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RUSSIAN JEWRY: THE HISTORY OF SURVIVAL

Polina Tomashevsky

“. . . We will consider all Jews to be the enemies of Russia. And for Russia, it is always enough to understand who the enemy is, and the enemy will be dead.”

—From the front page of the newspaper *People's Defense*, No. 6, 1995, Moscow.

INTRODUCTION

Antisemitism in Russia has very deep roots. It has been an inseparable part of the Russian political and social landscape since the ancient times. In the nineteenth century, Russian Jewry comprised the largest and the most disliked ethnic minority group in the Russian Empire, as well as the world's largest Jewish community. Despite, or maybe because of their quantities, Jews were never fully accepted by the tsarist authorities or by the society as a whole. In fact, until 1772 they were legally barred from residing in the empire.¹ After Russia annexed part of Poland in the late eighteenth century, it felt burdened by the large Jewish population, which resided there for many centuries. In order to prevent the Jews from contaminating the rest of the population, the government decreed that they could only settle in the fifteen provinces newly annexed to the empire. These areas came to be known as the Pale of Settlement.²

Other restrictions were placed on the Jews by various tsars. For instance, in the beginning of the 19th century, under Nicholas I, young Jewish boys were drafted into the military for terms of twenty-five years. The goal was not so much to strengthen the already powerful army, as to take the youngsters away from their families and communities in order to break their ties with their people and their faith. The draft also created tension within the communities, since the community leaders had to pick the minors to be drafted to meet the government quota.³

An even more serious restriction placed on the Jews by the government was a restriction on land ownership at the time when land ownership defined one's level of wealth and thus position in a predominantly feudal

¹ BITTER LEGACY: CONFRONTING THE HOLOCAUST IN THE USSR 1 (Zvi Gitelman ed., Indiana Univ. Press 1997).

² *Id.*

³ *Id.* at 2.

society. This restriction rendered the majority of Jewish population barely able to support themselves. About one third of the Jewish population was dependent on relief provided by Jewish institutions for food, clothing, and even burial services.⁴

Even the most lenient ruler of all, Alexander II, whose rule was looked back upon as a golden age of Russian Jewry, did not feel that it was possible for Jews to completely assimilate with the Russian population. While attempting to improve the position of Jews in society and to integrate them with the rest of the population, he saw this mission almost impossible due to the nature of a Jew. In his own words, his policy was “to revise all existing legislation regarding the Jews so as to bring it into harmony with the general policy of merging this people with the native population, *so far as the moral status of the Jews will allow it.*”⁵

While this maltreatment of the Jews was mainly a result of government actions, it received wide support by the entire non-Jewish population of Russia. Anti-Semitism, although predominantly non-violent before the early 1880's, always existed on all the different levels of the society—starting with the uneducated peasants and reaching as high as the *crème de la crème* of the society, Russian intelligentsia. This Jew-hatred was taken for granted by most, and the issue did not elicit heated discussions in the salons of the aristocrats nor in the literature of the time. In fact, the word *zhid* (“kike”) was commonly used by writers as a matter-of-fact substitute for “Jew,” without ascribing to it the pejorative overtones that we normally would today. When, for instance, Fyodor Dostoyevsky, one of the greatest Russian writers of all times, is accused of being a passionate antisemite, the accuser is absolutely correct. His letters openly express the view that the Jew was a harmful and alien element in the Orthodox community. However, this view was shared by the rest of the non-Jewish society, and has been accepted just as it has been expressed—as a matter of fact. On the other hand, his hatred toward the Jewish religion as a whole in no way reflected his attitude toward any individual member of this religion. It is known that one of his closest friends and favorite pen-pals was a Jewish woman. This attitude was not unique and is reflective of a general trend in the society of the time.

It is a great challenge to pinpoint one reason for the animosity toward Jews in the eighteenth and nineteenth century Russia. There is no doubt that at least part of it comes from the fact that Jews followed a faith alien to the national Russian Orthodox Christianity. This was also reflected

⁴ *Id.*

⁵ THE JEWS IN SOVIET RUSSIA SINCE 1917 1 (Lionel Kochan ed., Oxford Univ. Press 2d ed. 1972) (*emphasis added*).

in their way of life, very secluded and communally oriented. Of course, the seclusion may be explained by the conditions that have been created for them by the government, but it is the nature of the religion itself that makes the outsiders feel somewhat alien and unwelcome. Another view that exists as to the nature of antisemitism in Russia, is that behind the religious hatred is Russian nationalism, a sense that a Jew did not belong to the Russian way of life, that the aims and ideals associated with him—such as capitalism, or a progressive philosophy—made him a creature apart from the traditional Russian world, even less than human.⁶

No matter how unwelcome Russian Jews felt in Russia in the eighteenth and nineteenth centuries, the antisemitic movement did not turn violent until the last decades of the nineteenth century. The antisemitism that has become known to the entire world for its cruelty and barbarianism started after the assassination of Tsar Alexander II, for which Jews were held responsible. In 1881, pogroms shook Ukraine and Belarus. They were, no doubt, the result of centuries of discrimination, coupled with so-called “folk antisemitism” which was based on the belief that Jews were merciless exploiters of the innocent Christians in the towns and villages of the Jewish Pale.⁷ However, contrary to the common belief, Jews and Christians lived in harmony in those areas until the “hooligan ringleaders” were brought in by the authorities from other parts of Russia to start the pogroms.⁸ The other atrocities of the last decades before the Socialist Revolution of 1917 included *The Protocols of the Elders of Zion* written by the tsarist authorities that “exposed” a Zionist plot to destroy Russia⁹, and the Beilis case, which started in 1911 and continued up until the Revolution. In this case, the police arrested a Ukrainian Jew, Mendel Beilis. He was accused of a murder of a Christian child for the purposes of using his blood in a Jewish ritual. Beilis spent two years in prison, while the authorities were trying to make a case against him, although the high officials had evidence that absolved him, which they conspired to conceal.¹⁰

The Revolution of 1917 marked the beginning of a new era in Russian history, as well as in the history of Russian antisemitism. In this article, I will focus on the development of the Soviet antisemitism, its place

⁶ *Id.*

⁷ See THE JEWS IN SOVIET RUSSIA, *supra* note 5, at 2.

⁸ *Id.*

⁹ To the Western world, as well as the educated part of the Eastern world, Zionism has always been known to describe a movement to create a Jewish State. However, in the Russian jargon, the word only signifies the connection of the Jews to the *Protocols*.

¹⁰ See BITTER LEGACY, *supra* note 1, at 3.

and its role in political and social development and the demise of the new Socialist state, and the evolution of the movement into its contemporary form. Part One of the essay will address the role of Jews in the Revolution and how it was regarded by the majority of the Russian population; Part Two will focus on the "Jewish question" during the Stalin era, the horrors, the persecution, and the Jews in Stalin's government; in Part Three, I will look at the various facets of antisemitism in today's Russia. Some issues that I will address will be whether antisemitism in today's government is purely personal opinions of its promulgators or a political platform, a direction in which the country is going? I will point out the increasing in number and boldness outbursts of violence that have taken place in the past few years, directed at Jews (or Zionists, which in the language of antisemites is synonymous), and how authorities choose to respond to these outbursts. I will also discuss the impact that current policy has on the position that Russia occupies in the international community. In this part, I will also attempt to answer the main questions of the article: What role does legislation and government have in the current situation? Are they effective in their attempts to curb antisemitism and extremism¹¹? And can the international community influence the situation in the economically and politically declining Russia?

