob administrativnoi otvetstvennosti* (2nd ed.; Moscow, 1972), pp. 15-22; English transl., *Soviet Statutes and Decisions*, V, no. 1 (1968), pp. 7-14.

³² Article 501, RSFSR Civil Code. Cf. Loebler, note 1 above, p. 52.

³³ Part 2, sec. V (4), 1961 Programme of the CPSU (emphasis supplied).

³⁴ Articles 101, 102, Fundamental Principles of Civil Legislation, as amended, note 2 above; cf. Articles 3, 5, Universal Copyright Convention.

³⁵ Note 17 above.

³⁶ This is true only if a publishing contract is considered to be a foreign trade transaction. See Bykov, note 16 above, who refers to its 'commercial character'. On foreign trade transactions, see for example, A. V. Dozortsev and D. M. Genkin, in *ibid.*, pp.94-96; M. L. Gorodiiskii, *Litsenzii vo vnesheinei trgovle SSSR* (Moscow, 1972), pp.36-37; L. A. Lunts, *Vnesheinorgovoiia kuplia-prodazha* (Moscow, 1972), pp.13-18. This view was not always generally accepted. In 1926 Chel'tsov maintained that publishing contracts do not fall within the category of foreign trade transactions, but were merely subject to the regulating influence of the Ministry of Trade. Iu. Chel'tsov, 'Poniate vnesheinorgovoi sdelki po zakonodatel'stvu SSSR', *Revoliutsionnaia zakonost*, no. 15-18 (1926), p.18.

³⁷ An undated RSFSR decree of 1920 and another of February 15, 1923, published respectively in *SU RSFSR* (1920), no. 53, item 235; (1923), no. 15, item 189; also see Decree of the People's Commissar of Foreign Trade of the RSFSR, November 10, 1922, *SU RSFSR* (1922), no. 76, item 945. Extracts of the latter two decrees appeared in A. Ganin et al. (comps.), *Grazhdanskii kodeks* (3rd ed.; Moscow, 1928), pp.72, 216-217. The 1922 RSFSR Civil Code provided in Article 17 that 'all persons . . . shall participate in foreign trade only through the medium of the government'. Gsovski observed that 'although the . . . practice' of issuing foreign trade licenses to private 'persons has been discontinued, there is no statutory obstacle to its restoration'. V. Gsovski, *Soviet Civil Law* (Ann Arbor, 1948), I, p.469.

³⁸ The materials cited in note 37 above are not included in volume 1 of *Sbornik normativnykh materialov po voprosam vnesheinei trgovli SSSR* (Moscow, 1970).

³⁹ Articles 137, 175, RSFSR Civil Code; USSR Decree, January 7, 1937, *SZ SSSR* (1937), no. 8, item 25; extracts published in *Grazhdanskii kodeks RSFSR* (Moscow, 1972), p.178; *Sbornik normativnykh materialov po vnesheinei trgovle SSSR* (Moscow, 1961), I, pp.53-54.

⁴⁰ Article 88, RSFSR Criminal Code. Cf. *vvs SSSR* 1970 no. 13, item 108 and USSR Customs Code of 1964 (*vvs SSSR* 1964 no. 20, item 242) Art. 100-102. V. Samoilov *Sots, zak.* (1970), no. 11, pp.64-66.

⁴¹ Until 1958, a violation of the foreign trade monopoly was itself a crime; see Article 59-11 of the 1926 RSFSR Criminal Code and corresponding provisions of criminal codes of the other union republics.

⁴² Article 97, Fundamental Principles of Civil Legislation, as amended, note 2 above.

⁴³ Article 2, Universal Copyright Convention.

⁴⁴ *SP SSSR* (1967), no. 30, item 213; English transl.: *Hungarian Law Review*, no. 1 (1968), pp.84-86. The duration of the Agreement was extended in 1971 to the end of 1977 (*Le Droit d'Auteur*, vol. 84, 1971, p.123). Also see G. Boyta, *GRUR International* (1968), pp.159-162, *id.*, *ibid.* (1969), pp.439-445; F. Majoros, *Osteuropa Recht*, XIV (1968), 175-196; *id.*, *ibid.*, XVIII (1972), 61-97; I. Timar, *Hungarian Law Review*, no. 1 (1968), pp.15-20; *id.*, *Droit d'auteur*, LXXXI (1968), 68-71; E. Ulmer, *GRUR International* (1968), pp.411-412. English translation: *International Review of Industrial Property* (Weinheim), vol. 1 (1970), no. 1, pp.32-47.

⁴⁵ *SP SSSR* (1972), no. 1, item 4; French transl.: *Revue internationale du droit d'auteur*, no. 74 (1972), pp.170-171. See also the Bulgarian Decree implementing the Agreement in *Drzhaven Vestnik*, 1972, no. 9, pp.2-3. The Agreement has been concluded for 3 years (Art. 9), i.e., until the end of 1974. For literature see: Majoros F., *Osteuropa-Recht*, vol. 18 (1972) pp.247-254.

⁴⁶ Refugees enjoy the same copyright protection as nationals of

establishment of new newspapers, journals, and publishing houses requires Party approval.⁷⁰ Party organs also decide such questions as the title of newspapers, the number and size of copies to be printed, and the price.⁷¹

Party guidance over the contents of publications finds its expression, among others, through controlling the work of the State Committees for Publishing,⁷² by checking the thematic plans of publishing houses for political literature⁷³ and for political posters,⁷⁴ and by issuing directives on the limits of discussion and criticism. It has been decreed, for example, that criticism may be directed against individual functionaries, but not against decisions of Party organs.⁷⁵ Party directives operate independently of and in addition to legal norms issued by state organs.

Given this mechanism of dependence, guidance, and control, both the editor and the author are likely to feel constrained to conform to the demands presented to them.

Labour law aspects

The responsible editor determines the author's fees. The area of discretion on the side of the publisher is limited, for author's fees are fixed in union republic decrees. The fees vary with the type of literature, the length of the book, and the number of copies to be printed. Fees are not based on actual sales. *Belles-lettres* in prose, for example, merit between 150 and 400 rubles⁷⁶ for each author's sheet (16 pages). If more than 15,000 copies are printed, the fees increase proportionally. Translations of *belles-lettres* in prose earn 50-150 rubles per author's sheet, whereas political literature of the scientific-popular type is remunerated with 100-300 rubles for the first ten author's sheets. If more than 15,000 copies are published, additional fees are due, amounting to 50 per cent and more. The rates for scientific literature are similar, regardless of the number of copies printed. The best reward for an author, including financially, is a second edition of his work. It entitles him to 60 per cent of the previous fee; the scale decreases, until it reaches 10 per cent for the seventh edition.⁷⁷

Some leeway is envisaged in fixing the author's fee between a minimum and a maximum. It is supposed to serve the ends of Soviet cultural policy. Thus, authors agreeing to write 'literary works on historical-revolutionary topics' may receive the maximum fee for the type of literature in question; half of this fee can be paid out as an advance.⁷⁸

Authors of translated works are not paid as a general rule, although exception is made for *belles-lettres*. Here the authors receive 60 per cent of their original fee if the translation is made from Latvian, etc, into Russian.⁷⁹ A Russian author, on the other hand, until 1969 was not entitled to a fee if his work was translated into Latvian, etc.⁸⁰ Now they are paid the minimum fee. Spreading Russian literature among the non-Russian peoples has thus stopped being a free service. Translating Russian works now brings profits to their Russian authors, which could be impressive considering the

number of non-Russian nationalities in the USSR. The monetary aspect becomes even more apparent in the light of tax law. Author's fees exceeding 1,800 rubles a year are taxed not progressively, but at a flat rate of 13 per cent.⁸¹

Part of the labour law scene is the social security system for authors and artists. Those who are employed can choose to have their old-age pensions based either on their regular pay or on their author's fees. Successful and prominent authors will prefer the latter, but they may do so only if they are members of the Writers' Union or of the respective trade union.⁸²

Samizdat

This legal superstructure is clear enough if socialist organisations handle the publication, reproduction, and circulation of literary works. But does it also apply to *samizdat* works?

Defining Samizdat

Samizdat publications include literary works, political writings, newsletters, petitions, open letters, trial transcripts, and similar material.⁸³ The publication and dissemination of an election platform by a non-communist group also could be considered an example of *samizdat*. Such an attempt was made by an association of 'democratic electors' in Latvia after Soviet leaders had imposed a pro-communist government in 1940 and after parliamentary elections had been ordered.⁸⁴

There is no official or generally accepted definition of *samizdat*.⁸⁵ The word *samizdat* is a Russian abbreviation used since about 1967. It has been coined colloquially in the Soviet Union and is a play on the names of state publishing houses like *Gospolitizdat* or *Akademizdat*. Literally the word means self-publishing.

For legal purposes the following criteria are relevant: it is (1) a work of literature available in material form in the Soviet Union;⁸⁶ (2) published, reproduced, or circulated privately in the Soviet Union; (3) for the use of an indefinite number of persons.⁸⁷ These three criteria are not sufficient, however. They would not help to distinguish a *samizdat* work from, say, the letter of a boy to his girl-friend circulating among her schoolmates and their friends. We have to add at least one functional criterion: (4) private publishing, reproduction, or circulation is used as a *substitute* for services generally performed by Soviet socialist organisations.

One question of practical importance is whether the term *samizdat* extends to both published and unpublished materials. Colloquially, it is understood to comprise both. Some privately reproduced works pass from hand to hand among trusted friends known to each other. As long as this group remains closed, the work has not been 'published' within the meaning of Soviet copyright law.⁸⁸

the country in which the refugees habitually reside, according to the Convention relating to the Status of Refugees in 1951 (Art. 14). None of the socialist countries, except Yugoslavia, adhered to the Convention.

⁴⁷ Note 2 above. On the effects of the principle of substantive reciprocity embodied in these provisions in relation to Soviet law, see, among others, Boyta (1969), pp.440-441; Majoros (1968), pp.183-184, 194-195; and Timar, pp.18 and 70 respectively, all cited in note 44 above. Also see note 5 above and notes 79 & 80 below.

⁴⁸ The Hungarian instrument of ratification was deposited on September 15, 1972. See *Copyright Bulletin*, VI, no. 4 (1972), p.3. Its membership became effective on December 15, 1972. See text at note 8 above.

⁴⁹ Soviet-Czechoslovak Agreement on Cultural and Scientific Cooperation, February 28, 1972, *SP SSSR* (1973), no. 4, item 18.

⁵⁰ Article 125, USSR Constitution.

⁵¹ Article 2, *Polozhenie Gosudarstvennogo komiteta Soveta ministrov SSR po delam izdatel'stv. poligrafii i knizhnoi trgovli*, September 22, 1964, *SP SSSR* (1964), no. 18, item 117; reprinted in *O partiinoy*, note 11 above, pp.473-479. Similar formulations are found in union republic statutes. For the RSFSR Statute, see *SP RSFSR* (1965), no. 3, item 18; the Latvian statute, *Zinotajs* (1965), no. 10, pp.455-459, 483-487. The subordination and name of the committees have been changed several times, most recently in 1972. *Vedomosti SSSR* (1972), no. 32, item 277; no. 39, item 350, and corresponding union republic sources.

⁵² Loeber, note 1 above, pp.31-36. D. A. Loeber, 'Administration of Culture in Soviet Latvia, in': *Res Baltica* (Leyden, 1968), pp.133-145.

⁵³ Article 3, *Polozhenie*, note 51 above. Similar obligations for publishing houses are laid down in a 1968 statute on the socialist state publishing house and a 1967 model statute on preparing a manuscript for publication. See *Spravochnik normativnykh materialov dlia izdatel'skikh rabotnikov* (Moscow, 1969), pp.14-30, 92-100. Cf. *Zinotajs* (1968), no. 44, pp.1020, 1039.

⁵⁴ Cf. notes 51 and 52 above, and notes 57-64, 66, 72-75, 137 and 164 below.

⁵⁵ Loeber, note 1 above, pp.41-42. Cf. Article 5, Decree of the Latvian SSR, October 16, 1967, *Zinotajs* (1967), no. 48, pp.1823, 1830; also, *Biulleten' ministerstva vysshego i srednego spetsial'nogo obrazovaniia SSSR*, no. 9 (1967), p.3.

⁵⁶ Loeber, note 1 above, p.90.

⁵⁷ Article 30, model statute, note 53 above.

⁵⁸ The publishing contract is based on all-union model publishing contracts of 1967, reproduced in *Spravochnik*, note 53 above, pp.137-149, as required in Article 506, RSFSR Civil Code, and the other union republic civil codes. Cf. Article 101, Fundamental Principles of Civil Legislation.

⁵⁹ Article 47, model statute, note 53 above. Cf. the article on the responsibility of the publisher by B. Stukalin, Chairman of the State Committee of the USSR for Publishing in *Sovetskaia kul'tura*, February 20, 1973. Stukalin urges 'an atmosphere of high exigence in the selection, evaluation, and editing of manuscripts. There must be no concessions of any kind to alien ideologies . . . Control over the ideological and scholarly level of literature can be most effective when it is exercised above all at the stage of planning, reviewing and evaluation of manuscripts'.

⁶⁰ Articles 30, 39, model statute, note 53 above.

⁶¹ Article 40, *ibid*. On the right of an author to defend his views against the publishing house, see A. Vaksberg, *Izdatel'stvo i avtor* (2nd ed.; Moscow, 1958), pp.98-100; V. Kamyshev, *Prava avtorov literaturnykh proizvedenii* (Moscow, 1972), pp.29-31.

⁶² V. Chertkov, *Sudebnaia zashchita prav i interesov avtorov* (Moscow, 1971), p.7 and Chertkov V., in: *Tvorcheskie soiuzy v SSSR*, Moscow, 1970, pp.240-1.

⁶³ Article 511, RSFSR Civil Code.

⁶⁴ Article 42, 1968 statute, note 53 above.

⁶⁵ Loeber, Administration note 52 above, p.138. The awarding of bonuses to publishing house personnel is regulated by a 1971 model statute published in *Biulleten' gosudarstvennogo komiteta soвета ministrov SSSR po voprosam truda i zarabotnoi platy*, no. 7 (1971), pp.2-6. See especially Articles 6, 10 and 13.

It may be otherwise with *samizdat* works circulating among an indefinite group of persons. But even these materials do not necessarily meet the requirements of 'publication' in the sense of being 'generally available'. Publication presupposes the distribution of a sufficient number of copies, an '*activité industrielle*'.⁸⁹

A number of aspects are irrelevant to the legal notion of a *samizdat*, on the other hand; for example, the motives for using private publishing as a substitute for regular publishing. It may be that the manuscript has not been accepted for publication by a socialist organisation or that it is not likely to be accepted because of current editorial policies of Soviet publishing houses, whereas the author wishes to see his work appear; alternatively, the manuscript may be acceptable, but the author prefers private publishing. The same applies to the content of a *samizdat* work. It does not matter whether it is of literary or political significance⁹⁰ or whether it is an original or a translation.

It is also irrelevant whether the author of a work has consented to its use in *samizdat* form or not. If the consent is lacking, the *samizdat* publisher has violated the (personal and property) copyright of the author.⁹¹ The notion of *samizdat* thus refers not only to publication by the author but also to private publication by third persons. The latter usually come from among those who read the works of the author. They reproduce the work (in type-script or otherwise) and pass it on. As a matter of fact, probably the majority of *samizdat* materials fall into this category.⁹²

A *samizdat* work remains in this category if it is subsequently published, reproduced or circulated outside the Soviet Union (so-called *tamizdat*, i.e. 'published out there').⁹³ The method of reproduction is equally without relevance to the notion of *samizdat*. It makes no difference whether the *samizdat* work is reproduced by hand, typewriter, mimeograph, print, or tape. Nor does method of circulation - by hand, by mail, etc - matter. Circulation by hand bears some similarity to the 'chain-post' (*kol'tsevaia pochta*) officially encouraged in the 1920s for distributing newspapers then in short supply.⁹⁴ It is of no importance in terms of copyright law whether *samizdat* works are distributed without costs or against payment.

In instances of reproduction and circulation by way of *samizdat* it is irrelevant whether the work has been previously published or not. The need for *samizdat* may have arisen because earlier editions are sold out or are withdrawn from circulation in the state book trade and are relegated to the 'special funds' (*spetsfondy*) of libraries. One example is Solzhenitsyn's *One Day in the Life of Ivan Denisovich*.⁹⁵ *Samizdat* is used also to circulate works published abroad. They include, among others, foreign broadcasts copied on tape and circulated in the Soviet Union (so-called *radizdat*).⁹⁶

Samizdat usually refers to works of literature. But it could be understood to cover also - at least by analogy - photographic works or phonographic records.⁹⁷

Copyright

To answer the question of whether copyright applies to *samizdat* works, it is useful to distinguish between the acquisition of the right and its protection.

(a) Acquisition of copyright

Copyright comes into existence as works of science, literature, and art are created. It is linked to a factual process and applies 'regardless of the form, purpose, and merit of the work or of the method of its reproduction'.⁹⁸ Once a work is created, it does not matter in terms of copyright whether it is subsequently published, reproduced, or distributed by way of *samizdat*. It is likewise of no consequence if a work does not appear in print. Certain types of scholarly manuscripts, for example, are not created for publication but to be deposited as reference material.⁹⁹

An author who publishes his work himself is making use of his 'right to publish, reproduce, and circulate his work by any method allowed by the law'.¹⁰⁰ The law has not abolished or limited the right of self-publishing, it only may be exercised subject to the requirements laid down in constitutional, administrative, criminal, and other norms of law.¹⁰¹ Non-observance of these norms may have administrative, criminal, or other consequences, but it does not abolish or limit the copyright of the author. A person using a *samizdat* work without permission violates the copyright of the author, although he is free to use it for personal purposes.¹⁰²

(b) Protection of copyright

A second question is whether the copyright of a *samizdat* author is 'protected by law'. It is not if the copyrights are 'exercised in conflict with the purpose of these rights in a socialist society in the period of building communism'.¹⁰³ The purpose of Soviet civil legislation (which includes copyright) is 'to foster' the 'protection of the . . . cultural interest of citizens and the correct combination of these interests with those of society as a whole'.¹⁰⁴ Soviet courts may find that some *samizdat* works do not correctly combine the interests of citizens and a society as a whole.¹⁰⁵ If this argument prevails, *samizdat* authors will be denied judicial protection; they would remain unprotected against an unauthorised publication, reproduction, and circulation of their work. They would also be deprived of the right to inviolability.¹⁰⁶

International copyright

The international protection of *samizdat* materials raises a number of issues. Some of them have been the subject of lawsuits.

