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THE SOVIET PSYCHIATRIC ASSISTANCE STATUTE OF 1988: AN UNCERTAIN PROGNOSIS

Cynthia A. Lewis*

INTRODUCTION

On January 5, 1988, the Soviet Union, in partial response to President Gorbachev's *glasnost* reforms, adopted the "Statute on Conditions and Procedures for the Provision of Psychiatric Assistance" (Statute).¹ The Statute is significant because it is the first comprehensive legislative act in the Soviet Union to regulate all aspects of psychiatric assistance, to define obligations of mental health professionals, and to profess a concern for individual patient rights.² The Statute identifies

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1. Statute on Conditions and Procedures for the Provision of Psychiatric Assistance, Ved. Verkh. Sov. SSSR, No. 2 [2440], (Jan. 13, 1988) (effective Mar. 1, 1988), Item 19, at 22-27 (USSR), reprinted in *New Law Broadens Mental Patients' Rights*, 15 CURRENT DIG. SOVIET PRESS 11 (1988) [hereinafter Psychiatric Assistance Statute] (discussing the new Statute and procedures for administering psychiatric assistance made effective on March 1, 1988); Gustafson, *Soviet Human Rights Under Gorbachev: Old Wine in a New Bottle*, 16 DEN. J. INT'L L. & POL'Y 177 (1987). *Glasnost* is a term indicating openness that translates into a more relaxed state policy toward censorship, restrictions on demonstrations, and the treatment of prisoners. *Id.* at 177, 180. Gorbachev's *glasnost* policies include plans to change the Criminal Code to allow individuals more freedom to appeal in court and extinguish the abuse of psychiatry that leads to denial of an individual's access to the judicial system. *Id.*; Quigley, *Soviet Courts Undergoing Major Reforms*, 22 INT'L LAW. 459, 460 (1988). *Glasnost* means openness, relating to anticipated legal and political reform in the Soviet Union under Gorbachev. *Id.*; see *Statute Adopted Against Psychiatric Malpractices*, FOREIGN BROADCAST INFORMATION SERVICE -SOVIET UNION (F.B.I.S.—SOV), Jan. 6, 1988, at 40 [hereinafter *Psychiatric Malpractices*] (stating that the USSR Supreme Soviet Presidium adopted a Statute concerning the procedures for administering psychiatric assistance); *Criminal, Civil Codes Under Consideration*, F.B.I.S.—SOV, Jan. 28, 1988, at 53 (stating that the Director of the Soviet Institute of Law regards the reform of the Soviet Criminal Code as part of overall Soviet governmental and legal reforms designed to improve the protection of individuals civil rights); Jost, *The ABA, the Soviet Union and Advancing Human Rights*, 120 N.J.L.J. 5, 23 (1987) (viewing the Soviet appeals law as a valuable contribution to the policy of *glasnost* because it gives the court more power to protect individual rights from the abuses of the Soviet bureaucracy).

2. *Explain Supreme Soviet Decree*, F.B.I.S.—SOV, Feb. 18, 1988, at 80. The Chief Psychiatrist of the Soviet Ministry of Public Health, Aleksandr Churkin, emphasized in an interview that this comprehensive legislation was the first of its type to pertain to all aspects of psychiatric assistance, regulating both the procedure for treating the patient and the ethical responsibilities of health officials involved. *Id.* Churkin also stated that this Statute was designed to respond to the concern for the humane

specific procedures for administering psychiatric assistance and enumerates conditions under which a person can be hospitalized in a psychiatric institution.³

The Statute lists three basic objectives at the outset. First, it defines procedures and conditions for the administration of psychiatric assistance.⁴ Second, it attempts to protect the rights of mentally ill people.⁵ Third, it seeks to protect society from mentally ill people who may pose a physical danger.⁶ Under the Statute, an individual has the right to refuse commitment to a state mental hospital unless diagnosed as mentally ill.⁷ The tenets of the Statute also address a person's right to appeal such findings and his guaranteed right to humane and fair treatment if a diagnosis of mental illness is substantiated.⁸ The Statute

treatment of psychiatric patients. *Id.*; *Public 'Not Yet Ready' to Debate Psychiatry*, F.B.I.S.—SOV, Feb. 23, 1988, at 60 [hereinafter *Public 'Not Yet Ready' to Debate Psychiatry*]. The provisions of this Statute create comprehensive law that governs aspects of medical and social treatment of psychiatric patients, guaranteeing individual rights by shifting the burden of protection to mental health officials and professionals. *Id.* at 62; see *Psychiatric Abuse in USSR*, CANDLE AND CADUCEUS 3 (1988) (stating that the psychiatric decree of the Presidium is the first statement of rights for mental patients in 27 years and that a previous secret directive, under the supervision of the Ministry of Health, governed psychiatric commitment).

3. Psychiatric Assistance Statute, *supra* note 1, at 11-14; see *Psychiatric Malpractices*, *supra* note 1, at 40 (declaring that the Psychiatric Assistance Statute sets forth administrative rules of procedure for rendering psychiatric assistance and highlighting the responsibilities of health officials to comply with this Presidium statute); see also *Psychiatric "Errors, Malpractices" Redressed*, F.B.I.S.—SOV, Jan. 6, 1988, at 27 [hereinafter *Psychiatric "Errors, Malpractices" Redressed*] (observing that the Statute includes provisions that stress the importance of preventing psychiatric malpractice).

4. Psychiatric Assistance Statute, *supra* note 1, at 11-13.

5. *Id.*

6. *Id.* at 11.

7. *Id.* at 11-12. The Statute indicates that a psychiatrist commits an individual to a psychiatric institution with the person's consent. *Id.* Moreover, under the Statute, only in special circumstances where the individual poses a threat to himself or individuals in his vicinity may the psychiatrist legitimately force the person to be institutionalized. *Id.* at 12. Furthermore, if institutionalized, the Statute requires that a panel of psychiatrists subsequently examine the patient. *Id.* The Statute also grants the patient a right of appeal and monthly psychiatric reevaluation with a goal of patient release as soon as possible. *Id.*; see *Psychiatrist Answers Questions on New Law*, F.B.I.S.—SOV, Mar. 1, 1988, at 50 [hereinafter *Psychiatrist Answers Questions*] (noting that Chief Psychiatrist Churkin states that the new Statute makes it mandatory for Soviet officials and psychiatric professionals to prioritize concern for the social well-being and legal rights of mental patients).

8. Psychiatric Assistance Statute, *supra* note 1, at 11. Those suffering from mental disorders are guaranteed, in accordance with the general provisions of the new Statute, legal and social assistance, the right to petition for a local psychiatrist to examine them, and treatment through the least physically restrictive psychiatric methods possible. *Id.* A person subject to psychiatric examination or in disagreement with the psychiatric findings can appeal to the appropriate chief psychiatrist of the area's public health establishment. *Id.* at 12. That chief psychiatrist may appoint a commission to examine

indicates that, in certain situations, mental health professionals who knowingly abuse their professional positions are subject to criminal liability.⁹ In addition, this Statute repeatedly acknowledges the importance of a patient's consent, proclaiming that only mentally ill people presenting an immediate danger to society or themselves will be forcibly institutionalized.¹⁰ Finally, the Statute indicates that it will facilitate a reorganization of the administrative and professional hierarchy controlling the committal of people to institutions and their subsequent treatment.¹¹ Such reorganization will include: first, the appointment of regional chief psychiatrists, second, the involvement of local government, judicial, and health organizations in patient evaluation, and third, the utilization of professional review boards to verify psychiatric diagnoses.¹²

This Comment examines the provisions of the Statute that in theory represent a concern for human rights and accurate psychiatric diagnosis and treatment not previously expressed in laws of the Soviet

the individual's mental health. *Id.* In addition, a commission of psychiatrists will review the mental health of the patient every six months, and public health agencies may check the legitimacy of the psychiatric commitment of any patient. *Id.* at 13. In instances where a diagnosis indicates that a person must immediately be sent to a psychiatric hospital, that person should receive a monthly professional review. *The New Legislation Regarding Psychiatric Help*, USSR News Briefs, Feb. 29, 1988, at 4; see *Psychiatrist Answers Questions*, *supra* note 7, at 50 (explaining that when appealing a psychiatrist's diagnosis, a patient has the right to request that a psychiatrist from the person's region of habitation is appointed to the review board).

9. Psychiatric Assistance Statute, *supra* note 1, at 11. The Statute specifically states in its general provisions that anyone who knowingly commits a psychologically healthy person to a psychiatric hospital must face criminal liability and prosecution. *Id.* Additionally, if malpractice occurs, the Statute gives the Soviet Prosecutor's Office chief supervisory powers within specific jurisdictions to litigate. *Id.* at 13.

10. *Id.* at 11-13. The Statute provides for compulsory psychiatric treatment for people who demonstrate certain characteristics of mental illness and pose a criminal danger to society. *Id.* at 12. Compulsory commitment may occur when patients present an immediate danger to themselves or society. *Id.* The Statute stipulates that if a person is found mentally ill and dangerous upon forced commitment to a psychiatric hospital, that person's relatives and lawyers must be immediately notified and a commission of psychiatrists must check the validity of nonconsensual admission within a twenty-four hour period. *Id.*

11. *Id.* at 13.

12. *Id.* at 11-13. Allegedly, the Statute will involve both local health agencies and psychiatrists in the psychiatric examination process. *Id.* at 11. The duties and responsibilities of chief psychiatrists of public health agencies create a geographical hierarchy that acts as a check on lower level professionals. *Id.* at 13; see *Public 'Not Yet Ready' to Debate Psychiatry*, *supra* note 2, at 62 (noting that the Statute mandates the appointment of a chief psychiatrist for each geographical area to oversee treatment and hospitalization practices in order to prevent malpractice or diagnostic error); see also *Psychiatric Malpractices*, *supra* note 1, at 40 (indicating that the Statute defines the rights and duties of the chief psychiatrists, granting them power to review suspect non-consensual psychiatric commitment).

Union.¹³ On its face, the broad language of the Statute claims to respect concepts of socialism, democratism, and humanism¹⁴ which appeal to values of righteousness and humanitarianism.¹⁵ Yet, upon examination of this Statute, in light of its historical background and the present state of Soviet psychiatric treatment and commitment, it is apparent that the Soviet government will face inherent difficulties in implementing the Statute's expressed ideology. Part II explores the historical background of the Statute and the Marxist-Leninist tradition in the realm of human rights. In addition, Part II examines the Soviet Union's conformance to international human rights agreements and addresses the Soviet government's failure to enact promises associated with the Helsinki Final Act.¹⁶ Part III analyzes the legal guidelines prior to the enactment of the Statute,¹⁷ modifications present in the

13. See *Public 'Not Yet Ready' to Debate Psychiatry*, *supra* note 2, at 63 (explaining that, for the first time, an integrated law now exists governing provision of medical and social assistance to people suffering from mental illness).

14. Psychiatric Assistance Statute, *supra* note 1, at 11. The Statute specifically provides psychiatric assistance for those people who are mentally ill "on the basis of the principles of democratism, socialist legality, humanism and mercy." *Id.*

15. Accord Bozeman, *Human Rights and National Security*, 9 YALE J. WORLD PUB. ORD. 40, 58 (1982) (explaining that the 1977 Constitution expresses some classically western freedoms).

16. *Conference on Security and Coop. in Eur., Final Act*, Helsinki, (1975), United States Dep't of State, Foreign Policy Series No. 8826 [hereinafter Helsinki Final Act]; Comment, *Human Rights in the Soviet Union: The Policy of Dissimulation*, 29 DEPAUL L. REV. 819, 863 (1980) [hereinafter Comment, *Human Rights in the Soviet Union*]. The Soviet Union did not uphold the promises made to protect civil and political rights at the Helsinki Conference that produced the Helsinki Final Act. *Id.* The failure of the Soviet Union to follow the humanitarian obligations stated in the United Nations Charter and United Nations Covenant on Civil and Political Rights violates the human rights of Soviet dissidents. *Id.*; see Comment, *The Fine Line Between the Enforcement of Human Rights Agreements and the Violation of National Sovereignty: The Case of the Soviet Dissidents*, 7 LOY. L.A. INT'L & COMP. L.J. 323, 329-31 (1984) [hereinafter Comment, *Enforcement of Human Rights Agreements*] (explaining that although the Helsinki Final Act is not a legally binding document, it refers to human rights concerns that coincide with the nature of other binding United Nations human rights agreements, including the International Covenant on Human Rights); see also Osakwe, *Soviet Human Rights Law Under the USSR Constitution of 1977: Theories, Realities and Trends*, 56 TUL. L. REV. 249, 287 (1981) (discussing Soviet human rights violations against dissidents and psychiatric patients).

17. See *Political Abuse of Psychiatry in the USSR*, Amnesty International Briefing, EUR. 46/1/83, Mar. 1983, at 1-21 [hereinafter Amnesty International, *Political Abuse of Psychiatry in the USSR*] (explaining that the vagueness and broadness in the civil commitment procedure stated in the 1971 Directive on Emergency Confinement of Mentally Ill Persons Who Represent a Social Danger led to arbitrary nonconsensual confinement of people in mental institutions). Doctors who order a person committed to a mental institution or hospital send a report to the hospital; thereafter, a commission of three psychiatrists must determine whether the confinement should continue. *Id.* at 4. Once discharged, the person is placed on a special list and monitored. *Id.* Because descriptions of symptoms of mental illness were imprecise, violations of the 1971 Directive regulations occurred frequently. *Id.* at 3; *How Psychiatry is Abused in the USSR*,

new Statute,¹⁸ and the significance of the established practice of using the psychiatric profession to control dissent.¹⁹ Part IV analyzes the domestic origins of support for implementation of the Statute, as advanced by administrative leadership changes,²⁰ the appeals law,²¹ and

39 CURRENT DIG. SOVIET PRESS, 1, 1-3 (1987) [hereinafter *How Psychiatry is Abused in the USSR*] (illustrating that psychiatrists, as well as other public officials, violated the psychiatric 1971 Directive and other instructions that regulated easy and frequent commitment). It is possible for psychiatrists to hospitalize patients without approval from the chief psychiatrist or without notice to the patient, relatives, or lawyers. *Id.*

18. Psychiatric Assistance Statute, *supra* note 1, at 13. The new Statute on Psychiatric Assistance was designed to: (1) create a more organized and uniform law; (2) make psychiatric assistance primarily voluntary with forced treatment as an exception to prevailing practice of consensual treatment; (3) subject all mental health cases only to the supervision of the Ministry of Health; (4) allow patients to appeal diagnoses; and make defense lawyers mandatorily available for patients. *Id.* at 13-14; *Psychiatric "Errors, Malpractices" Redressed*, *supra* note 3, at 27. The new Statute amends the Criminal Code to make mental health professionals liable for illegally committing people to mental hospitals if they are known to be healthy. *Id.* at 27; see Van der Stoel, *Human Rights in the Soviet Union*, 6 NETH. Q. HUM. RTS. 1, 75-76 (1988) (reporting that since passage of the psychiatric law, Soviet mental health officials deny that there are abuses of psychiatric diagnoses of patients); *Politics and Soviet Psychiatry*, SCIENCE, Feb. 5, 1988, at 551 [hereinafter *Politics and Soviet Society*] (noting that, although the new psychiatric legislation can not yet be accurately analyzed as to its effects, 100 dissidents were released; Helsinki Watch estimates that 200-1000 political dissidents are still confined in psychiatric hospitals).