PART ONE: JEWS AND THE REVOLUTION

One of the first measures taken by the revolutionaries after overthrowing tsarism, was to abolish all legal restrictions on the Jews. Although the legislation issued did not mention Jews per se, it eliminated all the limitations that had been imposed on the basis of religion, creed or nationality. This sudden and unexpected end to the centuries of oppression led to an upheaval of Jewish political activity. The numerous Jewish parties, which although existed before, were mostly of underground character, were now flooded with new members. Although multiple conflicts arose among the various Jewish parties, in general Jewish population was happy with the new order—it finally received the freedom and equality that it has been waiting for centuries.

This is why, when Bolsheviks came to power in October of 1917, Jews were not happy with and not supportive of the new government, and justifiably so. Despite the fact that Lenin denounced antisemitism in strong form both before and during the revolution, and it became punishable by the

¹¹ Throughout this article, I will be using the word "extremism" to describe the position of certain actors in the political arena today whose views display fanatic devotion to the idea that Jews are enemies that must be eliminated as quickly as possible.

Soviet law, Jews nevertheless found themselves unpopular. During the New Economic Policy (NEP), which was implemented in the early 1920's, and which allowed some private enterprise, some Jews went back to their pre-revolutionary activities engaging in small-scale commerce. But soon "NEPmen" started to be looked down upon, and their activities were condemned. Jews were now characterized as "exploiting elements."¹² Ironically, others blamed Jews for the revolution and for destroying the private economic sector. And in all fairness, the number of Jews that took an active part in the October Revolution and became Lenin's closest comrades in the Bolshevik cause, cannot be ignored. The names of Kamenev, Zinoviev, Trotskiy, and many others are etched on the pages of history as those who actively participated in overthrowing the democratic regime of the February Revolution and establishing the communist dictatorship. It is also impossible to disregard the activities of hundreds of Jewish activists who enforced this dictatorship in cities, towns, and villages of Russia, causing suffering to the population, including its Jewish members.

It is true, however, that most of the Jewish members of the new government were not the typical members of the Jewish community. They rejected their origins and the existence of Jewry as a nationality in general and their affiliation with it in particular.

Predictably, after the October Revolution, activity of Jewish political organizations sharply decreased. At first, scattered meetings of a limited character dedicated to the Jewish problems took place, but after the Germans occupied Ukraine and Belarus, these organizations lost a big portion of their membership that populated these regions. The communities on the occupied territories still held elections and attempted to maintain some sort of sovereignty, but those still "free" from German regime, but "occupied" by Moscow, especially those of non-socialist character, practically disappeared. Even the Jewish socialist parties, if they opposed Bolshevik regime, were abolished and persecuted. Only a few members of the Provisional government (that seized power in the February revolution), among them a number of Jews, joined Lenin and the Bolsheviks for a short period of time, but by the summer of 1918 they too abandoned the cause and became victims of the terrorist regime.¹³ In general, according to the Jewish press of that time, the attitude of Russian Jewry to the October coup was strongly negative, regardless of which Jewish party or movement they be-

¹² See *id.* at 7.

¹³ See Gregor Aronson, *Yevreiskaya Obshestvennost' v Rossii v 1917-1918 g.g. [Jewish Community in Russia in 1917-1918]*, in *KNIGA O RUSSKOM YEVREISTVE 1917-1967 [A BOOK ABOUT RUSSIAN JEWRY 1917-1967]* 1, 16-17 (Jacob Frumkin et al. eds., 1968) [hereinafter *RUSSIAN JEWRY*].

longed to. An article in one of the Jewish journals decisively stated: "We must energetically participate in the struggle to save Russia from the Bolshevik plague."¹⁴

Thus, the communist revolution put an end to the social, cultural, and national hopes of the Russian Jews. The last turbulent years of Tsarism, especially the World War I, in which Jews were chosen by the government to be a scapegoat for Russia's losses and failures, brought Russian Jewry to despair, but also stimulated an immediate renewal of activity. This was expressed in the Jews' active participation in the revolutionary movement of 1905, as well as 1917. But this activity was short-lived, as it was choked by the Bolsheviks soon after the October revolution. However, suppression of political activities was just the beginning of the Communist regime—the real horrors began when Joseph Stalin came to power in the late 1920s, and have continued ever since.

PART TWO: THE STALIN ERA

It is well known that in the mid-1930s Stalin promulgated the ideology of Russian chauvinism in order to counteract aggressive German totalitarianism, whose confrontation with Communist Russia had then become acute. Stalin thought this revival of traditional imperial Russian nationalism would support his foreign policy. This chauvinism also became a cornerstone of his newly elaborated national-state doctrine, "the theory of the elder brother," which became part of the Constitution of 1936. This doctrine curtailed the rights of the Soviet republics and almost completely eliminated the rights of national minorities.¹⁵

This theory was used by Stalin to disguise his policy of concentrating absolute power in his own hands and placing himself above the Party and above the state administrative machinery. He justified his policies by saying, "Owing to the historical development we inherited from the past (and by right of succession), one nationality, namely the Great Russian one, turned out to be more politically and industrially developed than the other nationalities."¹⁶

Around 1938, Stalin and the Bolsheviks started to enforce compulsory education of Russian language and literature in the schools of republics and regions. This promoted even further the already blooming nationalistic and chauvinist views, and of course along with them, antisemitism. At this

¹⁴ *See id.* at 17-18.

¹⁵ GENNADI KOSTYRCHENKO, *OUT OF THE RED SHADOWS: ANTI-SEMITISM IN STALIN'S RUSSIA* 13 (1995).

¹⁶ *Id.* at 13-14.

time, national minorities, including the Jews, started losing whatever little independence and cultural uniqueness they had left. Ethnic newspapers, magazines, and sociopolitical, cultural, and educational organizations were forcibly closed by the government authorities. To justify his policies to the Jewry, Stalin turned to the voluminous works by Lenin, in particular those favoring assimilation of Jews.

As World War II came as a heavy burden on Russia, Stalin took advantage of that to add more features to his national-hierarchical conception. The Party and state bureaucrats began secretly to launch a campaign of ethnic cleansing, so-called “national-personnel” control. This policy was supposed to give Russians priority in the key spheres of socio-economic life, but in practice it concentrated on eliminating “Jewish influence” in those spheres by eliminating Jews. The bureaucrats’ enthusiasm in enforcing this policy led to the absurdity of multi-page reports on the number of Jews involved in various spheres, such as theater, art, and music. These Jews were being dismissed for no reason, and that was not even disguised. They were replaced predominantly by unqualified Russians, as well as to a lesser degree members of other nationalities—Armenians, Latvians, Kazakhs, etc. Even participation of Jews in the World War II was purposely diminished in newspaper articles, such as the one listing the statistics on the number of recipients of military orders and medals in nationalities living in the Soviet Union, such as Ukrainians, Belorussians, etc. At the end it listed without any numerical data other nationalities rewarded for their participation, Jews being last on the list after Avars, Kumyks, and Yakuts. In reality, Jews were fourth by the number of awards received in the first half a year of the war, and became third after a year of combat.¹⁷

Shortly after the war was over, Stalin realized that his attempts at assimilation of Jews have failed. Thus, he chose a different approach. In November of 1948, he terminated the existence of the Jewish Antifascist Committee (JAC), which was created in the first days of the war with the permission of the government. The authorities were hoping that this committee would help Russia establish better connection with the allies and obtain financial support from them. After the war, its main role was supposed to be promulgating assimilation of Jews. However, after seeing popular negative reactions to the assimilationist article by a renowned writer and Jewish activist Ilya Erenburg, Stalin realized that his plan was not working and put an end to the organization, accusing it of promulgating anti-Soviet propaganda.¹⁸

¹⁷ See *id.* at 15-23.

¹⁸ See *id.* at 113.

