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AUTHOR: YURI FEOFANOV and DONALD BARRY

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1755 Massachusetts Avenue, N.W.
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NCSEER NOTE

This is the seventh in a series of Council Reports which, in all, will contain a book, by the same authors and probably with the same title, forthcoming, M. E. Sharpe. This Report begins Part V: The Gorbachev Period II, and consists of an Introduction by Donald Barry, Chapter Ten: Criminal But Not Political, Chapter Eleven: A General Fights the System, and Chapter Twelve: On the Eve of Ethnic Warfare, all by Yuri Feofanov. Subsequent Reports in the series, numbered sequentially, will contain the balance of Part V and the remaining Parts VI-VII. They will carry the same main title and the subtitle of the Part contained.

[Correction: Reports #5 and #6 contained Part IV, not "Part III" as they listed on their face pages and in their NCSEER NOTES]

PROJECT INFORMATION:

CONTRACTOR: Lehigh University

PRINCIPAL INVESTIGATOR: Donald Barry

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V. THE GORBACHEV PERIOD II

Donald D. Barry

Introduction

The cases in this section fall into no single category. Their main shared characteristic is that they could not have been discussed so openly prior to the Gorbachev period. Indeed, some of them had their origins long before Gorbachev came to power but could only receive the treatment they warranted in the era of glasnost.

"Criminal But Not Political" (Chapter Ten), as the title suggests, has nothing to do with party-state operations or public officials. It does not involve a law-enforcement campaign orchestrated from above (a not unusual phenomenon during the Soviet period) or even a case of "telephone law," where an official sought to influence the decision of a judge. But it does provide insights into the justice system of the Soviet period, and it speaks to the level of control exercised by the political authorities over the release of information about cases, even after a decision has been rendered by a court.

The simple murder case described here began in 1962. After the convictions of clearly innocent youths were thrown out by the Ukrainian Supreme Court, another defendant was tried for the crime in 1970. This is the point at which Feofanov began covering the case. His coverage is not so much about the crime itself as it is about problems in the criminal process. He applauds the Ukrainian Supreme Court in the earlier phase of the case for standing up against two lower court opinions, the procuracy, and a public aroused by the crime. When the third trial commenced, the evidence against the accused appeared to be formidable. Yet five years after the trial the conviction was thrown out by the USSR Supreme Court. Perhaps as much as any case in the book, this one shows that Feofanov's paramount interest involves the defense of the principle of fair play (against, as often as not, questionable investigatory techniques) rather than whether or not the defendant in a particular case actually committed the criminal acts in question. Restrictions by the regime prevented Feofanov from fully informing the public as to the outcome of this case until 1990.

"A General Fights the System" (Chapter Eleven) is seen by Feofanov largely as a matter of military honor betrayed. In discussing the case he reminisces about the scrupulous honesty of a particular commander of his, as others were stealing what they could, when his unit was moving through Germany at the end of World War Two. He contrasts the commander's integrity with the behavior of many military officers in this case who, through lack of courage and honor for the uniform, so easily submitted to the pressure of investigators.
General Yevsiukov, viewed by Feofanov as a victim of a law-enforcement campaign in which a high-level offender needed to be found, fought the system and won.¹

Of the issues that came to the fore with glasnost, perhaps none carried the potential for disrupting the political equilibrium as much as ethnic tensions did. Much of the national resentment manifested during this period was directed at Moscow, as complaints against the center were registered from all corners of the country. In addition, however, a multitude of examples of ethnic tension involved long-standing hostility between nationality groups living side-by-side, quarrels that had been suppressed during much of the Soviet period by Moscow's firm hand.

The two cases discussed in Chapter Twelve, "On the Eve of Ethnic Warfare," fall into this latter category. Both are also distinguished by having legal-judicial components, which brought them into Feofanov's area of particular interest.

The Nagorno-Karabakh problem was one of the first serious ethnic issues to explode during the Gorbachev period. Nagorno-Karabakh, an enclave populated largely by Armenians but located within the Azerbaidzhan union republic, had long been an area of contention. Localized hostilities in the late 1980s grew into a full-scale war between the republics of Armenia and Azerbaidzhan in the 1990s, when an increasingly weak central authority became unable to control the situation.

The case Feofanov examined began relatively early in the hostilities, in 1988. Arkadii Manucharov, a leader of the Armenian "Karabakh Committee," was arrested by USSR authorities, ostensibly for economic crimes but really because he was seen as a cause of the local unrest. He was tried in Minsk, the capital of the Byelorussian republic, and the case was later heard by the USSR Supreme Court. One of the complicating issues in the case was that while Manucharov sat in Butyrskii Prison in Moscow he was elected as a deputy to the Armenian Supreme Soviet. The question of whether Manucharov was entitled to legislative immunity, and therefore freedom from prosecution, became the central issue of the case.

Another area of intense ethnic hostility has been in the Abkhazian region of the republic of Georgia. Like Nagorno-Karabakh, this territory is located in the Caucasus Mountains region to the south of Russia between the Black and Caspian Seas. Abkhazia is an area of Georgia that has long sought independence. A bloody war in the early 1990s resulted in an uneasy cease fire between Georgia and Abkhazia, but nothing like a permanent resolution of the issues has been achieved. With regard to the places mentioned in this case, "The Battle Near the Bridge," Sukhumi is the Abkhazian capital and Ochamchira is an Abkhazian town to the east, nearer to Georgia proper.²
The issue on which the case turned involved a regional procurator’s act of providing arms to a defenseless and restless crowd in Ochamchira, who were afraid of being attacked by an armed convoy approaching from Georgia. Procurator Valerii Gurdzhua acted only after local police refused to provide protection themselves. He was tried in Moscow by the USSR Supreme Court for exceeding his authority. Gurdzhua did not deny this charge, but claimed to have been justified in his actions by “extreme necessity” (a well-established concept in Soviet criminal law), namely, the need to protect the local populace.

In this case Feofanov departs from his common position that the law must be scrupulously followed in all respects. He agrees that the procurator clearly exceeded his authority, but he asks whether, given the circumstances, Gurdzhua could reasonably have done otherwise. Acknowledging that no-one could know in advance the consequences of his acts—“history does not have a subjunctive mood,” as he put it—Feofanov believes that on balance the court could reasonably have ruled in the defendant’s favor.3

NOTES

1. General Yevsiukov was acquitted of all charges of corruption, the crime he was accused of. He later sued for damages and received a substantial award. But his suit for reinstatement in the army with his previous rank was left unresolved. High military positions were on a list of posts for which reinstatement through judicial review was prohibited. This vestige of the earlier Soviet period still had not been removed from the law in 1989, when Yevsiukov’s case came to court. Feofanov wrote about this matter in his Izvestiia coverage of the case, but did not discuss the issue here. See his “Chest’ mundira,” Izvestiia, April 27, 1989, p. 6. In 1990 the USSR Committee on Constitutional Supervision ruled that excluding positions from judicial review by means of such lists violated the USSR Constitution and laws. See Donald D. Barry, “The Quest for Judicial Independence: Soviet Courts in a Pravovoe Gosudarstvo,” Toward the “Rule of Law” in Russia?, ed. Donald D. Barry (Armonk, NY: M.E. Sharpe, 1992), p. 268.


CHAPTER TEN. CRIMINAL BUT NOT POLITICAL

Yuri Feofanov

Under this heading I will combine reporting on three trials, all involving the same crime. This is a crime that all countries consider the most serious—murder. And the threat of another "murder" is also present here—an execution based on the sentence of the court, which is judged by the authorities to be a just punishment, or at least a necessary one.

But the stories of these trials, which took place in different periods of Soviet life, testify about yet another thing: when a campaign against crime departs from politics, when the authorities remain inactive in relation to what a court is doing, then courts manage not by reprisal, as in political and politicized cases, but by true justice. In these cases the presumption of innocence prevailed, the right to counsel was in operation, the judges were appropriately critical of the evidence presented by the state and tolerant toward the defendants, without regard to the gravity of the acts in question. Even Procurator General Vyshinsky, on the eve of the Moscow show trials of the 1930s, pressed for an acquittal in the "purely criminal case" of a man accused of murder where the evidence was of doubtful validity. And acquittal was brilliantly achieved in that case.

In spite of the fact that all three trials in this case were murder trials, the motives and circumstances varied: the first two trials involved a terrible evil act; to the third the element of romantic drama was added. The first case reflects the eternal doubt of a system of justice: how to hand down a sentence if "everything is clear" but nothing short of complete certainty will do. Politics eliminates such doubts when a regime of "sotszakonnost" prevails. Without politics, judges became real judges in the Soviet legal system.

Eight Years Later . . . Plus Five

Typically, honest and conscientious investigators, procurators and judges set as their task a noble objective—to punish evil, restore justice, and defend individuals, in short, to make things right. But the opposite happens if they ignore legal formalities while seeking noble ends. I'd like to discuss the "technology" of such situations by using a specific case as an example. This is a case where I was familiar with all of the details. I read the materials from the preliminary investigation, talked with the investigator and the procurator in the courtroom from the beginning of the case until its end, and then wrote about the case for the newspaper. Of course I was not present during the questioning of the accused by the investigator. However, I heard the testimony in court and now, after the passage of many years, I can affirm that I was
sincerely convinced that these two men were convicted according to both the law and the canons of justice. After long discussions with the investigator and the procurator I was also convinced that no illegal methods of torture or blackmail were used.

But let's get back to the story. Nearly eight years elapsed from the moment of the commission of the crime until the case was finally closed. Everything in the case was so intertwined that, in one phase of the case, at least, innocence suffered and wrong triumphed, false leads produced by the investigation and even during the judicial stage of the proceedings appeared true, and what was actually true was subject to doubt. In short, the judges became confused in the search for truth. Unfortunately, I will not be able to describe to any great extent the conclusions contained in the 63 volumes of evidence that were assembled for this criminal matter, which was then known as the "Kharkov Case."

At 11:40 p.m. a 17 year old student at the radio technology school named Irina Koliada was murdered near her home on Kutovaia Street. At about 9 p.m. Irina had gone to the local bathhouse to take a shower, and about a half-hour later, on her way back from the bathhouse, a girlfriend, Irina Baistriuchenko, had seen her. At 11:40, when a sporting event was on television, neighbors heard a muffled cry outside, but paid no attention to it. It got to be 1 a.m. and she had still not returned, so her mother went outside to look for her. She saw a man climbing over a nearby fence and, on approaching that spot, found the body of her daughter. An examination by medical experts later disclosed that the girl had also been raped.

The Kharkov police were hurriedly summoned to the scene and commenced a search, but they found no strong evidence regarding the assailant. Only Irina's bag with its contents strewn about, a brick that had apparently been used to strike her, and a fountain pen were found. There were no fingerprints or footprints. And the mother had seen the man running away for just a second, and then only from the back.

