

V. TEREBILOV

**THE  
SOVIET  
COURT**

V.TEREBILOV

# THE SOVIET COURT



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Translated from the Russian by Murad SAIFULIN

Designed by Sofia GANNUSHKINA

**В. Теребилов**

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## *Chapter I*

# **A BRIEF HISTORY OF THE SOVIET JUDICIARY**

### **1. WHY THE SOVIET STATE NEEDS THE COURTS**

The first legislative enactments promulgated by the Soviet government of Russia in October-November 1917 were Decrees, transferring all power to the workers and peasants, nationalising the land together with its mineral resources, the forests, waters and large enterprises, the transport facilities and the banks of tsarist Russia, and turning them into state property, or property owned by the whole people. At the same time, the government issued decrees repealing the social estates and proclaiming the equality of nations, the separation of the church from the state, the equality of women, and so on.

The new socialist state needed a new law and order. The old tsarist state machine, naturally, could not be used for this purpose; it had, therefore, to be dismantled and replaced by a state apparatus built on entirely new principles.

Together with the other state institutions of tsarist Russia the people abolished the old courts that protected the interests of the ruling classes. The abolition of the old courts gave many lawyers and politicians in the West a pretext for accusing the new Russia of establishing a kind of "legal vacuum" following the victory of the October 1917 Revolution. The history of the Soviet courts has amply refuted this kind of nonsense. True enough, the old judicial machinery was completely abolished, but this was done in order to replace it by a new judicial apparatus capable of fulfilling the purposes and tasks of the worker and peasant state.

The theoreticians of socialism have never denied the necessity for strict and consistent legal regulation of all aspects

of political life. On the contrary, they have emphasised that the socialist state can function only on condition that there is perfect legislation and that the laws are observed by all officials and ordinary citizens, and by all organisations and institutions.

Apart from other administrative and legal institutions, these tasks should also be implemented in a socialist state, by simple, democratic and truly popular courts of law. In a letter addressed to August Bebel in 1884, Engels wrote: "It is in the nature of all parties or classes which have come to power through revolution to demand that the new legality created by the revolution should be unconditionally recognised and regarded as holy."<sup>1</sup>

Lenin, the founder of the Soviet state, elaborating upon this provision, regarded socialist legality as one of the fundamental principles of the socialist state and in this context wrote: "...Instructions of the Soviet government must be faithfully observed, and care must be taken that they are obeyed by all."<sup>2</sup>

It is common knowledge that the state emerged at a specific stage of social development, when private ownership split society into classes. Together with the state there emerged law, consolidating the order favourable to the ruling class. To sustain this order, the ruling class created organs for the enforcement of legal rules. These organs doubtlessly included the courts, for as Lenin wrote, law "is nothing without an apparatus capable of *enforcing* the observance of the rules of law".<sup>3</sup>

And in fact in the history of society there has never been a state without courts. Moreover, the courts in all exploiting societies have always served the purpose of oppressing the working people. Like the entire state machine of such societies, the courts serve the interests of the ruling class, propping up the pillars of this society, protecting the political rights and privileges of this class: in slave societies the courts defended the interests of slave-holders, in feudal societies—the interests of the feudal lords and in capitalist societies—the interests of the capitalists.

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<sup>1</sup> K. Marx and F. Engels, *Selected Correspondence*, N.Y., 1936, p. 427.

<sup>2</sup> V. I. Lenin, *Collected Works*, Vol. 29, p. 555.

<sup>3</sup> *Ibid.*, Vol. 25, p. 471.