19. Van der Stoel, *supra* note 18, at 75. People who publicize views or behave in a manner that the Soviet government considers politically bothersome face commitment to mental hospitals even though no evidence indicates that they are mentally ill. *Id.*; see Osakwe, *supra* note 16, at 284 (claiming that dissidents have no legal rights due to the Soviet government effort to suppress dissenting opinions); Comment, *Human Rights in the Soviet Union*, *supra* note 16, at 854-55 (defining Soviet dissent as a term that applies to any individual who the Soviet government considers "actively resistant to the security and implementation of the Communist party's policies"); Comment, *Soviet Abuse of Psychiatric Commitment: An International Human Rights Issue*, 9 CAL. W. INT'L L.J. 629, 629-30 (1979) [hereinafter Comment, *Soviet Abuse of Psychiatric Commitment*] (suggesting that the Soviet government represses the opinions and actions of individuals who speak or act against the government's practices and laws, and punishes them using coercive hospitalization).

20. See *Politics and Soviet Psychiatry*, *supra* note 18, at 551 (arguing that the effects of the Statute will escape realization if the leadership of the psychiatric administration is not changed).

21. LAW OF THE UNION OF SOVIET SOCIALIST REPUBLICS ON PROCEDURES FOR APPEALING TO THE COURT UNLAWFUL ACTIONS BY OFFICIALS THAT INFRINGE THE RIGHTS OF CITIZENS, *trans. in Law on Appealing Officials' Illegal Actions*, 29 CURRENT DIG. SOVIET PRESS 12, 12-13 (1987) [hereinafter *Law on Appealing Officials' Illegal Actions*]; see Quigley, *The New Soviet Law on Appeals: "Glasnost" in the Soviet Courts*, 37 INT'L & COMP. L.Q. 172 (1988) [hereinafter Quigley, *New Soviet Law*] (describing the appeals law that permits individuals to appeal to courts if they feel that the administrative actions of a government official have in some way violated their rights). The report indicates that the appeals law impacts employment and housing, requiring fair dismissals and fair review of housing applications. *Id.* at 173. However, Soviet citizens may not appeal decisions or actions of a government board. *Id.* at 176.

the Criminal Code amendments.²² Finally, Part V considers the significance of international pressure on the Soviet government to implement the Statute and reform Soviet psychiatric practices.²³ Part VI of the Comment recommends practical ways to increase protection for individual rights and facilitate effective implementation of the Statute. The Comment concludes with a sober appraisal of the potential long-term effectiveness of the Statute.

I. HISTORICAL OVERVIEW

The significance of individual freedom, expressed in the Statute and its application to Soviet society, merits an examination of the Soviet Union's historical treatment of human rights issues. The government of the Soviet Union originally based its communist theories on a Marxist-Leninist philosophy.²⁴ The Marxist-Leninist theory is a source of the

22. See Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 4 (explaining that prior to the Statute, a person convicted under the Criminal Code had no procedural right to a defense and an appeal); *The New Legislation Regarding Psychiatric Help*, *supra* note 8, at 4 (reporting that while creating the Statute, legislators also drafted an amendment to the Criminal Code that makes it a crime to knowingly commit a mentally healthy person to a psychiatric hospital).

23. Ellman, *Psychiatric Treatment for Political Dissidents in the USSR*, 7 POLY. L. REV. 82, 85 (1982) (explaining that pressure from international organizations such as the WPA in the 1970s helped influence the Soviet government to reform its abusive practices); see Osakwe, *supra* note 16, at 250 (demonstrating that human rights laws in the Soviet Union did not start developing until the 1970s and that this legislation's goal was to create the appearance that Soviet laws complied with international human rights legal protections); Sharansky, *Gorbachev Plays a Double Game*, N.Y. Times, Jan. 4, 1988, at 4 (reporting that in order to secure western approval and cooperation to exchange scientific knowledge, the Soviet Union at times fabricates Soviet human rights concessions). Reporters warn that the Soviet government will make the fewest concessions necessary to appease western human rights activists, and that although the Soviet government will improve human rights in some areas, it will tighten control in other areas. *Id.*; see also *Politics and Soviet Psychiatry*, *supra* note 18, at 551 (reporting that the Soviet Union wants to regain membership in the WPA, therefore, it is susceptible to pressure from western countries and organizations).

24. See Bozeman, *supra* note 15, at 57 (explaining that the Marxist-Leninist doctrine in the Soviet Union describes that material circumstances in the world and the on-going class struggle control human destiny). The Soviet interpretation of this doctrine describes individual rights as "bourgeois illusions and entrapments." *Id.*; Dean, *Beyond Helsinki: The Soviet View of Human Rights in International Law*, 21 VA. J. INT'L L. 55, 57 (1980) (stating that Soviet theorists contend that individuals only have rights specifically conferred on citizens through Soviet law, which is rooted in Marxist-Leninist theory); Ioffe, *Soviet Attitudes Toward International Human Rights Law*, 2 CONN. J. INT'L L. 361 (1987) (defining Marxism-Leninism in the Soviet Union as a stage of society when the need for communism, laws, and protection of human rights will naturally wither away). The Soviet government functions under the theory that human rights will only be a guaranteed protection when it is in the Soviet State's best interest. *Id.*; Osakwe, *supra* note 16, at 249, 255-56 (describing Marxist-Leninist ideology as a theory that does not recognize individual rights and freedoms).

Soviet government's traditional reluctance to legislate human rights laws, such as the Statute, because of its belief that individual rights do not need statutory protection.²⁵ According to this theory, an ideal socialist society does not need human rights laws²⁶ because elementary individual rights already exist as a product of the economic development of society.²⁷ Human rights are a product of economic determinism, controlled by the naturally dominant class in society.²⁸ Thus, universal human rights do not exist unless they develop as the by-products of a functioning socialist state.²⁹

A. THE EVOLUTION OF INDIVIDUAL RIGHTS IN SOVIET LAW

The Marxist-Leninist theory evolved in Soviet society as a theory of communism, stressing the superiority of collective will over individual rights.³⁰ The Soviet socialist doctrine supports individual rights only if

25. See Ioffe, *supra* note 24, at 361 (theorizing that pure socialism eradicates the need for human rights legislation); Osakwe, *supra* note 16, at 255 (explaining the Marxist-Leninist theory supports individual human rights because they evolve from the societal structure of the state).

26. See Ioffe, *supra* note 24, at 361 (stating that an underlying philosophy of Marxist-Leninist socialism is the need for the protection of human rights becomes unnecessary if society attains a natural balance).

27. See Bozeman, *supra* note 15, at 57 (explaining that individual human rights in Soviet society are not central to the dynamic of economic determinism; therefore, internationally recognized human rights have no legal relevance). Human destiny is a product of the economic conditions of the state; thus, human rights legislation will face enforcement and state support only if necessary to further economic goals. *Id.*; Dean, *supra* note 24, at 57 (arguing that human rights have no recognized legitimacy unless specific state legislation creates them); Ioffe, *supra* note 24, at 361 (explaining that the Marxist-Leninist tradition holds that human rights are products of the state's development). This philosophy encourages the belief that in the perfect socialist society the need for any human rights legislation will disappear, as laws "wither away." *Id.*

28. DEPT. OF STATE, 100TH CONG. 2D SESS., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1987 1045, 1063 (Joint Comm. Print 1987) [hereinafter COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1987] (stating that the Communist Party controls political, social, and economic functions at every level of government); Dean, *supra* note 24, at 66-67 (recognizing that the Soviet government plays a major role in shaping the directions of Soviet society because of the existence of party control over economic determinism); see also Osakwe, *supra* note 16, at 264 (describing the Soviet government's absolute right to recognize and to enforce or to ignore individual rights because of the nature of Soviet law that places societal interests far beyond those of the individual).

29. See Dean, *supra* note 24, at 57, 60-61 (examining the Soviet theory that individual rights are a function of economic rights as the state determines). The Soviet State controls rights granted to its citizens. *Id.*; Marks, *Engineering Human Rights: A New Generation for the 1980s*, 33 RUTGERS L. REV. 435, 436-38 (1981) (explaining the concept that individual rights do not exist unless enacted through specific laws).

30. Osakwe, *supra* note 16, at 261-62. The collective will of the group dominates the rights of the individual in Soviet society. *Id.* The Marxist-Leninist theory views individual rights as products of the socio-economic structure of society. *Id.*; see Dean, *supra* note 24, at 61-62 (emphasizing that only through the recognition of economic

the state chooses to recognize or create them under the Soviet doctrine of positive law.³¹ In the Soviet Communist government, actual power is hierarchical and theories do not become law unless the party apparatus legislates them.³²

As a result, the evolution of Marxist-Leninist socialism into Soviet communism mandates that individuals subject to psychiatric treatment cannot claim violation of their human rights unless they document the existence of a statute or directive recognizing these rights. In light of this philosophical history, the Statute is not legislation ratified to protect an abstract concept of universal human rights,³³ rather it represents newly created individual rights.³⁴

B. IDEALS EXPRESSED IN THE 1977 CONSTITUTION

The 1977 Constitution is an example of how ideological representations do not have legal application to Soviet society unless enacted in specific legislation. The 1977 Constitution³⁵ enumerates human rights not specified in previous Soviet constitutions.³⁶ This inclusion can be

and social rights, such as the right to work and to an adequate education, can a person attain individual rights); *see also* Osakwe, *supra* note 16, at 248-50 (arguing that statements in the 1977 Constitution supporting human rights are not a product of Marxist-Leninist ideology, because efforts to protect individual rights are a recent phenomenon). *See generally* R. MEDVEDEV, *ON SOCIALIST DEMOCRACY*, (1975) (discussing socialism and democracy, and their historical roots in the Soviet Union).

31. Osakwe, *supra* note 16, at 254. According to Soviet philosophy, the concept of positive law is essentially synonymous to Soviet law and the 1977 Constitution because Soviet law does not recognize natural law as a source of Soviet law and does not profess a belief in the "inalienable rights of man." *Id.* Instead, rights exist as a result of governmental mandates and legislation. *Id.* All rights in the Soviet Union exist only if the ideology is present in the constitution and the state legislates to protect such rights. *Id.*; *see Comment, Enforcement of Human Rights Agreements, supra* note 16, at 335-36 (setting forth the traditional western concept of human rights as a theory which recognizes that people possess universal inalienable human rights that they expect the governmental body to protect through legislation). These human rights exist under this theory even if a state fails to enact legislation to protect them. *Id.* at 335.

32. COUNTRY REPORTS FOR HUMAN RIGHTS PRACTICES FOR 1987, *supra* note 28, at 1063. In the Soviet government, actual power exists at the top of the political hierarchy and implementation of decisions is left to a small group of subordinate officials. *Id.*; *see Dean, supra* note 24, at 61, 64-65 (explaining that in Soviet society the government is the source of human rights, and, therefore, has the responsibility of creating and guarding against abuses).

33. *See* Osakwe, *supra* note 16, at 254 (recognizing that Soviet legal norms do not support the existence of "inalienable rights"). Western society defines inalienable rights as a sphere of legal rights inherent upon a person's birth. *Id.*

34. Psychiatric Assistance Statute, *supra* note 1, at 11-14.

35. KONST. SSSR, art. 39 (1977), *trans. in* Hecht, *THE SOVIET UNION THROUGH ITS LAWS 19-60* (1983) (1977 Constitution).

36. *See* Chalidze, *The Humanitarian Provisions of the Helsinki Accord: A Critique of Their Significance*, 13 VAND. J. TRANSNAT'L L. 429, 463 (1980) (insisting that the 1936 Constitution recognized only one-half of the human rights guaranteed in

attributed to internal and international pressure to protect human rights.³⁷

According to the Soviet socialist governmental tradition, however, the 1977 Constitution is merely a document that sets forth the ideological framework of societal values and legal norms.³⁸ Under socialism, the constitution is a declaration of a new phase of legal and socio-political development.³⁹ It merely heralds principles for government authorities to follow.⁴⁰ Therefore, as interpreted, the 1977 Constitution does not provide for specific legal remedies⁴¹ and is not a document for individuals to rely on for protection of their human rights.

Prior to the enactment of this comprehensive Statute, freedoms stip-

the 1977 Constitution).

37. *Id.* at 463. The increased recognition of specifically enumerated human rights in the 1977 Constitution resulted from internal dissent that encouraged international organizations to call for Soviet reform. *Id.* at 452, 463; see Ioffe, *supra* note 24, at 362 (explaining that the Soviet government's promises, internationally in accordance with the intent of the Helsinki Final Act to improve human rights guarantees, are in part recognized in the enactment of the 1977 Constitution).

38. COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1987, *supra* note 28, at 1063. The 1977 Constitution provides Soviet society with a guiding framework on which to base the development of its political system. *Id.*; see Bozeman, *supra* note 15, at 58. The 1977 Constitution expresses freedoms characteristic of Western countries, yet also indicates that these stated liberties can only be legally applied to Soviet society to strengthen the interests of the state. *Id.*; Dean, *supra* note 24, at 65. Article 39 of the 1977 Constitution limits the rights guaranteed to individuals and states that individual rights can not be upheld when they have a negative impact on the Soviet State. *Id.*; Feldbrugge, *The Soviet Human Rights Doctrine in the Crossfire Between Dissidents at Home and Critics Abroad*, 13 VAND. J. TRANSNAT'L. L. 451, 462 (1980) (stating that, in forming the 1977 Constitution, the Soviet government considered the threat of internal dissent and, thus, made individual freedoms subsidiary to the overall interests of the state government). The 1977 Constitution, partially in response to the 1970s dissent movement in the Soviet Union, represents a strategic design for the Soviet human rights doctrine and defines basic duties of both the citizens and government. *Id.*

39. Scurlock, *Constitutionalism Soviet Style*, 48 U.M.K.C.L. REV. 167, 168 (1980).

40. *Id.* The 1977 Constitution provides political and theoretical guidelines to govern developing Soviet society. *Id.* at 168; see Feldbrugge, *supra* note 38, at 463 (explaining that the 1977 Constitution merely indicates the Soviet government's ideal goals that are not realized unless legislation supports them). Citizens may only enjoy rights that state laws specifically mandate. Dean, *supra* note 24, at 57-59. Compare Ioffe, *supra* note 24, at 363 (describing that even though rights are enumerated in the 1977 Constitution, they have no weight because an individual can not base a claim for legal recourse on the constitution) with Osakwe, *supra* note 16, at 249-50 (arguing that the human rights guarantees of the 1977 Constitution demonstrate that the Soviet government has both the goal and intention to create laws supporting human rights and the government, as well as honoring such proclamations through the creation of laws).