Since no-one was arrested at the scene and the assailant had left no obvious clues, the police began collecting information about everything that happened that evening, such as hooliganistic activities, fights, drunken carousing. And, it seemed, something turned up. The guard at a city park stated that a young man known as Viktor had been hanging around the park with two friends and that they had been drinking together on that night. Another significant piece of information: a deaf-mute named Voitova lived near the deceased. At about midnight she was coming home on the tram, and when she got off at the stop some young men started hanging about her and followed her. A natural conclusion was reached: they bothered one woman and she ran away, so they went after another. It made sense! True, they were bothering Voitova at 12 midnight. So they couldn't at the same time be attacking Irina Koliada. Nonetheless it was decided to find the three young men.
Suspicion fell on Khavat, Bobryzhnyi and Zalesskii, who were seen drinking on the evening in question and who, in the words of witnesses, were acting impudently. The evidence was dubious, but there were no other suspects. And the whole city was aroused about the murder.

The three youths were arrested. After brief denials they admitted the rape and murder of Irina Koliada. They explained and showed how it had happened. The necessary investigatory experiments were performed, and the evidence from witnesses was assembled. Irina’s mother identified one of them as the person she saw running away on Kutovaia Street. And with that, the case went to court.

At this point the first of many surprises took place. In answer to the question from the presiding judge, "do you admit your guilt?"—the three replied: "No, I don’t admit it"; "I’m not guilty of anything"; "I didn’t commit any crime."

Nonetheless, the Kharkov Oblast Court came to the conclusion that the charge had been proven and sentenced all three to the supreme punishment (execution). The Supreme Court of Ukraine concluded, however, that the guilt of the defendants had not been proven, and rescinded the sentence. When the case came back to the Kharkov Oblast Court, it decided to re-open the investigation. This time it sentenced two of the defendants to the supreme punishment and the third to fifteen years in prison.

The Criminal Law Collegium of the Ukrainian Supreme Court reviewed the appeals of the accused. It examined every piece of evidence in exhaustive detail, checked the testimony of each witness, juxtaposed every point in the charge to the materials of the preliminary investigation and the trial. And it came to the conclusion that the participation of Khvat, Bobryzhnyi and Zalesskii in the crime of which they were accused had not been proven. The case against them was dropped and they were released from custody.

It should be said that the Criminal Law Collegium of the Ukrainian Supreme Court demonstrated wisdom and courage. Yes courage. Because the two sentences of the oblast court, the public opinion that had developed regarding the crime, the enormous amount of material from the preliminary investigation and the confessions of the accused—all of this was difficult to ignore. One can’t forget that in coming to the conclusion that the case had not been proved against the three defendants, the court, in essence, was declaring that this extremely serious crime remained unsolved. What chance was there to solve it now, after more than three years?

In short, there were a number of relevant "considerations." But the court could take a truly legal stand, a rare occurrence for the time. It reasoned that if the charge wasn’t proven beyond a reasonable doubt, then it wasn’t proven at all. The Procurator of Ukraine protested
the decision, but the Plenum of the Ukrainian Supreme Court and then the Plenum of the USSR Supreme Court left the ruling intact. A special ruling was addressed to the investigative organs,3 and criminal proceedings were commenced against those responsible for violating legality by bringing charges based on the forced confessions of the three innocent defendants. Two investigators were convicted in these proceedings.

However, the stereotyped phrase "justice triumphed" does not appropriately describe the situation. Did not the Kharkov judges act improperly? Why did they hand down guilty sentences without sufficient proof? No-one from the local authorities pressured them. Alas, confidence in the truth is sometimes replaced by confidence in one's rectitude, in one's infallibility. This is fatal to the cause of justice, as the "Kharkov Case" eloquently testifies. Doubt exists where the truth is not brought out to the most exacting degree. Only this attitude will lead to justice.

And so, the three were exonerated. This was the pre-history that faced Yulii Liubimov, the investigator for especially important cases in the office of the Procurator General of the USSR, who was put in charge of the case. Three years had passed since the crime, and the investigation was basically at an impasse. Irina Koliada was dead—no one could argue with that. But that was all. There was no further data. Except, perhaps, the very important fact that Liubimov’s predecessors on the case had accepted an untrue version of events surrounding the crime that had very nearly ended in disaster. The twenty-volume record of the case of Khvat. Bobryzhnyi and Zalesskii, which the investigator studied, convinced him that any direct trail of evidence had now been lost. Even the most faint leads in the direction of the real criminals were hardly likely to be found in these tomes. Hardly . . . But reading about the case still led to some reflections on it.

Having accepted the version of a hooliganistic attack, and thereby limiting itself in advance to the view that the assailants just happened to meet Irina and didn’t know her beforehand, the previous investigation did not check the circle of contacts of the Koliad family with sufficient care. All of those who "could" commit the crime at that time, recidivists, known hooligans, etc., were in the police’s field of vision. But those who "could not" commit such an act (could not in the sense that nothing about their behavior attracted the attention of investigators)—there was no attempt to search for them. It might be that nothing would come from this line of reasoning—after all, what kind of circle of acquaintances does a 17 year old girl have? —girlfriends at the technology school, neighbors, young male friends. However, the conclusion of the experts indicated something else. Alas, Irina had earlier "known life." None of her acquaintances had, after the tragedy, told of any particular intimacy with the deceased.
Which means that either they were not that close to here or for some reason did not want to acknowledge it.

With whom had Irina been intimate? Her relatives either could not or would not say. Nonetheless, the investigator was determined to check into her close relationships. The girlfriends of the deceased did not name anyone in particular, but what they said turned out to be extremely important. "Ira had lately talked a lot about pregnancy," said one of her girlfriends. "She was reading various pamphlets about medicine, and was interested in how one becomes pregnant and how to terminate it."

"Was she expecting a child?"
"She didn't say she was."

When the case went to court the first time, and in the investigation associated with it, this side of the life the deceased did not come out. There had been no medical testimony. To determine now whether Irina had been pregnant was impossible. But was it possible that what in all likelihood had been a casual intimacy could have gone completely unnoticed? Theoretically yes, but in practical terms . . .

"I can't tell you anything," Shcherbakova, a girlfriend of Irina once said to Liubimov. "except that once Ira mentioned a certain Valentin. She loved him very much. Who is he? I don't know. She said that he was a musician, and much older than she."

The investigator did not come up with any other information of this kind. But could the young woman have seen a doctor? Endless inquiries turned up nothing. Irina's aunt worked with the railroad, assigned to its hospital. Should this be investigated? He began questioning doctors. But what would they say--that they see so many people. In any case, when he asked Dr. Alfred Kucher whether he recalled a young woman who came to him five years ago about pregnancy, the doctor became embarrassed.

"I seem to recall that my nephew asked on behalf of someone. Excuse me, however. I can't really say. And in the end a man should have his secrets."

One thing caught the attention of the experienced criminalist: the doctor, a mature man, remembered well what was for him a routine case, but didn't want to give out information about it. Why?
"Who is this nephew?"
"His name is Valentin."

The statements of the old doctor did not amount to a great deal. Only one thing was definite: in 1962 Valentin had gotten from his uncle a doctor's request for a pregnancy test for someone. Valentin was a musician. First the words of Shcherbakova, and now the contribution
of Dr. Kucher. Finally a lead. The thing that remained was to find out for whom the pregnancy test was issued.

At first Valentin categorically denied that he had made such a request from anyone. A face-to-face meeting was arranged with his uncle. Finally he acknowledged that he had gotten the order for the pregnancy test for a friend who was pregnant by him . . . Her name was Irina.

"Did you kill her?" the investigator bluntly asked.

"..."

As the investigator later explained to me, Valentin did not answer. To pronounce the word "yes" in these circumstances, when threatened by such consequences, was almost impossible. But eventually Valentin uttered the terrible "yes." But this was, of course, one on one with the investigator. Defense lawyers then were not allowed access to the accused at this stage of an investigation.

And so, a confession was made. But it was necessary to supplement a confession with other objective evidence that could complete the chain of proof. This was even more important in that confessions were now suspect. Khvat, Bobryzhnyi and Zalesskii had also confessed, of course. Therefore, for Liubimov and his associates in the investigation, the brief "yes" pronounced by Valentin was more the beginning of their work than its completion.

Yes, Valentin Zaporozhets had confessed. But did that mean that he would be truthful throughout the process? He said yes when he could not explain why he got the doctor’s order for a pregnancy test. And couldn’t he reconsider and change his statement? If he retracted the confession, the investigator would not have enough evidence of substance to implicate him. No fingerprints on the murder weapon. Nobody saw the criminal with the victim (Irina’s mother had "identified" Khvat earlier); no one could even confirm a relationship between Valentin and Irina. So the bare confession had to be supported by further evidence.

Over many months the investigatory team had compiled a massive number of inquiries, interviews, expert investigations and experiments. The crime and events associated with it had been investigated from all angles. The basic approach that Liubimov chose involved attempting to get all of the details from the accused. The kind of preliminary investigation then in use is now illegal. But for an investigatory team it was very convenient.

And so the questioning of the suspect began. One of the so called "blank spots" was the time of the commission of the crime. During the investigation in the case that had already been dismissed, the known facts had not been laid out in a logical pattern, but had been discarded. In fact, even then a witness named Baistriuchenko had said that at 11:30 p.m. she had met an upset Irina, who was going toward her home. At 11:40 the neighbors heard a scream. And the
mother had seen a man running away at 1 a.m. An expert had stated that the body had lain for about an hour-and-a-half without having been moved and without a change in position. But how can this hour or hour-and-a-half be explained? Could the murderer or murderers have spent all that time just sitting there with their victim? The previous investigation had simply ignored the testimony of Baistriuchenko and the neighbors, estimating the time of the crime at 1 a.m.

What had really taken place? Only the suspect could explain, since there were no eyewitnesses. And Zaporozhets did explain. He had been intimate with Irina. But then he dropped her and married someone else. A little later their relationship resumed, with both of them observing care and discretion about their meetings. In a short time Irina began to insist that he leave his wife, threatening to expose their affair if he didn’t. They agreed to talk it out, and to meet on May 28 at about 10 p.m. He came with his cousin Oleg Borovoi. The talks weren’t going anywhere and the cousin, seeing this, left. The girl also started toward home. Valentin, not knowing what to do, decided to follow Irina, to try to persuade her one more time “not to do anything foolish.” It was at this time that she apparently met Irina Baistriuchenko. Catching up with her, Valentin demanded that she give her word she would keep their secret. She refused, and in the ensuing argument she slapped his face. Valentin grabbed the brick and struck a blow to Irina’s head.

“I got scared,” Zaporozhets explained to the investigator, “and I dragged her to the fence and went to Oleg’s. I told him everything. We went together to Kutovaia Street. Oleg leaned over Irina’s body, but some woman went past and we ran away... Oleg Borovoi, Ph.D. in technical sciences, confessed that he knew about the crime, and that he had been at the place where it had happened. As the testimony of the two coincided, the chain of events was logically and in fact closed.