Bourgeois lawyers, philosophers and political leaders have always tried to convince public opinion that the courts stand "above class" and reflect the "interests of the whole nation". They maintain that the courts in a bourgeois society are independent of the state, that they defend the rich and the poor alike and that all citizens are equal before the law and the courts. In actual fact the situation is altogether different. In the era of bourgeois-democratic revolutions the bourgeoisie that came to power by ousting the feudal lords proclaimed democratic freedoms and advanced the slogan that "all people are equal before the law". "True, the law is sacred to the bourgeois, for it is his own composition, enacted with his consent, and for his benefit and protection."<sup>1</sup>

The methods and forms of the functioning of the bourgeois court keep changing, but its class essence remains the same. The activity of the courts, especially in developed capitalist countries, seems to be attractive to many people and creates the impression that all citizens are equal in the eyes of the law and the courts. But this is merely an outward impression. The rights provided for by the law in a capitalist state may be used only by those who are able to employ advocates and meet all legal costs. That part of the population which has not sufficient means often lacks legal defence, but not for the reason that the law officially deprives working people of this defence, but for the reason that their economic status prevents them from making use of the constitutional rights. Here is what C. Johnson, a noted US lawyer, wrote on this subject: "Equality of justice is accepted as a fundamental principle in America... but the principle of equality often vanishes... Inability to pay court costs and fees and to buy the services of attorneys often separates the rich and the poor by a great gulf."<sup>2</sup>

Of great importance for the capitalist states is the selection of judges to suit vested interests. As a rule, most judges represent the propertied classes or are economically dependent on even wealthier persons who in fact control the election of judges.

As distinct from the bourgeois legal theories, Soviet legal science has never denied or concealed the class character of

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<sup>1</sup> K. Marx and F. Engels, *On Britain*, Moscow, 1962, p. 263.

<sup>2</sup> C. Johnson, *Government in the United States*, N.Y., 1956, p. 507.

the court. In the original synopsis of his article "Immediate Tasks of Soviet Government", Lenin wrote that the proletarian revolution should abolish the old courts, not reform them. "The October Revolution fulfilled, and successfully fulfilled, this necessary task. In place of the old court, it began to establish new, people's court or, rather, Soviet court, based on the principle of the participation of the working and exploited classes—and only of these classes—in administering the state."<sup>1</sup>

In developing this idea, Lenin stressed on many occasions that the task of the court in a socialist state is to combine compulsion and education.

The foregoing enables us to draw the following conclusion: 1) the old court that appeared in capitalist society could not perform its functions in a socialist state and therefore it had to be abolished completely; 2) the socialist state necessarily requires a new court; this court must be formed from amongst working people; 3) the court in a socialist state is called upon to defend its interests and also the personal property and other civil rights protected by the law; 4) the court is needed by the socialist state not only to suppress the resistance of the deposed classes, but also to educate citizens in a spirit of new, socialist relations and in the new rules of the community; 5) the court in a socialist state above all persuades, educates and, when it fails in this, enforces measures of compulsion in accordance with the requirements of the law.

Thus, the socialist state preserves the court and the legal regulation of social relations. Moreover, the court and legal regulation actively promote the progress of socialist society.

The socialist court went through a long and complex process before a sufficiently simple and fully effective judicial system corresponding to the ideas of the socialist state came into being.

## 2. THE FIRST DECREES ON THE COURTS

The first state organ of Soviet justice was the People's Commissariat of Justice, which by the decision of the Second All-Russia Congress of Soviets, dated November 26, 1917, was included in the first Soviet Government.

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<sup>1</sup> V. I. Lenin, *Collected Works*, Vol. 27, p. 217.

The basic task of this Commissariat was to abolish the pre-revolutionary system of justice and to create a new, Soviet court.

On December 7, 1917, or one month after the successful October Revolution, the Government promulgated a Decree on the Courts (No. 1), which abolished the tsarist judicial system and fixed legislatively the democratic principles governing the organisation of the new courts of law.

Art. 1 of this Decree declared that all the existing judicial institutions of tsarist Russia, such as the district courts, judicial chambers, the Ruling Senate, the military and naval courts and the commercial courts were abolished and replaced by local courts formed on the principle of democratic election. This Decree repealed such institutions as the court investigators, the procurator's office, the jury system and the private bar.

Henceforward the local judges were to be elected by direct democratic procedures. But before such elections were held, the judges were to be elected by district, town and provincial Soviets of Workers', Soldiers' and Peasants' Deputies. Conferences of local judges were to be convened to discharge the function of cassation with respect to local courts.

According to the Decree, preliminary investigation into criminal cases was to be conducted by local judges until such time as the judicial proceedings were entirely reformed. Personal rulings made by these judges to detain and arraign persons were to be endorsed by decision of the entire panel of the local court.