41. Feldbrugge, *supra* note 38, at 463. The reality of Soviet constitutional law is that it is not utilized in the Soviet legal system to protect individual human rights. *Id.* The 1977 Constitution is not used to appeal Soviet State practices. *Id.* at 465-66.

ulated in the constitution were merely a facade.⁴² People subject to psychiatric examination and confinement had few individual rights.⁴³ Suppression of individual rights continued after the enactment of the 1977 Constitution because rights recognized in the constitution are not legally applicable to individuals in Soviet society.⁴⁴ Therefore, subjects of psychiatric treatment will not be accorded legally recognized rights until specific laws pertaining to psychiatric assistance are adopted.

The 1977 Constitution represents the ideological goals of the state that often support the interests of the state at the expense of individual rights.⁴⁵ The language of the constitution indicates that an objective of the Soviet government should be to strengthen and aid the development of the traditional socialist state, valuing collectivity over individuality.⁴⁶ For example, the claims supporting freedom of speech do not identify an individual's right to publicly dissent to Communist party principles.⁴⁷

As long as the Statute does not support individual rights at the expense of governmentally defined societal interests, it can be interpreted as being consistent with the 1977 Constitution.⁴⁸ The values and goals expressed in the 1977 Constitution may forecast a conservative interpretation of the language of the Statute. Therefore, due to the conservative nature of the 1977 Constitution, and despite the new Statute, individual rights may receive limited protection when they conflict with Communist party goals.

42. See *supra* note 40 and accompanying text (explaining that rights do not exist unless the state specifically legislates them).

43. See Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 3 (asserting that legal rights for individuals confined in psychiatric hospitals are vague and easily manipulated).

44. See Ioffe, *supra* note 24, at 363-64 (claiming that human rights declarations in the 1977 Constitution will provide no effective legal recourse if legislation is not enacted at the national and local level providing for specific legal rights and remedies).

45. Feldbrugge, *supra* note 38, at 462. The general provisions of the 1977 Constitution contain language that pertains to human rights. *Id.* The 1977 Constitution specifically states that "[i]n exercising their rights and freedoms, citizens may not injure the interests of society and the state or the rights of other citizens." *Id.*; KONST. SSSR art. 39 (1977), *trans. in* HECHT, *THE SOVIET UNION THROUGH ITS LAWS 19-60* (1983). The 1977 Constitution further stresses the superior interests of the Soviet state to increase its power over the rights of the individual. *Id.* art. 59, para. 2, art. 62, art. 65 (1977).

46. Feldbrugge, *supra* note 38, at 463. Constitutional freedoms do not support individual dissent and criticism of the Soviet party government if such dissent conflicts with or harms the collective goals of the Soviet State. *Id.*; KONST. SSSR art. 39 (1977), *trans. in* Hecht, *THE SOVIET UNION THROUGH ITS LAWS 19-60* (1983).

47. Feldbrugge, *supra* note 38, at 463-64.

48. *Id.*

C. SOVIET RESISTANCE TO INTERNATIONAL PRESSURE REGARDING HUMAN RIGHTS

The Soviet government generally resists international pressures to reform internal state legislation.⁴⁹ The Soviet Union is a strong proponent of the sanctity of sovereign rule when confronted with international interference.⁵⁰ Self-determination concerning legal, social, and political

49. Psychiatric Assistance Statute, *supra* note 1, at 11-14; *Abuse of Psychiatry in the Soviet Union, 1983: Hearing Before the Subcomm. on Human Rights and Intl. Organizations of the Comm. on Foreign Affairs and the Comm. on Security and Cooperation in Europe House of Rep.*, 98th Cong., 1st Sess. (1983) [hereinafter *1983 Hearing*] (discussing the concern of the United States over the political use of psychiatry in the Soviet Union). In addition, legislators interviewed several human rights activists, psychiatric professionals, and dissidents on the state of psychiatric law and abuse in the Soviet Union. *Id.*; Ellman, *supra* note 23, at 85 (concluding that accounts of Soviet psychiatric abuse of patient's rights and indiscriminate treatment with harmful drugs, concerned the World Psychiatric Association (WPA)). In the late 1970s, the WPA tried to convince the Soviets to halt abusive practices and considered the expulsion of the Soviet Union from the WPA. *Id.* at 85; Comment, *Human Rights in the Soviet Union*, *supra* note 16, at 823. In the Soviet Union, national sovereignty is of primary importance and takes precedence over general principles of international law. *Id.*; see Osakwe, *supra* note 16, at 287 (indicating that concern over whether the Soviets would keep promises made under the Helsinki Final Act led to the creation of Helsinki Watch groups that track abuses of the rights of dissidents in psychiatric prisons); Comment, *Soviet Abuse of Psychiatric Commitment*, *supra* note 19, at 629 (explaining that psychiatric law and treatment developed into an issue of international concern when the Soviet government increasingly used psychiatric hospitalization to control dissent); Amnesty International *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 1-21 (outlining the Amnesty International extensive record of abusive psychiatric treatment of dissidents at the discretion of the Soviet Psychiatric professionals and government officials). Amnesty International closely monitors abuses and frequently sends letters to the Soviet Union appealing for the release of healthy dissidents. *Id.*; see also *Politics and Soviet Psychiatry*, *supra* note 18, at 551 (setting forth the Helsinki Watch monitoring of Soviet compliance with the Helsinki Final Act and describing the number of people hospitalized for political dissent); Koryagin, *World Psychiatry: Readmitting the Soviet Union*, *LANCET*, July 30, 1988, at 268 (noting what considerations the WPA must examine before allowing the Soviet Union to rejoin the organization after its resignation); *Superpowers Seek Accord On Visiting Mental Hospitals*, *N.Y. Times*, May 22, 1988, at 1 (reporting on preliminary arrangements to allow American psychiatrists to visit Soviet mental hospitals - a goal that the American Psychiatric Association (APA) has repeatedly sought); INTERNATIONAL ASSOCIATION OF THE POLITICAL USE OF PSYCHIATRY (IAPUP), Informational Bulletin No. 18, Apr. 1988, at 1-8 [hereinafter IAPUP *Information Bulletin* No. 18] (outlining psychiatric abuse in the Soviet Union). The IAPUP is an organization of national groups that focus on the freedom of political prisoners subject to the political use of psychiatry. *Id.*

50. *Id.* The Soviet government claims that the United Nations Charter supports the superior role of national sovereignty, indicating that issues of national sovereignty preclude international interference. U.N. CHARTER, art. 2(7); Comment, *Human Rights in the Soviet Union*, *supra* note 16, at 823; see Comment, *Enforcement of Human Rights Agreements*, *supra* note 16, at 338-39 (asserting that Soviet officials continue to support the dominance of sovereignty over international law because such views do not represent Soviet State interests and support capitalist over socialist concerns). In addition, Soviet government officials believe that the notion of sovereignty is superior to

issues is a primary concern of the Soviet State, and rules of international law are considered binding only if they coincide with principles of Soviet law.⁵¹ Consequently, Soviet government policy resists international pressure regarding Soviet human rights issues. The Soviet government asserts that the mere predominance of western views on human rights in international law does not destroy the validity of Soviet views.⁵² As a result of the Soviet historical emphasis on the value of self determinism,⁵³ the Soviet government may resist international efforts to encourage administrative compliance with the Statute.⁵⁴

Soviet resistance to international pressure to conform to human rights agreements is evident in the Helsinki Final Act.⁵⁵ Although the Helsinki Final Act is an international declaration that is not legally binding under international law, it implies a moral commitment to adhere to humanitarian principles.⁵⁶ Due to failure of the Soviet Union to adhere to the principles of this declaration, Helsinki Watch groups monitor Soviet compliance.⁵⁷ In an attempt to diffuse international

international law because historically significant socialist value of state self-determination repudiates foreign interference in Soviet State matters. *Id.* at 339.

51. Osakwe, *supra* note 16, at 266. The Soviet conflict of laws regulations stipulate that when Soviet domestic law conflicts with an international agreement to which the Soviet Union is a party, the agreement will not be considered valid. *Id.* The Soviets may apply International treaties or agreements to Soviet law with reservations. *Id.*

52. Comment, *Enforcement of Human Rights Agreements*, *supra* note 16, at 338-39. The Soviet Union expresses concern over the predominance of western capitalist views in areas of international law and refuses to allow international law to dominate over socialist sovereign state policies and laws. *Id.*

53. *Id.* at 339. The Soviet government officials' perceived right to sovereignty and freedom from international interference is an expression of the value of self determination. *Id.*

54. See COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1987, *supra* note 28, at 1064 (reporting that the Soviet government resists international pressures for reform, claiming that human rights issues involve internal political problems solely of Soviet national concern).

55. Helsinki Final Act, *supra* note 16, at 425; see Comment, *Enforcement of Human Rights Agreements*, *supra* note 16, at 325 (explaining that the Helsinki Final Act is merely a declaration and, therefore, not legally binding).

56. Comment, *Enforcement of Human Rights Agreements*, *supra* note 16, at 323-25 (stating that the Helsinki Final Act is a declaration of co-operation concerning human rights practices not legally binding upon the Soviet Union). Principles of the United Nations' Universal Declaration of Human Rights legally guaranteeing basic human rights imply an obligation for the Soviet Union to comply with the principles of human rights expressed in the Helsinki Final Act. *Id.* at 329. Compare Comment, *Human Rights in the Soviet Union*, *supra* note 16, at 830-31 (explaining that the Helsinki Final Act is neither a legally binding treaty nor a convention, thus the Soviet Union is not legally obligated to comply with it). The Helsinki Final Act, however, creates moral obligations. *Id.* with Chalidze, *supra* note 36, at 434 (claiming that the Helsinki Final Act can not bind the Soviet Union because its language is too general).

57. Ellman, *supra* note 23, at 85 (explaining that the WPA showed concern for Soviet abuses of psychiatric practices and asserted international pressures to change

pressure for Soviet legal reform, the Soviet Union imprisoned and punished members of the Helsinki Watch groups; however, the opposite effect occurred as international concern intensified.⁵⁸ Yet, the Soviet Union may attempt to diffuse international influence by enforcing the new Statute in ways that further Soviet government goals.

D. PSYCHIATRIC COMMITMENT AND TREATMENT PRACTICES PRIOR TO THE PSYCHIATRIC ASSISTANCE STATUTE

A person diagnosed as mentally ill may be committed to one of two psychiatric hospital systems. "Special" hospitals or "ordinary" hospitals, under the control of the Ministry of Interior prior to 1988, are intended for the criminally insane; however, Soviet government authorities often use them to confine political dissidents.⁵⁹ Second, ordinary hospitals confine patients considered less dangerous.⁶⁰ A person may be

Soviet practices); Osakwe, *supra* note 16, at 287. In 1976, Helsinki Watch groups were formed to monitor the Soviet compliance to the 1975 Helsinki Final Act, due to the Soviet government's demonstration of an increased harshness in the treatment of dissidents. *Id.*; see Sharansky, *supra* note 23, at 4 (documenting the increased harshness in treatment of dissidents, including violations of basic human rights occurring after the Soviet government agreed to the Helsinki Accords); see also Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 20 (showing that concern over human rights practices in the Soviet Union and the psychiatric abuse of political dissidents led the WPA to increase its monitoring activities of Soviet practices and to demand changes).

58. Osakwe, *supra* note 16, at 286-87. After Helsinki Watch groups were formed, Soviet authorities imprisoned many members in a surge to repress the activity of such groups. *Id.*; *Testimony of Dr. Anatoly Koryagin at a Public Hearing of the Commission on Security and Cooperation in Europe*, May 15, 1987, at 2-3 (asserting that Soviet citizens who tried to monitor Soviet compliance with the Helsinki Accords were seen as a threat and imprisoned, mainly because Soviet government officials realized that their policies were not conforming to the Helsinki humanitarian terms and feared the increased international publicity); see 1983 *Hearing*, *supra* note 49, at 16-17 (statement of Harold Vistosky, M.D., Chairman, Committee on International Abuse of Psychiatry, American Psychiatric Association) (explaining that critics of the Soviet psychiatric practices have been repressed and imprisoned because of their efforts to publicize and reform practices); see also Comment, *Enforcement of Human Rights Agreements*, *supra* note 16, at 333 (claiming that people in the Soviet Union are frequently arrested and subjected to abuse in violation of the United Nations Covenant on Civil and Political Rights); *Universal Declaration and the Political Covenant*, G.A. Res. 2200 (XI), art. 27, 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966).

59. 1983 *Hearing*, *supra* note 49, at 64-65 (Statement of Professor Harvey Fire-side) (noting the commitment of dissidents to "special psychiatric hospitals" is used to confine the criminally insane, that the Ministry of the Interior controls).

60. *Id.* All hospitals that are not "special psychiatric hospitals" are considered "ordinary" hospitals that health authorities control. *Id.*; see Comment, *Soviet Abuse of Psychiatric Commitment*, *supra* note 19, at 639 (indicating a broad criteria for commitment that falls under the Civil Procedure Code). THE CODE OF CIVIL PROCEDURE OF THE RSFSR (amended 1964), THE SOVIET CODES OF LAW 544-680 (H. Berman & J. Spindler trans. W. Simons ed. 1984) [hereinafter CIVIL PROCEDURE CODE].

committed to a psychiatric hospital based on reported observations of virtually any behavior considered incorrect or inappropriate in Soviet society.⁶¹ When diagnosed as mentally ill during the pretrial period, the person is immediately admitted to a hospital and his or her legal case is terminated.⁶²

Treatment in the psychiatric hospital includes the forced administration of mind altering drugs; released dissidents have claimed that this is often used as a method of punishment and control rather than therapy.⁶³ Prior to 1988, committed patients lost all civil rights;⁶⁴ upon release, they faced the stigma of being labelled mentally ill, leading to arbitrary recommitment and social and political restrictions.⁶⁵ The chief psychiatrist of the Ministry of Health, when asked to comment on the state of psychiatric law and treatment prior to 1988, indicated that patient's rights were often violated.⁶⁶ He claimed that this was due to inexperienced psychiatrists and administrators whose attempts to protect both the patient and Soviet socialist values led to unintentional abuses of patient's rights.⁶⁷

61. Comment, *Soviet Abuse of Psychiatric Commitment*, *supra* note 19, at 639. The civil commitment procedure permits legal commitment for any behavior deemed incorrect. *Id.*; see Ellman, *supra* note 23, at 84 (reporting that a mere complaint can justify a government to authorize police to commit a person to a mental hospital); *How Psychiatry is Abused in the USSR*, *supra* note 17, at 1-3 (identifying the forced commitment of Anna Ivanovna). The Ministry forcibly committed Ivanova to a mental hospital after she made repeated complaints to the Ministry of Interior about her bothersome neighbor. *Id.* at 2. Another Soviet citizen, Zoya Petrovna, accused her physicians of negligence; the Ministry of Interior labelled her vocal complaints "litigious activity" and put her name on the psychiatric register. *Id.* at 1.