But there was still one other consideration. Oleg Borovoi stated that with the arrest of Khvat and his friends, innocent young men, the relatives in the family were somewhat upset. They suspected that Valentin was somehow involved in the matter. And they wondered if sooner or later the investigation team would find a real lead. There were no eyewitnesses, but it seemed that Valentin’s relationship with Koliada would be discovered. So the relatives collected 3 thousand rubles and took it to Irina’s mother, asking her just to be quiet about the relationship between her daughter and Valentin.

The investigation team learned all of the details of this trip, even down to the person who drove the relatives in their own car. Neighbors of Irina stated that a BMW automobile did in fact come and that those who got out had a discussion with Irina’s mother about money. Nor did the relatives themselves deny the visit to the deceased’s mother.
And further evidence was collected. Witness Nina Enina stated that around midnight on the 28th of May she saw two men on Kutovaia Street, and she recognized one as Zaporozhets. Colleagues of Borovoi heard him say once at a party, when he had been drinking, that his cousin was the perpetrator in the much-talked-about case of the girl’s murder. The statements of three scientists, who had been at the party, constituted further important evidence.

An experiment was carried out. Zaporozhets, and then Borovoi, were taken with investigators and others to the scene of the crime. They indicated, almost precisely, where the body had lain at first, and where it had been dragged. Zaporozhets described Irina’s apartment, the kind of furniture it contained and where it was located. All of this evidence provided a solid basis for the charge.

The Criminal Collegium of the Ukrainian Supreme Court, chaired by M. Vereshchaga, began hearing the case, and I was present at these proceedings. Zaporozhets was accused of the murder of Irina Koliada and Borovoi of concealing evidence.

"Accused Zaporozhets, do you admit your guilt."

"No, I am absolutely guilty of nothing."

"Accused Borovoi?"

"I fully deny my guilt."

A particular characteristic of this trial was its similarity in one basic respect to the case of Khvat, Bobryzhnyi and Zalesskii. Khvat and his colleagues implicated themselves at the preliminary investigation (we won’t discuss here the reasons, but merely the fact). But before the court they retracted their statements, asserted that they were guilty of nothing, and that their confessions were made under pressure by the investigators. And, as we know, all of this turned out to be true.

And here it was as if the same thing was repeating itself. The key question at the trial was whether the defendants made honest confessions or had wrongly implicated themselves during the preliminary investigation.

Valentin Demin, prosecutor from the USSR Procuracy, began the questioning. Both Zaporozhets and Borovoi stated that they had confessed at the instigation of the investigators and under pressure from them.

The prosecutor: “You said, Zaporozhets, that now, before the court, you want to speak only the truth. Speak it. How did the investigator pressure you?”

Zaporozhets: “It’s hard to say. They didn’t strike me, starve me, or deprive me of sleep. No measures of this kind were used. But the investigator said—admit your guilt and I will try to make it easier for you. But if you refuse, then what awaits you is the bullet.”

The prosecutor: “And you admitted guilt even though you were not guilty?”
Zaporozhets: "What else could I do? I felt trapped."

The prosecutor: "First of all, not just one investigator questioned you. Second, you're not a boy, but a literate person, and you understand what it means to incriminate yourself. And finally, the Deputy Procurator General of the USSR questioned you. Why didn't you report this to him?"

Zaporozhets: "I thought that the investigators had everything in hand and would refute whatever I said."

The prosecutor: "A meeting preceded the questioning. A transcript was made. They prepared you for the questioning in the presence of a stenographer."

Zaporozhets: "... (after a long silence). She could have left."

I present this excerpt from the questioning simply to describe something of the character of the battle between the accused and the accuser.

The trial went on for about a month and a half. The charge was based to some extent on indirect evidence. No-one, besides the mother of the deceased, had seen the assailants at the site of the body, and the mother had stubbornly insisted that she had seen the acquitted Khvat. This meant that every piece of indirect evidence had to be unassailable. Yes, the questions of the prosecutor had established a logical chain of events that was flawless. When the accused, in denying their presence at the scene of the crime, explained how they knew certain details that the investigator could not have provided them, as much as he might have wanted to, they were helplessly trapped within the walls of this chain of logic. But logic is not proof.

Defense lawyers S. Liubitov and M. Gorodisskii conducted a skilled defense. Incidentally, I knew Marcel Pavlovich Gorodisskii, and had discussed jurisprudence in general and this case in particular with him. A lawyer of the highest level and an erudite man, he was a worthy adversary for the relatively young prosecutor. The defense had one powerful ally—the acquittal of the three young men who had also confessed, but whose case had been dismissed.

The mother of the deceased, who had received money from the Zaporozhets family, denied that she knew either the accused or their relatives.

"But you went to see them?" asked the prosecutor.

"Well yes, I went."

"Why?"

"Just to go..."

So taken together with the testimony of the driver who brought the relatives of the accused to Irina's mother right after the murder, these words acquired important evidentiary force. It meant that there was a connection between Zaporozhets and his relatives on the one
hand and the mother of the deceased on the other. Thus, the assurances of the accused that there were no relations between the families were untrue.

The trial went into its second month. The accused continued to insist on their innocence. The prosecutors and the defense lawyers again returned to analyzing the material from the preliminary investigation. In answering the question as to how he could so exactly designate the location of the body, if he had never been at that place before, Zaporozhets began to tell how once he was looking for a club of some kind and wandered down Kutovaia Street and "the place stuck in my mind like a picture." But this was at the investigatory phase, where the defense lawyer wasn't present. Borovoi explained that his cousin was a weak person, that he drank a lot, and got mixed up with women, and that therefore to "break" him was not hard. Borovoi said he had implicated Zaporozhets "on the basis of malice, but now he repented."

The tape recording from the preliminary investigation continued to roll.

The voice of Zaporozhets: "In my life there has been a tragedy that can't be undone: I killed Irina. This weight has been on my conscience for many years. I can't hide the crime any longer. I didn't want to kill her—everything happened so suddenly. It's hard for me to talk about it, but it's even harder to be silent. My loved ones wanted to hide my crime, and I understand that by my confession I am implicating them, but what can I do? I open-heartedly confess and sincerely repent. My relations with Irina fell into two periods. The first was clear and cloudless. The second began after my wedding. Then I endured everything, threats, blackmail, tears, scandal. And finally the news that she was pregnant, and then that night . . ."

There follows the telling of the details of the crime, which have already been described. And then the testimony of Oleg Borovoi, as recorded on the tape recorder.

The voice of Borovoi: "I have known Valentin since childhood. He grew up as a pampered child. He knew only his music. . . I knew about his relationship with Irina from the beginning. He was already engaged to his present wife. One time he said that Irina was pregnant and that he had to find a doctor to do an abortion. And then he rushed into our house one night, upset and bloody. He said that hooligans had attacked him, but when my wife left the room, he blurted out everything. How he had talked with Irina, waited for her to come out of the bathhouse, how they had argued and she had slapped him and he . . . . He begged me to go with him and I agreed. Irina lay not far from the house, and was dead. We tried to drag her, but a woman came along . . .

In the morning I told Valentin's father everything. The wife of our uncle, the doctor, came over. We decided that it was absolutely necessary to hide Valentin's relationship with Irina, about which almost nobody knew in any case, since Valentin had been very careful. We collected three thousand rubles and father took it to Irina's mother. . . "

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The Criminal Collegium of the Ukrainian Supreme Court ruled that the charged had been proved and sentenced Valentin Zaporozhets to 15 years in prison and Oleg Borovoi to three years.

However, the case didn't end there. After a year and a half Oleg Borovoi came to see me—he had been released from prison early. He asked me to speak with him as a neutral party, and he requested my advice. He said that a tragic mistake had been made. His cousin Valentin Zaporozhets had in fact had a relationship with Irina Koliada and she had gotten pregnant. He had convinced her to have an abortion. After the murder they had gone to Irina's mother with money, and his uncle had helped in doing this. And on that fateful night Valentin had met with Irina. But Zaporozhets had not killed her and Borovoi had never been at the scene of the crime. Naturally I asked him why they had confessed to the investigators. Had they been tortured? Beaten? Had they been pressured in other ways? No, he answered, there was none of that. It was something else. The investigator said, in the words of Borovoi, that if Zaporozhets confessed he would live, and if he didn't confess, he would face the death penalty. And the investigator laid out before Valentin the whole chain of uncontradicted evidence. And it really led to murder.

When he had related all of this to me, I honestly didn't know whom to believe. I understood that an investigator was fully capable of behaving in the way described. But when it got to court the two defendants completely denied the charges, that is, they violated the "terms of the agreement." After the charge in the case had been presented, the defense lawyer got to work (at that time the law provided that the whole preliminary investigation was held without the defense lawyer; the suspect faced the whole punitive machinery of the state alone). And he categorically insisted that the cousins had not confessed, that by confessing Valentin would be signing his death sentence.

Everything was logical; logical in the spirit and the morals of "socialist legality," which I understood so well. But I also knew the investigator and prosecutor. I met with both of them. And I also believed them. In their opinion this was the normal course of things in criminal practice: deny the confession, since there were no direct witnesses to the murder, and to uncover any new leads after all of these years would be impossible. And, added the investigator, he had no need to persuade Zaporozhets to confess, since it was very unlikely that the court would hand down a death sentence, given the absence of direct witnesses and the indirect evidence on which the charge was based.

Oleg Borovoi, however, did not stop pursuing the matter. And he finally received his due. Lev Smirnov, the Chairman of the USSR Supreme Court, issued a protest against the
sentence. The case was reviewed in a supervisory procedure and the sentence was vacated on
the basis that guilt had not been proven.

This took place 5 years after the sentence had been handed down. Still, in my opinion, it
can be said that the law triumphed. This is not so common, but even under a totalitarian
regime it happens. In the end, however, the regime showed who was in charge. After the
sentence was revoked Oleg Borovoi again approached me with the request that the newspaper
carry an announcement about the decision of the Supreme Court, in order to restore the good
names of him and his cousin. I agreed, and consulted with the procuracy about how best to do
this. I felt that there was no fault on my part or that of the newspaper, since the report had
been published about the court proceedings after the sentence had entered into force. I
suggested that this be drafted at the procuracy for publication in the newspaper. But they didn’t
want to hear this. Moreover, there followed a phone call to the editor-in-chief from the
administrative department of the Communist Party advising that nothing be published, since the
Supreme Court had rescinded the sentence for "purely formal reasons."

I reported this to Borovoi, and also advised him that the only course left to him was to
sue the newspaper for restoration of honor and dignity. The cousins brought such a suit, but
the Frunzenskii People’s Court dismissed the case. This was done, of course, under pressure
from the procuracy.