(a) Soviet *samizdat* materials published abroad

Soviet *samizdat* materials will rarely appear abroad in accordance with the procedure established for the transfer of publishing rights.¹⁰⁷ They normally reach foreign users through bypassing the Soviet governmental agency entrusted with handling such transfers.¹⁰⁸ This would have at least two legal consequences: (1) the Soviet author may not legally claim or receive royalties from the foreign user of the *samizdat* material. Stipulating a fee would

⁹⁸ RSFSR Decree, August 10, 1931, 'O poriadke vypuska proizvedenii pečati', reprinted in Fogelevich, note 19 above (6th ed.), pp.129-130; *KhS RSFSR* (1959), II, pp.176-178. Cf. note 182 below. The obligation of publishing houses to supply 'control copies' (or 'signal copies') is linked with control of contents. See Loeber, note 1 above, pp.31, 34 and 37. On Soviet censorship see, among others, *Studies on the Soviet Union*, XI, no. 2, (1971), pp.1-148; M. Dewhurst and R. Farrel, *The Soviet Censorship* (Metuchen, N. J., 1973).

⁹⁹ *SS RSFSR*, XV, (1970), p.288.

¹⁰⁰ In pre-revolutionary Russia censorship was carried out openly. The censorship agency was part of the Ministry of Internal Affairs and operated on the basis of the *Ustav o tsenzure i pečati*, the text of which was published in *Svod zakonov*, XIV. On the censorship agency as part of the ministerial system, see *ibid.*, I, Part 2, Book 5, Chapter 3, Articles 308, 330-338. Also see, M. Lemke, *Ocherki po istorii russkoi tsenzury i zhurnalistiki XIX stoletia* (St Petersburg, 1904; reprint ed., 1972); V. Rozenberg, *Russkaia pečat' i tsenzura v proshlom i nastoiashchem* (Moscow, 1905); D. Val'denberg, *Spravochnaia kniga o pečati* (St Petersburg, 1907); P. Tolstoi, *Ograničenie svobody pečati* (St Petersburg, 1912). On censorship and the Bolshevik struggle for freedom of the press prior to 1917, see A. Bereznoi, *Tsarskaia tsenzura i bor'ba bolshevikov za svobodu pečati 1895-1914* (Leningrad, 1967). On the *Polar Star* edited by Alexander Herzen in London from 1855-1868 and its secret correspondents in Russia, see N. Eidel'man, *Tainye korrespondenty 'Poliarnoi zvezdy'* (Moscow, 1966). Books censored by pre-revolutionary censorship agencies are listed by M. Klevenskii et al., *Russkaia podpol'naia i zarubezhnaia pečat'; bibliograficheski ukazatel': 1831-1879* (Moscow, 1935); L. Dobrovol'skii, *Zapreshchannaia kniga v Rossii 1825-1904* (Moscow, 1962).

¹⁰¹ Articles 34, 42, Rules of the CPSU.

¹⁰² Decrees of the Central Committee of the CPSU, June 18, 1956 (Article 1); Jan. 6 and July 31, 1959 (Article 9); June 22, 1960 (Article 3); January 29, 1966; and March 6, 1966. Texts published in *O partiinói*, note 11 above, pp.298, 318-319, 329-334, 469-471, 481-483, 360-363. On

violations of the Decree of March 6, 1966, see the Decree of the Central Committee of the CPSU, March 20, 1968, in *Spravochnik partiinogo rabotnika* (Moscow, 1968), VIII, p.284; *Voprosy ideologicheskoi raboty; sbornik vazhneishikh reshenii KPSS (1965-1972)* (Moscow, 1972), pp.541-542.

¹⁰³ Decrees of the Central Committee of the CPSU, July 24, 1953; June 18, 1956 (Article 3); July 31, 1959 (Article 2), in *O partiinói*, note 11 above, pp.292, 298, 329-334.

¹⁰⁴ Decree of the Central Committee of the CPSU, February 17, 1967, in *O partiinói*, note 11 above, pp.488-491. Also see note 51 above. Cf. Drizul A., in: *Gazeta-organ partiinogo komiteta*, Moscow, 1972, pp.111-17.

¹⁰⁵ Decree of February 17, 1967, note 72 above.

¹⁰⁶ Decree of the Central Committee of the CPSU, November 1948, in *O partiinói*, note 11 above, pp.428-429.

¹⁰⁷ Decrees of the 14th Congress of the All-Union Communist Party, December 1925, and of the Central Committee of the CPSU, July 25, 1939, in *ibid.*, note 11 above, pp.141, 198. Also see *Voprosy partiinói raboty* (Moscow, 1959), p.335. Cf. Articles 2 and 3, Rules of the CPSU. For a summary of some Party directives on the contents of publications, see Loeber, note 1 above, pp.32-33.

¹⁰⁸ As of June 1, 1973, one ruble equalled about \$1.40.

¹⁰⁹ The royalty scales are governed by all-union and republic legislation. See Article 98, Fundamental Principles of Civil Legislation, as amended, note 2 above. Union republic materials as of April 1, 1966, are collected in *Sbornik normativnykh materialov po avtorskomu pravu na literaturno-khudozhestvennye i muzykal'nye proizvedeniia* (Moscow, 1966). Also see *Avtors'ke pravo na tvori literaturi; zbirnik ofitsial'nykh materialiv* (Kiev, 1969); P. Anton (comp.), *Autorioigus Eesti NSV-s; juhendmateriale* (Tallinn, 1969). For the RSFSR, see *Grazhdanski kodeks RSFSR* (Moscow, 1972), pp.240-241. For the Latvian SSR, see the Decree of September 14, 1967, as amended, *Zinotajs* (1968), no. 2, pp.26-39, 44-60; amended (1969), no. 7, pp.237, 249; no. 33, pp.956, 967; (1970), no. 16, pp.542, 569.

amount to a violation of the monopolies of foreign trade and foreign exchange.¹⁰⁹ It would be legal, however, to grant publishing rights gratuitously. A foreign exchange transaction in the form of a gift is not punishable under Soviet criminal law;¹¹⁰ (2) the foreign user of the *samizdat* material is denied copyright protection in the Soviet Union.¹¹¹ But he may be protected in another country where he seeks protection. The courts of this country may consider *samizdat* works not to have been properly 'published'.

The British High Court of Justice was called upon in 1971 to decide whether a Russian novel by a Soviet author printed and distributed in Paris had been previously 'published' in the Soviet Union. The defendant claimed that the novel was published there by way of *samizdat*. The court found no evidence to support this view and observed as dictum that *samizdat* works have not been issued to the public. *Samizdat* works probably could not be treated as 'publication' within the meaning of the British Copyright Act of 1956 since they do not 'satisfy the reasonable requirements of the public'. *Samizdat* means 'rather a clandestine circulation which intentionally disregarded such requirements because they could not lawfully be voiced by potential readers or satisfied by the author'.¹¹²

A German court reached a similar decision in 1972. A 'circulation of the work by way of *samizdat* - if it has taken place at all - cannot be considered a first publication within the meaning of Article 6, paragraph 1 [and] Article 4, paragraph 4 of the Revised Berne Convention because the author has not authorised the alleged *samizdat* edition', the court held. A publication, in the view of the court, presupposes, moreover, 'that the work is made available to the public in a sufficient number of copies by way of a central act of distribution, an *activité industrielle*, e.g. through the book-trade'.¹¹³ Both decisions were made in cases involving Solzhenitsyn's novel *August 1914*.

The Universal Copyright Convention provides for a similar solution. 'Publication', as used in Article 6 of the Convention, means the reproduction and the 'general distribution to the public' of copies of a work. Publication presupposes, furthermore, 'authority of the author or other copyright proprietor' (Article 3). 'Distribution' requires, according to a generally recognised view in legal doctrine, a circulation of a sufficient number of copies.¹¹⁴

The attitude of Soviet law towards *samizdat* materials is irrelevant in this context. Member-states of the Universal Copyright Convention grant protection in accordance with their own national standard.¹¹⁵ If this standard entitles the *samizdat* author to protection, it does not matter whether his home country denies it. The reasons for such denial, for example the failure to observe a transfer procedure, are equally of no consequence in the country where protection is sought.

A foreign publisher is protected under the Universal Copyright Convention only if and when the Soviet author agrees with a use of

his work abroad. This follows from his copyright, which includes the right to determine whether and when his work should be made available to the public.¹¹⁶ In the cases decided by the British and the German courts the consent of the author was present. Solzhenitsyn had expressly transferred publishing rights to the plaintiffs. The judgments continue to be relevant, therefore, although they were made in 1971 and 1972, before the Soviet Union was a member-state of the Universal Copyright Convention.

The foreign user of *samizdat* material ordinarily has no direct contact with its author. A use of the material can nonetheless be legal if the consent of the author can be inferred. An open letter with the notation 'multiply and circulate' would be an obvious example. In many other cases, too, consent will be implied. Such consent will be a general one, as a rule. It does not grant exclusive rights to a user who happens to be the first or the one who chooses to claim exclusive rights. In such cases a parallel use would constitute no copyright violation.

Works published in the Soviet Union and subsequently circulating there by way of *samizdat* (e.g., because they have been withdrawn from the book-trade network) are in a different category. Here the author may be bound by the publishing contract he concluded with his Soviet publisher. The standard publishing contract which serves as a basis for individual contracts¹¹⁷ prohibits a transfer of publishing rights as long as the contract is in force.¹¹⁸ Publishing contracts are concluded for a maximum period of three years.¹¹⁹ The period begins from the day the work has been approved for publication. The author is free to transfer publishing rights after this period has elapsed.

(b) Foreign works used in Soviet samizdat

A reproduction and circulation of works of non-Soviet authors in the Soviet Union by way of *samizdat* would be in accordance with Soviet law as long as the work is used to satisfy personal needs.¹²⁰ A use for other purposes would constitute a violation of copyright. Foreign authors are now protected in such cases, an improvement over their status before the Soviet Union acceded to the Universal Copyright Convention.

(c) Bilateral copyright agreements of the Soviet Union

The bilateral agreements of the Soviet Union with Hungary and with Bulgaria exclude the protection of *samizdat* authors. The agreements provide for a publication of works in the partner-country only 'with the consent of the competent organs of the Contracting Parties'.¹²¹ The parties undertook, moreover, to agree on a regulation for 'the transfer of the rights needed for the exploitation of works'.¹²²

Civil law

One question of civil law is whether the legal capacity of Soviet citizens includes a civil right to publish their works. Gringol'ts, a prominent Soviet specialist on copyright, states that 'performing a publishing, theatrical, or similar activity lies outside the limits of

⁷⁸ Decree of the Estonian SSR, February 23, 1972, *Teataja* (1972), no. 9, item 80. Cf. Decrees of the Central Committee of the CPSU, December 24, 1953, and of February 17, 1967, reprinted in *O partiinnoi*, note 11 above, pp.442-444, 488-491.

⁷⁹ Article 1(e), RSFSR Decree of September 9, 1968, *SP RSFSR* (1968), no. 17, item 90; Decree of the Latvian SSR, September 14, 1967, note 77 above; and corresponding decrees of other union republics. Kamyshev, note 61 above, pp.179-180.

⁸⁰ RSFSR Decree of April 7, 1960, *SP RSFSR* (1960), no. 16, item 64, as amended by Decree of September 9, 1968, note 79 above. The union republic regulations are not uniform. Cf. the literature cited in note 47 above.

⁸¹ Article 16 USSR Decree of April 30, 1943, *Sbornik zakonov SSSR i ukazov Prezidiuma verkhovnogo soveta SSSR* (Moscow, 1968), II, pp.294-304, as applied in accordance with Instructions of the USSR Ministry of Finances, reproduced in *Sbornik normativnykh materialov po sovetskoiu finansovomu pravu* (Moscow, 1967), p.157. Earlier sources mention 1200 rubles per year as the income above which the flat rate commences. See *Spravochnik raionnogo finansovogo rabotnika* (Moscow, 1952), I, p.347; *Spravochnik nalogovogo rabotnika* (Moscow, 1951), p. 112; (1958 ed.), p. 39; (1963 ed), p.39.

⁸² USSR pension law, July 14, 1956, reprinted in *Sotsial'noe obespechenie i strakhovanie v SSSR* (Moscow, 1972), pp.179-193. USSR Decree providing pension security for writers, composers, and others, August 7, 1957, in *SP SSSR* (1957), no. 10, item 106; and a Ministerial instruction on pensions for writers in the Latvian SSR, January 30, 1965, reprinted in *Likumdosanas akti par pensiju pieskirsanas un izmaksas kartibu* (Riga, 1966), pp.319-322. Also see S. Smirnov, *Kak ischislaiutsia i vyplachivaiutsia pensii chlenam tvorcheskikh soiuзов i artistam* (Moscow, 1962); A. Tsepin, in *Tvorcheskie soiuzy v SSSR* (note 62), pp.169-200.

⁸³ Some *samizdat* works are translated in the West; A. Brumberg (ed.), *In Quest of Justice: Protest and Dissent in the Soviet Union Today* (New York, 1970); M. Browne (ed.), *Ferment in the Ukraine* (New York, 1971); P. Reddaway (ed.), *Uncensored Russia* (London, 1972); *Samizdat I, La voix de l'opposition communiste en URSS* (Paris, 1969). See also C. Gerstenmaier, *Die Stimme der Stimmen. Die Demokratische Bewegung in der Sowjetunion* (3rd ed.; Stuttgart, 1971).

⁸⁴ The association succeeded in publishing the election platform, but the authorities prevented its distribution. The Central Election Commission refused to accept the association's list of candidates. See *Socialistiskas revolucijas uzvara Latvija 1940 gada: Dokumenti un materiali* (Riga, 1963), pp.225, 310, 427; cf. also pp.417, 430, 495. The election platform of early July 1940 appears in *Report of the Select Committee to Investigate Communist Aggression and the Forced Incorporation of the Baltic States into the USSR* (83rd Congress, 2nd Session; Washington D.C., 1954), p.305. Also see B. Kalnins, *Latvijas social-demokratijas piecdesmit gadi* (Stockholm, 1956), pp.282-284; V. Miller, *Sozdanie sovetskoi gosudarstvennosti v Latvii* (Riga, 1967), pp.383-386; and A. Berzinsh, *I Saw Vishinsky Bolsheviz Latvia* (Washington D.C., 1948), pp.33-37; A. Komsars, *Universitas* (New York), no. 21 (1968), pp.8-11; R. Turks, *ibid.*, no. 25 (1970), pp.30-32. Cf. note 131 below.

⁸⁵ On the history, significance and utilisation of samizdat, see the pioneering study of A. Boiter, *Samizdat: Primary Source Material in the Study of Current Soviet Affairs* (mimeo., 1972), portions of which are published in *Osteuropa*, XXII (1972), pp.645-654, and in *The Russian Review*, XXXI (1972), pp.282-285. For an evaluation of samizdat practice in the USSR, see an article by S. Topolev (1971), translation: Du samizdat au kolizdat, *Cahiers samizdat* (Brussels) no. 5 (January 1973), document no. 22 (mimeo). A Soviet comment on samizdat appears in *Visty z Ukrainy*, June 15, 1972, p.4, summarised in *ABSEES*, III (1972), p.50.

⁸⁶ Article 96, Fundamental Principles of Civil Legislation; Article 475, RSFSR Civil Code.

the legal capacity of citizens'.¹²³ This statement may reflect the law in action, but it is not necessarily in conformity with the law in the books. The following provisions on the content of legal capacity of citizens are relevant:

Citizens may in accordance with the law . . . have author's rights . . . and also have other property and personal non-property rights.¹²⁴ No one may be restricted in legal capacity . . . other than in cases established by law.¹²⁵

No statutes have been published expressly limiting the legal capacity of citizens in such a way as to deprive individuals of the civil right to publish their works.¹²⁶

Constitutional law

(a) Freedom of speech and press

The Constitution proclaims freedom of the press. The right is 'guaranteed' by 'placing at the disposal of the working people and their organisations printing presses, stocks of paper . . . and other material requisites' necessary for its exercise. The wording clearly includes a right of individuals to engage in *samizdat*. But such constitutional right can be used only 'in conformity with the interests of the working people, and in order to strengthen the socialist system'.¹²⁷

Samizdat works may or may not comply with this requirement. Much depends on the political judgment of those in control of publications. A glimpse into the reasoning of the authorities at the time of the drafting of the Constitution can be gained from a leading article of *Pravda* in 1936. According to the editorial, 'the freedom of speech and press serves as a mighty means for strengthening the socialist order . . . He who sets himself the task of undermining the socialist order . . . is an enemy of the people. He will not receive a shred of paper, he will not cross the threshold of a printing shop to carry out his vile intent'.¹²⁸ Vyshinskii offered a similar interpretation in 1938:¹²⁹

In our state, naturally, there is and can be no place for freedom of speech, press, and so on for the foes of socialism. Every sort of attempt on their part to utilise to the detriment of the state - that is to say, to the detriment of all the toilers - these freedoms granted to the toilers must be classified as a counterrevolutionary crime to which Article 58, paragraph 10, or one of the corresponding articles of the Criminal Code¹³⁰ is applicable.