All persons with a good reputation and enjoying civil rights were to be permitted to act as prosecutor and defence counsel both in court and in preliminary investigation.

All court employees were instructed to retain their office and discharge their routine functions under the guidance of officials appointed by local Soviets.

The courts were to pass their decisions on behalf of the Russian Republic, and to be guided in the pronouncement of their judgements by the laws of the deposed governments in so far as they were not repealed by the Revolution, and did not run counter to revolutionary conscience and revolutionary sense of justice. In addition to regular courts, revolutionary tribunals were set up to combat counter-revolution, pil-

lage, misappropriation, sabotage and other abuses by merchants, industrialists and civil servants. The tribunal consisted of a chairman and six assessors elected by provincial or town Soviets of Workers', Soldiers' and Peasants' Deputies.

The Soviets set up investigation commissions to conduct preliminary investigations.

This Decree did more than abolish the old judiciary, it laid the new, democratic foundations of the Soviet court: the election of judges, the participation of people's assessors in court proceedings, public examination of cases and guarantees of the right to legal defence.

Over 55 years' existence of the Soviet state many changes have been introduced into the administration of justice, changes affecting not only certain legal institutions but also many organisational forms of judicial activity. Nevertheless, the basic principles of the functioning of the courts laid down in Decree No. 1, have remained valid to this day.

It should be noted that this law was elaborated with the direct participation of Lenin, the founder of the Soviet state, who also signed it.

Despite the difficulties involved in the implementation of the Decree, despite the sabotage and abuses on the part of the officials of the old judiciary, new, Soviet courts were set up literally in a few months throughout vast territories of Soviet Russia.

Developing Decree No. 1, the Soviet Government adopted, on March 7, 1918, Decree No. 2. The latter further regulated the work of the people's courts. District people's courts were set up to deal with major cases beyond the jurisdiction of a local court. Trials in all courts were conducted in the local languages. This principle, reflecting as it does the Leninist nationalities policy, is strictly adhered to to this day.

Members of the public could participate in court hearings as prosecutor and defence counsel.

Other provisions of Decree No. 2, such as those guaranteeing open and oral hearings, contests between parties, the defendant's right to legal defence, appeals against verdicts are still in force today.

Decree No. 3, issued on July 20, 1918, further delineated the cognizance of local and district people's courts. The cognizance of local courts was extended considerably. In criminal cases they could mete out penalties depriving people of

freedom up to 5 years; in civil cases the maximum sum contested in law suits was raised to 10,000 rubles. The decree stipulated the establishment in Moscow of a provisional Court of Cassation with two departments—civil and criminal—to examine appeals against district court decisions.

The first Soviet Constitution was adopted in July 1918, this being followed by a series of legislative enactments on the judiciary, and on civil and family law.

The Statute of the People's Courts of the RSFSR, passed on November 30, 1918, fully confirmed the principle of conducting judicial proceedings in native languages. It made it the court's duty to abide by the laws of Soviet government alone and where an appropriate law was missing—by socialist legal consciousness. It prohibited the application of the laws adopted by deposed governments.

People's courts functioning on provincial territory were directed by the Council of People's Courts. This Council exercised judicial control over the work of people's courts and at the same time acted as a court of cassation.

The Statute demanded the maximum involvement of the working people in the administration of justice. Nearly all cases were to be heard with the participation of people's assessors. Candidate assessors were to be nominated by general meetings of workers and peasants. Only disenfranchised persons could not be elected.

### 3. THE COURTS DURING THE CIVIL WAR AND FOREIGN INTERVENTION

The Soviet courts emerged and developed in a grim situation due to the Civil War and the intervention of 14 imperialist states. Black market profiteers and saboteurs, the scum of the old society, together with the open enemies of Soviet government came to the surface and embarked on a bitter struggle against the new social system. The ordinary courts were supplemented by revolutionary tribunals, organs of the Cheka<sup>1</sup> and militia. All these institutions were created to punish all those who attacked the gains of the October Rev-

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<sup>1</sup> The All-Russia Extraordinary Commission was set up on December 7, 1917 for the purpose of combating counter-revolution, sabotage and profiteering.—*Ed.*

olution and to uphold the interests of the workers and peasants who had received civil rights and freedoms.