In the end I felt some guilt, not so much personally as for the whole state. I want to
emphasize that I didn’t have any personal conviction regarding the guilt or innocence of the
cousins. However, legal principles obviously were flouted when the court dismissed the suit
regarding restoring their good name. Therefore, I did the only thing that it was possible to do:
in one of my writings on law, some years later, I examined the matter again and discussed the
discharge of the case against of the cousins, five years after the sentence.  

NOTES

1. Sotsialisticheskaia zakonnost’, socialist legality, the foremost principle of law during
much of Soviet history.


3. On "special rulings" see Part III, note 1.

4. Yuri Feofanov, "Vosem’ let spustia . . ., I eshche piat’ . . .," Bremia vlasti (Moscow:

15
A Military-Criminal Drama in Three Acts

The trial that will be described below is perhaps the only one of its kind in Soviet experience. Maybe in world experience. It could take place, of course, only when the democratization of our society had begun, and the party had lost some of its former power. Particularly since the events in question took place in the army, where the blind obedience to superiors provided for in the regulations was supplemented by intensive political supervision of everyone, from the enlisted man to the marshal. In the case we are about to discuss political considerations were not paramount, and the general in no way challenged party rule in the armed forces. He went to court with a private suit. But the court proceedings showed to what a low level the concepts of the honor and dignity of the officer in the Soviet Army had fallen. The commitment to glasnost in these proceedings brought forth a call to the editor of Izvestia from the highest levels. But it was already 1988, and the trembling that a summons from the Ministry of Defense might have caused in the past was no longer there. 

Act I The Criminal

The charge came like a public slap in the face. The chief of staff of the Odessa Military District (before that commander of the army of the Far East), Lieutenant General Leonid Yevsiukov, was accused of stealing money that belonged to the state. "For the sake of his career he spent state funds on entertaining high public officials, members of a commission involved in the criminal activity of subordinates . . ." He even resorted to taking from soldiers, the accusation averred. Nor was he careful regarding the details: he brought the strong box and other things of that kind to Odessa in his move from Yuzhno-Sakhalinsk, where the army staff had been stationed.

In times past, when the honor of an officer meant something, it would be a bullet in the temple if someone was guilty or a challenge if someone had been insulted in this way. But the state can’t be challenged to a duel, and likewise one can’t throw down the gauntlet with regard to the military procuracy or even an investigator. The latter, after all, is only doing his job. Only one answer was left—the court. But strange as it may seem, the military justice system did not want to take Yevsiukov to court. Strange because the objective of commencing a criminal case is to go to court. And for more than three years the general loudly demanded, "take me to court." And they answered: "take your 47-year-old self and retire, collect your
pension of 150 rubles per month, from which your debt to the state will be gradually deducted, and don't bother us with your appeals."

General Yevsiukov had actually submitted 253 appeals and to each of them had received standardized replies from the Chief Military Procuracy: "the facts are unsupported . . . "; "there are no grounds . . . ."

Finally, on April 5, 1985 criminal proceedings were instituted. On the 29th of that month the general was called for his first questioning. Still no charge was presented, but information was sent from the Chief Military Procuracy to the Central Committee of the Communist Party of the Soviet Union to the effect that the chief of staff of the Odessa Military District, Lieutenant General Yevsiukov had stolen 10 thousand rubles and had, through abuses of his position carried out in his own self interest, imposed losses of 300 thousand rubles on the state treasury. That was basically what had been reported to the Minister of Defense, Marshal Sokolov. True, later that year, in September 1985, when an order was issued removing Yevsiukov from his post and dismissing him from the army, and when he had been kicked out of the party, the amounts listed in the charge had been reduced to 5 thousand rubles theft and 100 thousand in overall losses. These are still significant amounts, but nevertheless the case was not sent to court. Rather, it was dismissed, citing article 6 of the Criminal Procedural Code of the RSFSR, with the justification that "the person has ceased to be socially dangerous." This would seem to have been true. Having been dismissed from his position and separated from the army, Yevsiukov could no longer get at the funds of the Ministry of Defense or the pockets of the soldiers. But there was one point of importance that had not been considered: in article 160 of the USSR Constitution it was stated: "No one may be deemed guilty of committing a crime and subjected to criminal punishment other than by the judgment of a court and in accordance with the law." These words were repeated in the Criminal Procedural Code. And the retired general, on the basis of this provision, turned to the court, demanding that it either defend his military honor or find him guilty. He had long and insistently been denied a resolution of his case. Moreover, he had been summoned again and again for questioning, as a witness and as a suspect in a crime. So under the threat of punishment he had been required to testify against himself.

Incidentally, the dismissal of a case by an investigator without clearing the suspect is fairly widespread. And it is a gross violation of individual rights. A person is accused, arrested, held in custody, and then, without a court hearing, without an apology and without compensation for damages, he is released: you're guilty, but we're letting you go. The investigatory system in this way covers up its arbitrary acts. Some citizens, especially those who have been in custody, are extremely happy just to be released; others never come to
understand that they continue to be seen as having done something wrong; still others are bothered by what has happened to them, but they can’t get anyone to listen. It requires both stubbornness and courage to fight for the restoration of your honor in court for almost four years.

General Yevsiukov fought and won. But not easily or quickly. The investigation was renewed in 1986. As a result the charge of stealing money was dropped completely. The charge of abusing his position remained, but it now involved the amount of only 48 thousand rubles in losses to the state treasury. At a pre-trial session of the court, the prosecutor took another 33 thousand off that amount, and the court then dismissed the case altogether. But the general would not give in. His position was that a decision must be made one way or the other.

But we haven’t yet said what the commander was accused of specifically. He was charged with both very dangerous acts against the state, and with petty acts “in the personal realm.” When inspectors came to visit his army he ordered that they be fed without cost, and, on their departure, he gave them packages of hard-to-get fish. He covered the costs through phony accounts and other financial tricks. In addition, under expenses “for political work,” he gave high officials works of art, Japanese fishing rods, and other gifts. Moreover, the commander was supposed to have stolen a refrigerator, 15 meters of carpet runner, and a footlocker for shoes; and one of his non-commissioned officers gathered berries for the commander.

The charges, as already noted, melted away quickly as the case progressed—10 thousand stolen and a third of a million misappropriated (this was at the time the information was transmitted to the Central Committee of the CPSU and the ministry was informed of Yevsiukov’s acts), and then, progressively, 5 and 100, and then only misappropriation of 48 thousand, and then, when the case got to court, the prosecutor brought a charge of misappropriation from the treasury of 8320 rubles and 20 kopecks. To which defense counsel N. Il’inna reasonably asserted: “if this was the sum the ministry had started with, there would never had been a case.”

Nevertheless, a case there was. Why? Who needed it? What enemies of the commander were behind it? When I raised this question with Leonid Grigorevich (Yevsiukov), he could only reply “I don’t know.” “But why has the military procuracy continued to accuse you with such persistence?” Again the general had no answer. The only logical answer was right out in the open. How was it that the commander’s problems started? It began when some soldier-athletes were caught stealing, and their trail led to three military financial experts, who are now in prison. One of them mentioned that a commander supposedly knew about the
questionable financial operations, that he in fact had ordered them. In this the procuracy saw
the possibility of an "enormous case": at this time, after the exposures of the Andropov period,
the authorities were trying to get any high-ranking people that they could and turning them
over to the party or the courts, in order to demonstrate thereby their uncompromising struggle
against corruption. In addition, it was also fully possible that someone in the Ministry of
Defense had it in for Yevsiukov, but I never succeeded in establishing this.

In short, they began building a file of "compromising material" against Yevsiukov and
sent it to Moscow, to the Chief Military Procuracy. They knew there about the presumption of
innocence, of course, that an accusation is not proof of guilt, that everything must be checked
out before taking the matter further. But they were in a hurry to proceed. And when it goes
that far, just try then to reverse the process: "we've come to a dead end, and we don't have
evidence yet, but we're proceeding with the investigation, so comrade Minister of Defense,
don't take any drastic measures for a bit . . ." Who has ever changed one's report to superiors
in the Soviet system? Here there was a different presumption: whatever was reported has to be
justified, and nobody worries if someone suffers as a result.

So it's possible that no higher-up had anything against General Yevsiukov. The
mechanism was just put in motion, and nobody bothered to stop it. Everything that came out of
the judicial proceedings supported this particular version of the reprisal against the general.
The judicial panel that heard the case came to the conclusion that during the preliminary
investigation the accused's right to defense had been violated, in a veiled way, but to a
substantial extent nevertheless. Because of this the court felt compelled to issue a special
ruling about all of the violations of the law and send it to the Procurator General. But I am
getting ahead of the story.

Although many officials in the military justice apparatus participated in the investigation
of Yevsiukov's case, the most important role was played by Colonel M. Kapitonov, an
investigator for particularly important cases in the Chief Military Procuracy. This is what I
heard at the trial about the preliminary investigation.

Witness Lieutenant Colonel Yuzhanin, who was then a staff officer in the army, testified
as follows: "I had sums on account with which I bought equipment in 1982. In 1985 I was
called to the procuracy in Moscow, where it was suggested that I say that I gave Yevsiukov
five thousand rubles as a bribe. But that was not the case, so I categorically refused. They
threatened me by saying that I'd be sent to Sakhalin to be confronted by my accusers. I went
there, but there was no confrontation."

Colonel Mirzoyan: "I received 130 rubles for help with materials and I spent it on
myself. I acknowledged this at the investigation. Somehow they convinced me to say that I
gave this money to Yevsiuk. But that wasn't the case. They questioned me four times. Then they called me in again. And again. I went to Afghanistan. Then they called me in Kabul to say, "Tell them you turned over the 130 to your commander."

The insistence of the investigator is easy to explain: without these statements the accusation is reduced to one episode, though an important one.

Naturally, under such pressure people tend to become flustered, saying one thing and then changing it later. The more so when higher-ups who came to his receptions and entertainment wrote off sums of money: 970 rubles, 2010 rubles, 400 rubles. And the fish and caviar had been illegally obtained. Officers, even generals, who were involved in this came before the court. The investigatory materials also mentioned those who were supposed to have dined free and received packages of hard-to-get fish. Among them were a marshal, a general of the army, and a lieutenant general. I heard their testimony. And, as the charge stated, the commander, to cozy up to them, gave them expensive presents. Yevsiuk demanded, "Question them."

But the investigators decided not to. Or they didn’t want to since a contrary answer would result in the collapse of their case.

The court called these high officials to give testimony. They categorically denied the charges. True, they answered in various ways: "I have a firm rule that wherever I eat I settle up with the waiter"; "I paid the waiter, and it’s unthinkable..." However, as was explained in court, many marshals didn’t pay for their dinners, and considered it unthinkable that they should do so. And high civilian commissions from Moscow were usually hosted at the expense of subordinates. This was the widespread practice.

