

The hazardousness of living in the former Soviet Union (1917-1991) is attested to by that regime's murder of more than 61 million men, women and children innocent of any wrongdoing.¹ (The methods used included shooting, starvation, working to death, freezing, etc.)

***Migalka* Under Attack In Russia – Innocent Driver's Conviction Overturned After Thousands Protest**

By Hans Sherrer

Stalin was the most prolific of the Soviet Union's murderers, and depending on the source, he is either ahead or behind Communist China's Mao Tse-tung as history's most prolific mass murderer. While Stalin and other top communist leaders had the most privileges, people throughout the Soviet Union with political connections shared their elitist attitude that they were superior to everyone else in society.

The Soviets' elitist attitude that common folk were disposable second-class citizens was so deeply ingrained in the psyche of Russians that after the dissolution of the Soviet Union in 1991, certain Soviet practices granting special privileges to high government officials and politically connected persons were allowed to continue.

One of those privileges is known as *migalka* – which is a flashing blue light on the roof of a vehicle that in conjunction with a siren and a special license plate allows a vehicle's driver to disregard all traffic law, and gives that vehicle the right of way over all traffic going in both directions. *Migalka* is different than the disregard of traffic laws by emergency personnel and police – since it is a perk unrelated to assisting public safety.

Thirty government agencies have the authority to issue *migalka* privileges, and fifteen years after the Soviet Unions dissolution, more than 5,000 people in Moscow alone have *migalka* privileges. Nationwide the total in Russia is many thousands more.

The number of privately owned cars in Russia has increased significantly since 1991 and so traffic jams, which were unknown under the Soviets, are now common in Russia's larger cities. That has resulted in the illicit sale of *migalka* privileges to wealthy private citizens by corrupt government officials. The going bribe is about \$50,000 for basic *migalka* privileges – the use of the blue light, a siren and the special license plate to avoid the traffic laws. However, for a bribe of \$200,000 or more, a person can obtain a *migalka* and a *predisaniye* – which is an official document forbidding the police from even visually inspecting the inside of a vehicle through an open window.

Since few people in the Soviet Union drove cars, most people saw *migalka* as a perk of government position that didn't affect their daily life, and even if they didn't like it, they couldn't do anything to change it. Its continued use, however, has bred deep resentment among the tens of millions of Russian who now drive and see government workers and politically connected business persons legally disregard the traffic laws with impunity as they careen down congested city streets and highways.

The large number of traffic related deaths and injuries in Russia is attributed in part to the many thousands of recklessly driven vehicles sporting the *migalka*.²

This widespread resentment of *migalka* came to a head in February 2006, when a Siberian railway worker, Oleg Shcherbinsky, was convicted of "failing to yield" to the Mercedes of Mikhail Yevdokimov, the governor of Russia's Altai region in SE Siberia.

On August 7, 2005, Yevdokimov's Mercedes was traveling at 80 miles per hour going in the same direction as Shcherbinsky, but it was being driven on the wrong side of the two-lane road with its blue *migalka* light flashing. The Mercedes crashed into a tree after sideswiping Shcherbinsky's car that had just begun making a left-hand turn. Governor Yevkokimov, his bodyguard and his driver were killed. His wife was seriously injured. Criminal charges were filed against Shcherbinsky in the death of Yevkokimov.

Shcherbinsky's defense was he didn't see the fast moving Mercedes in his rear view mirror when he began making the left turn. His defense was rejected by the judge who ruled Yevkokimov had the right of way so Shcherbinsky was responsible for the accident and the governor's death. He was convicted on February 3, and sentenced to four years imprisonment in a labor colony.

The reaction to Shcherbinsky's conviction was swift and intense among Russian's fed up with the class structure of Russia's drivers – one class being the common folk required to follow the law, and the other the elite lawless class of politically connected people granted *migalka* privileges. A grass roots organization, the Free Choice Motorists' Movement,



Russians protesting Oleg Shcherbinsky's conviction

used the Internet to quickly organize a nationwide protest of Shcherbinsky's conviction.

Vyacheslav Lysakov, head of the Free Choice Motorists' Movement, said several days before the protest was scheduled to take place, "Shcherbinsky's sentence has really shocked people, because it shows that in this country anyone can be put in jail, even if he is innocent."³

On February 12 (only nine days after Shcherbinsky's conviction), thousands of motorists in 21 cities throughout Russia participated in the protest by tying black and orange ribbons to their cars and slowly driving in convoys through their respective city. The protestors displayed signs and waved placards with messages that included: "Today Shcherbinsky – Tomorrow You!" and, "We want the law to be equal for everyone!"⁴

One of the protestors in Moscow, a 30-year-old man, told a reporter, "The situation is getting absurd. This cannot be tolerated any longer. The Shcherbinsky trial showed yet again that the authorities view ordinary citizens as nothing more than cattle."⁵

Another protester said, "The Shcherbinsky case has resonated throughout Russian society."⁶

The police didn't just stand by and let the protestors clog city streets. They applied a heavy hand in an effort to disrupt the protests, which had been publicly announced in advance, by stopping participating drivers for "document checks and purported traffic violations."⁷ In Moscow alone, hundreds of drivers were harassed.

The car convoys were the most organized public protest in Russia since the early 1990s, and it sent shockwaves through the Kremlin and Russia's regional governments. The black and orange ribbons on the cars was highly symbolic. The black represented the "death of justice" and the orange symbolized Ukraine's 2004 "Orange Revolution" when masses of protesters forced a

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Daughter Awarded \$315,000 For Deceased Father's Wrongful Murder Conviction

By JD Staff

Sixteen-year-old Thai-American Sherry Ann Duncan was found murdered in scrubland outside Bangkok, Thailand in August 1986.

