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# Perestroika and the Procuracy

**The changing role  
of the Prosecutor's  
Office in the USSR**

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# Foreword

The Bureau of Justice Statistics (BJS) introduces this series of discussion papers to promote the exchange of information, analyses, and ideas on issues related to justice statistics and the operations of criminal justice systems both domestically and abroad. In the future, BJS will address issues that arise from ongoing analyses of BJS statistical data but that are not covered in our standard Bulletins or Special or Technical Reports. The Discussion Paper series will also provide a forum for scholarship, research, and analyses addressing selected topics of special interest and relevance to the justice community.

In this first discussion paper, Soviet studies scholar Dr. Gordon B. Smith, University of South Carolina, describes the changing role of the prosecutor's office in the former Soviet Union. This paper was originally presented at the Kennan Institute of the Woodrow Wilson International Center for Scholars on December 9, 1991. The Russian prosecutor's office faces dramatic challenges as it tries to adjust to a new national order and a society under pressure to base its criminal justice system on the rule of law.

It is my hope that by better understanding the elements of criminal justice systems in other countries we can encourage the development of comparable international research and statistical analyses. BJS looks forward to future discussion papers presenting new information, analyses, and ideas to the justice community and to the Nation.

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## About the author

Gordon B. Smith is a Professor of Government and International Studies at the University of South Carolina. He holds a B.S. degree from Iowa State University with a triple major in International Studies, Russian, and Journalism; and an M.A. and Ph.D. in Political Science from Indiana University. Professor Smith has traveled extensively in the Soviet Union, Eastern Europe, Mongolia, and Japan. In 1975-76 he was a Fulbright exchange professor at Leningrad State University Law School. He has published seven books and numerous articles on Soviet politics, law, Soviet technology, and East-West trade. His most recent book, *Soviet Politics: Struggling with Change* (St. Martin's Press, 1992), includes an analysis of the August 1991 attempted coup and its implications for the reform process in Russia. Dr. Smith has been a fellow of the Harvard University Russian Research Center, a fellow of the Kennan Institute for Advanced Russian Studies of the Woodrow Wilson Center, a Visiting Scholar at the Centre for Russian and East European Studies of Birmingham University in England, and a Visiting Scholar at the Slavic Research Center of Hokkaido University in Sapporo, Japan. He has consulted with the U.S. Department of State and several Fortune 500 corporations on Soviet energy problems and U.S.-Soviet trade.

# **Perestroika and the Procuracy:**

## **The Changing Role of the Prosecutor's Office**

Political pressures unleashed by the policies of glasnost, perestroika, and democratization have posed a serious challenge to the role of the Procuracy. In the wake of the attempted August 1991 coup d'état, the fragmentation of central organs of authority now threatens the very existence of this premier institution of the Soviet legal establishment.

### **Background**

The Procuracy dates back to 1722, when Peter the Great created the post of Procurator-General, subordinate to the Senate. The Procuracy was charged with the dual functions of supervising the activities of the Senate to protect against abrogation of its decrees and regulations and supervising the prompt and full execution of edicts. Catherine II extended procuratorial supervision to local levels, and the Procurator-General rose in stature.

The legal reform of 1864 eliminated procuratorial supervision of administration, leaving supervision of court activity as the principal function of the Procuracy. The functions of the Procuracy remained largely unchanged until the Bolshevik Revolution in 1917.

A Decree of the Council of People's Commissars of November 24, 1917, abolished the tsarist Procuracy. The Bolsheviks favored informal control mechanisms, such as worker tribunals. However, these proved inadequate to stem the rise of crime. In 1922 Vladimir Lenin reestablished the Procuracy and invested it with the power to supervise the legality of central agencies of administration.

Under Josef Stalin and his Procurator-General, Andrei Vyshinsky, the Procuracy became an instrument of state-sponsored coercion.

The new Statute on Procuratorial Supervision of 1955 was a product of the era of legal reform after Stalin. It expanded the jurisdiction of the Procuracy to include general supervision.

From 1955 to 1968 procuratorial actions were primarily concerned with grievances of individual citizens: violations of labor rights, illegal imposition of fines and other administrative sanctions, housing complaints, and complaints about officials overstepping their proper authority. However, a dramatic change was introduced late in 1968 in response to the Communist Party Central Committee criticism that the Procuracy was neglecting its role as the protector of the State's economic interests.

In 1969 the emphasis shifted to representations reflecting the State's interests: theft of state property, substandard production, padding of plan-fulfillment records, and violations of labor discipline.

## The Procuracy under Gorbachev

The Procuracy was late in responding to the challenges of President Mikhail Gorbachev's reforms. As an institution, it initially reflected a conservative bias, resisting both change and public challenges to its authority. Procurator-General Alexander Rekunkov, appointed under the Brezhnev regime, reacted angrily to "sensational journalism" that criticized irregularities of procuratorial performance. The Procuracy was roundly criticized at an October 2, 1986, meeting of the Politburo, where Gorbachev noted that the Procuracy needed to be restructured. On June 4, 1987, the Central Committee passed a resolution again criticizing the work of the Procuracy and demanded that the agency redirect its activities toward the protection of citizens' rights.