Acts of terror against Lenin and other prominent Soviet government leaders greatly complicated the situation and necessitated the reconstitution of many government bodies, including courts. The Government was forced to take extraordinary measures to enhance the struggle against violations of revolutionary legality and counter-revolution.

As interventionists were driven out of the greater part of the country and the internal counter-revolution was routed, the Soviet power struck roots in all major industrial and agricultural regions. The main task of the state in the changed circumstances was to restore the war-ravaged national economy. This situation enabled the Government to restrict the sphere of application of extraordinary measures and later to abandon this practice, and thus to return to the normal administration of justice through the system of ordinary courts.

The Cheka was reorganised in February 1922; its functions were curtailed and greater control installed over the observance of legality by its officers. The changed political situation made it possible to eliminate the dual structure of the judiciary. In this context mention should be made of the Decree on Strengthening the Activity of Local Organs of Justice, passed by the All-Russia Central Executive Committee on August 25, 1921. The Decree stated that the establishment of the Soviet power throughout the Russian Federation and the transition to peaceful construction made it essential that the activity of all organs and officials should conform strictly to the laws in force, that the Soviets and the entire population should realise that the implementation of revolutionary law was one of the most essential requirements of the Soviet Republic. In this connection, the Decree said, the local organs of justice must institute proceedings against those who committed crimes and violated laws, their work must be improved and their prestige enhanced.

In spite of the fact that the Civil War was not yet over, the Government paid special attention to the observance of law. The Extraordinary 6th All-Russia Congress of Soviets discussed the question of the strict observance of laws. In its resolution the Congress demanded that all citizens and officials abide strictly by the laws, decisions and orders of

the central Soviet government. This demand extended to the courts also.

Lenin, who took part in editing the Congress resolution, repeatedly pointed out that the courts should act strictly within the framework of the law, that they should combat violations of the law not only by punishment, but also by educational measures.

The Civil War and foreign intervention interfered with the task of setting up a single system of people's courts. But even under these conditions measures were taken to improve the system of courts then existing.

This reform was carried over in full in November 1922. Separate decrees, decisions and instructions were replaced by one law—The Statute on the Judiciary of the RSFSR. The reform united all judicial institutions into a single system throughout the Russian Federation.

The people's court became its primary link. It examined most cases on a collegiate basis, with the participation of a people's judge and two assessors. Less important cases were heard by a judge individually. The provincial court was a higher organ. The judicial system was crowned by the Supreme Court of the RSFSR.

According to this Statute, people's judges were elected by the executive committees of the Provincial Soviets for a term of one year; while people's assessors were elected by general meetings of factory and office workers, peasants and servicemen.

Members of provincial courts were elected for a term of one year by the executive committees of provincial Soviets and approved by the People's Commissariat of Justice of the RSFSR.

The Supreme Court of the RSFSR supervised the activities of all the courts of the Republic, examined appeals for cassation of the judgements and decisions of provincial courts, and heard the most important cases (a small quantity) as a court of first instance. Members of the Supreme Court of the Republic were elected by the All-Russia Central Executive Committee.

In addition to the above-mentioned courts the Republic preserved the following: a) military tribunals to hear cases of crimes endangering the Army and the Navy; b) military-transport tribunals to hear cases of crimes relating to

transport; c) special sessions of people's courts to hear cases of infringement of the labour laws; d) land commissions to deal with land disputes; e) arbitration commissions to deal with cases of property disputes between state organisations.

An approximately similar system of judicial bodies was set up in other Soviet Republics.

Improvements were also made in the organisation of other legal institutions. On May 26, 1922, the RSFSR adopted the Statute of the Bar and two days later—the Statute on the Supervisory Powers of the Procurator's Office.

Thus, as soon as the situation in the country became normal, the Government carried out the judicial reform, which was a step towards strengthening socialist legality and improving the administration of justice.