62. *Soviet Abuse of Psychiatric Commitment*, *supra* note 19, at 639.

63. See 1983 Hearing, *supra* note 49, at 66 (statement of Professor Harvey Fire-side) (stating that drugs are administered to some patients solely as a form of punishment and not as part of treatment). In addition, Dr. Charles H. Fairbanks, Jr. reported that patients are subject to insulin shock therapy and sulfazin; neither drug is effective in treating the mentally ill. *Id.* at 10; Comment, *Enforcement of Human Rights Agreements*, *supra* note 16, at 334 (explaining that within institutions and hospitals, tortuous drug treatments and beatings keep patients submissive).

64. See *How Psychiatry Is Abused in the USSR*, *supra* note 17, at 1-3 (asserting that civil rights are easily and often violated); Grigoriant, *Soviet Psychiatric Prisoners*, N.Y. Times, Feb. 23, 1988, at A31 (describing the case of Vozgen Ayrapetyan who was tricked into going to a psychiatric clinic because of his reputation as a complainer); Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 12-16 (citing numerous cases of dissidents forcibly confined to psychiatric hospitals because they registered criticisms or complaints concerning mundane aspects of Soviet lifestyle).

65. Comment, *Enforcement of Human Rights Agreements*, *supra* note 16, at 335. If a person publicly complains, that person is easily reconfined. *Id.*; see *How Psychiatry is Abused in the USSR*, *supra* note 17, at 1 (reporting that Zoya Petrovna was forcibly confined in a psychiatric clinic and later discriminated against because of her complaints about medical treatment).

66. *New Mental Health Regulations Take Effect*, F.B.I.S.—SOV, Mar. 1, 1988, at

II. STATUTORY ANALYSIS

Prior to the 1988 Statute, the legal guarantees provided to people subject to psychiatric analysis and confinement were more limited in scope and ambiguous in content.⁶⁸ The administration of psychiatric law provoked fear in the Soviet people, through a belief that persons who seemed slightly abnormal could be forcibly committed to a psychiatric hospital without notice or a chance to challenge the diagnosis.⁶⁹ Local hospitals, psychiatrists, and Party administrators implemented psychiatric treatment based on separate admission and treatment procedures and a secret directive on emergency confinement.⁷⁰ Vague guidelines made the enforcement of procedures inconsistent and confusing.⁷¹ The Soviet government provided two separate systems, civil and

68. Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 3. The legal guidelines for psychiatric treatment and administration are vague, and the language is easy to manipulate. *Id.* Compare Ellman, *supra* note 23, at 82 (explaining that the terminology of psychiatric rules and regulations fail to clearly define mental illness, and, thus, often facilitate compulsory commitment to a psychiatric hospital) with Comment, *Human Rights in the Soviet Union*, *supra* note 16, at 823-25 (asserting that the confusion over Soviet laws gives government authorities discretionary power to interpret the laws as they wish).

69. *How Psychiatry is Abused in the USSR*, *supra* note 17, at 1-3. Psychiatrists were able to ignore regulations on commitment and treatment of psychiatric patients when they committed people to psychiatric institutions without first conducting an initial examination or giving notice to the patient. *Id.*; see *No Political Prisoners Remain in Asylums*, F.B.I.S.—SOV, Apr. 7, 1988, at 46 (reporting that Soviet authorities admit that past practices facilitated the commitment of people with minor disorders without affording them prior notice of the authorities' actions); Comment, *Human Rights in the Soviet Union*, *supra* note 16, at 862-63 (noting that committing patients to mental hospitals occurs without granting the patient a right to challenge official decisions).

70. See Ellman, *supra* note 23, at 82-83 (describing the secret 1971 Directive on "emergency confinement of mentally ill persons who represent a social danger" that defines the right to carry out compulsory psychiatric confinement); Maksimova, *Officials Say Mental Patients' New Rights Will Deter Abuses; 'Immediate Danger' is Criterion for Involuntary Commitment; Experiment in Some Areas Will Remove Many Patients From Registers*, 15 CURRENT DIG. SOVIET PRESS 13 (1988) (stating in an interview with a Soviet Psychiatric official, that prior to 1988, departmental regulations governed the commitment and treatment of psychiatric patients); Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 4 (defining the duty of the Procuracy, Ministry of Internal Affairs, and the Commission of State Secretary to investigate individual cases and determine who should be subjected to psychiatric examination).

71. See 1983 Hearing, *supra* note 49, at 7-9 (statement of Dr. Charles Fairbanks, Jr., Deputy Assistant Secretary of State for Human Rights and Humanitarian Affairs) (stating that broad prerequisite conditions for hospitalization give Soviet administrators enormous discretion); *Politics and Soviet Psychiatry*, *supra* note 18, at 552 (explaining that the imprecise clinical definition of schizophrenia includes in its definition dissent as

criminal, under which a person could be subjected to psychiatric treatment and confinement. Under either system, socially unacceptable behavior justified forcible commitment;⁷² this type of commitment occurred without the consent of the patient or any right to legal counsel for the patient.⁷³ Because psychiatrists, government administrators, or police do not require professional accountability, these guidelines for treatment and confinement are ineffective.

A. THE 1971 DIRECTIVE

The Ministry of Health, Ministry of Interior, and Procurator General ratified "The Secret Directive on Emergency Confinement of Persons Who Represent a Social Danger" (1971 Directive).⁷⁴ The 1971 Directive provides guidelines to regulate the forcible confinement of individuals to psychiatric hospitals.⁷⁵ These guidelines justify random forcible confinement under a guise of protecting society from dangerous people.⁷⁶ In addition, the 1971 Directive indicates that government officials can forcibly confine mentally ill people to psychiatric hospitals without their consent if their behavior suggests that they may "obviously" endanger themselves or others.⁷⁷ The intentionally vague lan-

a symptom of mental illness).

72. See 1983 *Hearing*, *supra* note 49, at 64 (statement of Professor Harvey Fire-side) (stating that under the civil commitment procedure, a person can be confined if that person appears to be dangerous). Under the criminal commitment procedure, if a person commits a crime and is diagnosed as mentally ill, commitment to a psychiatric hospital is appropriate. *Id.*; Comment, *Soviet Abuse of Psychiatric Commitment*, *supra* note 19, at 639 (explaining that a person can be committed to a psychiatric hospital in the Soviet Union under the Civil Procedure Code for "incorrect behavior"). In the Soviet Union, this kind of behavior is believed to include an intent to harm someone, steal, criticize the government, or incite protests. *Id.*; see also Osakwe, *supra* note 16, at 269 (revealing that the determination of a person proclaimed mentally ill as being dangerous does not actually matter because the diagnosis of mental illness itself justifies compulsory commitment).

73. See *How Psychiatry is Abused in the USSR*, *supra* note 17, at 1-3 (stating that despite regulations, patients often received no initial psychiatric examination, second opinion, or information concerning their case); Comment, *Human Rights in the Soviet Union*, *supra* note 16, at 840-42 (explaining that the procedural administration of psychiatric treatment prevents patients from obtaining a lawyer). Once admitted to the hospital, the patient has no right to appeal the commitment decision. *Id.* at 862; Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 4 (explaining that patients do not have a right to know the results of psychiatric examinations).

74. See Ellman, *supra* note 23, at 82 (describing the procedures and standards of the 1971 Directive).

75. *Id.*

76. See Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 3 (asserting that officials can forcibly confine a person who presents an "evident danger" to society).

77. Ellman, *supra* note 23, at 82; see *supra* note 76 and accompanying text (stating

guage of the 1971 Directive gives the Soviet police broad discretion to decide whether a person is dangerous.⁷⁸ This decision-making process for confinement permits police or psychiatrists to commit a person to a psychiatric hospital based on their subjective belief that the person is socially dangerous.⁷⁹ The committing psychiatrist, however, must file a report. Therefore, a commission of three other psychiatrists require a second opinion within a twenty-four hour period to determine the validity of the commitment.⁸⁰

The forced commitment of a person diagnosed as mentally ill may occur without notification or consent of relatives.⁸¹ The regulations do not provide the patient with the right of appeal or the right to legal counsel.⁸² In addition, the description of symptoms that warrant forced commitment is vague and imprecise.⁸³ Significantly, this 1971 Directive influenced the creation of special lists of individuals who received psychiatric treatment, facilitating arbitrary recommitment.⁸⁴ Conse-

that patients considered an "evident danger" are forcibly confined in a psychiatric institution). Soviet officials consider a person an "evident danger" when leading or participating in a protest against government policies.

78. See 1983 Hearing, *supra* note 49, at 8-9 (statement of Dr. Charles H. Fairbanks, Jr.) (asserting that the broad terminology describing mental health conditions justifying commitment necessitates reliance upon the discretionary decisions of political administrators); Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 3 (describing the police's power to carry out emergency confinement under guidance of the Ministry of Internal Affairs).

79. See Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 3 (explaining that the 1971 Directive permits the police to commit people to mental hospitals if the police consider these people dangerous to themselves or others). Ellman, *supra* note 23, at 82 (stating that a psychiatrist may use any nonconforming behavior to justify committing a person to a mental hospital and that consultations on this decision are not necessary).

80. See Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 4 (showing that despite adopted procedures, officials often violate them and sometimes a person never receives any form of psychiatric examination or diagnosis).

81. See *id.* (revealing that the authorities rarely inform relatives of the related committed person's status within the stipulated twenty-four hour period); *How Psychiatry is Abused in the USSR*, *supra* note 17, at 1-2 (demonstrating that in the case of Anna Ivanovna, authorities decided that she was mentally ill because she complained too much and committed her to a psychiatric hospital without consultation with her relatives).

82. See Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 5 (claiming that the 1971 Directive indicates that although defense counsel may be present at a patient's initial hearing, access to a lawyer is consistently denied, and once confined, there is no recognized right to a lawyer or judicial intervention).

83. See Ellman, *supra* note 23, at 82 (analyzing that psychiatric professionals and government officials exercise arbitrary discretion when deciding what symptoms to consider indicative of a psychiatric abnormality requiring forced commitment). The terminology of psychiatric rules do not clearly define symptoms indicative of mental illness thereby allowing the arbitrary commitment of individuals to psychiatric institutions. *Id.*

84. Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 4. Lists of those who received psychiatric treatment exist, giving authorities an

quently, the 1971 Directive fails to provide people subject to psychiatric treatment with any substantive rights.⁸⁵

B. THE 1988 STATUTE

The Statute, passed in 1988, provides a comprehensive body of guidelines to govern the treatment and commitment of psychiatric patients.⁸⁶ It is the first Soviet psychiatric assistance legislation to govern the entire range of psychiatric commitment and treatment.⁸⁷ Although the Statute protects individual human rights in the administrative procedure, it continues to protect Soviet society from patients perceived to be dangerous to themselves or others.⁸⁸ Soviet officials indicate that a major goal of the Statute is to reduce the number of people confined to psychiatric hospitals and to remove their names from publicized patient lists.⁸⁹

C. A COMPARISON OF THE 1971 DIRECTIVE WITH THE 1988 STATUTE

The Statute incorporates civil rights and professional accountability rules⁹⁰ that are not addressed in the 1971 Directive, local hospital procedures, or public health rules. The Statute identifies a patient's right to appeal commitment decisions and a right to legal counsel both

excuse to recommit listed people for further treatment. *Id.* Due to the lists of mentally ill patients, the vague terminology defining behavior justifying forced commitment, and the ease with which a person can be systematically recommitted, those with dissenting opinions can easily become subject to compulsory psychiatric treatment. *Id.* at 4.

85. See *supra* notes 75-84 and accompanying text (describing the tenets of the 1971 Directive).

86. Psychiatric Assistance Statute, *supra* note 1, at 11-14.

87. *Id.*; see *Public 'Not Yet Ready' to Debate Psychiatry*, *supra* note 2, at 62 (describing the 1988 Statute); *Ready to Rejoin Association*, F.B.I.S.—SOV, Feb. 18, 1988, at 80 (describing the comprehensive nature of the Statute pertaining to all aspects of psychiatric assistance); see also *How Psychiatry is Abused in the USSR*, *supra* note 17, at 4 (discussing the fact that a statute similar to the 1988 Statute was discussed in 1977, but Soviet officials did not approve it).

88. Psychiatric Assistance Statute, *supra* note 1, at 11-12.

89. *No Political Prisoners Remain in Asylums*, *supra* note 69, at 46. Chief Psychiatrist of the Ministry of Health Churkin claims that he will reduce the number of names on the certified patient lists. *Id.*; see *How Psychiatry is Abused in the USSR*, *supra* note 17, at 3 (reporting that Chief Psychiatrist Churkin seeks to have the non-consensual confinement of patients limited to only those people who pose a direct threat to themselves or to the lives of others).

90. See *The New Legislation Regarding Psychiatric Help*, *supra* note 8, at 4 (describing changes the new Statute imposes such as adding the right to appeal and assistance of a lawyer, providing for a second professional opinion, and revising the Criminal Code to include prohibition of professional malpractice).

before and after commitment.⁹¹ The 1971 Directive mandated the appointment of a three person commission to review the decision to commit a person.⁹² The Statute not only includes provisions for this three person commission, but also permits the patient to choose a psychiatrist from that patient's community to serve on the commission.⁹³ Under the Statute, the patient's relatives must be notified of the patient's status within one day of the forced commitment.⁹⁴ In addition, diagnostic information must be made available to the patient.⁹⁵ Furthermore, a patient who has been committed must receive periodic diagnostic examinations, the goal of which is to facilitate the patient's release at the earliest possible date.⁹⁶

Unlike the Statute, the 1971 Directive does not indicate that a patient has the right to appeal commitment decisions.⁹⁷ The 1971 Directive places emphasis on a subjective determination of whether the patient is offending Soviet social or legal values in a manner considered dangerous to Soviet society.⁹⁸ Although a commission of psychiatric professionals must examine patients forcibly committed to psychiatric hospitals, this requirement is not enforced under the 1971 Directive.⁹⁹ Without the provisions for both a periodic review and notice to the patient or relatives, the Directive does not protect individual patient rights.¹⁰⁰

91. *Id.* at 4; Psychiatric Assistance Statute, *supra* note 1, at 11-12.