Soviet practice has lived up to these demands, as the following example shows. Shortly before the incorporation of Estonia into the Soviet Union on 6 August 1940, one Electoral District Committee declared an electoral platform not sponsored by the Soviet leadership to be null and void. These were the reasons given:

The electoral platform demands freedom of speech, press, meetings, and other freedoms for all citizens; it follows that this demand includes also enemies of the state and of the people. It, thus, violates Article 31, paragraph 8, of the Election law where it is said that elections may not be abused for purposes hostile to the state and to the people.¹³¹

Contemporary textbooks emphasise that freedom of speech and freedom of the press may not be used 'to the detriment of the toiling population'.¹³²

It should be noted that the opposition press was suppressed in Soviet Russia three days after the October Revolution in 1917. An Edict empowered the Council of People's Commissars to close, temporarily or permanently, any organ of the press: (1) 'inciting to open resistance or disobedience . . .'; (2) 'sowing confusion by means of . . . perversion of facts'; and (3) 'inciting to acts of a criminal character . . .' The Edict, according to its Article 3 'is of a temporary nature and will be repealed by special edict when normal conditions of public life will be reestablished'.¹³³ It has not been repealed, however.

(b) Freedom of trade and crafts

The Constitution permits 'the small private economy of individual . . . handcraftsmen based on their own labour'.¹³⁴ This basic right does not exclude publishing as a trade nor any other crafts related to the field of literature and art if it is carried out by the owner himself.¹³⁵ But engaging in such crafts is subject to administrative regulations.

Administrative law

(a) Samizdat as a trade

Some trades are prohibited if carried out privately, i.e. not by state or socialist organisations. The proscribed list includes 'polygraphic trades (typographic . . . photocopying . . . trades)'.¹³⁶ The opening of printing enterprises (e.g., by cooperatives) is subject to permission of the State Committee for Publishing and of the police.¹³⁷ Even the acquisition of typewriters by citizens¹³⁸ and of duplicating machines by agencies has been regulated; the supply is legal 'only with special permission' by the police.¹³⁹ This rule, issued in 1932, has not been repealed by a published statute.¹⁴⁰ Establishment of publishing houses is a prerogative of the competent State Committee for Publishing.¹⁴¹ The private publishing houses which were permitted in the twenties¹⁴² have long been liquidated.¹⁴³ In short, there is no legal basis for engaging in *samizdat* as a trade.

(b) Self-publishing on a non-commercial basis

Many *samizdat* works are apparently not produced as a trade nor for profit, but on an *ad hoc* basis and for literary, political, or other non-material purposes. Publication and circulation of works of literature carried out privately and non-commercially is not subject to limitations established by administrative law. The statutes in force do not provide, e.g., an obligation to register works published privately or to procure permission for such activity.

This is in contrast to the legal situation prevailing in the field of art and broadcasting. The creation and the sale of works of fine arts is prohibited in the Soviet Union as long as samples of these works have not been 'approved' by the competent agencies of the Ministry of Culture.¹⁴⁴ This means that artists are allowed

⁸⁷ Article 476, RSFSR Civil Code.

⁸⁸ 'If only specially invited or admitted persons can acquaint themselves with the work, it is not considered to have been published.' Works reproduced 'as manuscripts', on the other hand, are to be treated as published 'in the majority of cases'. I. Gringolts, in *Kommentarii k GK RSFSR* (2nd ed.; Moscow, 1970,) p. 705. Also see note 87 above. Also see A. Makovskii, in *Kommentarii k Grazhdanskomu kodeksu Moldavskoi SSR* (Kishinev, 1971), p.448; A. Bepalova, in *Kommentarii k Grazhdanskomu kodeksu Kazakhskoi SSR* (Alma-Ata, 1965), p.544; O. Ioffe, *Sovetskoe grazhdanskoe pravo* (Leningrad, 1965), III, p. 39; N. Gusev, in *Sots. zak.*, no. 11 (1968), p.21; *Kommentarii k Ugolovnomu kodeksu RSFSR* (Moscow, 1971), p.305.

⁸⁹ Article 6, Universal Copyright Convention; and notes 112 and 113 below. Russian legal terminology distinguishes between 'making a work available to the public' (*proizvedenie vypushchennoe v svet*) and 'producing a work in print' (*izdannoe proizvedenie*). Cf. Articles 96-104, Fundamental Principles of Civil Legislation; Articles 475-495, RSFSR Civil Code. Both terms are commonly translated into English by the same word: publish or publication.

⁹⁰ See note 86 above.

⁹¹ On the civil law consequences of such violations, see Articles 499-500, RSFSR Civil Code; on criminal law consequences, see text after note 184 below. Cf. the Decree of the Plenum of the USSR Supreme Court, December 19, 1967. An author whose work in fact has been used may claim royalties and other copyrights regardless of whether a publishing contract has been concluded as required by law in Article 488 of the RSFSR Civil Code. *Biull. SSSR*, no. 1 (1968), pp. 13-16; see also the survey of court practice in copyright cases, *ibid.*, no. 5 (1968), p.43.

⁹² G. Kline, in *Dissent in the Soviet Union* (Hamilton, Ontario, 1972), p. 113 (*Papers and Proceedings of the Fifth Annual Conference, Inter-departmental Committee on Communist Affairs* McMaster University).

⁹³ Boiter, note 85 above, p.3; cf. notes 107-119 below. Rules for bringing printed works in and out

of the country as of 1936 are collected in Fogelevich, note 19 above (6th ed.), pp. 243-252. Also see Loeb, note 1 above, pp.43-44.

⁹⁴ Articles 5, 7, Decree regarding the Organisation Bureau of the Central Committee of the Russian Communist Party, February 16, 1925, reprinted in *O partiinoi*, note 11 above, pp.127-130.

⁹⁵ This and other examples are mentioned by V. Samarin, *Samizdat, Zarubezh'e* (Munich), no. 1 (1972), pp.14-15.

⁹⁶ Boiter, note 85 above, p.3; M. Bordeaux, *Religious Ferment in Russia* (London, 1968), p.49. Cf. notes 120 and 145 below.

⁹⁷ On the practice of engaging in private photographic work, see Loeb, note 1 above, p.40. Cf. notes 152-3 below.

⁹⁸ Article 96, Fundamental Principles of Civil Legislation; Article 475, RSFSR Civil Code.

⁹⁹ V. Rassudovskii, *Nauchnaia informatsiia i avtorskoe pravo, SGI*, no. 2 (1971), pp.41-43; Rassudovskii V., *Okhrana prav avtorov deponirovanykh rukopisii . . .*, *Sovetskaia iustitsiia* (1973), no. 8, pp.11-12. Cf. Decree of December 25, 1970, *Voprosy*, note 70 above, pp.554-559 (558).

¹⁰⁰ Article 98, Fundamental Principles of Civil Legislation, as amended, note 2 above; Article 479, RSFSR Civil Code.

¹⁰¹ Cf. Articles 476, 479, RSFSR Civil Code; Decree of USSR Supreme Court Plenum, note 91 above.

¹⁰² Article 493, RSFSR Civil Code.

¹⁰³ Article 5, Fundamental Principles of Civil Legislation; Article 5, RSFSR Civil Code. A. Eroshenko, *Pravovedenie*, no. 4 (1972), pp.27-35; E. L. Johnson, 'Abuse of Rights in Soviet Civil Law', *The Solicitor* 1, (1962), pp.320-335.

¹⁰⁴ Preamble, Fundamental Principles of Civil Legislation; Preamble, RSFSR Civil Code.

¹⁰⁵ In a 1930 decision, the RSFSR Supreme Court refused to recognise a copyright on musical rights to be performed at religious rites. The Court reasoned that the labour expended on creating such works was not socially useful. *Sudebnaia praktika RSFSR*, no. 7 (1930), p.1.

to make use of the results of their creative work only after this has been permitted by an administrative act. The construction and use of a radio transmitter likewise requires a licence. This applies also to amateur radio broadcasts. Violators are subject to fines.¹⁴⁵

A Soviet citizen, on the other hand, has no opportunity to use the services of state publishing houses for private purposes. An author cannot, for example, entrust a state publishing house to publish and distribute his work at his own expense. Hungarian state publishing houses, on the contrary, are allowed to publish and distribute works as a service to citizens against payment. A prior permission by the competent agency for publications is required.¹⁴⁶

(c) Limits and requirements of publishing

Publishing houses of state and socialist organisations are subject to the control of the State Committee for Publishing.¹⁴⁷ Private publishers operate outside the network of state and socialist organisations. Administrative regulations on the procedure for publishing addressed to state agencies and enterprises do not apply, therefore, to private publishers. But citizens are bound by the generally applicable rules.

The law provides no restrictions with respect to the type of work to be published. Thus, theoretically, textbooks could be published privately; the law envisages merely a special procedure for approving textbooks for use in educational institutions.¹⁴⁸ Special statutes monopolise the right to publish the works of Marx and Engels¹⁴⁹ and of Lenin.¹⁵⁰ Similar restrictions have to be observed in the case of authors whose works have been nationalised.¹⁵¹ Producing photographic works¹⁵² is generally free, but certain objects of military importance may not be photographed.¹⁵³ Likewise, there is no ban on collecting information for purposes of publication, but the 'circulation of foreign and all-union information within the territory of the USSR' is monopolised, being a prerogative of TASS.¹⁵⁴ These exceptions confirm the general rule that administrative law places no restrictions on producing copyrighted works unless some statutes establish specific limits.

Two requirements connected with the publishing process need consideration, however. The first requirement is an obligation to deposit copies (*obiazatel'nyi ekzempliar*) of published works with designated libraries. The obligation covers, according to a 1933 Decree, 'books, brochures, journals, bulletins, [musical] notes, geographical maps, and plans, as well as newspapers of the capitals of all the union republics'.¹⁵⁵ Materials produced 'on a mimeograph machine [*na steklografe*] or with the help of other multiplying devices', on the other hand, 'presently do not come within the meaning of the legal deposit copy'.¹⁵⁶ This excludes *samizdat* materials, as a rule. The union republics are permitted to impose additional obligations.¹⁵⁷ In the RSFSR 'polygraphic enterprises' are ordered to deposit seven copies of books and other publications.¹⁵⁸ The RSFSR regulation is not addressed to individual citizens. No sanctions are provided for a violation of the obligations mentioned.

A second requirement pertains to censorship.¹⁵⁹ A 1928 Circular instruction of the censorship agency *Glavlit* exempted, among others, 'all materials in print and manuscript, of a . . . general and everyday character', as well as 'wall papers written by hand or typed on a typewriter'.¹⁶⁰ But this Circular instruction was not included in a collection of regulations as of 1936. It was apparently superseded by other norms not providing for such exemptions.¹⁶¹ According to a RSFSR Decree of 1931, the tasks of the censorship agency include 'control over items prepared for publication or dissemination in the press, over manuscripts . . .'.¹⁶² The agency was empowered to issue 'rules . . . binding on all agencies, organisations, and private persons'.¹⁶³ It seems doubtful that these regulations are still in force. Censorship rules addressed to 'private persons' have not been made public. It cannot be established with certainty, therefore, whether or not *samizdat* materials come within the category of works subject to censorship.

Party directives

The Party is the 'leading core' of all state and social organisations.¹⁶⁴ On the basis of this principle, the Party claims the right to guide all publication activities in the country. Party directives issued to achieve control over publications do not reach into the area of private publishing but are addressed to Party organs for guidance and execution. Publishers of *samizdat*, who are not subject to Party discipline, legally remain outside Party control. The status of citizens differs in this respect from that of social organisations. The latter are not permitted to publish literature 'bypassing' the commercial publishing houses¹⁶⁵ unless they are granted 'publishing rights'.¹⁶⁶ The power to grant such rights rests with regional and higher Party agencies. Party directives define the scope within which such rights may be granted, e.g., for publishing literature for official use,¹⁶⁷ which is distributed without cost. In 1966 more than 3,300 organisations engaged in publishing activities bypassing state publishing houses. The books and brochures produced in 1970 accounted for more than 47 per cent of all titles published.¹⁶⁸

Another example of official self-publication is the wall paper (*stennaia gazeta*). It is published in single or few copies and displayed in enterprises and organisations. Although publishers are advised to call the wall papers 'newspapers of the workers of a given enterprise or of the farmers of a given village',¹⁶⁹ Party organs are instructed to exercise tight control over their contents.¹⁷⁰ The trade union takes an active part in organising the wall paper and other means of visual agitation.¹⁷¹ Radio broadcasting on an enterprise level is similarly sanctioned and supervised by the local Party committee.¹⁷² The practice of 'official self-publishing' thus represents a peculiar parallel to private *samizdat*.

The legal status of self-publishers can be further clarified by comparing it to that of amateur groups performing artistic work. There are about 320,000 such lay collectives in the Soviet Union,¹⁷³ and their activities include music, dance, and theatre performances.

¹⁰⁶ See note 91 above.

¹⁰⁷ See text at note 25 above.

¹⁰⁸ Soviet citizens are legally free in their ways to establish and to maintain contacts with foreigners, whereas governmental agencies (and their officials) are under an obligation to observe certain procedures in making such contacts. See USSR Edict of December 16, 1947 on the Procedure for Relations of Governmental Agencies of the USSR . . . with Agencies of Foreign States, reprinted in: *Sbornik zakonov SSSR i ukazov* . . ., note 81 above, I, pp.605-607.

¹⁰⁹ See text at notes 17, 35, 39 and 40 above. Cf. the Open Letter of March 22, 1973, by Academician A. Sakharov and others to UNESCO protesting against the suppression of a free flow of literature by means of the foreign trade monopoly; translated in: *A Chronicle of Human Rights in the USSR* (New York), no. 1 (1973), pp.55-6; *Cahiers samizdat* (Brussels), no. 8 (April 1973), document no. 29; English summary in *Human Rights in USSR* (Brussels), no. 4 (1973), pp.2-3; German summary in *Frankfurter Allgemeine Zeitung*, March 27, 1973, p. 28.

¹¹⁰ *Ugolovnyi kodeks Estonskoi SSR; kommentirovannoe izdanie* (Tallin, 1968), p.216.

¹¹¹ See text at note 42 above.

¹¹² *Bodley Head Ltd v. Flegon, The Times*, November 11, 1971, p.18; (1972) 1 *Weekly Law Reports*, 680. The decision became final in December 1972.

¹¹³ Landgericht Stuttgart, Partial Judgement of August 3, 1972, In Re Luchterhand Verlag GmbH v. Albert Langen-Georg Müller Verlag GmbH (file 17 o 325/71), p.45. The decision was upheld by the Oberlandesgericht Stuttgart in a judgement of February 21, 1973, which has been appealed to the Bundesgerichtshof. Cf. an article by Solzhenitsyn's lawyer in Zurich, Dr Fritz Heeb, 'Die urheberrechtliche Stellung eines sowjetisches Schriftstellers im Westen,' *Neue Zürcher Zeitung*, November 4, 1971. Solzhenitsyn commented on the cases as follows: 'Through the pirate-editions of Flegon and Langen-Müller, they [meaning the security organs of the USSR - D.L.] wanted to undermine

the system of international protection for my books,' in an interview with a Western correspondent on March 30, 1972. *Vestnik russkogo studencheskogo khrist'ianskogo dvizheniia*, (Paris) no. 103 (1972), p.190; E. Tervooren, 'Solsjenitzin en zijn auteursrechten,' *Juridische Studentenblad Ars Aequi*, XX (1971), no. 2, pp.41-46.

¹¹⁴ See Bogsch, note 7 above, pp.75-77; W. Bappert and E. Wagner, *Internationales Urheberrecht* (Munich-Berlin, 1956), pp.69-71; A. Troller, *Die mehrseitigen volkerrechtlichen Verträge im internationalen gewerblichen Rechtsschutz und Urheberrecht* (Basel, 1965), pp.116-117.

¹¹⁵ Articles 2, 3(2), Universal Copyright Convention. For recent literature see Bloom H., 'The end of samizdat. The Soviet Union signs the Universal Copyright Convention,' *Index* (London), Vol.2, No.2 (Summer 1973) pp.3-18 and Bromberg A. 'ZSR i Konwencja Genewska', *Kultura* (Paris), May 1973, pp.92-100.

¹¹⁶ This right of an author is generally recognised. See Article 98, Fundamental Principles of Civil Legislation; Article 479, RSFSR Civil Code; Article 3(1), Universal Copyright Convention; Articles 1, 2, United States Copyright Law of 1947; Article 12, *Urheberrechtsgesetz* of 1965, Federal Republic of Germany.

¹¹⁷ Article 101, Fundamental Principles of Civil Legislation; Article 506, RSFSR Civil Code.

¹¹⁸ The contract may be rescinded, for example, if the 'control agencies' have ordered the work withdrawn from the book trade. In this event, publishing houses draw up a Protocol on the discontinuance of publication. See V. Leman, *Ekonomika i planirovanie v knizhnom izdatel'stve* (Moscow, 1963), pp.224-226, 271. On the legal effect of suppression orders in relation to the author, publishing house, and book stores, see Loebler, note 1 above, pp.38, 41. Also see text at note 95 above.

¹¹⁹ Article 509, RSFSR Civil Code; Articles 1, 4, standard publishing contracts for literary and political works, note 58 above.

¹²⁰ See note 102 above.

They are usually organised at places of work, operating under the guidance of trade unions. In addition, party and state agencies consider it their task to facilitate the work of self-entertainment collectives and to supervise them.¹⁷⁴ The trade unions apply a variety of measures to guide the artistic lay-groups, among them the 'approval' of performance plans and the selection of ballet-masters, conductors of choirs, producers, and club-directors. Trade union decrees serve as the legal basis.¹⁷⁵

It is relevant in our context that trade unions do not enjoy similar rights of guidance in the field of publications. Workers are not expected to submit their publication plans to the local trade union committee for approval.