In the face of this criticism, Rekunkov was dismissed on May 27, 1988, and replaced by Alexander Sukharev, the former Minister of Justice of the Russian Republic (RSFSR). Sukharev's background was most unusual for a Procurator-General in that the bulk of his career had been spent in the Ministry of Justice — thus, he was a virtual outsider brought in to clean up the work of the Procuracy.

The 19th Party Conference of mid-1988 placed a heavy emphasis on developing the "rule of law state" in the USSR. In his address to the gathering, Gorbachev proposed transferring the bulk of criminal investigations from the Procuracy to the Ministry of Internal Affairs.

It was about this time that the Procuracy reverted to its pre-1969 policy of issuing more protests than representations, and the majority of those actions concerned protecting the rights of citizens. But it also became evident during this time that the majority of the public did not trust the Procuracy. The Procuracy was widely perceived as an organ of state coercion.

Instead, citizens preferred expanded access to judicial review of their grievances. The 1987 Law on Appeals (with subsequent amendments) expanded judicial review of citizens' complaints.

The reorientation of the Procuracy under Sukharev stirred up considerable resistance within the organization. Similarly, the notorious Gdlyan-Ivanov case exacerbated internal morale.\* On December 11, 1990, Sukharev was relieved as Procurator-General. He was replaced by Nikolai S. Trubin. The appointment of Trubin, a moderate with strong ties to Gorbachev, was consistent with Gorbachev's swing to a more hard-line position in late 1990. Trubin had been most outspoken on the need to preserve the Procuracy as a unitary, hierarchical, and central organ of state control and supervision. In his speeches and interviews he frequently alluded to the fact that the Procuracy was patterned on the French model. (However, France is not a federal state; it is a state with a strong, centralized, unitary government and administrative apparatus.)

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\*In 1988, Tel'man Gdlyan and Nikolai Ivanov led a high-level investigation into official corruption and organized crime in Uzbekistan that resulted in the arrest and conviction of Leonid Brezhnev's son-in-law, Yuri Churbanov. Taking advantage of the publicity generated by the case, Gdlyan and Ivanov were elected to the USSR Congress of People's Deputies in March 1989. A few months later, the investigators attempted to link conservative Politburo member Yegor Ligachev to the widening corruption scandal, but Ligachev mounted a counter-offensive, charging that the investigators had violated procedures and illegally gathered evidence. A special commission of the Congress of People's Deputies was established in June 1989 to look into the affair. Charges against Gdlyan and Ivanov were eventually dropped following the August 1991 attempted coup d'état.



Trubin's leadership of the Procuracy began to encounter resistance almost immediately from more reform-minded procurators, especially at the republic level. For example, Boris Yeltsin appointed an aggressive reformer, the 39-year-old Valentin G. Stepankov, Procurator-General of the RSFSR on April 6, 1991. At the time of his appointment, Stepankov noted that power was gravitating to the republics, and the USSR Procuracy, if it survives at all, will exist only as a coordinating body, having primary jurisdiction only in prosecuting violations of all-union laws.

Stepankov angered Trubin when he signed a separate protocol on May 27, 1991, recognizing the independent Procuracy of the Latvian Republic. This action caused a storm of controversy in the USSR Procuracy, where Stepankov was charged with violating the central, unified system of the Procuracy. But Stepankov simply noted that this unified system was breaking down anyway.

Stepankov also took the initiative to draft a new RSFSR Law on the Procuracy that grants the Republic procuracy sole authority in supervising the execution of all laws of the Republic. The authority of the USSR Procuracy would be limited to enforcing all-union laws on the territory of the Republic "in coordination with the Procurator-General of the RSFSR." Even matters of personnel, training, and budget were removed from central determination.

Stepankov's stated objective is to use the Russian Procuracy as a tool for enforcing reformist legislation by the Russian Parliament. In this sense, he may be seen as a progressive. Yet on issues challenging the authority and jurisdiction of the Russian Procuracy (e.g., human rights, rights of accused persons, and expansion of court jurisdiction), he is quite conservative.

The Stepankov-Trubin struggle prior to the August 1991 coup attempt, created an uncomfortable situation for many regional and local procurators. For example, Dmitri Verovkin, Procurator of Leningrad, was by career service and temperament a conservative in line with Trubin. He noted that there were problems because legal changes have not kept pace with political changes. For example, the criminal code still recognizes speculation. Verovkin would like to continue to prosecute violations, but this is "out of favor" politically. Clearly, he was a man caught in the middle — more inclined toward Trubin's orientation, but afraid of alienating his immediate superior, Stepankov.

## The Procuracy and the Coup d'Etat

The Procuracy was largely a spectator to the events of August 1991. Trubin was out of the country at the time. Stepankov was clearly aligned with Yeltsin and those resisting the coup instigators (the Committee on the State of Emergency). In some regions and cities (e.g., Kazan), procurators sided with the leaders of the coup; in others they resisted (e.g., Kemerovo). In most cases, they appear to have kept a low profile, perhaps because of the absence of Trubin.