And then the arrests began. Mikhoels, the director of the Jewish Theater and a leader of JAC was murdered in January of 1948 because of Stalin's paranoia. He felt that he could not rest until the ringleader of the plotters was out of his life, and Mikhoels became Stalin's personal enemy. Subsequent to Mikhoels' death, the authorities arrested and tortured his close friends and JAC comrades, as well as their friends. After Stalin's death, M.D. Ryumin, the former head of the Department to Investigate Cases of Special Importance to the MGB (Ministry of State Security), when arrested in 1953, frankly admitted:

From late 1947 the tendency to consider persons of Jewish nationality as enemies of the Soviet state . . . became clearly noticeable in the work of the Department to Investigate Cases of Special Importance. This directive led to the unreasonable arrest of persons of Jewish nationality accused of anti-Soviet nationalist activity and of American espionage.¹⁹

This activity was obviously a result of the growing Judeophobia that Stalin himself was spreading. Supposedly, Stalin was preparing for the "final solution to the Jewish problem," which was to gather all Soviet Jews and force them to migrate to the Far East region of the Soviet Union. Rumor had it that barracks were being built and that cattle cars were ready for the deportation.²⁰

One of the most famous and outrageous atrocities of the Stalinist era, however, was the so-called "Doctors' Plot." These two words became a symbol of self-evident agony of the regime of Stalin's personal rule, capable of any extreme measures in order to survive, but already crippled under the burden of repressions and doomed. Driven by growing paranoia, Stalin was convinced that the Jewish doctors that treat members of the government were involved in the anti-Soviet plot, part of which was to sabotage medical treatment of government officials. Among other accusations, the doctors were forced to confess to intentionally mistreating high government officials, like Shcherbakov, Kalinin, Zhdanov, and others. In addition, when Stalin's personal doctor discovered sharp decline in the dictator's health and recommended him to retire, Stalin perceived it as a disguised attempt by the enemy to deprive him of his supreme power. After this consultation, Stalin completely refused medical care.²¹

¹⁹ *Id.* at 88.

²⁰ *Id.*

²¹ *Id.* at 258-269.

At the same time as the Doctors' Plot was taking place in the high echelons of Soviet power, antisemitism in the lower circles of the society grew. The central committee of the Communist Party started receiving antisemitic letters from citizens outraged that most of the doctors at the Kremlin Medical Administration are Jewish, or letters criticizing medical newspapers for their pro-Jewish orientation. These letters however are not surprising or coincidental. Since early 1949 the propagandistic media were waging a wide-ranging campaign against "stateless" cosmopolitans, and they left no doubt as to who the primary targets were. The hysteria regarding medical workers, especially medical elite serving the government, grew stronger month after month. This went on until the autumn of 1952, when Stalin decided to reinforce the psychological pressure by more decisive actions.²² Multiple arrests and exiles of all "involved" in the Doctors' Plot, as well as all others that could in any way be traced to Jews, connection with Jews, or looked to Stalin as if they wanted his death or demise, followed until Stalin's death in 1953.

PART THREE: ANTISEMITISM TODAY.

Almost half a century passed since Stalin's death, and unfortunately little has changed in Russia with respect to attitudes toward Jews. True, there are no more repressions or exiles by thousands, or executions staged by the paranoia-stricken government. But evidence of hatred is still a very significant presence on a political arena as well as among the common citizens. And the harder life becomes in the countries of the former Soviet Union, the more important it is for political leaders to find a scapegoat in the collapsing society.

Dr. Leonid Stonov, President of the American Association of Jews from the Former Soviet Union, relates his observations of Russia today: "Russia is not a civil society but one that defines who is who based on ethnicity."²³ A surging number of nationalist groups and parties are placing a significant emphasis on people's ethnic origin and on the purity of the blood. All current and historical events are understood by these groups through a lens focusing only on the ethnic origins of the event's participants. Jews in today's society persist as the traditional image of enemies

²² See *id.* at 270-273.

²³ Dr. Leonid Stonov, *Antisemitism and Xenophobia in the Ideology of Russian Extremist and Nationalist Movements*, in *ANTISEMITISM IN THE FORMER SOVIET UNION: REPORT 1995—1997*, 73, 73 (Maureen Greenwood ed., 1997). Dr. Stonov is the International Director of UCSJ Human Rights Bureaus in the former Soviet Union and President of the American Association of Jews from the former Soviet Union. See *id.*

for nationalist groups, whose quantity increases almost daily. Many near-fascist groups look to a future state where ethnic and religious minorities will be discriminated against and oppressed. They advocate implementing the measures that were in effect during the tsarist times, such as quotas in education, “proportional” (meaning all Russian) ethnic representation in the government, universities, and scientific institutes.²⁴ Russian extremist groups, which are often referred to as “national patriots,” call for the unification of all Russians into one state.²⁵ The party “National Front” claimed that the borders of the former USSR should be extended, and that Russia should “bring freedom to European people from the world’s Zionist yoke.”²⁶ Nikolay Lysenko, the leader of the National-Republican Party, keeps repeating the words of a well known Russian nationalist and antisemite, and active member of the pre-Revolutionary Russian Duma, Vasily Shulgin: those Jews who lead an Orthodox Jewish life are not dangerous for Russia and can stay, but the Jews or half-Jews who lead a secular life and interfere in Russian policy and the economy are tremendously dangerous for Russian society and state.²⁷

Dr. Stonov attempts to divide antisemite movements in Russia into four general categories, based on his own observations:

- (1) A large traditional but marginal group of aggressive nationalists with a very low level of intelligence and very strong antisemitic ideas in the form of anti-Zionism, but with some political moderation. Thus, they are mainly unknown, they are generally not a major source of public disturbances, and do not have a lot of influence. Examples of these groups include the Russian People’s Union, the Russian National Assembly, and All Russia Party of Monarchic Center.
- (2) A group of totally antisemitic parties that explain all negative occurrences in Russia and in the world as a result of Jewish conspiracy. All their actions call “to end Zionism and Talmudistic Kikes.” Organizations that belong to this group include the Russian Party of Russia, the Public Russian Government, the Volgograd Union of Russian People.
- (3) A group of religious and pseudo-religious parties and societies, like the Orthodox Church-Slavic National Patriots, or neo-Pagans and Pagans. All of them are radical, extremist, racist and antisemitic. The most famous example of the group with these characteristics is Pamyat (Memory), which was the first major organization of its kind.

²⁴ See *id.*

²⁵ See *id.*

²⁶ See *id.* (internal citation omitted).

²⁷ See *id.* at 74.

- (4) A new political right wing, which is oriented to young people and is extremely antisemitic, racist and politically extremist. The organizations that belong to this group are the Russian National Unity (it has Nazi uniforms, arms, and training camps all over the country), the Russian Guard, the Black Hundreds, and the Russian Redemption Movement.

All of these organizations are officially registered and can legally come to power, unless there is a stronger force to oppose them.²⁸

Even leaving these extremist organizations aside, it is clear from various polls and events taking place in Russia today, that antisemitism is still very much alive among the masses. A majority of the population is still convinced that only pure Russian should be at the head of the state, and that the main concern for the Jews is personal profits and the welfare of their own nation, and therefore they should not be trusted. According to the same poll, the Jewish group is the largest and most hated minority group in Russian politics today.²⁹ Political leaders themselves feel free to make degrading antisemitic comments, suffering no adverse consequences. The question is whether they should enjoy such freedom, whether the law as it exists today allows for this freedom, and whether curbing it would or should constitute a violation of fundamental human rights.

THE LAW TODAY

Article 29 of the Russian Federation Constitution, adapted in December of 1993, states: "1. Each person shall be guaranteed freedom of thought and speech. 2. No propaganda or agitation inciting social, racial, national or religious hatred and enmity shall be allowed. The propaganda of social, racial, national, religious or language supremacy shall be prohibited."³⁰ This statement invokes two separate reactions. One is, whether this prohibition of propaganda inciting religious hatred is enforced in Russian courts, whether it has any force. The second question is whether this prohibition is a legitimate restriction on freedom of speech and expression, treasured so much by the Americans as a fundamental human right. I will address these two aspects of the law separately.