Labour law

The use of socialist property for private publishing purposes is not in itself a violation of any formal provisions of labour law. This is obvious if the use has been authorised. Even an unauthorised use is not necessarily illegal as long as the user is properly 'taking care' of the property in question, as all workers and employees are required to do.¹⁷⁶ But a publisher of *samizdat* could be accused of having violated the spirit of labour legislation if he used state property 'without authorisation for personal ends'. Cases of this sort are handled by social institutions called 'comrades' courts'.¹⁷⁷ If state property is used to make personal profit, disciplinary measures may be applied,¹⁷⁸ and if such acts have caused 'substantial damage', criminal sanctions.¹⁷⁹ Independently of these measures, damages can be claimed if the user caused property damage to the state. The state may have suffered a loss, for example, if the user fails to replace stocks of paper or other materials used.¹⁸⁰ Loss might also be seen in the depreciation of the facilities used,¹⁸¹ but it would be negligible as a rule. If the duplicating machine or the material used was the property of a socialist organisation, the legal consequences would be similar.

Criminal law

(a) *Samizdat*—not a criminal offence

The criminal codes in force provide no sanction for publishing and circulating *samizdat* materials. This is true even if some administrative regulations should have been violated by such activity.

The non-criminal character of *samizdat* activities should be noted for two reasons. First, *samizdat* is somehow associated with the notion of illegality in the minds of many non-lawyers within and without the Soviet Union. There is no basis in criminal law for such a view. Second, the present situation contrasts with that existing prior to 1960. The RSFSR Criminal Code of 1926 made it a criminal offence to violate 'rules established regarding multiplication and issuance of printed matter as well as [violation] of censorship for photographs and movies' (Article 185). A 'violation of rules concerning the procedure required for the opening and running of printing shops, lithographic, and similar establishments' was

likewise criminally punishable (Article 190).¹⁸² The provisions were copied from the first RSFSR Criminal Code of 1922 (Articles 224 and 225 respectively).¹⁸³ These crimes have been eliminated in the new RSFSR Criminal Code which took effect in 1960.¹⁸⁴

(b) *Criminal offences potentially connected with samizdat activities* Persons engaging in *samizdat* activities are not exempted, of course, from criminal responsibility for other punishable acts. Among the many crimes provided in the criminal codes, the ones most likely connected with self-publishing activities fall into the following categories:

- (1) Crimes against the rights of citizens, for example violation of authors' rights. The 'illegal reproduction and distribution' of another's literary work is a crime provided for in Article 141 of the 1960 RSFSR Criminal Code;
- (2) Crimes against the socio-economic order, for example a person using a state-owned duplicating machine may be accused of having caused 'property damage to the state . . . through . . . abuse of trust' (Article 94). If the accused should have engaged in *samizdat* as a business, he could be convicted for 'private entrepreneurial activity' provided 'state, cooperative, or other social forms' were utilised (Article 153). Criminal responsibility is envisaged also for 'engaging in a trade concerning which there is a special prohibition' (Article 162).¹⁸⁵
- (3) Crimes against the public order or the state, where criminal responsibility follows from the contents of the material published or circulated. Examples include materials revealing state secrets (Article 75),¹⁸⁶ pornographic materials (Article 228) or documents violating the laws on separation of church and state (Article 142).¹⁸⁷ Cases in this group involve also 'the preparation or circulation in written, printed, or any other form' of 'fabrications known to be false, which defame the Soviet state and social system' (Article 190-1).¹⁸⁸ If the fabrications are 'slandering' and are prepared or circulated 'for the purpose of subverting or weakening the Soviet regime', the act may be punished as 'anti-Soviet agitation and propaganda'; which is an 'especially dangerous crime against the state' (Article 70). The same applies to the mere 'keeping, for the same purpose, of literature of such content' (Article 70).¹⁸⁹ Cases in this group have attracted considerable attention in the Soviet Union and abroad.

(c) *Criminal responsibility for preparing, circulating, or keeping materials considered to be politically harmful*

The danger of preparing or circulating politically harmful materials is negligible if the ordinary procedure for publication is followed. Preventive censorship is likely to eliminate statements which may give reason for criminal prosecution. The situation is otherwise with *samizdat* material. Private publishing is used as a substitute for services generally performed by state publishing houses. In some cases authors resort to it to avoid censorship. This perhaps explains why *samizdat* occasionally is considered an activity bordering on illegality.

¹²¹ Article 2, Soviet-Hungarian agreement, note 44 above; Article 2, Soviet-Bulgarian agreement, note 45 above.

¹²² Article 7, Soviet-Hungarian agreement, note 44 above; Article 7, Soviet-Bulgarian agreement, note 45 above. A working agreement has been concluded between competent Soviet and Hungarian agencies on the procedure for implementing the Agreement on November 30, 1967. See Kudriavtseva, note 5 above, p.171 and V. Kamyshv, *Izdatel'skii dogovor . . .* (Moscow, 1969), pp.138-143.

¹²³ Gringolts, note 88 above, p.708. Similar views were expressed earlier by B. Antimonov and E. Fleishits, *Avtorskoe pravo* (Moscow, 1957), p.164. A USSR decree of May 20, 1932, cited by Antimonov and Fleishits to support their view provides no limitation on legal capacity in publishing, however. The relevant part of the decree reads: 'It shall not be permitted to open stores and small shops by private tradesmen' (Article 10). Text in *Direktivny KPSS po khoziaistvennym voprosam* (Moscow, 1957), II, pp.348-349. Cf. V. Serebrovskii, in *Sovetskoe grazhdanskoe pravo* (Moscow, 1938), II, p.305; (1944 ed.), II, p.240.

¹²⁴ Article 9, Fundamental Principles of Civil Legislation; Article 10, RSFSR Civil Code.

¹²⁵ Article 8, Fundamental Principles of Civil Legislation; Article 12, RSFSR Civil Code.

¹²⁶ See text at note 101 above. On the question of exercising the right to publish, see M. Gordon, *Sovetskoe avtorskoe pravo* (Moscow, 1955), pp. 79-80, 127; Antimonov and Fleishits, note 123 above, pp.46, 51-52; Kamyshv, note 61 above, p.26; Loeber, note 1 above, p.39.

¹²⁷ Article 125, USSR Constitution.

¹²⁸ 'Svoboda slova i pečati,' *Pravda*, June 22, 1936, p.1; reprinted in Fogelevich, note 19 (6th ed.) above, pp.3-5. Cf. Krylenko (then People's Commissar of Justice of the USSR): ' . . . the toilers of the Soviet Union will never permit that state property - the printing establishments . . . - are abused against the socialist society. The legal guarantees [freedom of opinion and freedom of the press - D.L.] do not apply, therefore, to enemies of socialist society.' N.V. Krylenko, *Rechte und Pflichten des*

Sowjetburgers (Moscow, 1936), p.31; *id.*, *Stalinskaia konstitutsiia v voprosakh i otvetakh* (Moscow, 1936), p.56.

¹²⁹ A. Ia. Vyshinskii, *The Law of the Soviet State* (New York, 1948), p.617; transl. from *Sovetskoe gosudarstvennoe pravo* (Moscow, 1938), p.555.

¹³⁰ Article 58, sec. 10, made counter-revolutionary agitation and propaganda a crime; it corresponds, with some changes, to Article 70 of the 1960 RSFSR Criminal Code now in force. See note 184 below.

¹³¹ Protocol no.6 of the Electoral District Committee in Virumaa, Estonia, July 11, 1940; German transl.: *Dokumente zu den kommunistischen 'Volkswahlen' in Estland, Vierteljahrshefte für Zeitgeschichte*, II (1954), pp.113-114. See note 84 above.

¹³² A. Lepeshkin, *Kurs sovetskogo gosudarstvennogo prava* (Moscow, 1961), I, p.516. Also see V. M. Safronov, in *Kurs sovetskogo gosudarstvennogo prava* (Moscow, 1971), p.224.

¹³³ RSFSR edict of October 27 (November 9), 1917, reprinted in *Dekrety sovetskoi vlasti* (Moscow, 1957), I, pp.24-25; English transl. by J. Meisel and E. Kozera (eds.), *Materials for the Study of the Soviet System* (2nd ed.; Ann Arbor, 1953), pp.23-24.

¹³⁴ Article 9, USSR Constitution; also see Article 115, RSFSR Civil Code.

¹³⁵ J. N. Hazard, *The Soviet System of Government* (4th ed.; Chicago, 1968), p.57.

¹³⁶ Article 4, USSR decree confirming rules for the registration of non-cooperative artisans and handicraftsmen of 1949. The official text was not published; cf. note 24 above. As amended on April 22, 1958, Article 4 is reprinted in *Grazhdanskii kodeks RSFSR* (Moscow, 1961), pp.166-173, and excerpted in *Sbornik*, note 31 above, pp.170-174. The rules were amended by decree of September 8, 1953, April 22, 1958, and June 3, 1963. Excerpts in English are published in J. N. Hazard, I. Shapiro, and P. B. Maggs, *The Soviet Legal System* (2nd ed.; Dobbs Ferry, 1969), pp.89-90, 167-169, 170. Also see the criminal sanctions provided in Article 162 of the 1960 RSFSR Criminal Code and in other union republic codes. See note 185 below.

Footnotes continued overleaf

The wording of Articles 70 and 190-1¹⁹⁰ 'is so broad that it is possible in practice to catch almost any strong expression of political dissent'.¹⁹¹ This is illustrated by some cases:

- (1) In the Siniavskii-Daniel trial (1966) the accused writers were convicted of anti-Soviet propaganda found in some passages of their literary works published abroad. The writers denied that they had intended to subvert or to weaken the Soviet regime, but the court inferred the intent from their writings.¹⁹²
- (2) A group of Jews in the Leningrad hijacking case (1971) was charged among others, with preparing and circulating Zionist materials;¹⁹³
- (3) A group of Baptists was sentenced in Rostov-on-Don (1966), among others, for setting up a printing press and for mimeographing religious literature. The court held that the defendants through their acts had violated the laws on separation of church and state.¹⁹⁴
- (4) Dr Fricis Menders was convicted of anti-Soviet propaganda and agitation for permitting an American Ph.D. candidate to take notes of answers Menders gave on questions about recent Latvian history. Menders was the former Chairman of the Socialist Democratic Party of Latvia during her independence. He was 84 at the time of the trial in Riga (1969).¹⁹⁵ More trials of a similar character are known to have taken place.¹⁹⁶

In some cases the accused may have believed the defamatory statement to be true. This, 'theoretically', would constitute 'a complete defence'. But it has 'been ineffectual in practice, except possibly as a basis for commitment to a psychiatric hospital', writes Berman. He adds that 'Soviet courts will apparently not admit that any sane Soviet citizen can honestly make a statement attacking the Soviet political or social system'.¹⁹⁷

Conclusion

It can be said that Soviet citizens enjoy the right to engage in *samizdat*. But the concentration of publishing facilities in the hands of the state limits in fact the free exercise of this right. A private publisher is further handicapped since the regime in power attempts to control the political and cultural life in the country. Such a regime is bound to view *samizdat* with distrust; it will even tend to associate it with anti-Soviet attitudes. □

137 Article 4(b), *Polozhenie*, note 51 above, and also of the RSFSR and Latvian statutes. Article 1, USSR Decree of July 12, 1952, as amended April 1, 1965. *SP SSSR* (1965), no.10, item 73. The police also are charged with verifying the observance of the procedure for opening polygraphic enterprises. See Article 5(a), *Polozhenie Ministerstva vnutrennykh del RSFSR*, April 25, 1961, *SP RSFSR* (1961), no.12, item 47, reprinted in *Sbornik normativnykh aktov po sovetskomy administrativnomu pravu* (Moscow, 1964), pp.504-508; Article 5(10), *Polozhenie o Ministerstve vnutrennykh del Estonskoi SSR*, February 13, 1973, *Vedomosti ESSR* (1973), no.11, item 93. The procedure for opening printing establishments in the Ukrainian SSR is regulated by a Decree of July 23, 1952, cited in *KhS URSS* (Kiev, 1964), VII, p.291.

138 Decree of the Lithuanian SSR of January 4, 1945 (*Khronologicheskoe sobranie zakonov Litovskoi SSR . . . Vil'nius*, Vol. 1, 1957, pp.106-107). The right to own typewriters was granted only to persons needing them professionally; typewriters owned by other persons were subject to expropriation (*iz'iatie*) against compensation. Similar decrees may have been enacted also in other Union Republics.

139 RSFSR Decree of June 26, 1932, reprinted in *KhS RSFSR* (Moscow, 1949), III, pp.309-310; English transl. in Hazard, Shapiro, and Maggs, note 136 above, p.89. A plan for the activities of the special department of the Latvian State University prepared in late 1940 or early 1941 allegedly envisaged the following instruction: 'The Special Department shall be obliged: . . . to control all multiplying facilities and the carrying out of all photographic and printing works.' A German text appears in *Bolshevikische Kulturpolitik* (n.p., n.d.), p.94; the book evidently was published by German occupation authorities in the Baltic States ca. 1942 on the basis of captured Soviet documents. The use of photocopying machines in the Soviet Union is restricted also in present times, as reported by Smith H., 'Copiers Multiply Soviet Censors' Task', *New York Times*, January 20, 1973, p.10.

140 The decree was not included in the *SS RSFSR* (1968) but is treated as being in force and has been commented on by: A. Lunev, *Administrativnaia otvetstvennost' za pravonarusheniia* (Moscow, 1961), p.142; Iu. Kozlov *Upravlenie v*

oblasti administrativno-politicheskoi deiatel'nosti sovetskogo gosudarstva (Moscow, 1961), p.40; *id.*, *Sovetskoe administrativnoe pravo; osobennaia chast'* (Moscow, 1964), pp.268-269; M. Eropkin, *Upravlenie v oblasti okhrany obshchestvennogo poriadka* (Moscow, 1965), p.110; V. Sorokin, in *Sovetskoe administrativnoe pravo; osobennaia chast'* (Leningrad, 1966), p.270; N. Shchelokov, *Sovetskaia militsiia* (Moscow, 1971), p.44.

141 Sources as in note 137 above.

142 RSFSR Decree on private publishing houses, December 12, 1921, *SU RSFSR* (1921), no.80, item 685. Cf. a circular letter of the RSFSR People's Commissar of Justice on the procedure for publishing collections of statutes by private publishers, March 13, 1923, in *Sbornik tsirkuliarov Narkomiusta RSFSR za 1922-1925 g.g.* (Moscow, 1926), p.480. It orders publication of such collections to cease and requires a permit for similar publications in the future.

143 The decree cited in note 142 above has not 'formally been repealed', but has not been included 'since 1929 in collections of laws on the press'. Antimonov and Fleishits, note 123 above, p.29. By '1931-1932 private publishing had ceased altogether'. B. Martynov, in *SGiP*, no.4 (1941), p.31.

144 RSFSR Decree of August 3, 1961, *SP RSFSR* (1961), no.21, item 98; Decree of the Latvian SSR of January 29, 1962, summarised in *Kommentarii Ugolovnogo kodeksa Latvii SSR* (Riga, 1967), p.346.

145 RSFSR Decree of April 7, 1960, reprinted in *Sbornik*, note 31 above, pp.128-129; English transl.: Hazard, Shapiro, and Maggs, note 136 above, pp.87-88. Decree of the Estonian SSR of February 23, 1973, *Vedomosti ESSR* (1973), no.9, item 69. On the criminal law aspects of using broadcasting facilities, see the Decree of the Plenum of the USSR Supreme Court, July 3, 1963. *Biull. SSSR*, no.4 (1963), p.26; reprinted in *Sbornik postanovlenii Plenuma verkhovnogo suda SSSR 1924-1970* (Moscow, 1970), pp.515-516. Also see L. Popov and V. Afanas'ev, *Sov. iust.*, no. 13 (1970), pp.13-14; P. Taylor, 'Underground Soviet Broadcasting', *The Russian Review*, XXXI (1972), pp.173-174; *Vedomosti SSSR* (1972), no.33, item 297.

146 F. Baranyi, *Magyar Ifjusag*, February 12, 1971.

147 Article 5, *Polozhenie*, note 51 above; on party control of the committee, see note 72 above.

148 Articles 22, 23, Instruction on planning and preparing manuscripts for textbooks, reprinted in *Biulleten' Ministerstva vysshego i srednego spetsial'nogo obrazovaniia SSSR*, no.12 (1971), pp. 13-18. Also see Loeber, note 1 above, pp.38-39.

149 Article 18, 1929 Statute on the Marx-Engels Institute, excerpted in Fogelevich, note 19 above (6th ed.), p.115.

150 Decree of the Central Committee of the Russian Communist Party, April 4, 1925, *ibid.*, pp.136-137.

151 Pertinent materials are collected in *ibid.*, pp.116-117. See note 142 above.

152 Photographic works may be protected by copyright. Article 475, RSFSR Civil Code. See note 97 above.

153 RSFSR Decree of February 23, 1929, *SU RSFSR* (1929), no.21, item 226; reprinted in Fogelevich, note 19 above (3rd ed.), pp.63-64; *Administrativnoe zakonodatel'stvo* (Moscow, 1936), pp.232-233. Rules for producing films and for filming and photographing on the territory of the USSR have been referred to in legal literature, but remain unpublished. A. Bednenko, *Administrativnopravovye voprosy organizatsii inostrannogo turizma v sotsialisticheskikh stranakh (avtoreferat diss.; Irkutsk*, 1972), p.24.