92. Ellman, *supra* note 23, at 82-83.

93. *New Mental Health Regulations Take Effect*, F.B.I.S.—SOV, Mar. 1, 1988, at 3. The patients' relatives are guaranteed the right to aid the patient in selecting a local psychiatrist to serve on the commission that reviews the patient's continued confinement. *Id.*

94. Psychiatric Assistance Statute, *supra* note 1, at 12.

95. *Id.* at 11-12. Patients admitted to a psychiatric hospital must be informed of the reasons for the commitment decision within twenty-four hours after the initial examination. *Id.*

96. *See Health Aide Cited on Psychiatric Reforms*, F.B.I.S.—SOV, Apr. 12, 1988, at 9, 10 (explaining that Soviet officials claim legislation guaranteeing the civil rights of patients will lead to the release of patients as soon as possible); *see also Public Not Yet Ready to Debate Psychiatry*, *supra* note 2, at 61 (noting provisions of the Statute that concentrate on assistance in the areas of jobs and housing to facilitate the individual's adaption to a normal lifestyle after release from a psychiatric hospital).

97. *See* Ellman, *supra* note 23, at 82 (asserting that a person faces forcible confinement if considered dangerous and is released only when this danger is cured).

98. *Id.*

99. *See* Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 4 (commenting that procedures in the 1971 Directive are not enforced).

100. *See* 1983 Hearing, *supra* note 49, at 8-9 (statement of Dr. Charles H. Fairbanks, Jr.) (stating that the vague terminology describing preconditions for commitment leaves the loss of individual rights to discretionary whim); Ellman, *supra* note 23, at 82-83 (documenting the arbitrary use of drugs on patients and the subjective power of authorities to commit individuals to psychiatric hospitals).

1. *The 1988 Psychiatric Assistance Statute Expands the Guarantees Under the 1971 Directive*

In deviating from the 1971 Directive, the Statute empowers the prosecutor's office to supervise the legality of administrative proceedings.¹⁰¹ Furthermore, the role of the Ministry of Interior in the examination and commitment of psychiatric patients is remanded to the Ministry of Health.¹⁰² This indicates that the Ministry of Interior will no longer have total control over the "special" hospitals where its officials have in the past used classification as mentally ill to confine dissidents.¹⁰³ Most significantly, the Statute imposes criminal liability, and, thus, a new level of accountability, on professionals who commit malpractice in committal, diagnostic, and treatment procedures.¹⁰⁴ The Statute states that future changes to the Soviet Criminal Code will reflect such professional liability.¹⁰⁵

2. *The 1988 Statute Is not Substantially Different From the 1971 Directive*

Although the Statute introduces new concepts of patient rights and professional accountability, its language is general and ambiguous in parts. As with past Soviet legislation, the language justifying nonconsensual psychiatric commitment is particularly ambiguous. The Statute uses nebulous terms to describe the person it considers dangerous to society.¹⁰⁶ Similar to the 1971 Directive, the Statute also allows for a

101. *New Mental Health Regulations Take Effect*, *supra* note 66, at 50.

102. COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1987, *supra* note 28, at 1048 (announcing the issuance of a Soviet government statement that places all psychiatric hospitals under the control of the Ministry of Health).

103. *See 1983 Hearing*, *supra* note 49, at 65 (statement of Professor Harvey Firestone) (explaining that "special" hospitals are used to forcibly commit dissidents).

104. Psychiatric Assistance Statute, *supra* note 1, at 13; *see The New Legislation Regarding Psychiatric Help*, *supra* note 8, at 4 (indicating that punishment for malpractice may include imprisonment for two years); *New Mental Health Regulations Take Effect*, *supra* note 66, at 50 (observing that the public prosecutor's office will monitor the legality of professional psychiatric activities).

105. *See Psychiatric "Errors, Malpractices" Redressed*, *supra* note 3, at 27 (reporting that the Soviet Presidium's introduction of amendments to the Criminal Code will apply to those persons committing malpractice or aiding in the commitment of healthy people to mental institutions). THE CODE OF CRIMINAL PROCEDURE OF THE RSFSR (amended 1960), art. 70, THE SOVIET CODES OF LAW 157-317 (H. Berman & J. Spindler trans. & W. Simons ed. 1984) [hereinafter CRIMINAL PROCEDURE CODE].

106. *Psychiatric Assistance Statute*, *supra* note 1, at 14 (responding to criticism that Soviet clinical diagnoses justifies forcible commitment of mentally healthy dissidents). Officials of the Ministry of Health claim that "purely litigious behavior by no means requires medical intervention." *Id.*; *see IAPUP Information Bulletin* No. 18, *supra* note 49, at 2 (placing more emphasis on whether violations of rules of the Soviet

broad spectrum of people to be considered mentally ill and socially dangerous enough to warrant forcible commitment. Furthermore, the Statute merely encourages, instead of requires, psychiatrists and mental health professionals to demonstrate concern for the well-being of psychiatric patients and to help them adapt to society.¹⁰⁷ Although the Statute discourages abuses of individual civil rights, it fails to propose concrete steps to monitor the protection of these rights.¹⁰⁸ Finally, although the Ministry of Health now controls all psychiatric institutions, no evidence of change exists in the administrative staff.¹⁰⁹

The changes in past practices which occur through the implementation of the Statute will help to show whether it substantially differs from the 1971 Directive.¹¹⁰ More time must pass, however, before the effects of the Statute on Soviet human rights practices can be conclusively measured.¹¹¹ Thus far, a lack of qualified candidates has caused the Ministry of Health to laboriously struggle to fill newly created administrative positions.¹¹² Despite this problem, however, the Ministry of

socialist society occur rather than on the mental state of the person); *Politics and Soviet Psychiatry*, *supra* note 18, at 552 (explaining that the broad definition of the mental illness termed schizophrenia encompasses behavior apparent in those who express dissenting opinions in Soviet society).

107. See *Psychiatrist Answers Questions on New Law*, *supra* note 7, at 50 (stating that under the new Statute, professionals and administrators have a moral obligation to protect the freedoms of their patients); *Psychiatric "Errors, Malpractices" Redressed*, *supra* note 3, at 27 (indicating that there is a duty to correctly apply rules to the treatment of patients).

108. See *Public 'Not Yet Ready' to Debate Psychiatry*, *supra* note 2, at 62 (arguing that the creation of the position of Chief Psychiatrist is the only major administrative change concerning the government's accountability); see also *Health Official Discusses New Psychiatry Law*, F.B.I.S.—SOV, Jan. 7, 1988, at 34 (reporting that the USSR Procuracy will carry out monitoring despite the fact that procedures are not yet specified).

109. See COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1987, *supra* note 28, at 1048 (explaining that personnel from the Ministry of the Interior remain in their positions at the institutions); Gumbel, *Critics Doubt Soviet Psychiatry Reformed*, Wall St. J., Feb. 2, 1989, at A6 (characterizing changes in the system as merely "cosmetic" because most officials retain their same jobs).

110. See Gumbel, *supra* note 109, at A6 (describing the Soviet government's efforts to comply with the new legislation as exemplified in the release of "dozens of patients thought by the West to have been wrongly confined"); *Superpowers Seek Accord on Visiting Mental Hospitals*, *supra* note 49, at 1 (noting that new safeguards have led to the release of patients and a decrease in the number of dissidents committed to psychiatric hospitals); *Psychiatric Abuse in the USSR*, *supra* note 2, at 3 (asserting that the release of "250 prisoners of conscience [in 1987], the largest contingent since the 1950s" shows the potential effect in the Soviet view of the Psychiatric Assistance Statute on the treatment of the mentally ill).

111. See Maksimova, *supra* note 70, at 14 (detailing a two year experiment in progress where patients are released and allowed to voluntarily seek psychiatric assistance).

112. *First Changes*, 15 CURRENT DIG. SOVIET PRESS 22 (1988) (offering an asser-

Health is actively reviewing patient registration lists and decreasing the number of names registered thereon.¹¹³ Overall, internal conflict among professionals, concerning the means to address questions of patient abuse, may frustrate the possibility of major changes in the administration of psychiatric law.¹¹⁴

D. THE STATUTE'S EFFECT ON PSYCHIATRIC LAW AND ITS POLITICAL USE TO CONTROL DISSENT

Psychiatric law and treatment in the Soviet Union became a subject of international concern primarily due to the Soviet practice of using psychiatry to control political dissent.¹¹⁵ When dissident groups in the Soviet Union became more organized and vocal during the 1960s and 1970s, the government, in an effort to suppress dissent, increased the use of psychiatric commitment of dissidents and abusive treatment of those committed.¹¹⁶ Thus, it became a common occurrence for Soviet government authorities, often with the assistance of psychiatric professionals, to label politically bothersome people as mentally ill and to confine

tion from the government controlled news service that requirements for the Chief Psychiatrist are so strenuous that qualified people are difficult to find for the positions).

113. *Public 'Not Yet Ready' to Debate Psychiatry*, *supra* note 2, at 62. In 1986 and 1987, in anticipation of the Psychiatric Assistance Statute, 9000 names were removed from the patient registration lists that are used to label patients as mentally ill and that justify on-going observation and arbitrary treatment. *Id.*

114. *See* Stoel, *supra* note 18, at 75-76 (reporting that psychiatrists at the Serbyski Institute, originally under the control of the Ministry of Interior, claim that psychiatric practices are legal, legitimate, and professionally sound in contrast to the views of the visiting delegation).

115. *See* S. BLOCH & P. REDDAWAY, *SOVIET PSYCHIATRIC ABUSE* 20-21 (1985) [hereinafter BLOCH & REDDAWAY] (highlighting the details of the psychiatric confinement of prominent dissidents in the 1960s that led to international recognition and publicity concerning Soviet abuse of psychiatric practices). Soviet dissidents publicized the Soviet abuse of psychiatry in the 1960s to encourage western scrutiny. *Id.* at 21.

116. *See* 1983 *Hearing*, *supra* note 49, at 8 (statement of Dr. Charles H. Fairbanks, Jr.) (defining psychiatric abuse as "the diagnosis of sane dissenters as mentally ill, and their punishment in psychiatric hospitals," which is abusive treatment). The Soviet Union has persecuted dissidents since the beginning of the 1900s. *Id.* at 7-8. In the 1950s and 1960s, under less restrictive governments, dissidents were able to become more vocal; and, subsequently, psychiatric abuse became a common method of controlling dissidents. *Id.* at 48-50 (statement of Peter Reddaway) (explaining that Soviet confinement of healthy dissidents in psychiatric hospitals began extensively in the 1960s); *see also* Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 1-10 (observing numerous incidents during the 1970s of confinement of mentally healthy dissidents); *Comment, Human Rights in the Soviet Union: The Policy of Dissimulation*, *supra* note 17, at 854-55 (defining the term dissident as anyone that the Soviet government classifies as opposed to the Soviet Communist party); *cf. Soviet Abuse of Psychiatric Commitment*, *supra* note 19, at 637 (examining an increasing international awareness of Soviet psychiatric abuses of individual rights). Since 1960, the number of dissidents committed to psychiatric institutions has increased. *Id.* at 629-30.

them to psychiatric institutions.¹¹⁷ This was an attractive option for the Soviet government because of the discretionary nature of psychiatric law and regulations.¹¹⁸ Although arresting and sentencing political dissidents attracted negative publicity,¹¹⁹ a finding of mental illness effectively permitted officials to circumvent a trial and avoid public scrutiny.¹²⁰

Commitment to psychiatric hospitals under civil law became an easy way to remove dissidents from society and label them as troublemakers, even after their release.¹²¹ In addition, the Soviet Criminal Code provides for commitment.¹²² Once committed to a psychiatric hospital, dis-

117. See 1983 Hearing, *supra* note 49, at 8 (statement of Dr. Charles H. Fairbanks, Jr.) (asserting that psychiatric abuse is a convenient way to incapacitate political dissidents); see also Comment, *Human Rights in the Soviet Union*, *supra* note 16, at 862-63 (stating that dissidents held as psychiatric patients are not released until they reject their dissident views); Ellman, *supra* note 23, at 84 (explaining that a person can be committed to a psychiatric hospital for simply complaining frequently to authorities).

118. See 1983 Hearing, *supra* note 49, at 8-9, 26-27 (statement of Dr. Charles H. Fairbanks, Jr.) (suggesting that Soviet officials have virtually unlimited discretion to confine dissidents, and letter from the All-Union Society of Neuropathologists and Psychiatrists stating that abuse of psychiatry does not exist because of the ethical concerns of Soviet psychiatrists). Government officials use psychiatric diagnostic practices to circumvent a political dissident's rights to trial proceedings. *Id.* at 8; Osakwe, *supra* note 16, at 284-85 (explaining that Soviet laws are subject to discretionary interpretation, and dissidents' legal rights are not protected because of the negative use of this discretionary power); see also Comment, *Human Rights in the Soviet Union*, *supra* note 16, at 861 (demonstrating that confining dissidents in psychiatric hospitals is an attractive option because it does not violate criminal law); Comment, *Soviet Abuse of Psychiatric Commitment*, *supra* note 19, at 632-37 (examining the nature of control that the Soviet State exhibits over psychiatric practices); *Politics and Soviet Society*, *supra* note 18, at 552 (concluding that the clinical definition of schizophrenia in the Soviet Union is broad enough to cover almost any dissident behavior).

119. See Grigoriants, *supra* note 64, at A31 (reporting that the Soviet government finds it easier to justify psychiatric commitment of dissidents rather than explain prison sentences). Commitment to psychiatric hospitals is a fairly easy process because "anyone with some sort of standing in society or who simply knows doctors and psychiatrists can do it." *Id.*

120. *Id.*

121. See 1983 Hearing, *supra* note 49, at 7-11 (statement of Dr. Charles H. Fairbanks, Jr.) (explaining that substituting psychiatric professionals' opinion for the trial procedure facilitates the commitment of dissidents to mental hospitals for an unspecified period of time); Ellman, *supra* note 23, at 84 (indicating that entire groups of protestors can suddenly be committed); Grigoriants, *supra* note 64, at A31 (explaining that it is easier to incapacitate someone as opposed to going through a lengthy trial procedure because anyone can label a person as mentally ill and facilitate psychiatric commitment); see also *Psychiatry Defended, Reforms Suggested*, F.B.I.S.—SOV, June 3, 1988, at 75, 76 (offering an official Soviet view that the Soviet Union uses psychiatry to suppress political dissidents).