In the wake of the coup and criticism that although he was away he did not actively come out against the coup, Trubin resigned on August 29, 1991. The USSR Supreme Soviet accepted his resignation, but asked him to stay on until his successor could be named. Shortly thereafter, Alexander Katusev, chief prosecutor in the Soviet Army, was dismissed for supporting the coup. In Ukraine, the republic's Supreme Soviet voted to "depoliticize" the procurator's office, and the Procurator-General of Ukraine was relieved of his post. In Kazakhstan, President Nazarbaev called for radical reforms of the Armed Forces, the KGB, the Ministry of Internal Affairs, and the USSR Procurator's Office, "taking into account the republic's sovereignty."

Meanwhile, Stepankov took charge of the investigation into the criminal activities of the organizers of the coup, bolstering his image as a reformer. However, by late October 1991 the fragmentation of the USSR along ethnic lines and Stepankov's reaction to ethnic violence within the Russian Republic began to tarnish his image. For example, on October 23, 1991, he banned all political parties and public associations that advocated violating the territorial integrity of the Russian Republic. This action was aimed primarily at the separatist movements in Tatarstan and Checheno-Ingushetia. He also

threatened to close any newspapers or media that "promote separatist tendencies."

There were also evident internal rifts within the Procuracy, surrounding the issue of whether the Procuracy should continue to exist as a centralized, unitary organ, or be dismantled, much as occurred with the KGB. In early November the hardliners in the USSR Procuracy made a last-ditch, desperate move to restore their waning authority. On November 5, 1991, Viktor Ilykhin, USSR State Prosecutor for State Security Matters, brought charges of treason against Gorbachev for granting independence to the Baltics. USSR Procurator-General Trubin immediately fired Ilykhin and repealed his order, but it is an indication of the chaos in the Procuracy that such an action could have been taken without having been preempted by the Procurator-General.

Finally, on November 22, 1991, the RSFSR Supreme Soviet passed a resolution abolishing the office of the USSR Procuracy and transferring its functions to the RSFSR Procuracy. Trubin "realized his impotence and resigned," according to Stepankov. After November 1, all financing for the USSR Prosecutor's office had ceased and some 39,000 employees had been laid off. Some have subsequently been interviewed and hired by Stepankov for the Russian Procuracy.

## Prospects: Can the Procuracy Survive?

The events of the coup and its aftermath rapidly accelerated the pace of change in the USSR, and those changes have affected every aspect of Soviet society, including the Procuracy. The devolution of authority from the center to the republics, noted above, need not prove to be a death blow to the Procuracy. Stepankov's draft RSFSR Law on the Procuracy essentially calls for a centralized, unified, and hierarchical Procuracy that answers to the RSFSR Procurator-General, rather than to the USSR Procurator-General. All of the functions of the Procuracy remain in place.

However, the coup raised popular and elite expectations concerning the need to create a state functioning according to the rule of law, especially Western concepts of the rule of law. Pressures in this direction, emanating especially from the Russian Parliament, threaten to redefine drastically the role and functions of the Russian Procuracy.

The draft of a new Russian Federation Constitution, published on October 11, 1991, in *Rossiiskaia gazeta*, calls for limiting the Procuracy to the prosecution of criminal matters in courts. If the new constitution is ratified, the procurator's power of general supervision would be assumed by a newly established People's Ombudsman (Pravozashchitnik), appointed by the Russian Parliament to investigate actions of government agencies, enterprises, local organs, and officials when those actions violate the rights of citizens. The investigatory powers of the Procuracy would be taken away and invested in a special agency for criminal investigation. Supervision of the courts — a power long resented by judges — would be granted to the Supreme Court of the Russian Republic.

The drastically scaled-back Procuracy envisioned in the draft Constitution of the Russian Republic coincides with what was advocated by Russian Minister of Justice Nikolai Fedorov. In a speech before Russian judges in late October 1991, Fedorov noted that the Procuracy as a higher supervisory body of state power was a uniquely Soviet phenomenon, a "sacred cow" created by Stalin and Vyshinsky. He denounced procuratorial supervision of the performance of the courts as a "legal atavism" and general supervision as a totalitarian "press" (*zagliadyvanie*). He argued that the only proper role of the Procuracy is to prosecute criminal cases in court. Limiting the role of the Procuracy would, in his view, strengthen the court system and bring the Republic's legal system into closer conformity with established European norms and legal experience.

The choice facing Yeltsin and his government today is a relatively clear one. Either he follows Fedorov's suggestions and severely limits the powers of the Procuracy, or he follows the advice of his Procurator-General Stepankov, who is arguing that there is still an important role for the Procuracy in enforcing the interests of the State. Yeltsin's appointment of supervisory officials (*prefects*) in every region of the Republic, however, has severely weakened Stepankov's position.

The Procuracy, as the premier institution in the Soviet legal system and the forceful protector of state power, appears to be rapidly losing its institutional *raison d'être*. The future of the Procuracy is very much in doubt.

## **Sources**

This paper is based on research conducted by the author in June 1991 in Leningrad and Moscow. Numerous interviews were conducted with procuratorial officials, including the Prosecutor-General of the Russian Republic, Valentin G. Stepankov.