#### 4. THE JUDICIARY IN THE PRE-WAR PERIOD

The Treaty on the Formation of the Union of Soviet Socialist Republics, signed on December 30, 1922, stated that the Central Executive Committee of the USSR should set up the Supreme Court of the USSR with a view to establishing revolutionary legality throughout the territory of the country. The functions of this highest judicial body were regulated in detail by the Statute of the Supreme Court of the USSR, approved by the CEC of the USSR on November 23, 1923.

The Supreme Court was to discharge three main functions: to exercise general supervision over legality, to exercise judicial supervision over the courts, and to act as a court of first instance for a definite category of cases.

By virtue of its function of general supervision (or of its constitutional function, as it was called at that time) it devolved on the Supreme Court to give the courts of the Union Republics guiding interpretations of the Union legislation; to draw conclusions about the constitutional legality of the decisions passed by the CEC, the Governments of the Union Republics and the Government of the USSR; and to make representations to the Presidium of the CEC of the USSR concerning the suspension or repeal of decisions taken by other central organs, should they not conform to the Constitution of the USSR.

The competence of the Supreme Court in the sphere of judicial supervision covered: the examination and submission

to the Presidium of the CEC of the USSR of protests against the decisions and judgements of the Supreme Courts of the Union Republics, when they ran counter to Union legislation or affected the interests of other Union Republics; the examination and repeal of judgements, decisions and riders passed by the divisions of the Supreme Court of the USSR and decisions taken by other USSR institutions performing judicial functions (the Supreme Arbitration Commission, etc.), when they ran counter to Union legislation; the examination of representations and submission of such representations to the Presidium of the CEC of the USSR with a view to repealing illegal decisions and orders of the Unified State Political Administration of the USSR;<sup>1</sup> and guidance over the activity of the military courts of the USSR.

The original jurisdiction of the Supreme Court of the USSR included the trying of cases involving the highest government officials, criminal and civil cases of exceptional importance, cases affecting the interests of two or more Union Republics, and the settlement of judicial disputes arising between Union Republics.

In accordance with the Statute, the Supreme Court functioned in the form of plenary sessions and four divisions: civil, criminal, military and military-transport.

The period 1924-36 was marked by the further development of the legal basis of the Supreme Court activity and an active search for better forms of the functioning of all other judicial institutions.

The 1924 Constitution of the USSR laid down that the central state organs should elaborate and adopt the Fundamentals of the Judiciary and Legal Proceedings, and also the Fundamentals of Civil, Criminal and Labour Legislation, while the republican organs of power should pass the corresponding codes of laws and other legislative enactments on the basis of these Fundamentals.

In line with this constitutional provision, the Central Executive Committee of the USSR adopted in October 1924 the Fundamentals of the Judiciary of the USSR and the Union Republics. The adoption of this exceedingly important all-Union law opened up a new stage in the development of the Soviet judicial system.

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<sup>1</sup> The Union-Republican body that replaced the Cheka.—*Ed.*

Art. 1 of these Fundamentals stated that the courts have the following tasks: to uphold the gains of the October Revolution and the new law and order, to protect the interests and rights of the working people, to strengthen the labour discipline and legal education of the workers, to enforce revolutionary legality in the personal and property relations between citizens. The Fundamentals also established a unified three-tier system of courts throughout the territory of all Union Republics; the people's court, the provincial court and the Republican Supreme Court. Exemptions from this judicial organisation were allowed, but only by special sanction of the Presidium of the CEC of the USSR.

The organisation and activity of the judicial bodies at all levels were to be based on the following principles: 1) justice was to be administered by the working people alone; 2) all judges and people's assessors were to be elected; 3) the state was to pursue its unified judicial policy on the basis of legislation. In accordance with the Fundamentals, every citizen who had not been discredited in court, enjoyed the right to elect and be elected to a Soviet, and had a definite record of social and political service, could be elected a judge.

In every Union Republic, the Supreme Court exercised supreme supervision over the practical functioning of courts and directed them.

This period saw the institution of the bar, called upon to render legal assistance to the population and to perform the function of legal defence in court; and the notaries public whose job it was to certify all kinds of acts, agreements and contracts, etc.