154 Article 3, Statute on TASS; reprinted in Fogelevich, note 19 above (6th ed.), pp.153-155. A new Statute on TASS was confirmed in January 1972, but the text is not available. *Izvestia*, January 11, 1972, p.6.

155 USSR Decree of November 10, 1939, *SP SSSR* (1939) no. 57, 589, repealing a decree of September 13, 1933, reprinted in Fogelevich, note 19 above (6th ed.), pp.158-159. The 1939 decree probably has been replaced by a recent statute whose text is not available. Cf. *Al'javitno-predmetnyi ukazatel' k postanovleniiam . . . Latvii SSR* (Riga, 1960), p.23. The legal deposit copy is discussed by Gorokhoff, note 19 above, p.56.

156 Article 9, Decree of September 13, 1933, note 155 above.

157 Article 6, *ibid.*

158 RSFSR Decree of January 15, 1940, *SP RSFSR* (1940), no.6, item 16; reprinted in *KhS RSFSR* (Moscow, 1941), VIII, pp.518-519. The obligation pertains to publications of more than two pages. Fogelevich, note 19 above (6th ed.), p.142. It probably has been replaced by a more recent enactment.

159 See text at notes 66-68 above.

160 Circular of November 1, 1928, reprinted in Fogelevich, note 19 above (3rd ed.), pp.64-65.

161 Cf. *Glavit* rules of July 31, 1936, in *ibid.* (6th ed.), pp.137-144.

162 RSFSR Decree of June 6, 1931, *SU RSFSR* (1931), no.31, item 273; reprinted in Fogelevich, note 19 above (6th ed.), pp.124-125. English transl.: Hazard, Shapiro, and Maggs, note 136 above, p.88. The decree was repealed in 1963. *SP RSFSR* (1963), no.1, item 3, list no.20.

163 Article 3, Decree of June 6, 1931, note 162 above.

164 Article 126, USSR Constitution.

165 Articles 1, 2, Decree of the Central Committee of the CPSU, February 28, 1966, reprinted in *O partiinoi*, note 11 above, pp.484-485.

166 Decrees of the Central Committee of the CPSU of February 11, 1959, and of February 28, 1966, reprinted in *ibid.*, pp.456-458, 484-485; Article 4, *Polozhenie*, note 51 above. Article 18 of a USSR decree of September 3, 1966, empowers the USSR Ministry of Higher and Specialized Secondary Education to grant publishing rights to universities. *Biulleten' Ministerstva vysshego i srednego spetsial'nogo obrazovaniia SSSR*, no.12 (1966), pp. 1-7; also no.6 (1967), pp.7-14; no.1 (1970) pp.10-12; no.5 (1971), pp.13-15. Among other organisations being granted publishing rights is the Russian Orthodox Church. See *Patriarkh Sergii i ego dukhovnoe nasledstvo* (Moscow, 1947), p.376; quoted by A. Bogolepov, *Tserkov' pod vlast'iu kommunizma* (Munich, 1968), p.48; *id.*, in *Russkaia pravoslavnaia tserkov' v SSSR; sbornik* (Munich, 1962), p.140. The right to make proposals for the granting of publishing rights is vested in the State Committee of the USSR for Publishing if the rights are to be conferred to institutions subordinate to all-union agencies. The union republic state committees are entitled to make proposals when publishing rights are to be conferred on institutions

subordinate to union republic agencies. This follows from the materials cited in note 51 above.

167 Decrees of the Central Committee of the CPSU of February 11, 1959, note 166 above; of February 28, 1966, note 165 above; and of December 25, 1970, reprinted in *Voprosy*, note 70 above, pp.554-559. The latter decree instructs the State Committee of the USSR for Publishing to draft and confirm a Statute on the procedure for publishing printed works by ministries, committees, agencies, and organisations. The draft must be coordinated with two departments of the Central Committee of the CPSU; the Statute has not been published.

168 Decrees of the Central Committee of the CPSU of February 28, 1966, note 165 above; and of December 25, 1970, reprinted in *Voprosy*, note 70 above, p.555. Also see V. Markus, *Organizatsiia izdatel'skogo dela* (Moscow, 1971), p.59. In 1970 seventy-seven million copies of printed items were distributed free of charge, whereas 1,200 million copies were produced for sale. *Ibid.*, p.22.

169 Decree of the Central Committee of the All-Union Communist Party of August 27, 1926, reprinted in *O partiinoi*, note 11 above, pp.145-147.

170 Decrees of the CPSU of May 1924, December 1, 1924, February 16, 1925, June 1, 1925, August 14, 1925, August 27, 1926, January 18, 1931, April 16, 1931, August 19, 1932, August 30, 1958, and July 31, 1959; reprinted respectively in *O partiinoi*, note 11 above, pp.111-112, 123-125, 130, 133, 137, 146, 173, 178, 183, 313, 333. Article 59, Rules of the CPSU. Cf. *Voprosy partiinoi raboty*, note 75 above, p.333; G. Lunenko, *Partiinaia organizatsiia i pečat'* (Moscow, 1962), pp.46-59; A. Kravchenko, *Besedy o pervichnykh organizatsiakh KPSS* (Moscow, 1965), pp.143-144; *Spravochnik sekretaria pervichnoi partiinoi organizatsii* (2nd ed.; Moscow, 1967), pp.95-98.

171 Article 11, *Polozhenie o profsoiuznom krasnom ugolke*, November 20, 1964, reprinted in *Spravochnik profsoiuznogo rabotnika* (Moscow, 1971), pp.475-477. Cf. *Spravochnik sekretaria*, note 170 above, p.92.

172 Decree of the Central Committee of the CPSU of March 6, 1966, reprinted in *O partiinoi*, note 11 above, p.363.

173 Iu. Kozlov, *Upravlenie v oblasti sotsial'no-kul'turnogo stroitel'stva* (Moscow, 1963), p.58.

174 Part 2, Chapter V, Section 4, 1961 Programme of the CPSU. On state guidance see, for example, Article 4(5) of the Statute on the culture department of executive committees of a city or district Soviet in the Estonian SSR, *Teataja* (1972), no.28, item 291; Decree of the Ukrainian SSR of February 14, 1958, on the development of national art, reprinted in *KhS URSS*, IV, pp.374-377. See V. Khoklov, *Kul'turno-prosvetitel'naia deiatel'nost' mestnykh sovetov . . . RSFSR (avtoreferat diss.; Leningrad*, 1969).

175 Decrees of the Central Council of Trade Unions of January 21, 1947, reprinted in *Spravochnik profsoiuznogo rabotnika* (2nd ed.; Moscow, 1964), pp.519-521; of July 15, 1966, in *Spravochnik partiinogo rabotnika*, VII, pp.370-375; of May 21, 1968, in *ibid.*, IX, pp.453-459; of January 24, 1969, in *ibid.*, XI, pp.399-404; of August 19, 1970, in *ibid.*, XI, pp.429-431; also the Statute for houses of amateur art activities of trade unions of August 9, 1968, in *Spravochnik profsoiuznogo rabotnika* (Moscow, 1971), p.473.

176 Article 2(a), Rules of the CPSU; Article 131, USSR Constitution; Articles 2, 51, Fundamental Principles of Labour Legislation; Article 127, 1971 RSFSR Labour Code; Article 22, 1965 Statute on the Socialist State Production Enterprise; Article 23, 1968 Statute, note 53 above; Article 11, Model rules for internal labour order, July 29, 1972, reprinted in *Biulleten' normativnykh aktov ministerstv i vedomstv SSSR*, no.1 (1973), pp.3-10.

177 Article 5(1)(b), *Polozhenie o tovarishcheskikh sudakh RSFSR*, as amended. This particular provision was added to the Statute on October 23, 1963. *Vedomosti RSFSR* (1963), no.43, item 750. Similar statutes have been enacted in other union republics. Cf. Article 26, model rules, note 176 above.

178 Articles 128, 135, RSFSR Labour Code; Articles 21, 22, 24, model rules, note 176 above. Unauthorised use of bed linen belonging to a special school for personal needs may be sufficient grounds for dismissal, according to an RSFSR Supreme Court judgment of March 14, 1972. *Biull. RSFSR*, no.10 (1972), p.1.

- 179 Article 94, 1960 RSFSR Criminal Code; also see note 177 above and text at note 185 below.
- 180 Article 88, Fundamental Principles of Civil Legislation; Article 444, RSFSR Civil Code.
- 181 Similar questions can arise if the driver of a state-owned automobile uses it for personal purposes without authorisation. See the cases reported in *Biull. SSSR*, no.5 (1960), p.8; *Biull. RSFSR* no.12 (1972), p.11. Cf. also examples mentioned in *Komentarii k Ugolovnomu kodeksu RSFSR* (Moscow, 1971), p.241; *Ugolovnyi kodeks Estonskoi SSR*, note 110 above, p.254; and an unpublished decision of the Latvian Supreme Court summarised by O. Zonne, *Disciplinara un materiala atbildiba* (Riga, 1969), p.77. Cf. Article 117, RSFSR Labour Code.
- 182 The corresponding provisions in the criminal codes of the other union republics for the pre-1960 period are collected in *Sistematizirovannyi tekst obshchegoiznykh ugolovnykh zakonov i ugolovnykh kodeksov soiuzykh respublik* (Moscow, 1948), pp.470-471, 473-474.
- 183 On the application of these provisions by courts, see the following commentaries to Articles 224 and 225 of the 1922 RSFSR Criminal Code: D. I. Kurskii (preface), *Ugolovnyi kodeks* (Moscow, 1924), pp.757-770; S. Askarkhanov et al. (comps.), *Ugolovnyi kodeks RSFSR* (Moscow, 1925), pp.370-374. On Articles 185 and 190 of the 1926 RSFSR Criminal Code, see: M. N. Gernet and A. N. Trainin (eds.), *Ugolovnyi kodeks; nauchno-populiarnyi prakticheskii kommentarii* (Moscow, 1927), pp.277-278, 281; A. B. Vroblevskii and B. S. Utevskaia, *Ugolovnyi kodeks; kommentarii* (2nd ed.; Moscow, 1928), pp.380-381, 383; A. N. Trainin et al., *Ugolovnyi kodeks RSFSR; kommentarii* (2nd ed.; Moscow, 1946), pp.227-228.
- 184 For an English text of the 1960 RSFSR Criminal Code, see *Soviet Criminal Law and Procedure: The RSFSR Codes*, introduction and analysis by H. J. Berman (2nd ed.; Cambridge, 1972), pp.125-202.
- 185 Cf. note 136 above. On the application of these provisions, see the commentaries cited in notes 144 and 181 above, and also in B. S. Nikiforov (ed.), *Nauchno-prakticheskii kommentarii Ugolovnogo kodeksa RSFSR* (2nd ed.; Moscow, 1964).
- 186 Articles 65, 75, 76, RSFSR Criminal Code, together with a USSR decree of April 28, 1956, on news representing a state secret, in Gorokhoff, note 19 above, pp.258-260.
- 187 The 'preparation with the purpose of mass circulation or the mass circulation of addresses, letters, leaflets, and other documents calling for a non-execution of the legislation of religious cults' constitutes a violation of the laws on separation of church and state according to a Decree of the Presidium of the RSFSR Supreme Soviet of March 18, 1966, regarding the application of Article 142 of the RSFSR Criminal Code. See *Vedomosti RSFSR* (1966), no.12, item 221. Also see Berman, note 184 above, p.73.
- 188 Keeping such material is not itself a crime, but it may be considered 'preparation' of circulation if the material was kept with the intent to circulate it. *Komentarii k Ugolovnomu kodeksu RSFSR* (Moscow, 1971), p.404.
- 189 This article and corresponding provisions in the criminal codes of other union republics are based on an all-union law of December 25, 1958, reproducing its provisions.
- 190 For Soviet commentary on these crimes published since December 1958, see L. Smirnov, *SGiP*, no. 2 (1959), pp.84-85; V. D. Men'shagin and B. A. Kurinov, *Nauchno-prakticheskii kommentarii k zakonu ob ugolovnoi otvetstvennosti za gosudarstvennye prestupleniia* (2nd ed.; Moscow, 1961), pp.42-49; M. P. Mikhailov, in D. I. Bogatkov et al., *Osobo opasnye gosudarstvennye prestupleniia* (Moscow, 1963), pp.117-133; *Komentarii Ugolovnogo kodeksa Latvii SSR*, note 144 above, pp.177-179, 407-408; M. V. Turetskii, *Osobo opasnye gosudarstvennye prestupleniia* (Moscow, 1965), pp.72-79; *Ugolovnyi kodeks Estonskoi SSR*, note 110 above, pp.185-188, 451; *Ugolovnyi kodeks Ukrainkoi SSR. Nauchno-prakticheskii kommentarii* (Kiev, 1969), pp.165-166, 403; M. P. Mikhailov and V. V. Nazarov, *Ideologicheskaia diversiiia - oruzhie imperializma* (Moscow, 1969), pp. 41-47, 54-58; *Komentarii k Ugolovnomu kodeksu RSFSR* (Moscow, 1971), pp.167-169, 403-404. Non-Soviet works on the subject include: F.-C. Schroeder, in *Der strafrechtliche Staatsschutz in der Sowjetunion, der Tschechoslowakei, Ungarn und Polen* (Herrenalb, 1963), pp.19-112 (71); P. B. Taylor, 'Treason,
- Espionage, and Other Soviet State Crimes,' *The Russian Review*, XXIII (1964), 247-258; Berman, 'The Writer and Soviet Law,' *The New Leader*, XLIX, no. 4 (1966), pp.13-16; *id.*, note 184 above, pp.81-83.
- 191 Berman, note 184 above, p.83. Also see note 190.
- 192 *Ibid.*, pp.81-82; and M. Hayward (ed.), *On Trial: The Soviet State Versus 'Abram Tertz' and 'Nikolai Arzhak'* (New York, 1966).
- 193 See *Neue Zeit* (Moscow), no. 21 (1971), pp.10-12. Cf. also the case of Belgorodskaiia, who was charged with distributing *samizdat* literature, Gerstenmaier, note 83 above, p.161, and the case of Bukovskii, Brumberg, note 83 above, p.117, 119. Of historical interest is a case decided by the Ukrainian Supreme Court in 1925. The court held that the preparation and posting of a notice about a forthcoming strike to constitute the 'fabrication and circulation of false rumours which may . . . discredit' the regime, but denied a counter-revolutionary purpose. *Vestnik sovetskoi iustitsii*, no.15-16 (1925), pp.617-618.
- 194 *Uchitel'skaia gazeta*, August 23, 1955; summarised in Bourdeaux, note 96 above, pp.166-167. Cf. also the ensuing correspondence in *The Times*, September-December 1966, as well as a 1966 Ukrainian case reported in *Pravda Ukrainy*, October 4, 1966, mentioned by Bourdeaux, pp.168-169.
- 195 B. Kalnins, 'Die Aburteilung von Dr. Fr. Mendlers in Riga,' *Baltisches Recht*, no.11 (1970), pp.2-6; *Briviba* (Stockholm), nos.7, 8, 10 (1969).
- 196 Pertinent information can be found in the *Khronika tekushchikh sobytii*, a Soviet *samizdat* journal appearing 1968-1972 (nos.1-27). The tradition of the *Khronika* is continued by *A Chronicle of Human Rights in the USSR* (New York), no.1 (1973), cf. pp. 7-14. Issues 1-11 are translated in Reddaway, note 83 above. The text of a judgement of the Supreme Court of the Uzbek SSR of 1970 in a case of preparing and circulating politically harmful materials is published in the *samizdat* journal *Obshchestvennye problemy* (Moscow) no.14 (1971), reprinted in *Vestnik russkogo studenteskogo khristianskogo dvizheniia* (Paris), no.106 (1972), pp.334-338 (judgement of the Tashkent City Court acting as a court of first instance, *ibid.*, pp.320-327).
- 197 Berman, note 184 above, p.83.

Chalidze letter to UNESCO

In response to the announcement by UNESCO earlier this year that the Soviet Union had decided to accede to the Universal Copyright Convention, Valery Chalidze, the exiled Soviet physicist and a former member of the Moscow-based Committee for Human Rights founded by Academician Andrei Sakharov, dispatched the following open letter to M. René Mahieu, the Director-General of UNESCO.

Presuming your concern that institutions for the international protection of authors' rights should be effective in defending the rights of the authors themselves and not just the rights of the states of the authors' nationality or domicile, and also your concern that these institutions should be beneficial for what is commonly called the advancement of our civilisation;

Noting the importance of the Soviet Union's accession to the Universal Copyright Convention;

Taking into account the anxiety of many cultural figures and, in particular, of a number of Moscow intellectuals with respect to possible misinterpretation of the provisions of this Convention;

I wish to call your attention to the significance of the wording of Article 10, paragraph 2 of the Convention: 'It is understood, that at the time an instrument of ratification, acceptance or accession is deposited on behalf of any State, such State must be in a position under its domestic law to give effect to the terms of this Convention.'

It is quite interesting to study Soviet legislation from the standpoint of its conformity to provisions of the Convention.

The first reason is the special nature of Soviet law and legal doctrine concerning the protection of civil rights. The Fundamental Principles of Soviet Civil Legislation contain a general norm which can hinder in practice application of the provisions of the Convention; specifically, Article 5 of the fundamental Principles states: 'Civil rights are protected by law with the exception of cases when they are exercised in contradiction to the purpose of these rights in a socialist society during the period of the construction of communism.' Despite the existence of a norm, establishing the primacy of international law when in conflict with domestic legislation, Article 5 is applied even to cases involving rights stipulated by international convention. I cite for example a dispute of Dr Boris Zuckerman with the postal administration. In denying Zuckerman's claim to monetary indemnity for loss of international mail by the postal administration, the court decision cited the norm expressed in Article 5 even though the right to receive indemnification in such a case is guaranteed by the Universal Postal Convention.