On the morning of the day that Lieutenant General Yevsiukov was to make his final statement in court, he had a meeting with USSR Minister of Defense Dmitrii Yazov. Leonid Grigorevich told me later in his military manner: "we spoke for 12 minutes." "About what?" "Just about things in general." The Minister of Defense, I thought, has an interesting life: at one point he meets a "soldier on the run" (the newspapers were writing just then about the minister meeting a deserter who couldn’t endure the humiliation by other soldiers in the barracks) and then a general who is rebelling. This, I guess, in addition to concerns about the defense of the country, is also his duty. Because the defense, depends not only on tanks and rockets, but also on the dignity and honor of those who work with them. At that time the minister did not know what the sentence would be. The military court panel, chaired by Major-General of Justice Pavel Talanov, decided to acquit Lieutenant-General Yevsiukov of all charges. Incidentally, when this case took place and I wrote in the papers that Yazov had met with General Yevsiukov, one couldn’t have foreseen that Marshal Yazov himself faced humiliation, and investigation, and prison.
Act 2, Army

In its pure form law is found only in codes and monographs, but it has an effect, it "lives" among people and in people, and it comes to the aid of people in the most extreme conflict situations. Therefore, the poet was scarcely right who said: "Where there is no morality, then creating laws does no good." One of the basic principles of law, on which justice itself is founded, is: "The other side will be heard." That principle is not so much legal as it is ethical.

During the time he was under investigation, General Yevsiukov came to Moscow four times, trying to get an appointment with then-Minister of Defense Sokolov. Each time he wrote asking to be received, but in vain. This was strange. This was not a platoon commander that was being dismissed from the army, but the chief of staff of a whole district, and recently the commander of an army whose units were held up as positive examples. Then there had been a report, an accusation, and it can even be said that it had become an opinion. But wasn't it at least necessary for the minister to look the general who had besmirched the uniform of the army directly in the eye? And, if convinced that these eyes were lying, to leave the general alone with a pistol? But if a meeting were to take place, it is very possible that the minister would not put a pistol on the table but would demand to be completely informed of the case and would call the military prosecutors into the office.

At age nineteen the son of a soldier killed at the front was called to the service. Leonid Yevsiukov ended up in a tank unit. And thus began a twenty-seven year military career characterized by irreproachable service. A straight line of ascent achieved without the help of influence and connections. Training battalion, tank commander, military school, lieutenant's shoulder-boards, company command, the Frunze Academy, combat, graduation from the General Staff academy with distinction, division command, army command. Not one interruption in the upward path. A general of the army, in testifying to the court as a witness, stated:

"I don't want to get involved in the administration of justice, but I can't not speak up for army commander Yevsiukov . . . ."

His words were a strong endorsement. But they didn't want to hear from Yevsiukov himself. This speaks to the system's indifference to "the fate of a soldier," and the way one can be saved by the false repentance that is required. Apparently there was some of this in the trial. So the investigation could have come out differently if the minister had not been in a hurry to issue an order wiping out the service and professional life of Yevsiukov, but instead had examined the matter personally. The swift dishonorable discharge of the general became a command to the military procuracy to act: a dismissed pensioner, who had gotten a job in a
civilian organization—this kind of person one could question for 13 hours straight, put in a psychiatric ward, search his premises, seize his diaries. Why the diaries? As they explained it, this was all legal. If he had remained a general prior to admitting guilt, they would not have dared to do all of this. Nor would they have dared to seek testimony from marshals who had gotten free meals—even though the law also allowed them to do so.

They can say that "everyone is equal before the law." But what if the person under investigation is a platoon leader or a mere soldier. Their position, I think, would be even worse than a general’s. Unfortunately, on the basis of a great many cases, a typical practice has developed: the person on whom the shadow of suspicion of the repressive machine has fallen can be accused of anything. As already said, procedural laws may be grossly violated in the process. And basic ethical norms may be trampled on as well. Basically, the witness is clued into the fact that what is expected of him is not truthful testimony but “needed” testimony; you are warned about the consequences of lying, but don’t be confused: lie in support of the investigation version and nothing will happen; but that can’t be promised if you speak in a way that we don’t need.

The accusatory bias in the justice system is all the worse for the tragic mistakes that may be committed. Judicial errors have existed in the past and, unfortunately, will exist in even the best legal systems. Accusatory bias is terrible in that, given the stated aim of putting criminals in jail, it conduces toward a further aim—to put any suspect in jail. Using the fight against evil as a cover, by its very nature it produces fear in society, hopelessness, and loss of faith in law and legal order. Witnesses are not suspects, they are "aides to justice," but in being forced to lie they are forced to commit crimes against justice. They say that a god without morals is terrible to consider. "Legality" without ethics is just as horrible.

One of those who testified in court was Lieutenant Colonel Chumachenko, a political officer, journalist, and teacher at the Lvov Military School. He had served under Yevsiukov and, like many others, he made a requisition for funds for special needs.

"I made the requisition at the order of the head of the political section, General Makarov. He said that the money was needed for entertaining commissions."

"But your first testimony did not say this: ‘I spent the money on my own needs’," the presiding judge said, reading from the transcript of the questioning by investigators.

"The investigator doubted my original testimony, and I changed it on the basis of his prompting."

"And then you asserted that you wrote the requisition at the order of Yevsiukov. So did you then lie about General Makarov, or are you now lying about the defendant, General
Yevsiukov. One time or another you lied. When? Do you understand that you could be tried for perjury?"

"I had to make it up," said the officer, "because my questioner demanded details."

We'll put to the side a question the presiding judge asked of Chumachenko ("How is it possible for you to educate students?"). And we won't pause to consider the reaction of the officer, when told that he could face perjury charges (a sorrowful smile as he was ordered to stand "at ease"). These we'll let pass. But what about holding to account the investigators and questioners for what they did in demanding lies from those they questioned? Officers Yuzhanin and Mirzoyan, who were discussed in the first act, did not give in to persuasion or threats. But others were more than ready to give perjured testimony.

Incidentally, the prosecutor asked Chumachenko whether the investigator use any improper methods, and he received a negative answer. So just a bit of pressure or a hint was enough for an officer to slander his superiors, to commit perjury. The investigators were not supposed to bring out "high moral qualities" in Lieutenant Colonel Chumachenko. But when confronted with a lie, should they not have thought of the honor of the uniform that they themselves were wearing? So when "pure law" meets morality—not in reports or newspaper articles that apparently this journalist-lieutenant colonel writes—this is in the full sense a true-life test.

A completely non-military participant in the trial, the female defense lawyer, said in reference to the testimony of Lieutenant-Colonel Chumachenko: "I was ashamed to listen to this officer."

"I am obliged to die for my Motherland, but no-one can force me to lie in the name of my Motherland." These are also the words of an officer, but one who wore the uniform of a different style—the tsarist army. Listening to the courtroom proceedings, the testimony of officers and generals, I involuntarily thought of examples of the past and the tradition of honor of an officer. They are sufficiently well-known to be worth repeating. But what is one to think when the judicial process forces one to reflect on our present problems of military ethics and fidelity to tradition?

A deputy to Yevsiukov, Major-General Tarasov, chief of the rear services of the army, went up the career ladder after everything that had happened to his commander. He served as deputy to the chief of staff of the rear services for the armed forces of the whole country. Then, it is true, he was demoted, but he maintained relatively high posts, and later became an instructor at the General Staff Academy. In his testimony he stated that Yevsiukov's predecessor and then Yevsiukov himself gave him orders regarding "arranging for meals for
the commission" and for handing out to its members "gifts of fish." Tarasov said that he just carried out their orders.

"Let's accept the fact," stated the presiding judge, "that the army commander ordered you to feed the commission free. But you knew that this was an illegal order. Why, general, did you not refuse to carry it out?"

"What could I do? An army general came to us with his wife and dog, and a physician and his aide. And I was given an order, greet them, organize things, don't take any money from them, and if they insist on paying then don't take more than a ruble each."

"Did Yevesiukov give you such an order?"
"No, that was his predecessor."
"And did you rush to fulfill that instruction?"
"Order!"
"Illegal order?"
"And who wouldn't rush to do it?"
"But think about it. You summon your subordinates (witness Moroz testified about this) and you say: the bill for these meals and gifts should be paid from the account for extra food for the personal staff. How could you carry out such an order?"

"If I didn't carry it out, I wouldn't be in my position very long. An order is an order."

"You graduated from the General Staff Academy, you went on active duty, and you began carrying out illegal acts . . ."

"Carrying out orders."
The presiding judge, Pavel Talanov, who had been conducting the trial quietly, if not without passion, could not contain himself: "And if you were ordered to explode a bomb at the army staff headquarters?"

"I am a soldier," the general answered.

During the break I asked the general whether his answer represented conviction or confusion.

"You know what would have happened to me if I hadn't . . ."

"And what would you have risked," interjected the female defense counsel, "by refusing to obey an illegal demand? Your career?"

The end of the break prevented him from answering. And of course he was not obliged to answer. But in court he also maintained silence when he was reminded that even during war one could be brought before a court for carrying out illegal orders. He quietly rasped, "I am a soldier."

24
The honor of the military uniform, in the old-fashioned understanding of the concept, is adhered to in the same way as another old-fashioned concept that has been forgotten, namely scrupulousness. During the court proceedings one officer was asked whether he had personally taken any caviar that had been acquired by army poachers. "No," he answered. "But during the investigation you testified . . .," he was reminded. "It wasn’t I myself, but my driver who brought the caviar." It wasn’t so much that the officer told a cowardly lie to get out of a difficult situation before the court. What is worse is that he blamed the shameful affair on his subordinate. And how will staff relations be after this? No sin if a subordinate settles up with the waiter for the marshal. Everything’s normal. Or almost everything. But here’s one fact: it wasn’t just conversations that were inspired by the free meals and the gifts by bootlickers. A whole criminal case arose. The prosecutor, in his courtroom speech, said: "The attention of the whole army community is riveted on this case."

If it was truly riveted, then you can be sure about this: now marshals pay for their meals.

Almost a half-century has passed, but I remember well our battalion political officer at the front, Captain Mironov. We called him "commissar," although that title was no longer in use. At that time we were moving through defeated but rich Germany, and there were few who had not grabbed something and could say, "Let him throw a stone who has not also stolen." Commissar Mironov could say this. He went around amongst all this stuff in a faded soldier’s blouse and canvas boots, with a tattered field bag of the regulation kind. He wore not a thread of the spoils of war. Those of us whose heads had been turned by all of the goods at hand called him an "odd fellow" behind his back. And now I’m thinking of him again, recalling him during this trial. He was a scrupulous person. As an officer he had the right to demand the highest standards. Many of the witnesses who appeared before this court did not have that moral right.