²⁸ See *id.* at 74-75.

²⁹ See Svetlana Ofitova & Nikolai Ulianov, *Fatherland Has Finally Merged with All Russia*, NEZAVISIMAYA GAZETA [INDEPENDENT NEWSPAPER], August 5, 1999, at 1, 3.

³⁰ CONSTITUTION OF THE RUSSIAN FEDERATION: WITH COMMENTARIES AND INTERPRETATIONS BY AMERICAN AND RUSSIAN SCHOLARS 25 (Vladimir V. Belyakov & Walter J. Raymond eds., 1994); see also KONSTITUTSIIA RF (1993) [hereinafter KONST. RF] art. 29 (Russ.).

1. *Enforcement*

During the Soviet Era, the Constitution was not a living document.³¹ Although the Soviet Constitution provided guarantees for a myriad of rights, in practice, few of these rights were ever enforced, and the Soviet courts rarely invalidated government action based upon constitutionality.³² The Soviet system was an authoritarian dictatorship where the rule of law did not prevail.³³ The International Centre on Censorship came to a similar conclusion in its 1989 report on the status of freedom of expression in the USSR. The Article 19 of the Universal Declaration of Human Rights Commentary points out that the Soviet Constitution did not confer upon the USSR Supreme Court the power of constitutional review.³⁴ It argues that the Constitution in the form in which it existed at that time has no juridical force or status.³⁵ In fact, many of the Articles in the country's Constitution are largely of a declarative nature.³⁶ The Commentary quotes the chairman of the Commission on Humanitarian Cooperation and Human Rights, Fedor Burlatsky, as suggesting that it is essential to create an independent judiciary, with judges made independent of the Party and the Ministry of Justice.³⁷ The new Russian Federation Constitution tries to address this problem. Article 10 provides for a separation of state power into legislative, executive and judicial branches.³⁸

Another barrier to the enforcement of the civil rights such as freedom of expression, which has always been a part of the Soviet Constitution, was a caveat that such freedoms could only be exercised in the interest of building socialism, or of the working people.³⁹ In addition, the Constitution provided that fundamental rights could not be used against the interests of the state, and that their exercise depended on the simultaneous observance

³¹ Scott P. Boylan, *The Status of Judicial Reform in Russia*, 13 AM. U. INT'L L. REV. 1327, 1339 (1998).

³² *Id.*

³³ *Id.*

³⁴ INTERNATIONAL CENTRE ON CENSORSHIP, COMMENTARY ON FREEDOM OF EXPRESSION AND INFORMATION ISSUES ARISING FROM: THE THIRD PERIODIC REPORT OF THE GOVERNMENT OF THE USSR, SUBMITTED UNDER ARTICLE 40 OF THE COVENANT FOR CONSIDERATION BY THE HUMAN RIGHTS COMMITTEE AT ITS OCTOBER 1989 SESSION 2 (1989).

³⁵ *See id.*

³⁶ *See id.*

³⁷ *See id.* at 3.

³⁸ KONST. RF, *supra* note 30, art. 10.

³⁹ F.J.M. FELDBRUGGE, RUSSIAN LAW: THE END OF THE SOVIET SYSTEM AND THE ROLE OF LAW 30 (1993).

of the fundamental duties of Soviet citizens, which included strengthening the authority and might of the Soviet system.⁴⁰ However, all the restrictions were eliminated in September of 1991, when the Congress of People's Deputies of the USSR adopted the Declaration of the Rights and Freedoms of Man.⁴¹ The universalist approach of the Declaration was carried over into the Declaration of the Rights and Freedoms of the Person and the Citizen adopted by the Russian Federation in November of 1991.⁴² A few months later it was incorporated into the Russian Constitution.⁴³

The trend to accept universal standards in relation to the protection of human rights and freedoms is evident throughout the new Constitution of the Russian Federation. For instance, Art. 17 provides: "1. Within the Russian Federation human and civil rights and freedoms shall be recognized and guaranteed under universally acknowledged principles and rules of international law and in accordance with this Constitution."⁴⁴ The government's dedication to the cause of human rights is present in other provisions as well. Thus, Art. 2 states: "Human beings and human rights and freedoms shall be of the highest value. Recognition of, respect for, and protection of the human and civil rights and freedoms shall be the duty of the state."⁴⁵ Similarly, art. 55 declares that "[t]he enumeration in the Constitution of the Russian Federation of fundamental rights and freedoms shall not be interpreted as a denial or diminution of other generally recognized human and civil rights and freedoms."⁴⁶

On the other hand, while these attempts to remedy the prior system of human rights abuse or total disregard are rather impressive, they would be virtually meaningless if the Constitution remains this declarative statement with no enforcement mechanism and no real force behind it. This realization brought about a drastic change in the system. Beginning on January 1, 1997, Russian judges were authorized to apply the Constitution to matters before them.⁴⁷ Thus, trial courts are now applying the Russian Constitution to their cases. Although quite a few cases were resolved using the

⁴⁰ *See id.*

⁴¹ *See id.* at 216.

⁴² *See id.*

⁴³ *See id.* at 227.

⁴⁴ KONST. RF art. 17.

⁴⁵ *Id.* art. 2.

⁴⁶ *Id.* art. 55, para. 1.

⁴⁷ *See* Boylan, *supra* note 26, at 1340 n.66, referring to Federal Constitutional Law No. 1—FKZ of Dec. 31, 1996 on the Judicial System of the Russian Federation.

Constitution since the law has been passed,⁴⁸ a conviction for violation of the Art. 29 prohibition of incitement of religious hatred and enmity⁴⁹ is yet to be seen.

Another improvement of the Russian legal system is its willingness to accept and implement universal standards of human rights protection. I have already discussed the universal nature of the new Constitutional provisions. The universalist approach is also used in enforcing these provisions. Thus, the Russian Constitutional Court, in examining all sorts of cases, bases its action on the provisions of international legal texts on human rights, so it is able, when judging cases on the basis of the Constitution, to respect the democratic norms and standards recognized by the world community.⁵⁰ Moreover, President Yeltsin submitted for ratification by the Duma the European Convention on Human Rights.⁵¹ If ratified, it will bring Russia under the jurisdiction of the European Court of Human Rights.⁵² However, while it should positively affect Russian policies with regard to human rights, it is unclear whether it will have any substantive influence. It is a matter of common knowledge that ECHR consistently affirms that it is for national authorities in the first instance, and in particular the national courts, to interpret and apply domestic law.⁵³

Therefore, while Russia is definitely moving in the right direction when it comes to enacting new laws protecting human and civil rights of its citizens, the real force of these provisions is yet to be seen. Judicial system is becoming more democratic by virtue of its separation from the political branches of the government, the universalist nature of the Constitution exhibits the drive to achieve the level of democracy and respect for the fundamental freedoms that has dominated the civilized world for decades. What is now needed is an effective enforcement mechanism that will bring the written word into reality.

⁴⁸ The Court used an Equal Protection Clause of the Russian Constitution in a suit by a foreigner who objected paying a higher room rate based solely upon her status as a foreigner. *See* Boylan, *supra*, at 1340. In another case, the Court declared that the practice of allowing prosecutors to appeal acquittals in Russia violated the Double Jeopardy Clause of the Russian Constitution. *See id.*

⁴⁹ KONST. RF art. 29. para. 2.

⁵⁰ *See* Joseph Brossart, *Legitimate Regulation of Religion? European Court of Human Rights Religious Freedom Doctrine and the Russian Federation Law "On Freedom of Conscience and Religious Organizations,"* 22 B.C. INT'L & COMP. L. REV. 297, 301 (1999).

⁵¹ *See id.* at 302.