The second reason is that specific Soviet legislation on author's rights includes some unusual norms which scarcely correspond to the provision of the Universal Copyright Convention. For instance, Article 106 of the Fundamental Principles of Civil Legislation provides for 'purchase' on a compulsory basis of copyright by the state. There exists a quite real possibility that the state will purchase the copyrights of works which have been written by 'dissenting' authors and banned by the domestic censorship in order to prevent their publication abroad. This will not even burden the state with excessive expense – since the purchase is on a compulsory basis, the state itself will determine the amount of the 'fee'. For instance Article 3 of the Convention provides that a state may require 'formalities or other conditions for the acquisition and enjoyment of copyright in respect of works first published in its territory or works of its nationals wherever published'.

While it is difficult to predict how onerous for authors will be those formalities which the USSR will establish for copyright protection under the Convention, there is reason to fear an attempt

by the state to restrain an author's freedom to disseminate his works. We already knew that the new norms for copyright law in the USSR provide: 'The procedure by which an author who is a Soviet citizen assigns the right to use his work in the territory of a foreign state is established by legislation of the USSR.' Legislation concerning the procedure mentioned has still not been adopted so far as we know, but there is serious apprehension that this legislation will, directly or indirectly, stipulate that an author must receive permission from the state for publication of his works abroad. Is this an objective of the institutions for the international protection of copyright?

Although from the point of view of principle any contradiction between domestic legislation and the spirit and purposes of the Convention is significant, in practice it may turn out to be important what sanctions will be used against an author for attempting to bypass an unlawful prohibition on the publication of his works abroad. Under the present liberal arrangements in the USSR, so far as is known, an author is not subject to criminal prosecution for the fact of publication of his works abroad without state permission. Usually in such cases an author encounters difficulties of a professional or administrative nature: exclusion from the Union of Writers, loss of the chance to publish in the USSR, trouble in receiving royalties from abroad. A demand may be made that the author disavow participation in publication abroad, which at times is not difficult for the author, since sometimes the works of Soviet authors are actually published without their consent, and while the Soviet Union is not a member of the Convention there is no procedure available to the USSR for substantiating the fact of an author's lack of participation.

There exists the danger that in the future the USSR can introduce sanctions more severe than the present ones for publication abroad without the permission of state organs. This fear is based on experience, for it is known that inventors have been subject to criminal punishment for patenting their inventions abroad without the government's permission (see the Decree on Inventions and Technological Improvements, ratified 5 March 1941).

I urge you to foster the study of the dangers which I have noted. At the 23rd Congress of the Communist Party of the Soviet Union one delegate expressed the real situation of creative freedom in the USSR in the following words: '... in our country everyone who considers himself an artist enjoys the right to create freely, to write freely at his own discretion without the least restriction. But to the same extent, the Party and our state organs enjoy the right to freedom of choice in what to print.'

I urge you to encourage the Contracting States of the Convention to study the question, to what degree are they prepared to support the right of the party and state organs of the USSR to select also what is printed abroad?

I urge you also to use your authority for the purpose of providing advisory assistance to the Soviet Union with respect to granting its citizens guarantees protecting their authors' rights against state interference.

Respectfully yours, V. Chalidze.

William F. Robinson

Who are the real Marxists now?

This article was originally written for the Research Department of Radio Free Europe.

Sociologist Andras Hegedus and philosophers Mihaly Vajda and Janos Kis have been expelled from the Hungarian Socialist Workers' Party (HSWP) on the basis of a resolution adopted by the Central Committee Secretariat on 14 May.¹ The resolution – which was published in the June 1973 issue of the party journal *Partelet* – said that the three men had been dismissed from the party after the completion of an examination of their ideological and political views as expressed in their 'recent' sociological and political writings. The investigation began on 5 February and was conducted in two stages – first by the Central Committee's Working Collective on Cultural Policy, and then by a larger body of social scientists from the Academy of Sciences.

The official grounds for the expulsion were expressed in the following manner:

It was unanimously agreed at these scientific discussions that in the writings examined there was a mingling of traditional rightist-revisionist views with those of the so-called 'New Left', the latter being fashionable in present-day anti-Marxist literature. The authors of the articles have expressed a number of ideological and political views which are opposed to Marxism-Leninism and to the policy of the Hungarian Socialist Workers' Party.

In addition, it was said, all three men had 'gravely infringed party rules' and had adopted attitudes 'unbefitting party members'. At the same time, it had been necessary to 'take into account' the fact that Hegedus had been 'warned several times' in the 'past few years' about his 'political mistakes', and that Vajda had been 'disciplined' by the party.

It should be noted that views quite similar to these were even more forcefully expressed in a speech by Central Committee Secretary György Aczel in late January. Speaking before a nationwide ideological conference in Budapest, Aczel explicitly condemned Hegedus and Vajda as 'intellectual turncoats' and 'renegades' who had broken with the labour movement at a time when constantly changing conditions were posing difficult questions vis-à-vis the working class. Hegedus and Vajda, according to Aczel, not only questioned the leading role of the working class, but – on the basis of 'imported ideas' – were seeking the 'radical revolutionary forces of our time' among the youth and intellectual groups in 'developed capitalist countries, and in "islands" and "communes" outside society, in a sort of "anti-culture" movement'. Moreover, he said, the two men were followers of the theory of Marxist pluralism. Particularly reprehensible in Aczel's opinion, was Hegedus's alleged charge that the living standards and way

¹ See p.73.

of life in the developed 'capitalist' countries represented the future system which would come about in those socialist countries that had adopted economic reforms and had accepted the market mechanism. One can argue whether these theories represent rightist or leftist revisionism, Aczel concluded, 'but one thing is sure – [they have] nothing to do with the cause of Marxism and socialism'.

Although these statements constitute the latest attacks against Hegedus and Vajda, they have not – as the Central Committee Secretariat affirmed – been the only ones to which they have been subject during the past few years. Brief biographical sketches of the two men (Kis is unknown)² will provide a somewhat broader background within which their recent expulsion from the party may be placed.

Andras Hegedus

Andras Hegedus, 51, is a politician, economist, and sociologist. He graduated in economics from the Budapest Technical University and joined the Communist Party in 1942, at the age of 20. From 1945 to 1947 he was secretary of the Hungarian Democratic Youth Organisation, and from 1948 to 1951 he was head of the Agricultural Section of the Communist Party. In 1952 he was switched to state administration and became Minister of State Farms and Forests. Somewhat later he became Minister of Agriculture, and in October 1954 he was named First Deputy Prime Minister. In April 1955 he replaced Imre Nagy, who had been compelled by the party to resign from the premiership. Hegedus held this position until the Hungarian revolution of October 1956, when he fled with his family to the Soviet Union. He belonged to the group that surrounded the late Matyas Rakosi, former first secretary of the Hungarian party, the members of which were banned in November 1956 from holding any party or state function and instructed by János Kadar to return to their original professions.

Hegedus returned from the Soviet Union in October 1958, and engaged in social science work. From 1958 to 1961 he collaborated with the Economic Institute of the Hungarian Academy of Sciences, and in the following two years he was deputy president of the Central Statistical Office. From 1964 to 1968 he was director of the Academy's Sociological Research Group, but early in 1969 he was demoted to a considerably less important job as chief staff member of the Hungarian Academy's Research Group for Industrial Economy.

Hegedus evidently underwent a metamorphosis in his philosophy after returning from the USSR, for he completely turned away from his past Stalinist associations and quickly became known for his outspoken liberal and reformist views. In fact, he was too bold and outspoken – at least as far as the party was concerned – and in August 1965 he was dismissed as editor-in-charge of the political-cultural monthly *Valóság*, only 18 months after his

² It was reported by Ferenc Fejto in the 15 June issue of the Italian weekly *Espresso* that Kis is a disciple of the late Hungarian Marxist philosopher György Lukacs. Together with György Markus and György Bence, he is reported to have been the co-author of a book on Marx's *Das Kapital* and *Introduction to a Critique of Political Economy* in which 'dangerous deviations' were allegedly discovered.

Resolution of the Secretariat of the HSWP Central Committee 14 May 1973

On 5 February of this year the Secretariat of the Central Committee of the Hungarian Socialist Workers' Party began an investigation in order to clear up ideological and political problems evident in the attitude of the sociologist Andras Hegedus and the philosophers Janos Kis and Mihaly Vajda, all of them party members.

Within the framework of the investigation, recent writings by the aforementioned, as well as the views expressed in them, were discussed by the Working Collective on Cultural Policy attached to the Central Committee, and later by a wider circle of social scientists at the Hungarian Academy of Sciences. The authors of the above-mentioned works were invited to express their views [on them] and to dispel any possible misunderstandings connected with them. All of them, however, refused to take part in the discussion.

It was unanimously agreed at the scientific discussions that in the writings examined there was a mingling of traditional rightist-revisionist views with those of the so-called 'New Left', the latter of which are fashionable in present-day anti-Marxist literature. The authors of the articles have expressed a number of ideological and political views which are opposed to Marxism-Leninism and to the policy of the Hungarian Socialist Workers' Party: they deny the existence of the working class as a class and the revolutionary role of the international workers' movement and its historical significance; they question the socialist character of the socialist countries and their achievements, preach the 'pluralism' of Marxism, and point out the possibility and justify the existence of 'several kinds of Marxism', and have severed their ties with the theoretical heritage of Marxism-Leninism.

The investigation disclosed clear evidence that on basic issues Andras Hegedus, Janos Kis, and Mihaly Vajda had adopted positions opposing the theory of Marxism-Leninism and the policy of the Hungarian Socialist Workers' Party. In addition to the theoretical and political mistakes disclosed in the course of the party's investigation and discussion, and the fact that [these men] had adopted an attitude unbefitting party members, it also had to be taken into account that in the past few years Andras Hegedus had been warned several times about his political mistakes, and that Mihaly Vajda had been disciplined by the party. All this provides the party with grounds for taking disciplinary action.

In view of the gravity of the mistakes they have committed, and their complete unwillingness to correct them, the Secretariat of the Central Committee has deprived Andras Hegedus, Janos Kis, and Mihaly Vajda of membership in the Hungarian Socialist Workers' Party (*Partelet*, June 1973, p.44.)

appointment. The reasons for the dismissal are to be found in the 'Ideological Guidelines' approved by the Central Committee in March 1965, a document that criticised *Valóság* for 'erroneous views', an 'incorrect, bourgeois' attitude, 'oppositional' tendencies, and a 'decadent' approach. Similar considerations lay behind his removal as director of the Sociological Research Group three and a half years later. In this case the department under his leadership was first criticised by the Central Committee Secretariat both for 'political attitudes divergent from the party line' and for 'ideologically erroneous, politically harmful rightist views'. Perhaps one of the acts prompting the Secretariat's criticism was the letter that Hegedus had previously sent to the Central Committee protesting against the Soviet-led invasion of Czechoslovakia. However, the leadership was forced to admit that Hegedus had been blameless with respect to the method of protest, since he had sent it confidentially through proper party channels.

Since 1969 Hegedus seems to have gone through another evolution in his thinking. More specifically, he seems to have developed basic objections to the rapid growth of consumerism and of the widespread public desire for material possessions under the impact of the New Economic Mechanism (NEM), as well as to the perceived failure of the Hungarian authorities to 'humanise' the social system by directing their energies towards the fulfilment of the intellectual and spiritual needs of the individual. According to an MTI commentary of 16 June summarising the report of the CC Working Collective on Cultural Policy, these views were most clearly expressed during a lecture given by Hegedus and fellow sociologist Maria Markus at a conference in Warsaw held under the sponsorship of an unnamed 'American foundation'. The title of the lecture was 'Modernisation and Alternatives of Social Development'.³

The MTI summary of their Warsaw talks said that they had spoken of the 'two main trends of development' which had evolved in the East European socialist countries. The first of these was the 'state administrative model' under which all social and production requirements were determined by bureaucratic apparatuses in accordance with the prevailing power and interest relationships within the bureaucracy in question. The second model, they were reported to have said, comprised those East European socialist countries that were taking the 'main road already travelled by the developed capitalist countries' and were attempting to ensure more dynamic development through the return to a market mechanism.

According to the description provided by the Hegedus group, it is entirely clear that in their view the socialist countries of Eastern Europe can be regarded as socialist countries only by [virtue of] the official 'ideology' dominant in them. [However,] they cannot actually pride themselves on either greater dynamism or the establishment of more humane social conditions than the advanced capitalist countries.

³ According to information provided by the University of Pittsburgh, this took place during an international sociological conference on modernisation held between 11 and 18 June 1972 under the joint sponsorship of the Center for International Studies of the University of Pittsburgh and the Institute of Philosophy and Sociology of the Polish Academy of Sciences.

In the final analysis, they attach their hopes to the same 'development trends' of socialism as [do] the enemies of socialism: to the reduction of the mass influence of the communist parties of the socialist countries, to the masses' turning away from the programme of socialist construction adopted in these countries, to the development and rigidification of conflicts within socialist society, to a trend which will give the bureaucracy a pluralistic orientation, and to the shaping of international power relationships in such a way as to favour the development and exploitation of internal conflicts.

Mihaly Vajda

Mihaly Vajda is known to have been on the staff of the Hungarian Academy's Philosophical Institute since 1967. Between 1968 and 1971 he was a member of the *Hungarian Philosophical Review's* editorial board. He holds the degree of candidate of philosophical sciences, and has published several articles in the theoretical monthlies *Társadalmi Szemle* and *Kortárs*. In one of his more important articles he discussed whether or not sociology should act as a critic of society.

Vajda's latest example of 'revisionism' as stated by MTI, was an article in the American 'New Left' periodical *Telos*, entitled 'Marxism, Existentialism, and Phenomenology'. In this piece, Vajda reportedly asserted that there is no single, authentic version of Marxism, and that, instead, several different interpretations are possible. In addition, he is alleged to have rejected the concept of historical inevitability, including the inevitability of the development of socialist society. The study compiled by the Central Committee Working Collective on Cultural Policy reportedly pointed out that his idea of Marxist pluralism

directly supports the tendencies [towards] political pluralisation [sic] in socialism presupposed and regarded as desirable by Andras Hegedus and Maria Markus. The substance of this platform is opposition to Marxism and the working-class movement on behalf of a 'Marxism' reduced to *petit-bourgeois* humanist phraseology, and on behalf of a 'socialist alternative' pitted against a realistic, existing socialism and against all forms of socialism realised in practice.

Warning to intellectuals

The question to be asked now, of course, is what meaning this latest action has for Hungarian political and cultural life. Although it is impossible to give a precise answer, it does seem that the Hegedus-Vajda-Kis expulsions are intended both as a signal to the Hungarian intelligentsia that limits to their activities do indeed exist, and as a sign to Hungary's socialist allies (particularly the USSR and East Germany) that the reform of Hungarian society is firmly under the control of the party, which will not tolerate any deviation from official Marxist-Leninist dogma. It is unlikely that the intelligentsia will misinterpret the party's attitude, for in addition to the three expulsions, for other, non-party, scholars were severely criticised by the Working Collective.

According to MTI, sociologist Maria Markus, sociologist-philosopher György Markus (her husband), and philosophers Agnes

Heller and György Bence have also been included in the 'narrow circle of social scientists' who have 'recently published or wished to publish' works that gave 'arbitrary interpretations' of the basic concepts of Marxism and of 'some phenomena of our present-day society', and that undertook the 'revision' of the 'theory and basic principles of the policy of [various] Marxist-Leninist parties'. It has also been reported that all seven individuals have been dismissed from their current jobs and that they have been temporarily forbidden either to publish or to travel abroad.

It is quite clear from available official reports that the Budapest seven are being condemned because of their common academic and theoretical opinions. All have been known in the past for their extremely unorthodox approach to matters involving basic ideological and policy issues, and, in some respects, it is surprising they have survived so long in the positions they have held. However, if the MTI summaries of their views are essentially correct, they have become even more explicit and more audacious in their public comments over the past eighteen months. In a word, they have finally passed beyond the limits where the party felt it could dispose of the problem by giving them a warning and the benefit of the doubt. Part of the reason for this is most probably connected with the forthcoming European security conference and the strong indications of co-ordinated effort on the part of the Warsaw Pact member states to tighten up in the ideological and cultural domains in the wake of a period of increasing *détente*. Moreover, behind the expulsions and the dismissals is probably also the idea that firm preventive measures are necessary both before any possible increase in the East-West flow of people and information, and in order to demonstrate that the campaign against ideological coexistence – or even worse, ideological convergence – is something more than mere verbiage.

One further point remains to be considered. From the evidence available thus far it does not appear that judicial proceedings will be instituted against the seven scholars, or that the ban on publishing and travel will be permanent. Although they have been dismissed from their jobs, it is still possible that they will be offered other positions. These will obviously be of much lower rank and prestige, but probably not without some rough similarity to their former professional careers. In other words, they will not be forced to join the ranks of physical labourers, or tram conductors. Indeed, were they to be subjected to punishment of this nature, it would be a reversal of the party's relatively lenient policy toward dissent and unorthodoxy since 1963. Hegedus, for example – and his colleague Maria Markus, who was expelled from the party in November 1968 for signing the Korčula (Yugoslavia) document publicly condemning the invasion of Czechoslovakia – continued to publish their professional works both in and outside Hungary without any apparent restriction until at least mid-1972. Moreover, less than two years ago both individuals were selected as 'representatives' of contemporary Hungarian sociology for the

purpose of contributing to a monograph put out last year by the University of Keele. The man responsible for their selection was Kalman Kulcsar, who replaced Hegedus as director of the Sociological Research Group in 1969. Similar accounts can be given in the cases of Mihaly Vajda and Agnes Heller and the philosophers Vilmos Sos and Zador Tordai, the latter three also being signers of the Korčula Declaration. Thus, although the party seems to be taking a more serious view of the present case than of the 1968 'scandal', there are grounds to believe that it will still act with some restraint and that the limits to research and discussion in Hungary will remain relatively broad and vague. □

Soviet Jews on emigration tax

Letter to the US Congress from 102 Jews from Moscow, Leningrad, Vilnius, Tashkent and Novosibirsk

What seemed like an important step forward towards freedom of movement and opinion for Jewish scholars, scientists and writers in the Soviet Union occurred earlier this year when the emigration tax was 'frozen' in response to world public opinion. Observers were quick to note, however, that this action was taken as a direct result of pressure by the US Congress and shortly before Mr Brezhnev's official visit to the USA. Subsequently, a group of 102 Jews from different cities of the Soviet Union wrote to Congress to explain how even without the tax they were being denied their basic freedoms.