The People's Commissariats of Justice of the Union Republics were made responsible for the supervision of judicial practice and lodging protests against illegal court decisions. Moreover, they exercised general guidance over the work of courts, inspected judicial institutions and issued instructions to all judges, procurators, investigators, notaries public, bailiffs and defence counsels. The People's Commissar of Justice of a Union Republic also headed the Procurator's Office of the Republic.

In addition to the above-mentioned functions the People's Commissariat of Justice of the RSFSR supervised the

implementation of the law on the separation of church and state.

The People's Commissariat of Justice also prepared and trained legal workers—a task of great importance at that time, for the country had very few qualified lawyers.

Taking into account the specific situation in certain non-Russian outlying regions, the Government allowed in these regions immediately following the October Revolution the existence of local national courts, functioning on the basis of local customs. For instance, the court of Qadi was allowed to sit in the Ferghana and Samarkand regions (Uzbekistan). These courts heard cases only with the mutual agreement of litigants. Understandably, they existed for a time and were then abolished everywhere as soon as conditions were such that people's courts could be entrusted with all judicial functions.

On July 24, 1929, the CEC of the USSR adopted a new Statute on the Supreme Court of the USSR, which formulated certain powers of the Court more precisely. In particular, the Court was given the right to provide guidance and interpretation of all-Union laws on questions arising in judicial practice. The Supreme Court could act in this way both on its own initiative and on the strength of representations made by the Procurator of the Supreme Court of the USSR. Under the new Statute, the Supreme Court was empowered to initiate legislation.

The Supreme Court of the USSR exercised supervision over the legality of decisions taken by the organs of power up to June 1933, that is, before the establishment of the Procurator's Office of the USSR, which was made responsible for supervising the decisions and orders adopted by the departments of the USSR and the Union Republics and also by local government bodies corresponded to the Constitution of the USSR and the decisions of the Union Government.

The period 1927-35 witnessed the development of public courts with extra-judicial cognizance. The purpose of these courts was to draw the broadest possible mass of the population into the administration of justice and to relieve the state courts of the need to hear insignificant cases. Thus, some rural Soviets set up, in 1927, conciliation chambers to deal with civil matters where the value of the object

of the dispute was below 15 rubles, and also with minor offences.

Public courts were set up in the countryside in September 1930. They were elected by a rural Soviet from among the local adult residents and were approved by a district executive committee. These courts tried cases of violations of public order, infliction of injuries and civil disputes over sums not exceeding 50 rubles, and some other cases.

By January 1, 1931, the Russian Federation had over 50,000 rural public courts. They existed until 1935.

In February 1931, the CEC of the USSR adopted a decision on the setting up of comrades' courts at factories. This decision was an incentive to the establishment of public courts in many enterprises. Their activity was supervised by local people's courts. Similar courts were set up in small townships and housing co-operatives. They were directed by local Soviets.

The new Constitution of the USSR was adopted in December 1936. In accordance with it the Supreme Soviet of the USSR passed, on August 16, 1938, a law on the judicial system of the USSR, the Union and Autonomous Republics.

Both the Constitution (Chapter IX) and the Law on the Judicial System formulated the purposes of justice and the main principles of the courts' functioning. The courts were charged with the following tasks: to protect the social and state system established by the Constitution of the USSR and the Constitutions of the Union and Autonomous Republics against any infringements, to safeguard the socialist economic system, socialist ownership, the political, labour, housing and other personal and property rights and interests of the citizens of the USSR, guaranteed by the Constitution of the USSR and the Constitutions of the Union and Autonomous Republics, the statutory rights and interests of state institutions, enterprises, collective farms, co-operative societies and other social organisations.

Justice in the Soviet Union is administered by courts of law with respect to all citizens alike, irrespective of their social status, property, job held, and their nationality or race.

The Constitution of the USSR and the Law on the Judicial System laid down also other principles of the organisation and functioning of the court: judges are independent

and subject to law alone; cases are tried by representatives of the people, by people's assessors; both judges and people's assessors are elected; trials are conducted in the language of the respective Union or Autonomous Republic; trials are, as a rule, open; the defendant has the right to legal defence.