⁵² *See id.*

⁵³ *See id.*

2. *Restriction on Freedom of Speech*

A radically different problem that Article 29 of the Russian Constitution presents, is whether the prohibition of hate or harmful speech is a violation of a fundamental human right—the right to freedom of speech. The debate on this subject is now heard in one form or another all over the world. With increase of racial violence and verbal harassment of religious minorities on American campuses, numerous scholars are posing a question of whether it is really unacceptable to put boundaries around free speech. The treasured First Amendment right is starting to backfire, when the absolute freedom of expression for one group of people becomes danger and humiliation for another. The challenge that the world community is struggling with is encompassed in balancing liberty and community; freedom of expression and freedom from discrimination; and the marketplace of ideas and the right of minority groups to self-respect.⁵⁴ While for the United States this is a question of whether certain restrictions of free speech should be put in place, for most countries of the world⁵⁵, where such restrictions already exists, the debate concentrates on a more theoretical point—should they be revoked, are they effective in curbing hate speech, or does it do more harm than good. The main question is: can nations that are sharply divided into dissenting factions of race, ethnicity, or religion tolerate scathing speech, or is some form of regulation an essential aspect of maintaining community?⁵⁶ The European Court of Human Rights takes for granted the necessity of speech regulations, but only allows such regulations if they satisfy its three-part test.⁵⁷ According to the ECHR, an interference with the exercise of the freedom to manifest religion or belief is contrary to article 9 unless it is prescribed by law, directed at a legitimate aim—the interests of public safety, protection of public order, health or morals, or for the

⁵⁴ See Jean Stefancic & Richard Delgado, *A Shifting Balance: Freedom of Expression and Hate-Speech Restriction*, 78 IOWA L. REV. 737, 738 (1993).

⁵⁵ For instance, in Greece, there is a law restricting proselytization. Numerous cases have been brought before the ECHR, but only in two such cases the court decided that the state's actions under the law were inappropriate. However, it still upheld the law. See Brossart, *supra* note 50, at 304.

⁵⁶ Stefancic & Delgado, *supra* note 54, at 738.

⁵⁷ Moreover, the European Convention on Human Rights itself contains a restriction on freedom of speech. Art. 9 provides: "2. Freedom to manifest one's . . . beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others." European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 9, para. 2, 213 U.N.T.S. 221.

protection of the rights and freedoms of others, and necessary in a democratic society.⁵⁸ While the first two prongs are almost always satisfied, due to the ECHR's policies discussed above, but the third prong requires a more involved inquiry. The "necessity" analysis recognizes that a certain margin of appreciation is to be left to the Contracting States in assessing the existence and extent of the necessity of an interference.⁵⁹ However, the margin of appreciation is subject to review by the European human rights system.⁶⁰ In reviewing state action that comes within the margin of appreciation, the ECHR sees its task as determining whether the measures taken at the national level were justified in principle and proportionate.⁶¹ To determine whether the measure is proportionate, the ECHR weighs the requirements of the protection of rights and liberties of others against the prohibited conduct.⁶²

Although the ECHR's approach seems reasonable in trying to address the problem of speech regulation, some scholars disagree with its fundamental premise—that speech regulation in general is needed and permissible. The most common arguments against speech restrictions include: (1) suppressing racism will cause it to go underground, only to emerge in even more virulent forms later;⁶³ (2) hate speech is not the root of the problem; regulating it is a diversion;⁶⁴ (3) societies inevitably turn rules against race hatred against minorities or political dissidents;⁶⁵ (4) hate-speech regulation will lead to further erosion of freedom of speech;⁶⁶ (5) talking back is better;⁶⁷ (6) laws against hate speech will chill discussion, especially in sensitive settings like university campuses;⁶⁸ (7) criminal prosecution of hate speech is not effective; other means should be tried first;⁶⁹ and (8) prosecution makes hatemongers into martyrs.⁷⁰ Thus, even for those opposing regulation, unenforceability is one of the reasons for their position. It is a major factor in a Russian society, where prosecutors have

⁵⁸ See Brossart, *supra* note 50, at 304.

⁵⁹ See *id.* at 305.

⁶⁰ *Id.*

⁶¹ *Id.* at 304.

⁶² *Id.*

⁶³ Stefancic & Delgado, *supra* note 49, at 738.

⁶⁴ *Id.* at 741.

⁶⁵ *Id.* at 742.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 743.

⁶⁹ *Id.*

⁷⁰ *Id.* at 744.

not enforced laws against nonviolent acts provoking ethnic hatred, and hostile speech is virtually never prosecuted.⁷¹

Major arguments of proponents of speech regulation include: (1) racism is increasing throughout the world and needs to be addressed through law; (2) suppressing hate speech will reduce the underlying impulse—racism; (3) hate speech harms its victims; (4) hate speech harms society; (5) racism unchecked gets worse; and (6) regulating hate speech will send a symbolic message to potential offenders.⁷² It is claimed that the laws against hate speech in the Soviet Union are an essential tool for curbing ethnic hostilities.⁷³ On the other hand, the argument is put forth that in a country like the former Soviet Union, marked by a tradition of centralized repressive government, laws against hate speech would not work.⁷⁴ Such a society, the argument goes, would not likely rely on shared expression, dialogue and other forms of communication to bind itself together. Rather, centralized authority serves that purpose. When intergroup conflict breaks out, the impulse to restore a communicative paradigm will be weak. Consequently, laws against hate speech will not be in force. If they are, they are apt to be used eccentrically, as in the case of dissidents.⁷⁵

However, the most appealing argument in favor of speech regulation is that there is a communal as well as an individual dimension to human rights and freedoms, and that the individual's right to promote racist views must be defended not only in terms of individual rights, but in terms of the communal interests in equality.⁷⁶ Thus, a sensible society would limit speech when it begins to endanger these interests.⁷⁷ This seems to be the idea behind President Yeltsin's creation of the Judicial Chamber for Information Disputes. It was created on December 31, 1993, by a presidential decree,⁷⁸ which assigned it sweeping and vaguely-defined responsibilities.⁷⁹ The main task of the Chamber was to help the President exercise his constitutional powers as guarantor of rights, freedoms, and legitimate interests in the mass information sphere enshrined in the Russian Federation

⁷¹ *Id.* at 743.

⁷² *Id.* at 744-747.

⁷³ *Id.* at 746-747.

⁷⁴ *See id.* at 748.

⁷⁵ *Id.* at 749.

⁷⁶ *Id.* at 739.

⁷⁷ *Id.*

⁷⁸ Frances H. Foster, *Parental Law, Harmful Speech, and the Development of Legal Culture: Russian Judicial Chamber Discourse and Narrative*, 54 WASH. & LEE L. REV. 923, 938 (1997).

⁷⁹ *Id.* at 939.

Constitution.⁸⁰ Thus, the President made another attempt at making Constitutional provisions regarding protection of human rights enforceable, although not very effectively. From the very start, the Judicial Chamber's decisions were not legally or realistically enforceable.⁸¹ Limited as it was in its enforcement powers, Judicial Chamber had a very broad scope of jurisdiction: it had authority to resolve "information disputes and other matters" involving norms established in the Russian Constitution, laws, and presidential edicts, universally recognized principles and norms of international law, Russian Federation international treaties, journalistic ethics, and generally-accepted ethical norms.⁸² The enforcement tools that the statute on the Judicial Chamber grants it, are at the most weak. It has authority to reprimand officials and journalists, to order rectification of factual errors, and to raise with the appropriate organs or personnel the need for more stringent remedies, such as written warnings, administrative or criminal proceedings, or termination of media outlets.⁸³ Thus, although the idea behind the creation of the Chamber was to benefit the society by protecting its rights through a quasi-judicial body, the effect was not as anticipated. The Chamber still causes some controversy as to its extra-constitutional nature,⁸⁴ while its decisions seem to have little influence on the media, or at least on the expression of antisemitic nature in the media. For instance, in January of 1995, the Chamber made a special expert assessment of publications in the Volgograd newspaper *Kolokol* as abuses of freedom of mass information. *Kolokol* articles blamed Russia's current ills on purposeful destruction by Zionist groups of the West and characterized Jews as enemies of the Russian people who controlled all key positions in Russia.⁸⁵ Unfortunately, however, *Kolokol* still exists and still publishes similar articles, despite the Chamber's conclusion.

