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**TITLE: The Soviet System on Trial: The
Coup and Its Aftermath**

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EXECUTIVE SUMMARY

Russian reformers are trying to confront the past by means of two legal proceedings--one constitutional, one criminal. The Constitutional hearing on the legality of President Yeltsin's ban of the Communist Party concluded at the end of November 1992, after five months of emotional testimony. The lengthy hearing on the nature of the Communist Party was neither initiated nor orchestrated by the government. Yet they used the opportunity to try to discredit the Communist Party to such an extent that it would never again be a powerful force. The Constitutional Court hearings were never fully successful from the reformers' or the citizens' perspectives. The decision of the court pronounced just before a meeting of the Russian legislature was a compromise decision. It did not rule that the Party possessed a monopoly on power, nor demonstrate the damage caused by a one party state. It did, however, establish a legal basis for a multi-party state by requiring the communists to compete on an equal legal footing with emergent parties. [On the ground, however, the communists have clear early advantages, especially at lower levels ruled legal by the Court. - Ed]

The coup criminal investigation was completed in early December, 1992. The conclusion of the investigation does not, however, guarantee a trial in 1993, [despite the announcement of the trial date for April 14. - Ed.] The long delay in the initiation of a trial of the coup perpetrators and the guarded legal decision emanating from the Constitutional Court mean that Russia has not yet condemned its past. The constitutional and

criminal procedures have so far failed to close the Soviet period or fully confront its legacy. They may, however, be regarded in the future as important precedents for a law-based state.

THE SOVIET SYSTEM ON TRIAL: THE COUP AND ITS AFTERMATH

An Interim Report

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The Soviet Union ended in December 1991 but the Communist system did not die with the collapse of the Soviet state. Russian reformers are trying to confront the past by means of two legal proceedings--one constitutional, one criminal. The constitutional case addressed the nature of the Party and its relationship to the Soviet state. The criminal case is directed at the coup leaders, former chiefs of the Soviet military and law enforcement apparatus. Neither of these cases can be the Soviet "Nuremburg", the intent of Shakhrai, the state's attorney in the Constitutional case. This goal is not feasible because the Soviet system did not collapse as fully as the conquered Third Reich. Moreover, the legal officials administering these cases are not representatives of foreign powers but instead were trained under and served the Soviet state.

The Constitutional hearing on the legality of President Yeltsin's ban of the Communist Party concluded at the end of November 1992, after five months of often emotional testimony. The majority of the judges, in a compromise decision, upheld the presidential ban of the Soviet Communist Party but failed to condemn Communism leaving its supporters the possibility of reorganizing on the local level and reclaiming confiscated property. Total condemnation would have been difficult in the existing political environment and with the particular set of

actors because none felt capable of throwing the first stone. Under these conditions, it is difficult to put the Soviet system on trial and make a case that the system with which the Party was associated is truly extinct.

The second legal process, a criminal investigation of the perpetrators of the August 1991 coup, has been underway since the putsch. The trial date has been postponed repeatedly; presently there is no certainty that the investigation will conclude in a formal trial. In certain respects the coup trial has already occurred, a continual stream of newspaper accounts has presented the views of the defendants as well as the case of the prosecution and of the defense. The endemic corruption has crept into even this case, the prosecutor has sold the defendants' testimony to German newspapers and has also cashed in his investigation by selling a book on the case to a foreign publisher.

Criminal trials have often delineated the end of different Soviet periods. The show trials of the 1930s marked the consolidation of Stalinist power and the discreditation of alternative ideologies or Marxist interpretations. At the end of the Stalin period, closed trials of Beria and his secret police associates revealed crimes so enormous that their revelations were hidden from the public. The trial of Brezhnev's son-in-law, Churbanov, the Deputy Minister of Internal Affairs, during the late 1980s for his links with organized crime discredited the Brezhnev era at the height of perestroika. Consistent with these

major transitions, the constitutional hearing and the coup investigation should mark the end of the Soviet period.