122. Comment, *Soviet Abuse of Psychiatric Commitment*, *supra* note 19, at 639-40 (describing articles of the Soviet Criminal Code that make it a crime to disseminate anti-Soviet falsehoods or to agitate or propagandize for the purpose of subverting or weakening the nation). CRIMINAL PROCEDURE CODE art. 70; see Osakwe, *supra* note

sident patients are subjected to harsh drug treatments¹²³ and to therapy intended to change their politically deviant thoughts and behavior.¹²⁴ When abusive Soviet practices that use psychiatry to control political dissent increased, international organizations expressed growing concern.¹²⁵ Meanwhile, Soviet psychiatrists, such as Anatoly Koryagin, examined political dissidents whom the government labeled mentally ill and found them mentally healthy.¹²⁶

16, at 285 (analyzing the discretionary power of the Soviet government to accuse at will people of crimes). Socialism dictates a belief in sovereignty and superior discretion of Soviet government officials because of the theory of the government's superiority over individual rights. *Id.*

123. See 1983 *Hearing*, *supra* note 49, at 9-11 (statement of Dr. Charles H. Fairbanks, Jr.) (reporting that the administering of insulin and sulfazin in unhealthy doses occurs in Soviet psychiatric hospitals); *id.* at 66 (statement of Professor Harvey Firestone) (explaining that drugs are used in tortuous dosages to punish patients); Grigoriants, *supra* note 64, at A31 (indicating that compulsory treatment includes a standardized treatment for all patients with painful and harmful magnesium sulfate injections); *Politics and Soviet Psychiatry*, *supra* note 18, at 552 (reporting that psychiatric hospitals subjected dissidents to harmful drug therapy and physical abuse such as being wrapped in wet canvas).

124. See Comment, *Human Rights in the Soviet Union*, *supra* note 16, at 862-63 (stating that patients are not considered healthy or released from the hospital until they conform their opinions). Ironically, suppressing dissent, the government gives the impression that they fear the dissident's discontent will spread. *Id.*; *Public 'Not Yet Ready' to Debate Psychiatry*, *supra* note 2, at 62 (arguing in reaction to criticism that Soviet psychiatrists do not use drugs to punish dissidents, but to make them functional); *Psychiatry Defended, Reforms Suggested*, *supra* note 121, at 76 (observing Soviet official's claims that the commitment of healthy dissidents is a rare mistake and not meant to change behavior); BLOCH & REDDAWAY, *supra* note 115, at 30 (explaining that dissidents subject to psychiatric abuse are usually supporters of human rights and a democratization process, and, thus, urge the Soviet government to comply with its constitution). The lead psychiatrists who commit dissidents to psychiatric hospitals are typically party administrators. *Id.* at 36-38.

125. See *Politics and Soviet Psychiatry*, *supra* note 18, at 552 (reporting that a decrease in the number of cases of psychiatric abuses in the past few years is due partially to the involvement of international organizations, including the WPA). The WPA expressed criticisms of the Soviet Union's psychiatric practices in the late 1970s as reports of abuses increased. *Id.*; Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 20 (noting that the WPA's condemnation of psychiatric abuse instigated the involvement of many international groups in the issue).

126. Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 6. Dr. Anatoly Koryagin, a Soviet psychiatrist who is an active opponent of Soviet psychiatric abuse, examined fifteen dissidents diagnosed as mentally ill and at one time forcibly confined to a hospital and concluded that forced confinement was not medically justified. *Id.* Dr. Koryagin was subsequently imprisoned for the publication of his findings. *Id.*; see Comment, *Soviet Abuse of Psychiatric Commitment*, *supra* note 19, at 630 (reporting that western psychiatrists examined Soviet dissidents and found no evidence of mental illness); see also Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 74 (revealing numerous cases of dissidents whom Soviet officials diagnosed as mentally ill and dangerous enough to warrant psychiatric commitment). Western experts later diagnosed these dissidents as either mentally healthy or not dangerous. *Id.* One "patient," dissident Major General Peter Grigorenko, faced forcible confinement in a mental hospital, and, upon release, mem-

The Statute is designed to prevent not only administrative inconsistencies, but also abusive practices such as the use of psychiatry to control dissent.¹²⁷ The Statute solves some of these problems when it assigns criminal liability to those who knowingly commit healthy people to psychiatric hospitals.¹²⁸ Soviet officials, however, are inconsistent in their analysis of the psychiatric law and dissident problem, refusing to agree that such abuse of psychiatry exists.¹²⁹ Unless Soviet officials concede that they use psychiatry for political purposes, it is unlikely that the Statute will serve to remedy past psychiatric abuse of dissidents. Moreover, Soviet sovereign concerns for the promotion of socialist ideological goals and the classification of dissent as a crime, will limit the implementation of the tenets of the Statute.¹³⁰

bers of the American Psychiatric Association (APA) examined him and found no signs of mental illness. *Id.* Evgeny Nikoldev, a 43-year-old linguist considered "socially dangerous" and confined in a psychiatric hospital for years, was found to be harmless when a Soviet psychiatrist who opposed Soviet psychiatric abuse examined him. *Id.* Vladimir Borisov, a human rights activist labeled mentally ill and forcibly confined to a mental hospital reported that an institutional psychiatrist told him: "Borisov, you're a normal fellow and I am sure that you don't want to be sent to a madhouse. Why don't you change your views?" *Id.* at 75; *Psychiatric Abuse*, Helsinki Watch, Feb. 22, 1988, at 5 (explaining that Helsinki Watch learned of ninety people imprisoned in psychiatric hospitals because of their religious beliefs); *Psychiatrists Conduct News Conference: Admit "Official" Pressure*, F.B.I.S.—SOV, Feb. 18, 1988, at 80. Soviet psychiatrists admitted that "official bodies" influenced some psychiatrists' decisions, but denied KGB involvement. *Id.*; see also *Psychiatry Defended, Reforms Suggested*, *supra* note 121, at 75 (arguing that critics of Soviet practices make sensational cases of mistaken commitment to hospitals). See generally BLOCH & REDDAWAY, *supra* note 115, at 1-95 (highlighting numerous cases of Soviet psychiatric abuse). Viktor Davydov was a victim of Soviet psychiatric abuse. *Id.* at 30. Despite the fact that a number of psychiatrists considered him mentally healthy, he was labeled as mildly schizophrenic. *Id.* at 30. Soviet officials determined that "[i]n view of the great social danger he represents he needs to undergo compulsory treatment in a psychiatric hospital of special type." *Id.*

127. See *supra* note 16, 22 and accompanying text (describing international pressures to reform treatment of dissidents).

128. Psychiatric Assistance Statute, *supra* note 1, at 11-12.

129. See *Superpowers Seek Accord on Visiting Mental Hospitals*, *supra* note 49, at 8 (reporting that Soviet officials deny the existence of government-ordered psychiatric confinements). G. Morozov, Director of the Serbysky Institute of Forensic Psychiatry in Moscow, claims that abuses do not exist. *Id.* Although some officials state that abuses never existed, others state that all healthy dissidents have been released. *Id.*; *No Political Prisoners Remain in Asylums*, *supra* note 69, at 46 (offering comments from Chief Psychiatrist Churkin, admitting that state psychiatric wards had healthy people in them). Churkin declared that there are no longer any political prisoners being held in Soviet psychiatric institutions. *Id.*; *Psychiatry Defended, Reforms Suggested*, *supra* note 121, at 80 (asserting that only a few cases involve wrongful commitment); *Soviet Attitude "Changed"*, F.B.I.S.—SOV, Feb. 2, 1988, at 16 (reporting that in answer to criticisms of Soviet practices, the Ministry of Interior and Ministry of Health denied problems regarding the abuse of psychiatry); see also Comment, *Soviet Abuse of Psychiatric Commitment*, *supra* note 19, at 636 (stating that in 1959, Khrushchev announced that political prisoners no longer exist).

130. See *Politics and Soviet Psychiatry*, *supra* note 18, at 552 (stating that many

The language of the Statute provides that people can be committed to a psychiatric hospital if categorized as socially dangerous.¹³¹ This language bears similarity with the language from the 1971 Directive.¹³² Therefore, discretionary freedoms may still permit Soviet officials to use psychiatry to suppress political dissent. In addition, the Soviet clinical concept of mental illness evolved to include a new illness called sluggish schizophrenia that incorporates symptoms mirroring dissenting behavior.¹³³ Changes in the treatment of dissidents have not yet shown conclusive evidence of reform, although the number of dissidents committed to hospitals has declined.¹³⁴

Soviet psychiatrists actually believe that dissidents are mentally ill). Compare Comment, *Soviet Abuse of Psychiatric Commitment*, *supra* note 19, at 639 (asserting that violation of criminal laws can occur if it is demonstrated that dissident behavior weakens the Soviet State politically) with Comment, *Human Rights in the Soviet Union*, *supra* note 16, at 859 (explaining that the Soviet government's tactic of repressing dissent through psychiatric confinement will ultimately injure the Soviet goal of communism).

131. See *supra* notes 74-85 and accompanying text (discussing the 1971 Directive). Compare Psychiatric Assistance Statute, *supra* note 1, at 11-13 (referring to provision nine of the Statute and stating that "a person who commits actions that give sufficient reason to suppose that he has a pronounced mental disorder and at the same time violates public order or the rules of socialist society, and also represents an immediate danger to those around him, may be subjected to an initial psychiatric examination without his consent . . .") with Ellman, *supra* note 23, at 82 (reporting that under the 1971 Directive, a "mentally ill person could be unwillingly confined to a psychiatric hospital if he or she were considered dangerous").

132. See IAPUP *Information Bulletin* No. 18, *supra* note 49, at 2 (placing priority on whether the rules of socialist society are violated, rather than on concern for the mental state of the subject); *Politics and Soviet Society*, *supra* note 18, at 552 (explaining that the broad definition of schizophrenia encompasses people expressing dissenting opinions).

133. See 1983 *Hearing*, *supra* note 49, at 36-39 (statement of Dr. Walter Reich) (presenting leading Soviet psychiatrist Snezhnevsky's view on mild forms of schizophrenia, that Western psychiatrists reject, and encompassing what many professionals consider normalcies); *Politics and Soviet Psychiatry*, *supra* note 18, at 552 (commenting that defining schizophrenia in broad terms makes it hard to separate political dissidents from those who are mentally ill). Soviet psychiatrists may easily commit dissidents due to the broad clinical definition of schizophrenia. *Id.*; Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 10 (indicating that a leading psychiatrist at the Serbsky Institute uses the concept of "sluggish schizophrenia" to justify compulsory confinement of known dissidents).

134. See *Health Aide Cited on Psychiatric Reforms*, *supra* note 96, at 10 (reporting that Soviet officials contend that the abuse of dissidents will no longer exist because of the placing of all psychiatric hospitals under the control of the Ministry of Health, and not the Ministry of the Interior). The Chief Psychiatrist of the Ministry of Health reports the 1988 release of many dissidents confined to hospitals. *Id.*; COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1987, *supra* note 28, at 1045 (showing that changing practices in the Soviet Union led to fewer cases of dissident imprisonment). Soviet officials however, have employed alternative means to restrict dissent. *Id.*; see also *Politics and Soviet Psychiatry*, *supra* note 18, at 551 (stating that it is difficult to measure effects of the Psychiatric Assistance Statute, but confirming that at least ninety-five dissidents were still confined in 1988). If administrative leadership within

III. RECENT LEGISLATIVE REFORMS THAT MAY FACILITATE IMPLEMENTATION

In the Soviet domestic legal sphere, new laws support the tenets of the Statute. Changes include: first, a recently ratified appeals law,¹³⁵ second, relaxation of restrictions on legal counsel practices,¹³⁶ and third, amendments to the Criminal Code.¹³⁷ This additional legislation is an element of the *glasnost*¹³⁸ reforms created to eliminate administrative and bureaucratic inefficiencies and extend democracy.¹³⁹ Although these changes appear to promote protection of individual freedoms described in the Statute, their effectiveness is questionable due to inherent limitations on their applicability to Soviet society.

A. THE LAW ON APPEALS

On January 1, 1988, the Soviet Union implemented an appeals law to allow people the right to challenge decisions of individual officials that appear incorrect or unsubstantiated.¹⁴⁰ The law provides prompt remedy to those subjected to illegal conduct at the discretion of administrators in the Soviet bureaucracy.¹⁴¹ On its face, this law appears to complement the Statute because it provides a procedure to appeal the decisions of psychiatrists or mental health administrators. The Statute refers to this appeals law as the appropriate legal procedure to follow if

psychiatric organizations does not change, western analysts fear that the Statute will not be enforced. *Id.* at 552; Grigoriant, *supra* note 64, at A31 (claiming that Soviet officials plan to take two million patients off the official register that is used to facilitate confinement of persons to psychiatric hospitals).

135. *Law On Appealing Officials' Illegal Actions*, *supra* note 21, at 12-13.

136. See Maksimova, *supra* note 70, at 14 (describing an interview with a Soviet official who discusses new legal rights for patients).

137. CRIMINAL PROCEDURE CODE art. 70; see *Drafting of New Criminal Code Explained*, F.B.I.S.—SOV, Mar. 4, 1988, at 58, 59 (explaining the proposed changes to the Criminal Code seeking to protect individual rights).

138. Quigley, *supra* note 1, at 460.

139. *Law on Individual Rights Takes Effect*, F.B.I.S.—SOV, Jan. 21, 1988, at 49, 50 (explaining that appeals law and other reforms are an attempt to extend democracy to the Soviet people under the guise of the "glasnost" policy); see Quigley, *supra* note 1, at 460 (describing that "glasnost" reforms have provided Soviet citizens with more rights to sue).

140. *Law on Appealing Officials' Illegal Actions*, *supra* note 21, at 12-13; see *Law on Individual Rights Takes Effect*, *supra* note 139, at 49-50 (noting that the appeals law became effective on January 1, 1988, to protect individuals from bureaucratic and administrative illegalities); Quigley, *supra* note 1, at 461 (enumerating an individual right to sue inherent in the appeals law); Quigley, *New Soviet Law*, *supra* note 21, at 172 (stating that the appeals law provides individuals with a right to sue Soviet bureaucrats).