While having very little (if any) positive influence on the media, the Judicial Chamber may even harm the society by its opinionated decisions. It undermines the authority of the government and the judicial system by portraying them as inept, inexperienced and overburdened.⁸⁶ The legislative, administrative, judicial, and presidential personnel and bodies appear

⁸⁰ *Id.*

⁸¹ Judicial Chamber has always relied heavily on publicity as a powerful sanction and enforcement mechanism. *See id.* at 926.

⁸² *Id.* at 939.

⁸³ *Id.* at 940.

⁸⁴ *See id.* at 945.

⁸⁵ *See id.* at 948.

⁸⁶ *See id.* at 960.

fundamentally incapable of meeting the challenge of harmful speech.⁸⁷ Several opinions emphasize the failure of Russia's parliament to create an adequate legislative base to battle mass media abuses. They highlight significant gaps in such areas as dissemination of fascist materials, production of dangerous advertisements, etc.⁸⁸ The Judicial Chamber depicts the state as equally ineffective in enforcing the minimal law that does exist.⁸⁹

Thus, not only does the Judicial Chamber fail at curbing anti-Semitic rhetoric in the media, it also harms the situation by undermining the authority of the government and the entire judicial system. Constructive criticism may be a healthy way to bring some change to a faulty system, but as a result of such criticism the government loses support and respect of its constituents, the system can never be effective, no matter how progressive the changes may be.

It is clear from the above analysis that hate speech regulation is need in Russia in order to effectively control the nationalist movements and their influence on the Russian people. The Article 29 prohibition is fully justified by the events discussed below—now the only impediment is lack of adequate enforcement mechanisms. It would seem that the new improvements that have entered the law in the past few years, that I have discussed above, would render the Russian Constitution more effective and provide a better protection for the defenseless Jews, but unfortunately, it does not. Here are a few examples of prominent politicians that have been receiving a lot of attention due to the chauvinistic views that they promulgate, and the responses they receive from law enforcement agencies.

A. *Nikolai Kondratenko*

A Krasnodar province governor Nikolai Kondratenko addressed the Kuban Youth conference in late February of 1998. Reportedly, during his two-hour speech, Kondratenko used the derogatory word *zhid* (kike) sixty-one times, blamed Jews for the war in Chechnya and the spread of homosexuality in Russia, called many of his political enemies “kikes,” and likened Zionists to livestock.⁹⁰ The thrust of Kondratenko's argument is clear—Jews are the enemy, and the faster Russia gets rid of them, the faster it will be able to resurrect itself as a world power.

⁸⁷ *See id.*

⁸⁸ *See id.*

⁸⁹ *See id.* at 961.

⁹⁰ Vladimir Serdyukov, *Where is the Party Looking?* IZVESTIYA [News], March 4, 1998 [hereinafter NEWS].

In 1991, Kondratenko while still occupying the position of the chairman of the Krasnodar regional Council of people's deputies, had written a virulently anti-Zionist report which had been distributed in the region in tens of thousands of copies.⁹¹ Nearly seven years after its publication and a few weeks after his infamous speech, the governor still likes to remind people of its existence. In another one of his addresses Kondratenko referred to the report as performing his "duty of a father before his sons and grandsons, to tell what [he] see[s], to tell the truth"—that Zionism is the primary source of danger for Russia.⁹² He was dismissed from that position shortly after the report came out, and his case was submitted to law enforcement agencies for "betraying the Motherland and so-called attendant crimes," as Kondratenko himself described the charges against him. The case was dropped nearly a year later for the absence of *corpus delicti*.⁹³ Merely four years later the patriotic victim of the Zionist plot became governor of the Krasnodar region.

And then the history repeated itself. After the news of the infamous speech reached Moscow, the executive committee of the Russian Intelligentsia Congress issued a statement demanding that President Yeltsin dismiss Kondratenko and submit the case to the Prosecutor's Office, as his antisemitic statements contained calls for international dissent. A few weeks later, the Krasnodar territory Prosecutor's Office officially announced that charges against Nikolai Kondratenko, who was accused of antisemitism, will not be brought. The explanation that the governor gave and the Prosecutor's Office agreed with, was simple: Kondratenko only criticized the policy of Zionism in Russia, not Jews as a nation.⁹⁴

Kondratenko is still a governor and is said to have close connections with the Communists and nationalists who dominate Russia's Parliament.⁹⁵ The support in fact is so strong, that only days after his speech at the Kuban Youth forum the current leader of the Communist Party of Russian Federation [CPRF] Gennady Zyuganov, who claims to be a devoted

⁹¹ Institute for Jewish Policy Research, *Russia* (last modified Dec. 1998) <<http://www.axt.org.uk/antsem/countries/russia/russia.html>>.

⁹² Vladimir Serdyukov, *Kondratenko is Ready to Unmask Zionist Policy Even in Court*, NEWS, Mar. 24, 1998, at 5.

⁹³ See *id.* *Corpus delicti* (corpus of the offense)—the fact of the offense having been actually committed. BLACK'S LAW DICTIONARY 344 (6th ed. 1990).

⁹⁴ See *Gov. Kondratenko Will Not Be Charged with Making Anti-Semitic Statements*, RUSSKY TELEGRAF [RUSSIAN TELEGRAPH], Apr. 10, 1998, at 3. See also *supra* note 28. For the explanation of the use of the word "Zionism" by Russian antisemites, see *supra* note 9.

⁹⁵ See *supra* note 27.

internationalist, included Kondratenko in his “shadow cabinet.”⁹⁶ In his announcement of the formation of the cabinet, communist leader stressed: “We have the possibility to form a stable government of the people’s trust. But if we do not have a solid and qualified team, which would offer a program for emerging from this crisis, and which would be legalized by the Federal Assembly, the situation may get out of control and go out into the streets.”⁹⁷ Although fortunately Zyuganov’s plans did not quite materialize, his choice of qualified team members says a great deal about the leader of the second largest party in Russia, who is now the second most likely candidate for Presidency.

B. Gennadi Zyuganov

In the March 26 Presidential election, the leader of the Communist Party of Russia, is projected to receive about 20% of votes⁹⁸, and is perceived to be the most dangerous opponent of the acting President of Russia Vladimir Putin. Zyuganov may not be able to win this election, but a person who has support of twenty percent of the population of the country is a force that cannot be ignored. So what does his popularity as well as the popularity of the party he represents mean for those Jews that decided to stick it out and did not emigrate?

Gennadi Zyuganov is a skillful politician, which comes from years of experience. That is why he will not be the one to instigate the pogroms or any other type of political instability—at least not directly and not right now, because that would definitely cost him some votes. As a matter of fact, some of his brothers-in-arms have been putting him in a rather uncomfortable position lately—General Makashov’s, Viktor Ilyukhin’s (Duma Security Committee Chairman), and Nikolai Kondratenko’s virulently antisemitic speeches attracted public attention to the CPRF, and particularly to its leader, forcing him to state his opinion on a very sensitive topic. The closer it gets to the elections, the more voter-oriented his views become. But before the election became an issue, Zyuganov did not hesitate to express his true feelings. In February of 1998, in his article published in a pro-Communist daily newspaper, Zyuganov, “employing code words normally used by Russian ultra-nationalist and hard-left activists, claimed that ethnic minorities were the main beneficiaries of the Soviet nationalities pol-

⁹⁶ See *CPRF Leader Is Forming His Own “Shadow Cabinet,”* SEGODNYA [TODAY], Mar. 5, 1998, at 3.