The word "army commander" (komandarm) calls forth lofty associations: the legendary commanders of the Civil War; the division leaders of the Great Patriotic War. A romantic aura surrounds it. But suddenly at this trial I saw that a komandarm can also be an entrepreneur who signs account sheets and invoices, manages departments and submits estimates, and that his field of vision includes not only the military preparation of troops, but also auxiliary services such as where the potatoes and pork are going to be acquired. These two conceptions are not contradictory: the army is an enormous management enterprise that involves taking care of the needs of tens of thousands of people. But these two concepts, the "higher" and the "lower," make strict demands on the military leader: no deviations from the law or military regulations, and not even a half-step out of line from military ethics in the direction of
anything that might cast a shadow on an officer's honor. A faked invoice can stain the uniform as much as an unfulfilled military order. And in the end it may be harder to remove it.

I was genuinely glad when the sentence was read: General Yevsiukov was acquitted on all counts. I was glad because this courageous man had fought for his honor, alone, against almost hopeless odds, and had won.

But at the same time I came away with other feelings about this trial. Would officers be charged with conceitedly bragging and being impudent, or would they be convicted of drunken debauchery if a valiant warrior seduced the wife of a citizen? This is negative behavior, of course, but hardly in the spirit of "hussar traditions." And here we have, my god, generals and commanders of armies involved in settling up with waiters for kopecks, false invoices, a lost bedside table, false testimony, anonymous accusations, scheming against colleagues, squabbles, petty squabbles.

Alas, the case of General Yevsiukov didn't end with this.

Act 3 The Legal Phase

After the acquittal General Yevsiukov sued for damages, seeking compensation for lost wages, costs of defending himself (the case lasted almost 4 years), and reinstatement in the army at his previous rank.

Again the Military Collegium of the USSR Supreme Court was convened, under the chairmanship of Major-General of Justice P. Talanov. The Collegium reviewed the suit and ruled for Yevsiukov in almost all respects. "Almost" does not mean that the court found any of the grounds for compensation to be inappropriate. "Almost" in this case has important meaning beyond the case of General Yevsiukov.

Yevsiukov's suit seemed to present no particular difficulties. On May 18, 1981 the Presidium of the USSR Supreme Soviet adopted a decree "On compensation for damages caused to a citizen by the illegal acts of state and public organizations and also by officials in discharging their official duties." In the criminal case that ended with Yevsiukov's acquittal it was stated that it was the illegal acts of officials that caused material harm to the general.

What more is there to say?

However, a representative of the Chief Military Procuracy offered the view that it would not be appropriate to award damages that went beyond expenses connected with the judicial proceedings. Why? His explanation went as follows: Yevsiukov was removed from his position on September 7, 1985. But the case against him was dismissed by the investigator on September 5 under article 6 of the RSFSR Criminal Procedural Code (as a result of changed circumstances, when an act has lost its socially-dangerous character or the person has ceased to
be socially dangerous, that is, for reasons that do not involve the rehabilitation of the person). Therefore, Yevsiukov was removed from the army and dismissed from the Communist Party not in connection with a criminal matter, but because order was not maintained in the army that he commanded, several officers were convicted, etc. In a word, the army kicked him out when there was no criminal case against him. And in addition Yevsiukov was not charged either in April 1985 or in September of the same year. He was charged only on March 27, 1987, when he had already been out of the armed forces for a year and a half.

I have to say that at this point I ceased to understand what was going on. In April 1985 a criminal case was brought against Yevsiukov, and in September it was dismissed (pardon me for repetition here), but he would not accept the dismissal and demanded that the court examine his dismissal. To say that he was not charged was simply absurd.

"That is precisely right," some lawyers explained to me. "absurd, but that's the way it is." If a suspect is arrested, a charge must be made within ten days. If, by the grace of God, he is released, then no particular time periods are prescribed by the law. In that way the accused may not know for sure until the end of the investigation precisely what he is being accused of. This point was brought out, by the way, in the special ruling in Yevsiukov's case.

Let me read from this special ruling of the Military Collegium of the USSR Supreme Court, which was sent to the Procurator General. There were 8 points involving violations of the law. The first point involves this absurdity discussed above. In the course of the whole preliminary investigation, that is, from April 5 until September 5, 1985 and then from August 4, 1986 (when the case was revived at Yevsiukov's demand) until March 24, 1987, General Yevsiukov was questioned (30 times!) as a witness . . . against himself.

Clearly, the law provides the accused with certain rights: among them are the right not to answer questions, not to give testimony against one's interests, etc. All of these are component parts of the constitutional rights of the accused to defense. A witness does not have such privileges: under pain of punishment he must tell the truth, the whole truth, and nothing but the truth. In its special ruling the Military Collegium therefore wrote that in the questioning "in every instance Yevsiukov was warned about the criminal liability for refusing to give testimony or for giving clearly false testimony, and in this way he was subjected to psychological pressure, which is prohibited by the law (Article 20 of the RSFSR Criminal Procedural Code), and was deprived of his right of protection from the criminal charges formulated by the military procurator in his decree of April 5, 1985."

We certainly don't regret the passing of the system of justice of that period. Yevsiukov formally petitioned for a defense lawyer, but his request was refused since he had not been
charged with anything. Isn't this absurd? The representative of the Chief Military Procuracy came to the following conclusion in reviewing Yevsiukov's suit:

"Yevsiukov was discharged in September 1985 for acts unbecoming an officer, but the criminal charge against him was filed only on March 27, 1987, that is, not during the time he served in the military. Therefore, his suit should be rejected."

But the Military Collegium of the Supreme Court, in its decision in his suit, wrote as follows: "The injury caused to L.G. Yevsiukov as a result of the illegal acts of the investigative organs and the procuracy are subject to compensation from the moment they were committed, that is, from September 7, 1985, when, at the petition of the Chief Military Procurator, Yevsiukov was removed from his post and then dismissed from active military service."

And it determined as follows: "Yevsiukov, L.G. is to be compensated for material damages caused in connection with the acts of the investigative organs and the procuracy, and charged to the account of the Ministry of Defense in the amount of 22,495 rubles and 18 kopecks . . . ."

Questions about the military's behavior in the Yevsiukov case were raised during the legislative hearings in the USSR Supreme Soviet in July 1989, when T.D. Yazov was being considered for the post of Minister of Defense.

Thus ended a case that was quite unusual for our political system. I don't know if analogous cases have come up in American military law practice. But for us it was virtually unique, and of great significance. The general's decision to fight the system, the judicial proceedings, the acquittal and the award of damages struck a blow at the conservative military system of the time, which was essentially beyond the law.

NOTES


2. On "special rulings" see above, Part III, note 1.

3. And, finally, amnesty.
CHAPTER TWELVE. ON THE EVE OF ETHNIC WARFARE

Yuri Feofanov

The two court proceedings that I want to present under the above heading in no way cover the causes of the ethnic conflicts now going on between Armenia and Azerbaidzhan and between Georgia and Abkhazia. But at least they shed light on one of the reasons: the interference of Moscow in local republican affairs at a time when its power to dictate results had already disappeared but its pretensions to run things from the center still existed.

On the defendant’s bench, naturally, sat real persons, and the real acts that they had committed were being examined. But over the proceedings hung the shadow of a despotic regime that was fading into oblivion. As a backdrop to these private events one sensed the earth-shaking developments taking place in the Union, which were proceeding on their inevitable course. But neither the political actors on the highest levels nor the directors of the central legal organs understood this, still hoping that "the word from Moscow" could stop the process of collapse.

Between a Seat in Parliament and a Bunk in Prison

On September 12, 1988, Stepanakert, the capital of the then little-known Nagorno-Karabakh Autonomous Oblast in the Azerbaidzhan SSR, exploded in mass disorder. At its center was Arkadii Manucharov, the leader of the informal social organization "Krunk" and the director of a local construction material factory. However, there was insufficient legal basis or proof for punishing this local public figure. So the authorities trotted out an oft-used device employed against rebels: a "political" offender would be accused of purely criminal acts. Something like how the future Nobel laureate Joseph Brodsky was convicted and exiled for "parasitism," since he was not considered to have worked anywhere.

It was decided to use just this approach against Arkady Manucharov. But it was already 1988, when the movement for more or less open election of members of the legislature had commenced, discussion of the law-based state was under way, and society was emerging from tight party control. The conveyer-belt society that had operated so well up to now was beginning to slip.

I'll start with a chronology of developments:

September 12, 1988: massive unrest in Stepanakert.

September 13: the Procuracy commenced criminal proceedings based on this unrest.
October 3: the Nagorno-Karabakh Procuracy opened a criminal fraud proceeding against A. Manucharov, the director of the construction material factory.

October 15: the two cases were combined, since they both involved the same person.

On November 28 Arkady Manucharov was arrested. His guilt as an organizer of the unrest had not been proved, but there was evidence that he had extorted bribes.

On April 1, 1989 Manucharov and four of his subordinates were charged, but the decision was made not to have the defendants tried in Nagorno-Karabakh. Instead, the case was transferred to a court that had no connection with the events. The USSR Procuracy was responsible for this change of venue.

July 20: The Brest Oblast Court [in Belarus], where the case had been transferred, returned it for further investigation. In the court’s opinion the defendant’s right to defense counsel during the period of preliminary investigation had been violated. At this point an event took place that brought the “Manucharov case” to the attention of the whole country, something that no-one could have imagined.

What happened was that on August 27 Manucharov, while in custody in connection with the investigation, was elected in a by-election as a deputy of the Supreme Soviet of the Armenian SSR.

August 29: The Presidium of the Armenian Supreme Soviet declared the election void. It was claimed that the election commission violated Article 96 of the USSR Constitution for having registered as a candidate for deputy a person “held in a place of deprivation of freedom.”

September 16: At a Supreme Soviet meeting Manucharov’s right to be a deputy was established on the basis of a report by the mandate commission, which stated that until he had been convicted by a court, the accused was not deprived of civil rights.

October 18: The final charges against Manucharov were submitted: bribe-taking and forgery. The case was again sent to Brest.

January 15, 1990: The Brest Oblast Court ruled that the case was to be sent to the USSR Procuracy for examination. In the ruling the court made reference to gross procedural violations: Manucharov had not been questioned under the amended charges; the permission of the Supreme Soviet to bring criminal charges against a deputy had not been obtained, and had not even been sought.

It was fully clear that the Brest Oblast Court did not want to undertake the unpleasant task of convicting a parliamentary deputy of another state (under the USSR Constitution the union republics were officially considered independent states with the right of secession). The case was sent from Brest to Minsk, the Byelorussian capital. The Byelorussian Supreme Court
During this time of heightened emotions, Arkady Manucharov was sitting in Butyrskii Prison. USSR People’s Deputy Galina Starovoitova managed to talk her way into the prison in order to hand over to Manucharov his deputy’s credentials.

On April 17 a new election campaign began in Armenia. Manucharov was nominated and registered as a candidate for the Lusavanskii electoral district (No. 143). But he continued to be held in prison.

May 20: Manucharov was elected a people’s deputy to the Supreme Soviet of the Armenian SSR.