The Constitutional hearing on the legality of banning the Communist Party analyzed the role of the Party in the USSR. Unlike past trials in previous transitional periods, it is not a criminal proceeding. The forum for this important hearing is the newly initiated Constitutional Court, a thirteen member body established only in July 1991, shortly before the coup. The Court is functioning under several disadvantages, it has no established procedures or clearly established mandate. This is true because no Russian Constitution has been adopted; the Court is forced to interpret the Brezhnev era Constitution of the non-existent Soviet state. The Court's collective experience was limited before it assumed this weighted political case. But it had begun to establish a solid record of judicial independence following its initial cases on the separation of the secret and regular police apparatus and on the political status of Tatarstan. The political nature of the Party case undermined this important court. Evidence of this is that the reformist government of Krygyzstan, a newly independent Central Asian country, has stated that they will not have a Constitutional Court because it can be politicized.¹ But Zorkin, the chief judge, tried to salvage its reputation within Russia by brokering a compromise between Yeltsin and the conservative legislature at the stormy Congress of People's Deputies in early December, 1992.

The lengthy hearing on the nature of the Communist Party was

neither initiated nor orchestrated by the government. In contrast to previous transition trials, former leading members of the Soviet Communist Party challenged the constitutionality of the ban on their Party and the Yeltsin government chose to exploit the opportunity to discredit the Communist Party in its entirety.² The purpose of the Russian government was to completely discredit the Party so that it could never again be a potent force.

The focus of the hearing was to determine whether the Party was indeed a separate institution or whether, in fact, it was inseparable from the government. At the heart of the hearing were two crucial arguments. Those who supported the ban argued that the Communist Party had incorporated the state, the legislature, justice system and all the institutions of the USSR. The state budget was used to meet the needs of the party elite and of its supporting ranks. The defenders of the Party argued that it was a public organization, albeit a very influential one but nonetheless remained a party. Major Communist officials testified but Gorbachev, despite intense pressure, managed to avoid participation. Over 130 expert witnesses submitted testimony. Summaries of only half the testimonies, evenly divided between the two positions, were presented. The summary nature of the testimony and the inability of the opposing sides to question the experts blurred the issues and politicized the process.³

The witnesses at the trial reflected the demise of the Soviet state. For the first time, a former Politburo member, the

now displaced Alexander Yakovlev, and dissidents were aligned in their condemnation of the Communist Party. Yakovlev noted that Party reformers were always crushed by their reactionary opponents.⁴ Evidence of this, he cited, was the Prague Spring and Gorbachev's perestroika. Former dissidents, Razgon, Yakunin, and the celebrated Bukovsky provided key testimony of their harsh treatment as political prisoners dictated by the Communist Party.⁵ As one journalist explained, hearing them express their sufferings publicly within the USSR gave a resonance to their cases that had not previously existed. Sergei Kovalev, a veteran of the labor camps and now the chairman of the Russian Parliamentary Human Rights Committee, provided gripping testimony on the Communist Party's role in judicial reprisals against human rights advocates and Soviet violations of international treaties of which the USSR was a signatory. He concluded that the very structures of the institutions run by the Communist Party were "Hostile to law and freedom."⁶

Other testimony against the Party at the Constitutional hearing sought to prove that the Party turned the state into an instrument of its power and that the Party did not abandon its role as a "leading and guiding force" of the country after Article 6 of the Constitution, which gave it such authorization, was abolished. Falin, the former chief of the International Department of the Communist Party Central Committee, testified on Party financing of foreign communist parties and terrorist organizations. The former director of Glavlit, the state

censorship bureau, reported on the level of censorship and the banning of publications up until the agency was abolished in the month preceding the coup.⁷ The domestic repression of the Stalinist period was recalled as well as the efforts by more recent officials to cover both physical and documentary evidence of Stalin's victims.⁸

Attention was distracted from the moving testimony of the first months of the hearing by the subsequent public conflict of Yeltsin and Gorbachev. The effort to make Gorbachev testify, a symbolic move to show that no one is above the law, diverted the public from the fundamental issues at stake--the role of the Party in the USSR and its relationship to the state.⁹ Instead, the attempt to compel Gorbachev to testify by denying him the right to travel abroad politicized the process further, and served to discredit the hearings and the court as an impartial forum.