⁹⁷ *Id.*

⁹⁸ *Presidential Ratings According to Opinion Poll* (ORT television broadcast, Mar. 4, 2000).

icies of the 1920s and 1930s. He added that ethnic Russians were currently disadvantaged compared with other groups and were facing genocide."⁹⁹ Two months later, in a television interview, the Communist leader pointed out that the number of minorities that 'dominate' government is disproportionately high in relation to the ethnic Russians, who make up 85 percent of the population.¹⁰⁰

The trend in Mr. Zyuganov and the Jewish question can be clearly seen in his responses to General Makashov's "patriotic" speeches. General Albert Makashov is a parliamentary deputy and a member of the Russian Communist Party's central committee. He is best known for his sincere and passionate hatred towards Jews and his public expressions of it, and will be discussed *infra*. In October of 1998, following one of the general's television interviews, which once again surfaced his sentiments, Zyuganov very successfully explained the good general's remarks. In his interview to a Jewish newspaper, Zyuganov said that Makashov's remarks "might well have been prompted by the fact that there are quite a lot of people of Jewish nationality among the so-called democratic journalists who day and night are making a fool of the people."¹⁰¹ In November, however, the Communist leader realized (just when Makashov came to the attention of the *duma*) that Makashov's statements were "impermissible" and "condemned his intemperance."¹⁰² However, he pointed out that some forces in the society "became hysterical" and tried to turn "poorly-worded statements into an ethnic conflict."¹⁰³

Zyuganov's next step was more decisive. In December of 1998, he wrote an open letter in which he announced that "any cases of chauvinism and national intolerance are incompatible with the communistic convictions."¹⁰⁴ He also acknowledged that the "idea of legal establishment of the percentage census on representation of different national and religious communities in the bodies of the state power" was an error.¹⁰⁵ However, there is still no doubt in Zyuganov's mind that Zionism is evil, and thus he demanded that "the Jewish community determine more concretely on the matter of Zionism," since "Zionization of the state power is obvious."¹⁰⁶

⁹⁹ See *supra* note 27.

¹⁰⁰ See *id.*

¹⁰¹ See *id.*

¹⁰² See *id.*

¹⁰³ See *d.*

¹⁰⁴ Dmitry Volkov, *Zyuganov Denounces Anti-Semitism and Zionism*, VREMYA [TIME], Dec. 24, 1998, at 1.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

Finally, in February of 1999, the “Communist-Internationalist Zyuganov” concluded the Makashov affair by categorically stating that “some statements of some members of the CPRF faction do not reflect the official position of the party.”¹⁰⁷

Whether this is true or not is hard if not impossible to verify. Obviously, the party’s constitution does not explicitly (or probably even implicitly) allow promulgation of antisemitism or incitement of religious hatred. But how does one explain Zyuganov’s initial support of Makashov’s statements, or his own statements for that matter? Why hasn’t the general been expelled from the party as soon as the party members realized that neither his position nor his public behavior will change? And here is some curious statistics: on November 4, 1998 a motion in the *duma* to censure General Makashov for his “harsh, abusive statements” and for inciting racial hatred was defeated by 121 votes to 107. Among the Communist members, 83 voted against the censure and 43 abstained.¹⁰⁸ If this is not evidence of the position of the party, it definitely shows the position of its members.

Even if I can believe Zyuganov that Makashov’s statements are not reflective of the Communist party’s official position, does that make the situation better for the Jews living in Russia, listening to Makashov’s speeches and those of his comrades, hoping that nothing horrible will happen this time, but still carrying the not-so-distant memories of the pogroms? The question is not whether there is a party behind the propaganda, but how to stop it from infiltrating the minds of the young and impressionable, the hungry, the dissatisfied with the current life or lack of it, the frustrated, or those in whom the current situation, political, economic, cultural, created a void that needs to be filled with something—be that expectation, military discipline, or just pure blind hatred.

Former deputy prime-minister Anatoly Chubais called for the Communist Party to be banned for its support of Makashov. The first question is—can it be done? Probably not, since a ban on a party that constitutes the majority of parliament “may destabilize the situation.”¹⁰⁹ The second, and more important question is—if it could be done, would it help? Would it alter the situation in any way? Sadly, the answer is no. Communists still enjoy support and popularity of the people. If for any reason the party is banned, it will go underground, where it is sure to gather even more support—the fact that it is banned is likely to add thrill and “adventure” for its followers, especially the younger members. And there will always be a

¹⁰⁷ Natalia Gridneva, *Makashov is Sent to Conduct an Investigation Again*, KOMMERSANT-DAILY [BUSINESSMAN DAILY], Feb. 25, 1999, at 2.

¹⁰⁸ *Supra* note 27.

¹⁰⁹ *See id.*

Makashov to lead the masses forward (because the Zyuganovs will be too scared and undecided and will be likely to join the party in power).

C. *General Albert Makashov*

General Makashov is the evidence that the political system in Russia, as well as the system of law enforcement, does not work properly. Makashov first drew public attention to himself with his chauvinist ideas in October of 1998 at two public meetings—one in Moscow, and one in a town of Samara. The Moscow Prosecutor's Office was willing to initiate criminal proceedings against the retired general under two articles of the Criminal Code—the Justice Ministry found calls for toppling the existing regime by force¹¹⁰ and ethnic hatred¹¹¹ present in both speeches. However, the law enforcement agencies' hands are tied by Makashov's immunity, which can only be waived by the *duma*.¹¹² Communists in general, and *duma* communists in particular decided to support Makashov in his efforts to rid Russia of "Jids" and journalists and refused to strip the good general of his immunity. As it turns out, there is no adequate legal base to pursue Makashov's case, and the existing legal base does not embrace the notion of extremism.¹¹³ Thus there is no possible way to counteract the Makashovs of Russia.

President Yeltsin's reaction to Makashov's statements was also very passionate. He was the first to publicly condemn the CPRF for supporting the antisemite. The statement that he issued informed the people that he reacted "with indignation to the aggressive statements of a number of Communist leaders regarding the nationality issue and restrictions of journalists' rights."¹¹⁴ Yeltsin warned the CPRF that any attempts to encroach upon citizens' rights on the basis of nationality will be suppressed in accordance with the Constitution and the laws of Russia. The President was indignant over the lack of action by the law enforcement agencies in connection with the recent events. He stated: "The seriousness of what happened has forced me to draw the special attention of law enforcement

¹¹⁰ See Ugolovnyi Kodeks RF (Criminal Code) [UK RF] art. 280 (2d ed. 1998).

¹¹¹ See *id.* art. 282.

¹¹² *Makashov May Be Tried Only with All Deputies' Consent*, SEGODNYA [TODAY], Oct. 14, 1998, at 1. See also KONST. RF art. 98. *Duma* is one of the houses of the Federal Assembly, which is the Parliament of the Russian Federation. Its duties are described in Art. 103 of the Constitution.

¹¹³ Irina Shkarnikova, *It's Not About Makashov—It's About "Makashism,"* MOSCOW NEWS, Nov. 19, 1998.