29 May 1990: The USSR Supreme Court released Manucharov from custody and sent the case to the USSR Procuracy for further investigation. The Plenum of the Supreme Court rejected the protest of the Procurator General, which had asserted that Manucharov’s election as a people’s deputy in Armenia was illegal.

Obviously, the case of Arkady Manucharov involved a very odd chain of events. His seat in parliament remained empty for almost a year while he spent his time on his bunk in a prison cell. It would be almost laughable if it did not involve such serious matters of law and politics, rights and morality, the professionalism of criminal investigations and the responsibility of courts. Here, for virtually the first time in Soviet history, concepts such as "legislative immunity," "civil rights," and the "presumption of innocence" took on real meaning. An instigator of civil disorder going to parliament? That didn’t happen in the country of the Soviets.

In assessing this case I don’t want to touch at all on the personality of Arkady Manucharov, or on his guilt, real or imagined. There was no decision of the court on that. The matter of Manucharov’s being elected a deputy when he was under investigation—what about that? Is that an endorsement of an honorable public figure or the rescue of "one of ours" from a deserved punishment? As they say, the voice of the people is the voice of God. But could it be that Manucharov’s arrest alone, coupled with the manufactured charge of taking bribes, was largely responsible for producing this "voice of God"? Soon the public would be lending their ears to the voices of investigators Gdlyan and Ivanov, to General Kalugin, and to the journalist Shchekochikhin for the very same reason—their challenges to the authorities.

In the above chronology I set forth the chain of events in a straightforward manner. I’ll try now to offer an analysis. The charge was that Manucharov cheated customers—people buying gravestones, by the way. And he was also charged with organizing massive civil disorders. And with theft. And at the level of the USSR Supreme Court, the charges also
included bribery and forgery. And what happened to the charge regarding civil disorders? Was it somehow dropped? Was the case officially dismissed? What a representative of the procuracy told me was that "we still have not finished the investigation." But this was just an empty excuse. Manucharov was famous in Nagorno-Karabakh. The authorities were trying to discredit the leader of the nationalist organization "Krunk," attaching the most unthinkable political labels to him. In the process they raised his standing in the eyes of the public. Basically the same thing happened to Russian President Boris Yeltsin, but he didn't have to suffer prison for it, as did Manucharov. The more the central authorities moved against him, the higher his standing went, the stronger his influence.

Given this positive side to the legal proceedings, in terms of standing up to authoritarianism, the question remains as to its effect on the administration of justice.

Is it appropriate for justice to accommodate itself to political passions? Was it worth it, in that sharp political situation, to bring a case against Arkady Manucharov, the leader of the opposition organizations? Even if he was guilty of something? Wouldn't it have made sense from the beginning to consider the likely reaction in such politicized circumstances? Wouldn't it have been better to subordinate law to politics in this case, to avoid likely excesses? Questions of this kind may sound rhetorical in a well-established political system. Neither the court nor the procuracy nor yet the administrative authorities in that kind of state could yield to short-term difficulties or political passions. But in Russia our former "telephone law" had been replaced by "megaphone law." The lurching, uncertain path the political system was then following, which the media was covering so thoroughly, cast a dark shadow over the whole judicial system.

In the Manucharov case the struggle between politics and law for the first time became a controversial public issue that threatened to topple the legal order. Representatives of the USSR Procuracy told me that they weren't in a position to investigate the case of civil unrest because of public interference. Regarding the bribery charge, it didn't succeed because witnesses wouldn't cooperate. But this was only one part of it. The charges against Manucharov yielded no reliable corroboration over a period of two years. In this sense, the acts of the procurators were unprofessional.

Of course one could question the issuance of deputy's credentials to Manucharov while he was confined to a Butyrskii Prison cell; and the flood of telegrams from abroad calling for "Freedom for Manucharov." These acts might be viewed as provocations, the intrigues of extremists. But you can't get around the fact that a man was held for a year and a half in prison, that he was charged with what seemed like half of the articles of the Criminal Code.
(defrauding customers, disorder. theft, bribery, forgery), that the episodes of the case were combined, separated, singled out, and changed, and still no persuasive evidence was produced.

Two years later, in Russia, the "Communist Party case" would be taking place before the Constitutional Court in Moscow. During the course of a half-year, very convincing evidence would be presented of the crimes of this bandit-like organization. But the whole thing ended inconclusively. As a result of the verdict, communist extremism was resurrected.

In this connection a legal question arises. In a civilized legal system would there be a basic principle that a case be returned for further investigation if the investigators came to court with an insufficient charge against the accused? No. The judge would simply dismiss the case. But look at how many times courts sent the matter back for further investigation in the Manucharov case. There's no telling how many cases used to be treated this way. And this when the period of preliminary investigation, with the suspect in custody, was practically unlimited (officially it was limited to one and one-half years!). But it's often true, I'm told, that only when a case comes to court are the flaws in the investigation brought to light, when a defendant or witness changes testimony etc., and that, therefore, dismissing the case would be allowing the criminal to go free. I agree that this happens. And that further examination may be necessary. But only under one indispensable condition, which knows no exceptions—that the person must be released from custody. To mete out the severe punishment of imprisonment because of the sloppy work of accusers is both illegal and morally wrong.

The Brest Oblast Court issued the decision that as a deputy Manucharov must be released, but even so he was held in custody for many months.

The Deputy Procurator General, in arguing before the Plenum of the Supreme Court against Manucharov's release, stated that the legal norms regulating the immunity of deputies were incomplete and didn't even make sense. It was absurd to nominate a person to become a deputy who couldn't meet with the voters. This is one view. On the other hand, the deputy of any soviet, even the most insignificant rural one, can remain unpunished even if he commits the gravest crime, murder for instance. If the soviet does not grant permission to withdraw his immunity, that's it. For instance, some deputies of the Russian Supreme Soviet initiated mass disorders on May 1, 1993, calling on citizens to rebel, and the law guaranteed that they would go unpunished.

This same question arose during the review of Manucharov's case. At that time the provision requiring the procurator, without exception, to seek the consent of the soviet before bringing a criminal case against a deputy was questioned. Some said that consent was needed only when the charge had to do with the person's acts as a deputy; others said that consent was required if the deputy was charged with a grave crime against a person (murder, rape, etc.):
and a third group said that any departures from the law were illegal. No legislative clarification has been provided on this matter up to now, and so several Russian parliamentarians have been able to engage in incitement of crowds without any fear of being prosecuted. Our democracy is still being played out less in the halls of parliament than in public squares and stadiums, through mass meetings and strikes, through confrontation and the heightened emotions. In this political maelstrom the most impossible and unpredictable things become possible.

Today the Manucharov case is forgotten, as is its principal character. But after all was said and done, it was the first case where an assertion of parliamentary immunity was treated not as an empty declaration but as the will of the voters, something stronger than the repressive machine of a totalitarian state.6

Still, the endless investigation of criminal cases because of the sloppy work of investigators and matters of parliamentary immunity are of secondary importance. The main problem in the Manucharov case lies in another area—the central authorities’ desperate attempts to decide everything themselves. A local conflict arises, and Moscow immediately tries to take over. The USSR Procuracy and the USSR Supreme Court get involved in what should be handled by the legal authorities of the autonomous oblast. And the union republic to which the autonomous republic was subordinate was removed completely from the case. Many conflicts that have recently turned into wars could have been extinguished in their early stages if the local authorities were allowed to handle them.

The judicial proceeding reported below confirms this point.

The Battle Near the Bridge

For a whole day before the trial the area around the USSR Supreme Court building on Vorovskii Street in Moscow was crowded with people. The press termed the upcoming case unprecedented. Judge for yourself. At the height of intra-ethnic conflict, in a small Abkhazian town, the representative of the law, the procurator, ordered the passing out of rifles to the populace before they had been issued to the police. The police refused to carry out this order. Then the procurator led the excited mob to the premises where the arms were stored, took it by storm, and the crowd threw itself into the battle. The result: four were killed, 20 wounded, and several armed attacks were completed in which Kalashnikov rifles, Makarov hand guns and explosives were seized.7

The charge against the procurator was exceeding official authority, resulting in grave consequences, including casualties.
The course of the investigation seemed to confirm the unprecedented events: in peacetime, in the "friendly and brotherly family of Soviet peoples" that had existed until recently, military actions followed a standard form. The procurator, whose duty it was to uphold public order and to resolve conflicts under authority of the law, resorted to the force of arms. But in the course of the proceedings these clear charges began to be clouded. It was and yet it wasn't that way.

On Saturday evening on July 15, 1990 the procurator of the Ochamchirskii region of Abkhazia, Valerii Gurdzhua, received an urgent call from the regional center. Sukhumi had exploded in civil disorder. Georgians and Abkhazians were fighting, and there were dead and wounded. There was alarm in the region because of a report that a convoy of vehicles carrying armed persons was on its way from western Georgia in the direction of Sukhumi. If this was so, then there was only one road that could be taken--from the city of Gali over a bridge on the Galizga River, then through Ochamchira to the capital of the republic. There was no other way to go. The only reasonable place to halt the convoy was at the bridge. And to do so was absolutely necessary, since the situation in Sukhumi was extremely tense.

The procurator was unable to locate the leading officials in the regional party committee or the regional soviet. So he decided, together with a major of the local police, to block the bridge with heavy trucks. The vehicles were placed close together, in the pattern of a chessboard. Near midnight intelligence reports indicated that the convoy was approaching, that those involved were armed, apparently even with machine guns. A telephone call was placed to Sukhumi, which reported that no help could be provided. Moreover, the leaders in Sukhumi had summoned police reinforcements from Ochamchirskii region, as the situation in the capital became more complex.

But things also became difficult in Ochamchira. Around midnight the "advance forces of the enemy" appeared. At the front were heavy trucks, followed by buses loaded with armed civilians wearing white headbands. A giant truck approached the bridge like a battering ram, attempting to disperse the obstruction with its bumper. The defenders responded with a hail of stones, and gunfire started. But the lead attacking truck got hung up in the other vehicles, and the attack subsided. Thus, the defense of the Ochamchirskii "home guard" held, and the local citizens and police quickly went back home.

When the heat of the battle had subsided and the opportunity for talks began to take shape, a tragedy occurred. A resident of the city of Gali went to the bridge, it was stated, as a truce envoy. But there was a shot, a fatal shot, and the envoy was killed. And immediately talks were out of the question. Blood had been shed.
So for the next night the Ochamchirskii side maintained the defense. They were armed with hunting rifles, but they really didn’t want to fire them, and the other side did not initiate anything. But at dawn bursts from automatic rifles commenced from the attackers, and this immediately tipped the balance of power. It is hard to guess how serious the danger from the attackers really was. But the locals were disturbed that they would be defenseless if the attackers broke through, and this is when the crowd turned to the police: "give us weapons, at least return our hunting rifles, since you can’t defend us."

That was the gist of the demands of residents of Ochamchira who, in desperation, were prepared to storm the police station. And they almost did, since they had started throwing rocks and bottles at the building. That is when procurator Valerii Gurdzhua appeared before the crowd.