Those who think that, now the tax has been frozen, the next step of issuing permits to those who had earlier received refusals will naturally follow on, are mistaken. On the contrary, a number of people in Moscow, Leningrad, Kiev and elsewhere have recently received emphatic confirmation of previous refusals. One naturally asks oneself the question: 'Why, when allowing thousands of Jews to emigrate, do the authorities forcibly detain thousands of other Jews?'

The analysis of the social composition of the people who have been repatriated shows that departure for those who have no higher education or qualifications – primarily those from Georgia, Central Asia and Moldavia – and manual workers who do not occupy significant places in the hierarchy of Soviet society is solved relatively easily. Also, permits are quite often, although not always, received by people with higher education in the arts. But when one examines the situation of scientists and qualified specialists in the exact sciences and technology (physicists, chemists, specialists in applied mathematics, radio-technicians, mechanics, metallurgists, etc), i.e. professions on which the Soviet authorities place a high importance, and when one examines the situation of people who previously occupied prominent places in society – such as university professors, top administrators, leading actors and

journalists – then a refusal is almost guaranteed (irrespective of the age of the applicant).

It should be borne in mind that there is a tendency among Jews in the USSR to go in for technical education. Therefore specialists in technology and the exact sciences constitute a large percentage of the Jewish intelligentsia. But this is not the only problem. For there are other people who have for no apparent reason received permanent refusals, and these people work in all professions and at all levels: actors, workers, specialists in the humanities, pharmacists, economists, pensioners, physicians and photographers. This situation is typical, and the few exceptions do not change the general rule.

In short, the method behind the detention of Jews is based on a principle of selection. The authorities explain this selection by the fact that the emigration of those detained might allegedly be harmful to state security. Now it may be difficult from outside to understand that this plausible proposition is groundless. An objective analysis such as we demand (in vain as it happens) in each concrete case of prevented emigration would undoubtedly reveal the complete non-involvement of the people detained in matters of state security. And in any case, quite apart from the security question, people who have applied for exit visas are automatically excluded from society and are thus deprived of any usefulness in it.

So what is the real reason for the authorities to issue permanently valid refusals and detain thousands of people inside their borders for year upon year? Why, or rather, for what reason are these people being subjected to repression, why are their families being deprived of the possibility of living and working normally? It is more than likely that the authorities themselves are perfectly aware that the emigration of these people cannot harm security and that the country's economy cannot suffer, because this Jewish emigration constitutes still only a small percentage of the total number of specialists. From our point of view the real aim of such a selection policy is to create a wide category of so-called 'refused' people, whose tragic fate will serve as a warning to the many thousands of Jews who wish, but do not dare,

to start applying for emigration. No one, irrespective of qualifications, age or sex, can know beforehand what his fate will be. We are convinced that unless the authorities renounce this policy of selective emigration and its victims are allowed to leave, a large proportion of the three million Soviet Jews cannot hope for the possibility of free emigration. A once-only release of only a small number of those prevented from leaving, carefully timed, should under no circumstances be seen as a constructive approach to the problem. Moreover, a simple increase of the emigration quota would not mean any change in the authorities' approach to the problem of emigration. Even

a two-fold or three-fold increase might easily be achieved by increasing the categories of Jews (from Central Asia or Daghestan, for example) to whose departure no serious obstacles are now created. Only when the categories of those who have been permanently refused are abolished and the juridical and other forms of repression against those who have applied for exit visas have been lifted – and publicised emigration introduced – only then should this be regarded as a constructive approach to the solution of the problem.

From *Jews in the Soviet Union*
vol.2, no.19 1973.



watersrand University newspaper *Wits Student*, were arrested and detained over-night on charges of defamation and contravention of the Publications and Entertainment Act. They were released on bail the following day. Earlier in the month both students were suspended for the rest of the academic year after having been found guilty by the university's disciplinary committee of three charges of misconduct and one of breach of discipline.

Colin Legum, an associate editor of the London *Observer*, was refused transit through Jan Smuts Airport, Johannesburg, to Swaziland in May in the interests of 'national security' according to Dr Connie Mulder, the Minister of the Interior, in Parliament in Cape Town on 8 June.

SOUTH VIETNAM

It was reported in April that the Saigon daily newspaper *Doc Lap* had been fined one million piasters for an offence against the press law after publishing an interview with a South Vietnamese war casualty who had complained about the duration of the war.

Jacques Leslie, a correspondent of the *Los Angeles Times*, was refused a visa and press card extension in June after a report written by him had appeared in the *Los Angeles Times* and the *Washington Post* earlier in the same week. The report alleged that some of the country's senior generals and a number of leading politicians were involved in a multi-million dollar scandal and that President Thieu had lent them his support. Earlier in the year Leslie had been threatened with the loss of credentials after visiting communist-held territory. On 20 July the government finally ordered his expulsion from South Vietnam.

On 2 July the government announced that **Kazu-hisa Ikawa**, the Saigon correspondent of the Japanese daily newspaper *Asahi Shimbun*, was to be expelled and that the paper's offices would be closed, after a translated summary of one of the paper's leading articles had been published two weeks earlier in the English-language paper *The Japan Times* claiming that South Vietnam was holding 200,000 political prisoners.

SOVIET UNION

The long drawn-out 'Case No.24', which has succeeded in suppressing the Moscow *Chronicle*

of *Current Events* still continues. Begun in late 1971, it has involved hundreds of interrogations and searches and a dozen or so arrests and trials, mostly of writers and scholars. The trials of certain principals in this case, however, namely **Pyotr Yakir**, **Viktor Krasin** and **Irina Belogorodskaya** (see *Index* 2/1973, p.ix) have not yet taken place.

On 2 July **Roald Mukhamedyarov** was sentenced in Moscow, in his absence, to indefinite detention in a psychiatric hospital. An author of some prison memoirs and a contributor to *samizdat* publications, he was arrested last September and apparently charged with 'anti-Soviet agitation and propaganda' (see *Index* 1/1973, p.ix). By March, however, he was in Moscow's Serbsky Institute of Forensic Psychiatry for in-patient examination, evidently because he had refused for six months to collaborate with the investigators. He was ruled 'non-responsible for his actions' and the psychiatrists' ruling was accepted by the court.

The Moscow mathematician **Dr Yury Shikhanovich**, who was arrested last September (see *Index* 2/1973, pp.vii-viii) on charges of 'anti-Soviet agitation and propaganda', spent June in the Serbsky Institute and was then ruled 'non-responsible for his actions' by a psychiatric commission.

On 5 July the Kiev cybernetician **Leonid Plyushch** (see *Index* 2/1973, p.x) was ordered by a second appeal court to undergo indefinite detention in a psychiatric hospital of a prison type. This reversed the more lenient ruling of the first appeal court.

The young Moscow literary scholar **Gabriil Superfin** was arrested on 3 July. He is the author of several articles of literary criticism, one of which was recently published in the USA, and had repeatedly been interrogated about 'Case No.24', especially concerning the whereabouts of the *Chronicle's* archives (see *Index* 2/1973, p.ix). After his arrest he was taken to Oryol and there were clear indications that his case was being linked with that of **Viktor Khaustov**, **Evgeny Kuzin**, **Oleg Savinkin** and **Alexander Egorov** (see *Index* 2/1973, p.x).

Although **Andrei Amalrik**, the historian, essayist and playwright, finished his three-year prison term in May for allegedly slandering the Soviet system in his writings, he was not released. New charges were brought against him concerning alleged anti-Soviet remarks made by him in his camp. Some

of his fellow-prisoners were reported to have agreed to testify against him and the trial was due to open on 10 July. It was then postponed because of a delay in appointing a lawyer for him. The lawyer Vladimir Shveisky first declined the request of Mrs Amalrik to take the brief because of official pressure, but after Mrs Amalrik had appealed to the International Commission of Jurists to intercede, Mr Shveisky accepted on 7 July. The trial eventually took place in Talaya in the Magadan Region of N.E. Siberia on 15-18 July and Amalrik was given a three-year sentence. On 22 July he declared a hunger strike in protest and because his wife had been allowed neither to attend the trial nor to see him.

A book by **Pyotr Shelest**, the former chief of the Communist Party of the Ukraine and a former member of the Soviet Politburo, was officially attacked for the first time ever in April in the theoretical and political journal *Kommunist Ukrainy* ('Ukrainian Communist'). The attack came in the form of a review of Shelest's book *Ukraina nasha Radians'ka* ('O Ukraine, Our Soviet Land'), which found 'serious faults and errors' in it: 'Elements of economic autarchism in the book are manifest. Their harmfulness consists, apart from everything else, in the fact that they can nourish nationalist illusions and prejudices and the remnants of national narrow-mindedness and conceit. Altogether, the reader's attention is excessively drawn in the book to the peculiarities and singularity of the history and culture of the Ukrainian people.' Shelest's book, hitherto widely displayed in Soviet bookshops, has now been withdrawn from sale.

In April Zinaida Grigorenko travelled to visit her husband, the cybernetician and publicist **Pyotr Grigorenko**, in the Chernyakhovsk prison psychiatric hospital, and learned that in January a psychiatric commission had recommended his transfer to an ordinary mental-hospital, but that this recommendation had since been overruled by the Chernyakhovsk city court. Grigorenko's book *The Thoughts of a Madman* was recently published in Russian by the Herzen Foundation in Amsterdam.

In early July the writers **Vladimir Maximov** and **Naum Korzhavin** were expelled from the Writers' Union, Korzhavin because he had applied to emigrate to Israel and Maximov because his behaviour and works did not 'correspond to the Union's rules'. Maximov's novel *The Seven Days*

of *Creation* has already appeared in the West in Russian and various other languages and is due shortly to be published in English. Another novel *Quarantine* also appeared recently in Russian.

Dr Veniamin Levich, an internationally known electro-chemist and Corresponding Member of the USSR Academy of Sciences who applied to emigrate to Israel in April 1972, was threatened with expulsion from the Academy on 8 May for activities 'damaging to the State'. On 16 May his son Evgeny, an astrophysicist, was arrested on a Moscow street and drafted into the army. Despite the fact that he is a very sick man, he has been sent to one of the most northerly military camps at the Bay of Tiksi, Yakutsk District.

Seven Moscow Jewish mathematicians and physicists held a hunger-strike from 10-24 June in the home of **Dr Alexander Lunts** in protest against the refusal to allow scientists to emigrate, thus reducing them to the status of 'state property'. On 18 June the youngest of the mathematicians, **Dr Anatole Libgobor**, received an exit visa.

It was reported on 17 June that the Russian sculptor **Ernst Neizvestny** had applied to emigrate to Israel.

Viktor Nekrasov, the Russian novelist and short story writer who lives in Kiev, was reported in June to have been expelled from the Communist Party and to be in imminent danger of being expelled from the Writers' Union as well.

Filip Hirshorn, the former solo violinist with the Riga orchestra who had been dismissed in February after applying to emigrate to Israel (see *Index* 2/1973, p.xi) was granted an exit visa in June.

The appeal of the Soviet Jewish engineer **Isak Shkolnik** (see *Index* 2/1973, p.xi) was heard by the Military Board of the USSR Supreme Court on 3 July and his sentence was reduced from 10 years to seven.

The two literary critics **Ivan Svitlychny** and **Yevhen Sverstyuk**, whose trials took place last March (see *Index* 2/1973, p.x) are now known to have been sentenced to seven years' hard labour and five years' exile on release, which is the maximum term under article 62 of the Ukrainian Criminal Code dealing with 'anti-Soviet agitation and propaganda'. Recent and apparently more

reliable reports confirm the length of the historian and literary critic **Ivan Dzyuba's** sentence as five years' hard labour only (without exile to follow, contrary to an early report quoted in *Index* 2/1973, p.x).

The science fiction writer **O. Berdnyk**, in trouble for his unorthodox views last year (see *Index* 3-4/1972, p.120) and since repeatedly criticised in the Soviet press – especially for his 'ideologically confused and erroneous' last novel *Zoryany korsar* ('The Astral Corsair') – was virulently attacked in March in an article and at a meeting of the Writers' Union of the Ukraine. The new charges were: receiving the gift of a sweater from his West German translator, Anna Halja Horbatsch, which was qualified as willingly getting in touch 'with dubious nationalist elements from abroad, that is, behaving unworthily of the calling of the Soviet writer and contrary to the Writers' Union's statute'; and 'sending dozens or even hundreds of unwise or even provocative letters everywhere, so that they also get abroad, are published in the nationalist press and harm the prestige of the Ukrainian Writers' Union as well as of Soviet literature in general'. So far as can be ascertained, no letters by Berdnyk have appeared in the foreign press. In early May, nonetheless, Berdnyk was expelled from the Writers' Union 'for anti-social actions and for deviating from the principles and tasks formulated in the Statute of the Writers' Union of the USSR'.

TUNISIA

On 5 March a Belgian student was sentenced to a year's imprisonment and received a fine of 1,000 F for bringing into the country copies of the newspaper *L'Ouvrier Tunisien*, which is published in France and contained criticism of the Tunisian government.

TURKEY

On 2 July an appeals court confirmed a sentence of 30 years' imprisonment, followed by 16 years' exile, imposed on a left-wing publisher and journalist **Suleyman Ege**. Ege, who had been arrested in 1970, was charged with publishing four books found to contain communist propaganda. The books included works by Marx, Engels, Lenin, Stalin and Chinese communists. The sentence is believed to be the heaviest im-

posed on a non-violent political prisoner in Turkey in recent times.

On 18 June the Turkish military tribunal in Ankara reimposed a sentence of six years and three months' hard labour, followed by 23 months' exile, on Professor **Ugur Alacakaptan**, the former dean of Ankara University's law faculty, for allegedly 'encouraging left-wing students to demonstrate against the government' between 1969 and 1971. **Ugur Mumcu**, an assistant professor at the faculty, received a sentence of five years and ten months' imprisonment, and two faculty students were given sentences of four years and two months. The sentences had originally been delivered last December (see *Index* 1/1973, p.xiii), but were quashed on 15 May by unanimous verdicts of the Military Court of Appeal, as a result of which Professor Alacakaptan and his colleagues were released. A final ruling on the case is expected to be given by the general board of the Military Court of Appeal.

The military prosecutor started proceedings in April against **Oktay Kurtboke**, the editor of the daily newspaper *Cumhuriyet*, for publishing a statement about presidential elections. During the same month **Nazim Sokmen**, editor of the newspaper *Batman Sesi* ('The Voice of Batman'), was sentenced to nine months' imprisonment because of two articles he had written in 1968.

During April the National Assembly approved a proposed change in the Martial Law which would empower the martial law commanders to close down any printing or publishing firm printing or publishing books, magazines or newspapers banned by the authorities. Accordingly, on 28 April the newspaper *Yeni Halkci* ('The New Populist') was closed down by the Ankara Martial Law Headquarters for allegedly misinforming the public and 'causing panic' among the people by publishing news about the possibility of increased bread prices (bread prices were in fact subsequently increased taking effect from 1 June).

Early in April the Court of Appeal ordered a retrial in the case of **Cetin Altan** and his article 'Last Opportunity for Parliamentarism' after he had earlier been acquitted by the Istanbul Criminal Court No.5 of insulting the National Assembly in the article. The offence carries a prison sentence of up to six years. **E. Turgun**, the former editor of the daily newspaper *Aksam* in which Altan's article was published, is liable to the same sentence.

and television stations could refuse to sell broadcasting time to persons or groups wishing to advocate controversial issues. The case arose after one of Washington's major television stations, the CBS affiliate station *WTOP*, refused to accept anti-war advertising from a pressure group two years ago. The group appealed to the District of Columbia Court of Appeal, which ruled that the Constitution's first amendment (which guarantees both a free press and free speech) prohibits a broadcaster who sells time for commercial messages from refusing an advertisement simply because it contains controversial material. In reversing the Appeal Court's decision, the Supreme Court held that broadcasting stations needed to retain a certain degree of 'journalistic discretion' in selecting their advertisements for the public interest and that the earlier ruling would unduly restrict day-to-day editorial decisions.

URUGUAY

Strict censorship has been imposed since President Bordaberry dissolved Congress at the end of June. The leading left-wing critical newspaper *Marcha* was suspended for two weeks after publishing allegations about torture and the two daily papers *El Popular* and *Ultima Hora* were each closed down for 10 editions.

YUGOSLAVIA

Following criticism by the party, **Slobodan Glumac**, Director General of the publishing house which publishes the Belgrade daily *Borba* ('Struggle') was reported in April to have resigned.

Zlatko Tomičić, a Croatian writer and poet and former editor of the literary journal *Književni List* (now banned), who was sentenced to three years' imprisonment in October (see *Index* 1/1973, p.xv) had his sentence increased to five years' imprisonment when he appealed to the Supreme Court of Croatia towards the end of March.