¹¹⁴ Igor Klochkov, *A Last Warning*, BUSINESSMAN DAILY, Nov. 10, 1998, at 1-2.

organs to the issue.”¹¹⁵ He was joined by the Ministry of Nationalities, which was also astonished at the inactivity and lack of involvement of the law enforcement organs.¹¹⁶ Thus, the President issued an order that the law enforcement agencies crack down on ethnic and political extremism. The directive does not focus just on Makashov’s statements, but on the party as a whole,¹¹⁷ because of its reaction to the speeches: during one of the CPRF meetings, Chairman of the Moscow City Committee of the CPRF said that “perhaps General Makashov said inappropriate things, but we are one with him.” This statement was met with a standing ovation by the ordinary communists attending the meeting.¹¹⁸ In an interview with a Moscow News correspondent, the first deputy chief of the presidential staff explained the president’s directive as an attempt to deal with the “masterminds” and “organizers,” establishing who is responsible for inciting ethnic strife and holding them responsible. The directive was issued only weeks before the Security Council session devoted to the socio-economic situation in the country. At this session, directors of law enforcement agencies will report to the president on their performance in enforcing the directive. The president himself will instruct the Ministry of Justice, law enforcement departments, and the government to initiate legislation that will help fight extremism in a systemic way. In addition, while there are no effective laws to address the situation, judicial and investigative practice needs to be developed. This is also important in order to expedite the drafting of these laws.¹¹⁹

These attempts to fight extremism in government are commendable coming from the President of the country. However, was it effective? Hardly. As an example of what Yeltsin wanted to change by issuing the directive, the deputy chief of staff talked about the passivity of the Prosecutor General regarding General Makashov. He said that the Prosecutor General admitted that Makashov’s actions constituted a violation of the law. “This, he said, was stated by a top-level expert in law. He should back up these statements with some action.”¹²⁰ If laws that Makashov violated already existed at the time he violated them, why is it necessary to adopt new laws? According to the Prosecutor General, Makashov is a criminal—then why is he still not only free, but continuing his extremist activity with new zeal? It is clear that writing and adopting laws is not the answer—it’s the

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *See* BOYLAN *supra* note 47.

¹¹⁸ *See supra* note 48.

¹¹⁹ *See supra* note 47.

¹²⁰ *See id.*

willingness of the enforcement agencies to enforce the existing laws and the effectiveness of punishment.

Another approach to curbing the communist extremists that was put forth by many politicians was to ban the party. As I have already suggested, this may not have solved the problem, however, it may have expressed more clearly the official position of the Russian government, as well as its strong commitment to doing away with chauvinism and extremism. Not only would it have improved Yeltsin's image in the West, it would have given him more credibility and respect among his own constituents. At first the idea of disbanding the party was received with skepticism, but after the communists demonstrated their support for Makashov, even those who initially opposed the measure changed their position. Yegor Gaidar, the leader of Russia's Democratic Choice, stated that the CPRF had found a common cause with "the zoological anti-Semite" Makashov, and thus had demonstrated its transformation "into a Nazi Party."¹²¹ Thus, according to Gaidar, "today we have the right and grounds to again raise the question of prohibiting the CPRF." Articles 16, 42, and 44 of the Law "On Public Associations" provide that public associations for the purposes of arousing racial, national or religious discord are prohibited. They further provide a detailed description of the process of banning a party that violates the above clause.¹²² Therefore, it is not the absence of the law, but the enforcement of the already existing law that presents a problem for the law enforcement agencies. And thus, the Communist party is still with us, and Makashov is active as ever—so much for Yeltsin's "crack down."

Similarly, application of the existing law makes it almost impossible to complete the case which was finally initiated against Makashov. According to the then director of FSS, Vladimir Putin, in order to be able to bring the case to court, a number of complex linguistic, psychological and other kinds of examinations must be carried out. "It is simply that our law is formulated in such a way that it is very difficult to prove *corpus delicti*, Putin explained. We need an intention, which in th[is] case is impossible to prove. Absolutely absurd things are needed—for instance, we must prove how the audience perceived the speeches delivered by the orator."¹²³

¹²¹ *Supra* note 48.

¹²² *See id.*

¹²³ Elena Tregubova, Vladimir Putin, "Go Bring Back the 'Iron Felix' to the Square, Only Be Sure Not to Squeak Afterwards!" *IZVESTIYA* [News], Dec. 19, 1998, at 2. The absurdity that Mr. Putin is talking about is not in the requirement itself, but in what it means for this particular case: the problem is that the only people that come to listen to Makashov or other orators with similar views, are those who agree with them. Therefore, if asked to testify, they would never admit

In January of 1999, the Moscow Prosecutor's Office, in response to the Moscow Mayor's accusation that it is unable to resist fascism and antisemitism, instituted legal proceedings against Makashov for instigating national discord. Makashov however, is not worried—he knows that he will not go to jail, because Duma is behind him.¹²⁴

In general, out of 40 cases of instigation of national, racial, and religious discord in the past several years, only twelve cases were sent to court, and only nine people were sentenced. Two people were sentenced to two years imprisonment, but one was amnestied. The rest received formal punishments or penalties.¹²⁵ In 1997, a criminal proceeding was instituted against Tschekotikhin, the Chief Editor of the newspaper *Nashe Otechestvo* [Our Fatherland] for publishing antisemitic materials, but the case was closed due to amnesty. He has not left his position and continues to be engaged in illegal activities.¹²⁶ The law also seems to fail against another political organization, Russian National Unity [RNU] and its devoted leader Aleksandr Barkashev, who targets mainly younger population of Russia and creates paramilitary camps to train them to fight Jews.

CONCLUSION

About ten years ago, a nice Jewish fifteen-year-old boy that I grew up with in Russia, accused his own father of being a Zionist. This is the most vivid evidence of how deep the anti-Jewish propaganda has reached. If even a Jewish boy saw logic in the fascist rhetoric and believed it enough to use it against his own father, wouldn't it be even more convincing for a Christian boy, or a Muslim, or a Russian atheist? And fifteen-year-old boys and girls are precisely the part of the population being targeted by the neo-Nazi movements, because they are more susceptible to brainwashing than older and more experienced people.

The situation of Jews in today's Russia is nothing to be desired. Synagogues are burnt down, cemeteries get desecrated, rabbis as well as regular members of Jewish communities become targets of unpunished violence. The Russian government has good intentions—it is trying to bring Russia to the level of the Western democracies, where human rights are

that the speaker's words incited national hatred, either because they would not want to incriminate the speaker, or because they truly believe that "truth" does not constitute incitement of national hatred.

¹²⁴ *It Is Rare Event That a Fascist is Sent to Jail*, KOMMERSANT-DAILY [BUSINESSMAN DAILY], Jan. 29, 1999, at 1.

¹²⁵ *See id.*

¹²⁶ Ekaterina Zapodinskaya, *Makashov's Case Will Cost the Investigation Dearly*, KOMMERSANT-DAILY, [BUSINESSMAN DAILY], Dec. 10, 1998, at 1.

protected by law, and where speech is regulated to the extent needed to maintain peace and to protect the interests of the national, racial, or religious minorities. Unfortunately, its attempts are not succeeding as yet: the laws, although exist, are not enforced by the courts, and the Constitutional prohibition of incitement of religious hatred is still only on paper. As Putin came to power this March, predictions are hard to make. According to George Soros, "it seems likely that the new government will be authoritarian and nationalistic. It is telling that one of Putin's first moves was to reject alliances in the Duma with [all the progressive parties] and make a deal for the support of the Communists."¹²⁷ It seems to me, however, that the changes made by President Yeltsin had some impact on Russia. The universalist nature of the new laws gained some respect from the Western societies, while separation of the judiciary branch from the rest of the government made judiciary more independent and therefore more effective in enforcing laws in the future. Once the democratization process starts, it is hard to turn back. Thus, I have more hope than does George Soros, but I do believe that there is still a lot to be done for Russia to start moving in the right direction, both legally and economically. I would like to believe that anti-Semitism in Russia will be curbed, but to achieve that goal, legal reform is necessary. The future is unpredictable, but the process that has been started by President Yeltsin is irreversible.

¹²⁷ George Soros, *Who Lost Russia?* N.Y. REV. BOOKS, Apr. 13, 2000, at 6.