141. See *Law on Appealing Officials' Illegal Actions*, *supra* note 21, at 13 (defining a specific time period when the complaint may be filed).

a person suspects unlawful action.¹⁴² Significantly, the existence of a complementary law identifying a right of appeal substantiates the right of judicial intervention into matters concerning the Soviet government and its administrative behavior.¹⁴³

Although the appeals law gives legal significance to the right to appeal outlined in the Statute, it also imposes limitations. Specifically, the appeals law only permits a person to appeal actions or decisions of individual Soviet officials.¹⁴⁴ A person cannot appeal a decision of a commission or government board.¹⁴⁵ Therefore, this law limits the Statute's proclaimed right of appeal.¹⁴⁶ Such a restraint on the right to appeal makes it difficult for patients to seek a remedy against an abusive or unlawful official government group, such as the three person psychiatric commitment commission, because they can only base their appeal on the actions of individuals within the group. The commission of psychiatrists, a group immune to appeals, reviews original commitment decisions made by individual psychiatrists. As a result, patients may not use this right to appeal to reverse the decisions of the reviewing committees.¹⁴⁷

B. REFORMS IN THE RIGHT TO COUNSEL

In 1988, the Soviet government recognized a more expansive right of lawyers to represent their client's interests.¹⁴⁸ Specifically, language was added to the law governing the bar which was designed to guarantee that Soviet attorneys may defend any client they choose without

142. Psychiatric Assistance Statute, *supra* note 1, at 15. A person may appeal to the court for remedy if a Soviet official has infringed upon that person's civil rights. *Law on Appealing Officials' Illegal Actions*, *supra* note 21, at 12.

143. See Quigley, *supra* note 1, at 461 (noting that the appeals law expands the circumstances under which a person may sue Soviet officials for illegal behavior).

144. *Law On Appealing Officials' Illegal Actions*, *supra* note 25, at 12 (indicating that article 1 of the appeals law limits the right of appeal to complaints against individuals); see Quigley, *supra* note 1, at 461 (explaining that an individual can bring a suit only if it involves an accusation against specific government officials). An individual is precluded from bringing a suit against a whole agency. *Id.*

145. *Law On Appealing Officials' Illegal Actions*, *supra* note 21, at 12-15.

146. See Quigley, *supra* note 1, at 461 (stating that individuals are not accountable for the illegal action of a government organization); see also Quigley, *New Soviet Law*, *supra* note 21, at 177 (claiming that the appeals law will strengthen the role of the judiciary in Soviet society).

147. See Quigley, *New Soviet Law*, *supra* note 21, at 177 (reporting that the Soviet chair of the Legislative Proposals Commission believes that the law will only succeed if lawyers and judges are bold and take the initiative to enforce it).

148. See Psychiatric Assistance Statute, *supra* note 1, at 13 (citing an interview that reveals that the defense lawyer is virtually free to defend any client or litigate any issue).

fear of reprisal from government officials.¹⁴⁹ Amendments to the law governing the bar propose that defense lawyers should defend the rights of citizens faced with mandatory psychiatric treatment.¹⁵⁰ This specific reference to psychiatric assistance complements the appeals law and the Statute because it supports an individual's right to counsel.¹⁵¹

The complementary changes in legislation manifested in the Statute, appeals law, and law governing the bar indicate a possible change in the Soviet government's attitude toward human rights.¹⁵² Yet, the historical treatment of political dissidents poses strong barriers which government authorities must overcome in order to effectively implement the new legislation.¹⁵³ Enforcement of the tenets of the Statute, guaranteeing individual rights of appeal and legal representation, will depend upon whether the Soviet government reforms its practice of exercising political control over the legal profession.¹⁵⁴ The Soviet legal profession is subject to government pressures that encourage lawyers to refrain from defending dissident clients unless the lawyers follow government direction.¹⁵⁵ An example of government control over the legal profession is the requirement for lawyers to disclose the identities of their clients to the state.¹⁵⁶ Moreover, lawyers must acquire a special government clearance to represent dissidents.¹⁵⁷ The Soviet government

149. Law of the Union of Soviet Socialist Republics on the Bar in the USSR, *Pravda*, Dec. 3, 1979, at 2-3 [in Russian], *trans. in The Law on the Bar*, 32 CURRENT DIG. SOVIET PRESS 16, 16 (1980) [hereinafter *The Law on the Bar*]; Psychiatric Assistance Statute, *supra* note 1, at 14.

150. *The Law on the Bar*, *supra* note 154, at 16-18; Psychiatric Assistance Statute, *supra* note 1, at 14.

151. *The Law on the Bar*, *supra* note 149, at 16-18; see Psychiatric Assistance Statute, *supra* note 1, at 11-12 (explaining that a patient has a right to appeal and a right to legal counsel).

152. See Quigley, *New Soviet Law*, *supra* note 21, at 177 (stating that the right to defense counsel will aid in supporting an equitable legal process in all areas of society); *supra* notes 106-20 and 139-50 and accompanying text (describing changes to the law on the bar and the law on appeals under the Statute).

153. See Comment, *Human Rights in the Soviet Union*, *supra* note 16, at 842 (stating that prior to adoption of the right to legal counsel, lawyers seldom represented dissidents at political trials because of the fear of professional repercussions). If chosen to represent such people, lawyers felt compelled to convince their clients to plead guilty. *Id.* Defense lawyers could not defend their clients to the best of their ability. *Id.* Moreover, attorneys who represented clients in political trials risked falling into disfavor with government officials at great cost to their careers. *Id.*

154. See COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1987, *supra* note 28, at 1052 (showing that attorneys face pressure from the Soviet government to act in compliance with official government policies).

155. See Barry, *The Soviet Legal Profession*, 82 HARV. L. REV. 1, 14-15 (1968) (explaining that the Soviet government limits the independent actions of attorneys).

156. See *id.* (indicating that lawyers must submit information to the Soviet government and are subject to government scrutiny).

157. See COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1987, *supra* note

maintains that the law governing the bar will eliminate the political control of government authorities over lawyers and their clients.¹⁵⁸ Before lawyers, however, can effectively represent politically controversial clients, Soviet authorities must show a willingness to be open to changes in the treatment of individuals subjected to psychiatric treatment.¹⁵⁹

C. POTENTIAL REVISIONS TO THE CRIMINAL CODE

In addition to the reforms in Soviet domestic law, amendments proposed to the Criminal Code seek to establish legal guarantees of human rights.¹⁶⁰ Specifically, Soviet officials claim that amendments to the Criminal Code will decrease commitment of dissidents to psychiatric hospitals and protect human rights guaranteed under Soviet law.¹⁶¹ The proposed revisions plan to improve an attorney's access to criminal defendants¹⁶² and impute criminal liability for those who illegally commit healthy people to mental institutions.¹⁶³ Although the draft of the amended Criminal Code stipulates these human rights reforms, its effect on the professional accountability of mental health professionals and officials cannot be assured until the amendments are adopted and implemented. Legal reforms in the appeals law, law governing the bar, and Criminal Codes present guarantees that relate to the tenets of the

28, at 1052 (arguing that attorneys need to obtain a special government clearance to represent dissident clients, and they risk professional ruin if they do not act in accordance with Soviet government mandates).

158. See *Psychiatric Assistance Statute*, *supra* note 1, at 13 (stating that under the new reforms, defense lawyers will have the freedom to choose who they represent).

159. See Comment, *Human Rights in the Soviet Union*, *supra* note 16, at 842 (suggesting that without specifically enforced rules, government pressure will continue to influence attorneys in their defense of clients).

160. See *Drafting of New Criminal Code Explained*, *supra* note 137, at 58 (guaranteeing implementation of punishments for crimes against peace and humanity such as psychiatric abuse of dissidents that will protect human rights); Jost, *supra* note 1, at 28 (explaining that the proposed reforms will prevent the abuse of psychiatry).

161. See Jost, *supra* note 1, at 28 (suggesting that the new reforms make it more difficult for Soviet officials to circumvent the criminal justice system); *Further on Law on Revisions*, F.B.I.S.—SOV, Mar. 9, 1988, at 12 (explaining that the Soviet Criminal Code was amended to democratize and humanize the criminal system).

162. See Jost, *supra* note 1, at 23 (discussing that the reforms allow attorneys access to defendants).

163. See *Psychiatric "Errors, Malpractices" Redressed*, *supra* note 3, at 27 (explaining that the goal of the proposed amendments is to create criminal liability for people who knowingly commit healthy people to psychiatric hospitals); Jost, *supra* note 1, at 23 (commenting that the goal of the amendments is to facilitate the release of political prisoners and eradicate the abuse of psychiatry that prevents individuals from obtaining judicial intervention); see also *Drafting of New Criminal Code Explained*, *supra* note 135, at 59 (describing that the goal of the Criminal Code is to guarantee conformance to laws and to protect individual procedural rights).

Statute.¹⁶⁴ The ability of these code reforms to protect and legitimize rights guaranteed in the Statute depends upon whether the government permits individuals protection under these laws. It also depends on whether additional government policies defining the sphere of application of the Statute are articulated and implemented.¹⁶⁵

IV. INTERNATIONAL SCRUTINY OF SOVIET PSYCHIATRIC TREATMENT

International organizations and foreign psychiatric associations scrutinize psychiatric treatment in the Soviet Union that allegedly infringes upon individual rights.¹⁶⁶ Increased Soviet concern over the opinions of foreign states in recent years, especially western states, has prompted Soviet leaders to be more willing to resolve issues that excite international fervor.¹⁶⁷ Abusive psychiatric treatment of dissidents is a human

164. See Psychiatric Assistance Statute, *supra* note 1, at 11-12 (guaranteeing a right to legal defense and the right to appeal the decisions of individual officials and providing for criminal liability of mental health professionals in appropriate cases).

165. See COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1987, *supra* note 28, at 1045 (detailing advances in the protection of human rights in the Soviet Union and explaining that the effects of recent reforms will not be known until the revised Soviet Criminal Code is implemented).

166. See 'Anti-Soviet Chorus' at *Psychiatric Meeting*, 29 CURRENT DIG. SOVIET PRESS 1, 1-3 (Oct. 19, 1977) (explaining dissatisfaction in the Soviet Union with international input concerning its psychiatric practices); *Soviet Psychiatrists Leave World Body*, 35 CURRENT DIG. SOVIET PRESS 1, 1-3 (Apr. 27, 1983) (reporting that after resigning from the WPA, Soviet officials expressed concern over international interference in its treatment of psychiatric individuals); see also Ellman, *supra* note 23, at 85 (stating that as early as 1973, intense international publicity concerned Soviet psychiatrists who sought to explain the relationship between mental illness and anti-social behavior). Soviet psychiatrists explained that dissenting behavior may appear to represent mental health, but such anti-social outbreaks are really a sign of illness. *Id.* at 83. In reaction to reports of psychiatric abuse, the WPA demanded Soviet reform. *Id.* at 85; Osakwe, *supra* note 16, at 287 (explaining that the Helsinki Watch groups publicized the lack of Soviet compliance with the Helsinki Final Act); Sharansky, *supra* note 23, at § 4 (stating that improved United States-Soviet relations should be tied to Soviet compliance with the Helsinki Accords); Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 20 (asserting that in response to reports of psychiatric abuse, the WPA created a committee to monitor Soviet practices, but when they requested reports on alleged dissidents, the Soviets replied slowly); *Ready to Re-join Association*, *supra* note 87, at 80 (stating that in response to international concern over psychiatric abuse of dissidents, Soviet authorities have agreed to permit foreign psychiatrists to visit and examine Soviet psychiatric patients); *Meet With Psychiatrists*, F.B.I.S.—SOV, Jan. 28, 1988, at 15 (explaining that the Soviet government's concern for human rights practices is in evidence when they invite the Helsinki Rights Committee to visit and meet with Soviet psychiatrists).

167. See Bloed, *Recent Developments in Soviet Attitudes Towards the International Protection of Human Rights*, 6 NETH. Q. HUM. R. 80, 82 (1988) (reporting that in sponsoring a resolution of the United Nations Commission on Human Rights in 1987, the Soviet Union supported the right of individual appeal to demonstrate concern for human rights and to appease foreign organizations); *2 Million to Quit Soviet*

rights issue that elicits a strong international demand for reform.¹⁶⁸ International organizations, principally the World Psychiatric Association (WPA),¹⁶⁹ Amnesty International,¹⁷⁰ International Association for the Political Use of Psychiatry (I.A.P.U.P.),¹⁷¹ and the Royal Commission of Psychiatrists of Great Britain,¹⁷² research and report on the political use of psychiatry to control dissent and related deficiencies in the Soviet legal system.

A. THE WPA'S INFLUENCE ON PSYCHIATRIC REFORM

The WPA is an association of national psychiatric organizations, which exerts an authoritative influence on world-wide psychiatric practices.¹⁷³ The Soviet Union views membership in the WPA as necessary to assure Soviet influence in the development of international policy concerning psychiatric practices.¹⁷⁴ The WPA reacts strongly to reports of the misuse of psychiatry to control dissent in the Soviet Union;¹⁷⁵ in earlier years it formed an investigative committee to study this problem.¹⁷⁶ In 1977, the WPA submitted a resolution to the Soviet Union

Mental-Patient Rolls, Wash. Post, Feb. 12, 1988, at A32 (indicating that the Soviet Union is showing a desire to rejoin the WPA).

168. See *Superpowers Seek Accord on Visiting Mental Hospital*, *supra* note 49, at 1 (stating that the APA made requests to examine Soviet psychiatric patients); *Politics and Soviet Psychiatry*, *supra* note 18, at 551-52 (observing that the WPA expects the Soviet Union to reform its psychiatric practices before being readmitted); Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 1-18 (reporting that Amnesty International and the APA sent letters to Soviet officials and publicized reports of abuse).

169. See Ellman, *supra* note 23, at 85 (explaining the influence of the WPA on Soviet reform and defining the goals of the organization).

170. See Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 20 (explaining that the WPA incited international concern for Soviet psychiatric abuse).

171. See *Psychiatric Abuse in the USSR*, *supra* note 2, at 3 (describing IAPUP as an organization that exerts international influence on the Soviet government).

172. See *1983 Hearing*, *supra* note 49, at 19-20 (statement of Harold Vistosky, M.D.) (describing the role of the Royal College of Psychiatrists in Great Britain and its influence on the Soviet Union).

173. Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 1-2. The publicity of the WPA's Sixth Conference, where WPA members criticized psychiatric practices in the Soviet Union, heightened the concern of other international organizations. *Id.*

174. See *Politics and Soviet Psychiatry*, *supra* note 18, at 552 (stating that the Soviet Union would welcome the opportunity to re-enter the WPA); Koryagin, *supra* note 49, at 268, 269 (describing the Soviet concern of readmittance to the WPA).

175. See Ellman, *supra* note 23, at 82 (stating that the WPA has strongly argued since the late 1970s that the Soviet Union must reform its abuse of psychiatry).