On 14 June **Lazar Stojanović**, a young graduate of the Belgrade Film Academy, was sentenced to 18 months' imprisonment on charges of making a film insulting to the President and hostile to the Yugoslav state. The film, *Plastic Jesus*, was Stojanović's graduation work and has never been shown outside academy circles where it received the highest mark two years ago. The prosecutor described the film as subversive and said that the

author's intention was to equate the revolution with Nazism and the partisans with Yugoslav quislings, all of which was a 'premeditated assault' on the state. Stojanović was already serving a one-year sentence for making disparaging political remarks; that and the latest sentence were combined into one, totalling two years' imprisonment.

Professor **Milorad Petković** was sentenced to two years' imprisonment on 27 April on charges of 'hostile propaganda' after he had been found to have defended Stalin in a lecture at Nevesinje.

A book by the Belgrade Professor **Zagorka Pešić-Golubović** called *Man and His World* was banned in Belgrade during April for stating that in Yugoslavia there is no single political force which can bring the working class to the foreground of political life.

Two issues of *Glas Konsila* ('Voice of the Council'), the largest Catholic fortnightly in the country, were again banned this year: the issue of 1 April was found by the Zagreb District Court to contain articles allegedly harmful to friendly relations between Yugoslavia and other countries by giving 'false, distorted and alarming information'; the court also found that in at least one article 'the current political course in our country is being denied'. Two articles in the issue of 10 June were found to contain 'false, alarming and perverted claims . . . provoking disturbance among our religious citizens and [in] relations between two friendly socialist countries'.

SOURCES

Amnesty Publications, Ankara Daily News, BBC Summary of World Broadcasts, A Chronicle of Current Events, Cumhuriyet, The Daily Telegraph, O Estado de São Paulo, The Financial Times, Frankfurter Allgemeine Zeitung, The Guardian, International Herald Tribune, International Press Institute Reports, Le Monde, Literaturna Ukraina, Los Angeles Times, Milliyet, The New York Times, The Observer, Radio Free Europe Situation Reports, Reuters, The Sunday Times, The Times, Ukrainian Herald, Washington Post, Wall Street Journal, Vecernje Novosti, Yeni Ortam.

Reshetovskaya's memoirs

Yet a new episode in the Soviet campaign against the Nobel Prize winning author *Alexander Solzhenitsyn* began to unfold earlier this year with the announcement by Solzhenitsyn's former wife, Natalya Reshetovskaya, that she was about to publish her memoirs. The announcement was made in the *New York Times* on 9 March 1973, in an article prepared by the Soviet news agency *Novosti* on the basis of an interview with Reshetovskaya that lasted for several hours. Later Reshetovskaya issued a statement accusing the *Novosti* agency of distorting her words and interpolating comments that did not come from her (*New York Times* 28 March 1973). Nevertheless, her intention of publishing her memoirs remained firm and two chapters have already appeared in issues no.5 of the pseudo-*samizdat* journal *Veche* ('Moot') together with a personal letter of permission from Reshetovskaya. [*Veche*, a rather crudely nationalistic unofficial journal masquerading as *samizdat*, is thought to have been produced with at least the connivance – if not the direct encouragement – of the KGB, but ceased 'publication' earlier this year shortly after the *Chronicle of Current Events* had been suppressed]. In response to this Solzhenitsyn's legal representative in the West, Dr Fritz Heeb, then issued the following statement:

Mrs Natalya Reshetovskaya, whose marriage to Alexander Solzhenitsyn was dissolved on 15 March 1973, has announced in the New York Times of 9 March 1973 that she intends to publish certain chapters of her memoirs. It is her full right to do so. However, she has no right to publish letters written by Alexander Solzhenitsyn to her, or his correspondence with other persons, or to publish material from his literary archives. Alexander Solzhenitsyn has never authorized her to do so. In accordance with the principles of copyright and the right to privacy of the individual, Alexander Solzhenitsyn, as their author, strictly forbids the publication of such letters and such material. Should this prohibition be disregarded, legal proceedings will be taken. Any publishers or newspaper editors who receive offers of Mrs Reshetovskaya's memoirs containing letters or literary material from Alexander Solzhenitsyn are warned that Alexander Solzhenitsyn cannot tolerate their publication.

Zürich 2 May 1973.

(signed) Fritz Heeb

damaged the reputation of the Philippines as a free and democratic nation.

Despite declarations by the President that censorship has been eased, the Assembly states categorically that a free press does not now exist in the Philippines.

Singapore

The General Assembly of the IPI yet again expresses its concern over the actions taken by Prime Minister Lee Kuan Yew against the press in Singapore.

The latest case of harassment – the jailing of newspaper publisher Lee Eu Seng in February – is another episode in the continuous attacks on the press.

Mr Lee, who publishes the *Nanyang Siang Pau*, has not been brought to trial. His brother, arrested in May 1971, has been detained without trial since that date.

The IPI General Assembly urges the Prime Minister to take action in this case and release the journalists. □

A Hungarian view of the Helsinki conference

Ifjokommunista is the monthly organ of the Hungarian Communist Party for young party members. The article below, directed especially at young people, was published in the May number and explains the dangers that might arise from a free flow of people, ideas, and information as proposed by Western European countries at the Helsinki Conference. This is an abbreviated text and is printed in the translation provided by the Research Division of Radio Free Europe.

The Western countries' announcement of the programme for a 'free flow' was dictated primarily by tactical and propagandistic considerations. Under the changed international conditions, the imperialists were forced to make a new change in their general tactics. In order to win the support of their own people, as well as that of the popu-

lations in the developing world, they had to stress 'humane considerations' in addition to publicising already well-known slogans, and described the 'free flow' as being essential if 'socialism with a human face' was to be achieved. Their propaganda is built around the belief that the idea of a 'free flow' evokes a favourable response from a democratic-minded Western public sympathetic to what it considers a self-evident benefit to all of Europe.

All this does not change the fact that the announcement of the 'free flow' of people, ideas, and information was an overt political platform made under the following fundamental socio-political circumstances: 1) the modification of military power relations to the advantage of the Soviet Union; 2) the beginning of a process of *détente* in Europe and between the two great powers that was characterised by, among other things, the drawing up of a number of important agreements favourable to both sides and based on mutual concessions; 3) the deepening of the political crisis in imperialism, its loss of prestige, and the failure of its tactics to divide the socialist countries; 4) the general development of mass communication and the prospects for the development of new technologies, tourism, and personal contacts.

Finally: what does the concept of a 'free flow' really mean? Those who advocate it try to give a scientific, or pseudo-scientific, foundation to the question. President Nixon, in expounding the philosophy behind America's new foreign policy, said: 'Our adversaries are not immune to change, and we must be prepared for this, we must get to know their circumstances and concern ourselves with them...' Former American Defence Secretary Laird explained the *détente* in the international atmosphere as due to the 'polycentric processes' taking place in the socialist countries and to the 'loosening of ideological fetters'. And according to F[rank] Shakespeare, director of USIA, the American propaganda agency, 'If cold war means the struggle between ideologies, a war waged by other than military means, then a cold war is obviously going on today, in the sense that a struggle is being waged for people's minds...'

These declarations shed light on the essence of the 'free flow' concept and its anti-communist trend. The basis of this concept is the belief in the 'changeability' of the socialist countries; [it is] a tool used in and a method of waging 'the struggle for people's minds' (propaganda and relaxation), and its objective – until the 'under-

standing' between the great powers reaches the desired degree – is 'the loosening of ideological fetters'.

The essence of 'Free Flow'

So far as its fundamental content is concerned, the concept of the 'free flow of people, ideas, and information' contains three closely connected elements:

1. The flow of anti-communist ideas, the outward form of the theory of convergence between the socialist and capitalist societies. Its objective is to open up favourable opportunities, under the changed conditions, for engaging in ideological diversion in order to weaken socialism's ideological system and its Marxist *Weltanschauung*, and gradually to undermine the ideological and psychological basis of socialist society, in line with imperialism's general strategic objectives.

2. This propaganda manoeuvre is designed to incite anti-Sovietism by fostering slogans about bourgeois democratic development and a concept of freedom devoid of class content, and to give the world the impression that developed Western society, not socialism, is the standard-bearer of humanity's great ideas.

3. The tactical line, the discussion programme – which does not disregard in any respect even elements which might be favourable to the socialist countries – is designed to discredit the socialist countries' endeavours to achieve *détente* in Europe, and to make it possible to gain certain one-sided advantages in the next European security conference by making acceptance of the policy of 'relaxation' – the weapon of the anti-communist strategists – a matter for political compromise.

The programme announced under the slogan about a 'free flow' is receiving support from quarters ranging from more moderate circles down to extreme reactionary propaganda organs, and encompasses a wide range of demands, from those that contain elements or rationality to those that are merely provocative.

Despite this, however, the extremely important fact that it was the socialist countries themselves which initiated and urged multilateral improvement of East-West relations and created the conditions for permanent co-operation within a guaranteed

European security system cannot be denied. This gives grounds for hoping that the Western countries – if they eschew the more provocative elements in their demands at the European security conference – might reach a 'decent compromise' in the forthcoming series of European conferences.

The liabilities of the West

The history of anti-communism, already many decades old, has been marked by the repeated failure of anti-Soviet and anti-socialist imperialist propaganda efforts and policy. Every new period and concept documents earlier failures.

The theory and tactics of the 'free flow of people, ideas, and information' have also suffered their first fiasco. In the preparatory talks on the European security conference, international power relations frustrated the West's plan to have the 'free flow' put on the agenda of the forthcoming conference. To cover up their failure, more and more is being written and said about the socialist countries' 'fear' of a free flow, which is attributed to their 'conservative mentality' and to their 'infringement of human rights'. The truth, however, is precisely the opposite. With respect to the free flow of people, for example, so far as Hungary is concerned the situation is as follows: Western citizens wishing to come to this country receive visas within 24 hours, and year by year an ever increasing number of tourists, delegations, and business colleagues come to this country from the West. However, Hungarian citizens sometimes have to wait for weeks. We have no ulterior motives vis-à-vis foreigners arriving in this country. This is not always the case with Hungarian citizens visiting the West. There are certain indications, for example, that enemy propaganda organisations are again starting to conduct public opinion polls [among these visitors].

And as to the free flow of ideas: we not only preach but put into practice the fostering and exchanging of what is really worth while in national cultures, arts, and science. This is proved by the foreign plays performed and the foreign films shown in Hungary, and by the large number of [foreign] literary and scientific works that are published. The propagation and introduction of Hungarian cultural values in Western countries has not been so widespread. It is not the West's objective to do so; they would like to achieve unlimited circulation and free flow of ideas and products that are both subversive and run counter

to the ideas of Marxism and socialism. And this we cannot tolerate. Socialist countries do not export revolutionary ideas, but they do not permit anti-revolutionary ones to be imported!

With regard to the free flow of information, we can also say that in this country the population is provided with accurate, objective information. That is why our political-minded public is much better informed about Western countries than people in the West are about Hungary. Here, too, it is the capitalist countries' turn to repair their omissions. It is only natural, however, that we are not prepared to give anyone an opportunity to spread malicious slander – under the guise of information.

Today, as hitherto, the best weapons against hostile undertakings and propaganda remain directness, argument based on party policy, and disclosure of the problems that exist and of the possibilities of resolving them and of successfully building socialism. We have truth on our side, and time is working for us.

All the signs indicate that the security conference will be convened this year, and the creation of a collective European security system seems to be feasible in the long run. This has been achieved by the Soviet Union and the socialist countries: our power and our policy are forcing imperialism toward peaceful coexistence. However, we must also be realistic enough to take into account the fact that the struggle between the two social systems, which is of universal dimensions, is more and more being shifted to the sphere of peaceful economic competition and that the ideological struggle is being intensified. □

Little is more than nothing

David Gill

East German Poetry

an anthology edited by Michael Hamburger
Carcanet Press 1972 £1.80

With the volume turned down by Reiner Kunze
London Magazine editions 90p

Where a state, like the German Democratic Republic, has a well-defined rôle for poets, one major consequence follows for the would-be anthologist. He cannot avoid making political judgements, any more than the cultural pundits of the GDR, or the obedient poets (or wayward poets) can: they are all caught up in the political web. The official line, of course, is to be positive in outlook, i.e. poets should study ways of advancing the construction of the German Workers' and Peasants' State, and handle themes that the ruling SED considers appropriate. One such poet who succeeded in this social mission was the late Johannes R. Becher, who has been described, more or less officially, as 'the incarnation of the national conscience': he managed to bring to the citizens of the republic a happy *Ferne leuchtend nah* ('the far-off radiantly close'). But other poets fall down on their utopian visions, either because they don't believe in them, or because they think they are irrelevant to their real business as poets. The latter view is put by Volker Braun, one of the younger poets represented in the Hamburger anthology. The prescribed positive rôle is really pointless:

But we only praise, don't improve anything,
 are dispensable.

We don't think ourselves quite responsible.
 For the time being I call us negative poets.

(*Provocation for me*)

Michael Hamburger makes his position clear at the outset. His anthology excludes Becher and his ilk because they are bad poets, and they are bad poets because they follow the party line. He doesn't claim, therefore, that the selection is in

any way representative of poetry in East Germany. Of course he is perfectly entitled to draw the line where he wishes, but it is a pity he did not include some of the 'positive' poetry (can it *all* be banal and tedious?), so that we could compare it with the poetry of those, who for one reason or another are (in the eyes of the GDR authorities) beyond the pale, in some cases literally.

Appropriately, the book opens with the ambiguous Bertolt Brecht, political tight-rope walker of the first order, who in his last years developed an economical verse-form (influenced by the Japanese *tanka*) which Mr Hamburger calls a 'minimal poem'. The Buckow Elegies are, for my money, the chief delight of the anthology. Here is the shrewd, warm-hearted, self-mocking Brecht, a sharp-sighted (when he has been able to find his spectacles) Brecht in his oriental persona, a reincarnation of Po Chu-I. The speaking tone is there in these poems, which often force you to mimic gestures as you read them. Consider the pause and the raising of eyes from the paper as he comes up with his answer in *The Solution*, a poem composed shortly after the Berlin uprising in 1953:

After the Uprising on June Seventeenth
 The Secretary of the Authors' Union
 Had leaflets distributed in the Stalinallee
 Which said that the people
 Had forfeited the Government's confidence
 And could only win it back
 By redoubled labour. Wouldn't it
 Be simpler in that case if the Government
 Dissolved the people and
 Elected another?

Among Brecht's most devoted disciples is the communist Wolf Biermann, who opted to live in the GDR and became such a critic of party bureaucracy that his satirical songs were banned and he was prohibited from publishing his poetry in East Germany. The flavour of Biermann is best found in his *After-dinner Speech of the Poet in the Second Lean Year*, maximal, piquant, rude:

O comrades, please try to remember
 The people have always enjoyed

Fat oxen in their *frying-pans!*
But not in *offices!*

Unluckily, Biermann is not as well represented as he deserves to be, which is not entirely the editor's fault since he was not permitted to use some existing translations for copyright reasons. *Song for my Comrades* is there, nevertheless (Biermann's communism smells of petrol-bombs and romanticism rather than committee rooms), but what a shame the selection didn't include *The Huguenot Cemetery* or his *Stasi-Ballade*, one of his most reckless exercises in self-irony and mickey-taking, in which he commiserates with the State Security agents getting cold and wet as they watch his house. He praises their thoroughness at bugging his songs, expletives and lavatory jokes, like Goethe's assiduous biographer, a kind of collective Eckermann:

Die Stasi ist mein Ecker
die Stasi ist mein Ecker
die Stasi ist mein Eckermann!

Reiner Kunze, like Biermann, is also someone who publishes in the West. The arrangement of his selection in the anthology is intended to reflect an increasing bitterness and withdrawal under political pressure. At least his *Bringers of Beethoven*, a brilliant fable about such pressures, has a certain expansiveness about it, but fabulists should look out for themselves: in *The End of Fables* the cock is too scared to make up a fable about either a fox or a farmer. Kunze is obsessed with the postal service, which lures him into the pleasures of communication with the world beyond, but at the same time betrays and alarms him. Registered letters that fail to arrive from West Germany drive him to exasperation and prose – see the fifteenth of the *Twenty-One Variations on the Theme: The Mail*. These tiny filings of poems puncture the demand that art should serve politics. They are like smaller and smaller sparks being struck as the iron on the heel wears down, till finally comes the *reductio ad nihilem*:

To R.K. Poet

I am K.

and live
here

The poet
has moved away

Address
unknown

This poem in fact appears in *With the Volume Turned Down*, Kunze's most recent collection of verse translated by Ewald Osers and published by London Magazine in one of their 'wholemeal sandwich' editions (at 90p a munch). Mr Osers has given us a further sad brave bunch of postage-stamp sized poems, which those who enjoy Kunze's courage and wit should sample.

To return to *East German Poetry*, mention must be made of Peter Huchel, now living in the Federal Republic, and Johannes Bobrowski (d. 1965), whose poems appeared in Penguin Modern Poets quite recently. These two stand out as poets of landscape, drawing their technique (it seems to me) from the impressionist work of Dehmel and Liliencron. Both re-create an Eastern European countryside with poplars and birches, reed-fringed rivers and lakes, crows, herons and swans bathed in a mystic light. For me, Bobrowski generates considerable emotional power in a semantic twilight.

Although none of the poetry I have referred to here owes anything to the influence of T. S. Eliot, the American Beat poets, surrealism or concrete poetry – all significant stimuli to West German poets since the late forties – an exception must be made for Günther Kunert, whose *Film Put in Backwards* and *Twofold Monologue – Short-circuited* show a lively urge to experiment. In the latter poem the punched holes in the computer tape become a stream of lamentation for the last generation (O O O O o o o o etc). Kunert too makes a stand (a strong theme in this anthology) for the minimal poem. Rather than give up altogether, he argues for one cheer:

But the never enough is better:
of plain material, short in measure, vessel
for a small flame, illuminating
little of its world, yet little is more than
nothing. □