The hearings were never fully successful from the reformers' or the citizens' perspectives. Unlike the transition trials in Argentina, public interest was not sustained and, despite nightly news casts, the proceedings often took place in a near empty courtroom.¹⁰ The public, without a well developed legal consciousness, could not comprehend the abstract legal issues involved, and the protracted nature of the proceedings further obscured the case.

The decision of the Constitutional Court was pronounced just before a crucial confrontation between President Yeltsin and the

highly conservative legislature, the Supreme Soviet. In the words of the Chief Justice, Valery Zorkin a "constitutional compromise" was reached, one with which neither the reformers nor the communists were happy.¹¹ The optimum outcome was not realized. The decision did not rule that the Party possessed a monopoly on power, nor did it demonstrate the damage caused by a one party state. It did, however, establish a legal basis for a multi-party state by requiring the communists in the future to compete on an equal legal footing with emergent parties. [As a practical matter, however, the communists have obvious early advantages, especially at the lower levels ruled legal by the Court. - Ed.] The fact that many former Communists among the legislators were able to strike at Yeltsin in the December session of the Supreme Soviet was evidence that the Court failed to fulfill either objective--to irrevocably crush the Party or fully discredit the Communist system.

The Constitutional Court case and the coup investigation are linked. The coup investigation was referred to at several points in the Party hearings. Moreover, many observers felt that the two crucial cases could not proceed simultaneously. Evidence to support this view was that a mere two weeks after the Constitutional Case ended, the final criminal indictment was presented by the Russian Prosecutor, Stepankov, and the coup case was turned over to the military collegium of the Russian Federation Supreme Court. Four of the eleven defendants were freed on bail after 16 months' confinement.¹² The jurisdiction

of the military collegium, anticipated by the military for more than the previous half year, was a move resisted by some of the reformers who wanted at least some of the civilian defendants to have their cases heard by civilian members of the Supreme Court. The conclusion of the investigation does not, however, guarantee a trial in 1993, [notwithstanding the announcement that the trial is to begin on April 14th, just after the referendum on a new constitution and simultaneously with the next session of the Congress of Peoples Deputies - Ed].

The long delay in the initiation of the trial of the coup perpetrators, and the guarded legal decision emanating from the Constitutional Court, mean that Russia has not yet condemned its past. The constitutional and criminal procedures have failed to close the Soviet period or fully confront its legacy. They may, nevertheless, be regarded in the future as important precedents for a law-based state.

NOTES

1. "Kyrgyz Constitutional Commission Completes Work," RFE/RL Daily Report October 19, 1992, p.3.
2. David Remnick, "Report from Moscow The Trial of the Old Regime," New Yorker November 30, 1992, pp.104-121.
3. For a discussion of the background see Carla Thorson, "The Fate of the Communist Party in Russia," RFE/RL Research Report vol.37, September 18, 1992, pp.1-6.
4. "Yakovlev Condemns CPSU and Present Russian Authorities," RFE/RL Daily Report No. 196, October 12, 1992, p.2.
5. "Further on Bukovsky Testimony," FBIS Daily Report FBIS-SOV-92-157-S, p.1.
6. Testimony by Sergei Kovalyov translated by Catherine Fitzpatrick, provided by Ms. Fitzpatrick.
7. "Witnesses Against the CPSU Begin Testimony," RFE/RL Daily Report July 28, 1992, p.2.
8. "Prosecution Witness Gives Statement 31 July," FBIS Report Supplement Constitutional Court on CPSU Legality August 13, 1992, pp.3-4.
9. Sergei Parkhomenko, "Gorbachev v vyrazheniakh ne stesniaetsa," Nezavisimaya Gazeta, September 30, 1992, p.2.
10. Serge Schmemmann, "Yeltsin's Ban on Communists Upheld," New York Times December 1, 1992, p.A8.
11. Ibid.
12. "Lukyanov, Other Coup Leaders Freed on Bail," RFE/RL Daily Report December 15, 1992, p.2.