176. *Id.* at 85. The Soviet Union resigned from the WPA to avoid facing a possible expulsion due to WPA investigatory demands. *Id.*

requesting reform of such practices.¹⁷⁷ In response to the WPA's pronouncements, Helsinki Watch groups, Amnesty International, I.A.P.U.P., and the American Psychiatric Association (APA) took action to investigate Soviet practices and to provide the WPA with reports on specific cases of Soviet psychiatric abuse.¹⁷⁸ These groups also publicize information¹⁷⁹ concerning instances of psychiatric abuse and request that Soviet officials and psychiatrists release dissidents from psychiatric hospitals.¹⁸⁰ In 1983, discouraged due to failure of the Soviet Union to implement reforms, the WPA discussed possible expulsion of the Soviet All-Union Society of Neuropathologists and Psychiatrists.¹⁸¹

Soviet authorities, anticipating expulsion, resigned from the WPA in 1983 several months before the WPA convened.¹⁸² In a letter to the WPA, the Soviet organization expressed its concern over the politicized nature of the WPA.¹⁸³ The Soviet All-Union Society of Neuropathologists and Psychiatrists claims that western countries used the WPA to antagonize the Soviet Union politically and to discredit Soviet psychia-

177. *Id.* The WPA established a Committee to Review the Abuse of Psychiatry for Political Purposes to monitor individual instances of alleged abuse. *Id.* at 20-21.

178. *See 1983 Hearing, supra* note 49, at 9 (statement of Dr. Charles H. Fairbanks, Jr.) (reporting on the contribution that Amnesty International made in obtaining and publicizing information concerning Soviet psychiatric abuse); Osakwe, *supra* note 16, at 287 (explaining that Helsinki Watch groups helped to monitor psychiatric abuses of dissidents); *Psychiatric Abuse in USSR, supra* note 2, at 3 (asserting that the IAPUP publicized information concerning the political abuse of psychiatry).

179. *See 1983 Hearing, supra* note 49, at 63-75 (statement of Professor Harvey Fireside) (indicating that Amnesty International's desire is to publicize information until the Soviet Union effectively remedies the problem).

180. *Id.* at 63-75; *see supra* notes 171-177 and accompanying text (explaining that international groups disagree with the imprisonment of dissidents). The international groups monitoring Soviet psychiatric treatment demand reforms and use international publicity to force the cooperation of the Soviet government. *Id.*

181. *See Koryagin, supra* note 49, at 268 (explaining that the Soviet Union faced possible expulsion from the WPA because of reports of Soviet psychiatric abuse). The Sixth Congress of the WPA became a forum for the discussion of abusive psychiatric practices. *Id.*; *2 Million Quit Soviet Mental-Patient Rolls, supra* note 166, at 32 (stating that Great Britain and the United States wanted the Soviet Union expelled from the WPA).

182. *See Soviet Psychiatrists Leave World Body, supra* note 167, at 1-3 (reporting that claiming abuse in the form of slanderous propaganda from member groups of the WPA, the Soviet All-Union Scientific Society of Neuropathologists and Psychiatrists resigned from the WPA). The Soviet government asserts that the United States and Great Britain encourage an anti-Soviet political campaign. *Id.* In addition, the Soviet government alleges that member states of the WPA use psychiatry to express political views. *Id.*

183. *See 1983 Hearing, supra* note 49, at 22 (setting forth Soviet complaints of the political nature of the WPA in a letter to the WPA from the Soviet All-Union Scientific Society of Neuropathologists and Psychiatrists).

try.¹⁸⁴ The Soviets assert that the WPA should focus on scientific developments in the field of psychiatry and resist politically motivated pressures from member state organizations.¹⁸⁵ Soviet authorities claim that they were willing to comply with requests for information on allegedly abused dissidents.¹⁸⁶ Despite this claim by Soviet authorities, however, international organizations continue to report the Soviets' negligible response to requests for information.¹⁸⁷

B. RESULTS OF THE INTERNATIONAL CAMPAIGN TO REFORM PSYCHIATRIC ABUSE

In the midst of international pressure for reform, Soviet authorities proposed the Statute.¹⁸⁸ The adoption of this Statute stemmed from Soviet concern for the international approval of human rights organizations and foreign governments.¹⁸⁹ The Soviet Union seeks readmittance to the WPA in 1989;¹⁹⁰ in support of readmittance, the Soviets assert that the Statute will rectify the concerns of the international psychiatry community.¹⁹¹ A decrease in the number of dissidents committed to psychiatric hospitals,¹⁹² a plan to release committed psychiatric pa-

184. *Id.* at 25-30; see 'Anti-Soviet Chorus' at *Psychiatric Meeting*, *supra* note 166, at 1-3 (explaining the view that western organizations predominantly influence the WPA). The criticism from the member states of the WPA is politically motivated and their criticism of Soviet psychiatric practices is simply a tool to further political goals. *Id.*

185. *Id.* The Soviet government asserts that member states of the WPA simply disagree with Soviet political doctrines and falsely attack psychiatric practices without scientific proof of Soviet psychiatric abuse. *Id.*

186. See *Ready to Rejoin Association*, *supra* note 87, at 80 (asserting that in 1988, Soviet officials were prepared to permit foreign psychiatrists to visit, but foreign psychiatrists indicated that they had no interest); Krauthammer, *The Verdict on Soviet Psychiatry*, *Wash. Post*, Mar. 17, 1989, at 19 (noting that the Soviets finally permitted nineteen psychiatry experts to visit Soviet psychiatric hospitals in March 1989). The American experts examined twenty-seven patients. *Id.*

187. See Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 20 (claiming that after presenting numerous requests for information about individuals, Amnesty International only received two replies from the Soviets in 1983).

188. Psychiatric Assistance Statute, *supra* note 1, at 11; see *Politics and Soviet Psychiatry*, *supra* note 18, at 551 (stating that the effect of the new law depends on whether there is a change in the leadership of the medical establishment).

189. See Sharansky, *supra* note 23, at 4 (implying that under Gorbachev, the Soviet Union wants to encourage favorable western public opinion); *Politics and Soviet Psychiatry*, *supra* note 18, at 551 (explaining that the Soviet Union is partly liberalizing its laws in hopes of being reinstated into the membership in the WPA).

190. *Politics and Soviet Psychiatry*, *supra* note 18, at 551-52 (explaining that the Soviet Union plans to request readmittance to the WPA in 1989).

191. *Id.* at 551-53 (describing changes in psychiatric law instituted in the Soviet Union that respond to WPA concerns). Critics express doubt that legislative changes will have an effect if administrative personnel changes do not occur. *Id.*

192. See *Psychiatric Abuse in USSR*, *supra* note 2, at 3 (stating that Amnesty

tients,¹⁹³ and a willingness to allow foreign states to examine Soviet patients are evidence of the Soviet government's desire to obtain international approval.¹⁹⁴ There remains concern, however, that even with the implementation of the Statute, the Soviet Union may refuse to effectively respond to international criticisms.¹⁹⁵

V. RECOMMENDATIONS

The successful implementation of the Statute depends upon several factors. First, the government enforcement of domestic legislative reforms that are manifested in the appeals law, law governing the bar, and revised Criminal Code must support individual rights enumerated in the Statute. The appeals law and changes to the law governing the bar, if executed, will provide those subjected to psychiatric examination with legal counsel and judicial review.¹⁹⁶ Furthermore, proposed amendments to the Criminal Code must be implemented to assign criminal liability to officials and professionals who commit healthy individuals to psychiatric hospitals.¹⁹⁷ Soviet officials' combined acceptance and enforcement of these domestic laws will provide individuals with the right to challenge psychiatric diagnoses and to sue unethical officials or professionals. Consequently, judicial monitoring of official adherence to the Statute will increase.

International reports that the recent release of psychiatric patients is the largest since the 1960s); see also *Politics and Soviet Psychiatry*, *supra* note 18, at 551 (indicating that although releases of psychiatric patients occur, a large number of dissidents remain unjustly institutionalized).

193. See *Ready to Rejoin Association*, *supra* note 87, at 80 (indicating a Soviet plan to release two million people from psychiatric control); *2 Million to Quit Soviet Mental-Patient Rolls*, *supra* note 167, at A32 (stating that the Ministry of Health plans to remove two million from the government's list of mental patients).

194. See *Superpowers Seek Accord on Visiting Mental Hospitals*, *supra* note 49, at 1 (detailing plans in 1988 to allow United States doctors to examine Soviet patients); Krauthammer, *supra* note 186, at 19 (describing the visit of a group of American psychiatrists to the Soviet Union). The Americans interviewed Soviet psychiatric patients or ex-patients. *Id.* The Soviets allowed this visit in an effort to gain readmittance to the WPA in the fall of 1989. *Id.* Readmission to the WPA would make it possible for the Soviet Union to participate in the 1991 Human Rights Conference now scheduled for Moscow. *Id.*

195. See *supra* notes 49-54 and accompanying text (explaining Soviet resistance to international pressures to reform practices because they do not want to admit past abusive practices).

196. See *supra* notes 138, 145 and accompanying text (referring to the appeals law and the legal guarantees mandated under the Statute).

197. *Drafting of New Criminal Code Explained*, *supra* note 136, at 58. Soviet officials will add a section to the Soviet Criminal Code punishing crimes against "peace and humanity." *Id.* The purpose of these amendments to the Criminal Code is to "reliably protect peoples' rights and to guarantee strict observance of legality" in Soviet society. *Id.*

Second, changes must occur within the psychiatric profession itself. Instructions pertaining to the treatment and commitment of individuals to psychiatric institutions must change at the local hospital level to guarantee accurate diagnosis and the right to appeal commitment decisions as stipulated in the 1988 Statute.¹⁹⁸ The appointment of new persons to administrative positions within the Soviet psychiatric organizational framework must occur to ensure the implementation of reforms under the Statute. In addition, a reform in the clinical criteria used to classify patients as mentally ill must emerge at the local level. Furthermore, Soviet psychiatric practice must not involve abusive treatment through the use of psychotropic drugs.¹⁹⁹ Far too often, dissidents are treated as mentally ill and subjected to the use of psychotropic drugs as punishment.²⁰⁰ The Soviet definition of schizophrenia facilitates the diagnosis of dissidents as mentally ill.²⁰¹ Future practices must conform to the humanitarian goals expressed in the Statute.

Third, Soviet officials must attempt to separate political concerns from individual psychiatric diagnosis and treatment. The close relationship between psychiatric officials, professionals, and the Soviet government facilitates government use of psychiatry to oppress political dissidents.²⁰² Those officials who are committed to the objective of the Statute should encourage judicial intervention to monitor the legality of psychiatric practices.²⁰³

Finally, readmittance of the Soviet Union to the WPA must be encouraged under conditions stressing the necessity of further Soviet

198. See IAPUP *Information Bulletin* No. 18, *supra* note 49, at 4 (indicating that instructions are published after the issuance of the Statute for the purpose of implementing the Statute).

199. *Health Aide Cited on Psychiatric Reforms*, *supra* note 96, at 10-11 (explaining that Soviet psychiatry was once based on the use of psychotropic drugs; however, the use of psychotherapeutic treatment has experienced a renaissance in the past few years).

200. See *Ellman*, *supra* note 23, at 84 (describing the administration of psychotropic drugs to a person with "sluggish schizophrenia" noting that Soviet doctors increased the dosage when the patient complained about an illness); *Politics and Soviet Psychiatry*, *supra* note 18, at 552 (describing the brutalization of patients in psychiatric hospitals and the toruous use of anti-psychotic drugs); Grigoriant, *supra* note 64, at A31 (documenting the forced treatment of "healthy" patients with magnesium sulfate injections to control them, causing agonizing pain).

201. See *Politics and Soviet Psychiatry*, *supra* note 18, at 552 (explaining that Soviet definitions of schizophrenia make it easy for organizations such as the KGB to commit people to psychiatric hospitals).

202. See *supra* notes 24, 25, 32-34, 49-58 & 68-72 and accompanying text (describing the Soviet government structure, the treatment of dissidents, and the psychiatric professions' participation in the process).

203. See *supra* notes 86-89 and accompanying text (explaining the tenets of the Psychiatric Assistance Statute).

human rights reforms. This will permit the WPA to play a more active role in influencing the implementation of the Soviet Statute.²⁰⁴ The monitoring of the Statute and other Soviet reforms by international organizations and foreign states will help to bind the Soviet government to its legislative mandates.

CONCLUSION

The guarantees of legal representation, protection of individual rights, and professional accountability, stated in the Statute, can reform psychiatric abuse and procedural deficiencies.²⁰⁵ The reality of the political situation in the Soviet Union, however, suggests that reforms of the psychiatric system may not last.²⁰⁶ The historical heritage of socialism, stressing the superiority of a hierarchical one party system, conflicts with legislation supporting individual rights.²⁰⁷ Failures to adhere to the Constitution, the Helsinki Final Act, and the 1971 Directive demonstrated that state party practices supercede Soviet promises to recognize individual rights when conflicts of law or goals arise.²⁰⁸ International human rights concerns and the publicity of Soviet psychiatric abuse when combined with Gorbachev's glasnost reforms will lead to short term changes in psychiatric practices and procedural guarantees. Whether the Statute remains effective beyond this period of international publicity and Soviet reform is uncertain.

204. See *supra* notes 173-186 and accompanying text (describing the WPA's influence on Soviet psychiatric commitment practices).

205. See *supra* notes 84-103 and accompanying text (describing the Psychiatric Assistance Statute and its goal to reform past practices).

206. See *Health Aide Cited on Psychiatric Reforms*, *supra* note 96, at 10-11 (claiming that the readmittance of the Soviet Union to the WPA before the effects of the new Statute are measured "will amount to absolution and acceptance of their denials with regard to questions of psychiatric abuse"); Gumbel, *supra* note 109, at A6 (asserting that as long as Dr. Vartanyan remains Chief Psychiatrist, the Soviets resistance to reform of past psychiatric practices is doubtful).

207. See Blood, *supra* note 167, at 83 (stating that under the socialist system, guaranteeing individual rights against unlawful government interference can not exist; this only exists in capitalist societies).

208. See, e.g., COUNTRY REPORTS FOR HUMAN RIGHTS PRACTICES FOR 1987, *supra* note 28, at 1063 (describing the superiority of top political officials in all political and social matters); Dean, *supra* note 24, at 64-65 (arguing that Soviet political officials are the source of individual rights for Soviet citizens); Feldbrugge, *supra* note 38, at 463 (declaring that the Soviet Constitution does not provide legal protections for Soviet citizens; political officials must legislate these rights); Amnesty International, *Political Abuse of Psychiatry in the USSR*, *supra* note 17, at 4 (explaining that Soviet officials often violate the mandates of the 1971 Directive). The Soviets failed to comply with the mandates of the Helsinki Final Act. *Id.* at 20.