Four construction workers and their employer were soon arrested on suspicion of being involved in the schoolgirl's murder. The employer, Winai Chaipanit, was soon bailed out by his girlfriend, socialite Suwimon Pongpat.

Physical brutality by the police during interrogations resulted in a confession by all four workers. The police also intimidated other people to provide witness statements implicating the men in the abduction and murder of Duncan, who had an American father and a Thai mother.

During their trial all four defendants retracted their confessions, claiming they were false and had only been provided to stop the police's brutal interrogation tactics. They also claimed the prosecution's witnesses weren't

being truthful about seeing them with Duncan.

After the Criminal Court rejected the men's defense and found them guilty, they were all sentenced to death.

As the men languished on death row while their appeals were considered, defense lawyer Pennapa Thamrunroj encountered police opposition and intimidation as she doggedly pursued leads to prove that the prosecution's witnesses hadn't been truthful, and that other people were responsible for Duncan's murder. After high police officials intervened and assigned a new officer to head a reinvestigation of Duncan's murder, new evidence surfaced that other men had committed the crime.

Relying on the fresh evidence of the four condemned men's innocence, in 1993 Thailand's Supreme Court overturned their convictions and ordered their immediate release.

The seven years in Thailand's worst maximum-security prison while awaiting execution were not kind to the men's well being. One died in prison before his exoneration, another died shortly after his release, another was permanently



Sherry Ann Duncan

disabled from a beating by guards, and the fourth, Thawat Kitprayoon, died of cancer in 1999.

The new evidence discovered during the reinvestigation of Duncan's murder resulted in the 1995 prosecution of Suviboon Patpongpanich as the mastermind of the crime. She was subsequently convicted of hiring two hit men to murder Duncan for dating her two-timing boyfriend. In 1999 Thailand's Supreme Court overturned Suviboon's conviction on the ground of insufficient evidence.

It was eventually revealed that Duncan had also been a two-timer. She had been dating both Suviboon's boyfriend and Chaipanit, the 42-year-old businessman who had been arrested in 1986 on suspicion of being involved in her murder.

After the men's exoneration, a suit for compensation was filed in the Civil Court naming the Royal Thai Police Office as the primary defendant. In October 2003 \$1 million (26 million baht, Thailand's currency) was awarded to the lone survivor and the relatives of the three deceased wrongly convicted men.

The case then took a new twist when Thawat's former employer Chaipanit, filed a claim for Thawat's share of the \$1 million civil award. In support of his claim he produced Thawat's will that named Chaipanit as sole beneficiary of any award to Thawat from the civil suit. Thawat's daughter, Ratchanee Kitprayoon, responded by filing a complaint with Thailand's Crime Suppression Division alleging Chaipanit falsified the will, and her legal challenge to his claim blocked any payment to him pending resolution of the dispute.

The Civil Court decided in favor of Thawat's daughter when it ruled that the purported will was invalid because it didn't bear the required authenticating signatures of witnesses. Chaipanit appealed, and on July 28, 2006, Thailand's Supreme Court upheld the lower court's ruling. It also ordered the payment of \$315,000 (11.9 million baht) by the Royal Thai Police as compensation to Thawat's daughter. She said that she had spent \$16,000 opposing Chaipanit's false claim (which is three to four years wages for a typical Thai).

As of the fall of 2006 Sherry Ann Duncan's 1986 murder re-

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Kremlin backed candidate to step down after he had won a rigged election.

Russia's central government recognized they needed to quickly deal with the furor caused by the Shcherbinsky case and the attention it focused on the trafficking in *migalka* privileges. They promptly announced a *migalka* would only be available to emergency services (police and ambulances), senior government officials, judges and members of Russia's parliament.

Another development after Shcherbinsky's conviction was one of Russia's most prominent lawyers, Anatoly Kucherena, agreed to handle his appeal at no charge. Also, petitions signed by tens of thousands

of people across Russia were delivered to the Altai Regional Court that was considering Shcherbinsky's appeal.

Expedited consideration was given to Shcherbinsky's appeal, and less than six weeks after the nationwide protests, his conviction was set aside on March 23, 2006. The court ruled Shcherbinsky had acted lawfully while the governor's driver had "grossly violated" several traffic laws. He was released later that day after seven months in custody.



Oleg Shcherbinsky with his daughter after his release

He left the jail in a car that had one of the protest stickers that cars all over Russia displayed — "All of us are Shcherbinsky." His wife was overjoyed that he wouldn't be spending years at hard labor in prison, "We had faith from the very beginning to the end."⁸

It was speculated in the Russian media that Shcherbinsky benefited from a combination of excellent legal representation on appeal and the nationwide outrage over the unfairness of his conviction.

Endnotes:

- 1 *Death By Government*, by R.J. Rummel, Transaction Publishers, New Brunswick, N.J., 1994. Chapter 4: 61,911,000 Murdered: The Soviet Gulag State.
- 2 In 2003, 36,000 Russian deaths and 250,000 injuries were related to traffic "accidents." Road traffic injuries in the Russian Federation. See, Facts and figures, World Health Organization, www.euro.who.int/violenceinjury/injuries/20060425_2.htm
- 3 Russian drivers to jam streets in protest, *NewKerala.com*, February 10, 2006.
- 4 Angry motorists protest russian VIP traffic rules, *Australian Broadcasting Corp.*, February 12, 2006, www.abc.net.au/news/newsitems/200602/s1568037.htm
- 5 *Id.*
- 6 *Id.*
- 7 Police Pull Over Cars During Drivers' Protest, by Carl Schreck, *Moscow Times*, February 13, 2006, p. 3.
- 8 Siberian Court Overturns Ruling, Frees Driver, by Judith Ingram (AP), *St. Petersburg Times* (St. Petersburg, Russia), March 24, 2006.