"Take it easy citizens, I’ll give you the rifles, but just take it easy," the procurator said to the crowd, according to the evidence I heard in court.

He went into the police station and asked why they didn’t go out and talk with the people, and why they abandoned the bridge. The people need to be defended, he asserted. He was told that they had orders from the minister of interior not to interfere. "Then return the rifles to the people who turned them in after the decree of the Council of Ministers of Georgia." They refused, answering that without an order from the minister they could not. Valerii Gurdzhua shot back at them: "Then hide in here like rats," and he returned to the crowd. The square was in an uproar. The procurator knew that the rifles were kept in a storeroom in the bank, and he made the decision that led to the criminal trial mentioned at the beginning. He went into the crowd and said, "Follow me, to the bank!"

The guard at the bank was shoved aside. About 1000 rifles were taken, but there were no cartridges. The procurator asked the police major, Daur Shlarba to find the salesman in the store where there was ammunition. The major, understanding the situation, took responsibility for this step, and he was brought to trial as well. But this was later.

On June 16 the crowd, armed with bird-rifles, hurried to the bridge crying out, "they shall not pass." And they didn’t. The residents of Ochamchira held the bridge until the regular troops of the ministry of interior arrived.

This is a review of the relevant events. Now for their evaluation, which is essentially what the judicial proceedings, which lasted for three weeks, were devoted to. There was not, nor could there be, any disagreement as to whether the procurator of the Ochamchirskii region exceeded his authority. Of course he did. He did not have the right to issue an order concerning the dispersal of arms. Moreover, he removed the guard, "broke into a secured place" (the premises of the bank), and issued weapons. These acts, in every formal sense,
comprise the elements of a crime, as provided for in relevant articles of the Criminal Code.

But did the procurator have the right to walk away from the events taking place? To wash his hands of it, so to speak? His official duties in no sense included the defense of a bridge. But could he simply throw his countrymen, whom the law required him to protect, to the vagaries of fate and the kindness of the attackers?

That was the question faced by the court. It was posed in a time of recurrent inter-ethnic conflict in Sukhumi, one small chapter of which was the fight for the bridge over the Galiza River.

For good or ill, the time of routine peaceful decisions had passed. The situation was completely out of the ordinary. And so were the decisions that all were required to make—from the president of the country to the policeman on the beat. Moreover, these were circumstances that left no time for reflection, for checking one’s actions against one’s authority. I realize that a court is neither a mass meeting nor a debating society. But it isn’t a lifeless machine either. It must judge each situation by the standards of law. But these should not be standards that narrow to a ridiculous extreme the examination of people and events. That is, of course, if one engages in real legal thinking, and does not just mechanically apply the old templates to every situation.

Article 14 of the RSFSR Criminal Code, which is titled "Extreme Necessity," states: "Although falling within the category of an act provided for in the Special Part of the present Code, an action shall not constitute a crime if it is committed in extreme necessity, that is, in order to eliminate a danger which threatens the interests of the Soviet state, social interests, or the person or rights of the given person or other citizens, if in the given circumstances such danger cannot be eliminated by other means and if the harm caused is less significant than the harm prevented." There were identical articles in the codes of all union republic and probably in all autonomous republics as well. This is one of the traditional and permanent aspects of the law. In an old Russian textbook on criminal law I found the following: "The law must not give way to untruth. Untruth is destructive by its very nature. If it seeks to destroy law, then law must vigorously stand up for itself."

Perhaps the main question the court had to answer was whether the procurator was acting under extreme necessity. Was there some other option or could Valerii Gurdzhua and Daur Shlarba not have done otherwise that to distribute the guns and bullets?

"I ordered the distribution of the guns" stated procurator Gurdzhua during the investigation and then in court, "because I had no choice. If you judge that I caused harm, then I prevented greater harm. And I’m not the only one who thinks so. Colonel General Shatalin."
the commander of the internal troops, stated: 'if they had not been stopped at the bridge near Ochamchira, it could have been worse than in Fergana'.

I want to present the state's case through some of the questions put to the defendant and the answers received.

"What does your authority as procurator for the region involve? Don't you think that you exceeded it?"

"I think that I did exceed it. But I had to save people's lives."

"There was a decree of the Georgian Council of Ministers regarding issuing of personal hunting rifles. How is one to understand your order to issue the rifles?"

"I violated the decree. I couldn't see any other alternative."

"Who assigned you the duty to stop (the enemy's) movement across the bridge?"

"The circumstances. Circumstances of extreme necessity."

Then, during closing arguments, the state's prosecutor said that there was no extreme necessity that required rushing to arm an agitated crowd, that those trying to get across the bridge from the other side were not extremists ready to do harm, but people concerned about the fate of their relatives in Sukhumi. That is, they came not with the sword, but with the olive branch. Perhaps this is so. But as the defense emphasized, the investigators didn't really examine the intentions of the armed individuals on "that side." An armed convoy came, and that is a fact. A truce negotiator was killed, and that is a fact. And he was killed by a kind of rifle that the defenders did not have. Moreover, this happened during the night, and weapons were distributed to the defenders only the next day. The investigators did not explain these circumstances but simply laid the whole blame on the procurator and the police major.

And so the court had to reach a conclusion as to whether the defendants were in a state of extreme necessity. It is always difficult to assess the acts committed under the concepts of "extreme necessity" or "necessary defense" (self defense). Usually charges are brought if grave consequences ensue. I have been present at several cases involving necessary defense, and my view is that judgments are often based on the consequences rather than the acts: if a death takes place how can one acquit the person defending himself? An acquittal is required, but the tragic result presses on the judges. And how can the concept of extreme necessity be applied to the population of a whole town? Being judged, of course, were not the town and not the region, but the procurator of the region. But he was defending not himself and not his property, but the whole population. One could not find the motive of material gain in his acts. Whether the threat to the life and property of his fellow townsmen was real or not is not significant in assessing extreme necessity. It is only important that the populace was convinced
of the reality of the threat. Otherwise the crowd would not have been so intent on arming themselves.

The position of the state prosecutor was also understandable. The law is the law, and for a prosecutor no circumstances justify its violation. But in Ochamchira "two laws" were in conflict: the law of war and the law of peace. Only an insane person would condone the distribution of arms to a crowd in a conflict, let's say, at a wine store. Emotions in such circumstances might run high, but they would be emotions during a peacetime conflict. At the bridge over the Galizga military acts were taking place. The residents of Ochamchira felt that they faced the threat not of a drunken brawl but of being overrun by foreign forces. Encounters of the kind that brought this case to court are often called "conflicts based on nationality." This is real war! With fighting in the vicinity, as on the border between Armenia and Azerbaidzhan, the Armenian-Azerbaidzhani front.

The state's position was as follows: "The defendant took responsibility for exceeding his authority and thereby acknowledged his guilt."

The defense evaluation was different: "Valerii Gurdzhua took responsibility, exceeded his authority, and thereby performed a heroic act."

The same actions: crime or courageous deed? This really is how the question was posed in real life, not just in the concluding arguments in court. Is the precise but thoughtless fulfillment of instructions, orders, decrees or the law itself a good or an evil? I have discussed this matter many times in my writing, and I always stated--and remain convinced--that for the sake of public order and legality, especially in our country, the pedantic fulfilling of every letter of the law is more important than the free interpretation of its spirit. But, obviously, not always. When the situation in Ochamchira became extreme and the crowd was prepared to storm the police station. Procurator Gurdzhua quieted the people and prevented massive disorder. Regarding the armed groups advancing on the city, he saw them as a direct threat to human life and property.

The prosecution's opinion was that the issuing of arms led to an escalation of the conflict and to casualties (four people were killed). The defense's position was that because of Gurdzhua's acts much greater bloodshed was prevented. As we all know, history does not have the subjunctive mood and neither do individual events. We will never know if the "other side," having taken the bridge, would have peacefully embraced the population of Ochamchira. The investigators, unfortunately, paid no attention to the intentions, arms, numbers, etc. of those trying to storm across the river. But in any case the words of the commander of the internal troops, that the result "could have been worse than Fergana"--were not contradicted. And it was this possibility that the regional procurator would not condone.

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The court came to the conclusion that the acts of Valerii Gurdzhua and Daur Shlarba were criminal in nature. Gurdzhua was sentenced to two years in prison and Shlarba to one year. The judges did not explain their decisions to the public, but merely announced the sentence. But the sentence avoided addressing the most important questions raised by the circumstances.

Yes, "passing out the cartridges" when emotions were raised to their limits was a risky proposition. It was possible that this alone could have escalated the conflict and led to casualties (although there had been casualties even before the arms were distributed). If this hadn’t been done and the other side had proceeded peacefully to Sukhumi, bothering no-body, then all would have been tranquil. But I tried putting myself in the position of the procurator, with an obligation to defend the people when no other authority in the locality was operating, people were fearful for their lives, and the crowd was prepared to storm the police station. How much easier it would have been for Gurdzhua to wash his hands of the whole matter. How much more tranquil it would have been to observe the roiling square from the window of his office and then, independent of the consequences, bring proceedings against those responsible for the disorder. He went beyond his authority, and he went out onto the square.

But behind all that has been sketched out here is the problem raised in introducing these two preliminary skirmishes in the ethnic wars that have become so intense: the desire of Moscow to judge everything and everybody. In spite of this couldn’t the court have been more objective? Couldn’t the local organs of justice have coped with this case? I’m convinced that if the Center had not interfered in the complexities of local life so directly and crudely, the intensity of the conflicts would have been much less severe and many of them could have been avoided.

NOTES

1. Also referred to as the "Karabakh Committee."

2. Feofanov wrote about this case in "Mezhdu parlamentskim kreslom i tiuremnymi narami." Izvestiia, July 2, 1989, p. 3.

3. Oleg Kalugin was a retired KGB Major General who in 1990 made some statements about his former employer that led to the initiation of criminal charges against him, as well as his being stripped of his awards, rank, and pension. Kalugin’s attempts to sue the officials responsible for these actions were unsuccessful, but after the abortive coup attempt of August 1991 President Gorbachev rescinded all actions that had been taken against Kalugin.
4. Yuri Shchekochikhin, a well-known Russian journalist who writes for the newspaper Literaturnaia gazeta.

5. Feofanov coined the term "megaphone law" to describe improper public pressure on the courts (including by crowds with speakers using megaphones). See, for instance, Feofanov's "Ot komandy po telefonu k komande po megafonu?" Izvestiia, May 29, 1990, p. 1.

6. A more recent example of a person being released from detention to run for office was that of Sergei Mavrodi, who was elected to the Russian State Duma in October 1994.

7. See Feofanov's coverage of this case in "Boi u mosta." Izvestiia, January 24, 1990, p. 4.

8. The Fergana Valley in Uzbekistan, where considerable bloodshed had recently taken place.