The 1938 Law on the Judicial System of the USSR, the Union and Autonomous Republics established a harmoniously structured judiciary and strictly defined the functions of Soviet courts at all levels. Art. 102 of the Constitution of the USSR and Art. 1 of the Law on the Judicial System provided that justice in the Soviet Union was to be administered by the Supreme Court of the USSR, the Supreme Courts of the Union Republics, the courts of territories, regions, Autonomous Republics and Autonomous Regions, National Areas and also by the special courts<sup>1</sup> of the USSR and people's courts.

The Soviet judicial institutions were divided into the courts of the USSR (the Supreme Court of the USSR, military tribunals and special courts) and the courts of the Union Republics (the Supreme Courts of the Union and Autonomous Republics, Autonomous Regions and National Areas, regional or territory and people's courts). The system of courts was based on the administrative and territorial division of the country and was organically linked with the system of Soviets—the political foundation of the USSR.

Procurators and investigators were withdrawn from the system of Republican Commissariats of Justice and were subordinated directly to the Procurator of the USSR. Thus, two mutually independent systems were created: the system of courts and the system of procurator's offices. Under the Constitution of the USSR, general guidance over these bodies is exercised by the Supreme Soviet of the USSR, which determines and directs the policy of the Soviet state in the sphere of justice.

On July 20, 1936, the Central Executive Committee and the Council of People's Commissars set up the People's Commissariat of Justice of the USSR. Subsequently this commissariat was transformed into a ministry.

The Statute on the People's Commissariat of Justice of

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<sup>1</sup> In 1957, the special courts, including the railway and water-transport courts, were abolished.

the USSR, adopted in 1936, made this body responsible for the exercise of guidance of courts, and the Supreme Court of the USSR for original jurisdiction and judicial supervision. The People's Commissariat of Justice supervised the application of the principles of the judiciary, summed up practice and issued general guidance with a view to ensuring the uniformity of judicial practice. These tasks were fulfilled by the Commissariat through the issue of instructions, the study of definite categories of crimes, the issue of orders on labour organisation in legal bodies, etc. It also directed the system of legal education and regulated the structure, financing and staffing of judicial bodies.

Delineating the functions in guiding courts of law between the People's Commissariat of Justice as a state administrative body and the Supreme Court of the USSR as an organ of judicial supervision was a complicated problem. This problem was solved in the following way. Since about half the judgements and decisions were appealed by way of cassation, a large number of cases were not verified by higher courts, though some of them might have involved judicial errors. The latter could be established, for instance, by judicial supervision of some or all cases. The courts were supervised by workers of the People's Commissariat of Justice, who ascertained illegal court judgements and decisions and submitted cases to the chairman of the Supreme Court of a Union Republic or of the Supreme Court of the USSR for their consideration and lodging of the appropriate protests. To eliminate a possible collision between directives issued by the Supreme Court and the People's Commissariat of Justice the latter's guiding instructions on judicial practice were required to be submitted for the consideration of the Plenary Session of the Supreme Court of the USSR and realised in the form of the Court's decisions.

Until 1938 the People's Commissariat of Justice had no representatives of its own in regions and territories, and the courts were directed by the chairmen of regional and territorial courts. In December 1938, the People's Commissariats of the Union Republics set up judicial administrations in the territorial and regional Soviets. These administrations were charged with the task of drawing up proposals on the structure and staffs of the judicial bodies and on other questions. They checked up the examination of complaints in

court, saw that the people's assessors participated in court proceedings, etc.

#### 5. THE COURTS DURING THE 1941-45 WAR

The Great Patriotic War of 1941-45 wrought big changes in the life of the Soviet people. The attack by Nazi Germany on the Soviet Union necessitated the mobilisation of all forces both at the front and in the rear.

In the new situation caused by the war effort the Presidium of the Supreme Soviet of the USSR issued a number of enactments aimed at reinforcing the struggle against offenders who were undermining the defence potential of the country. Among the enactments issued on June 22, 1941, the first day of the war, were the Ordinance on Martial Law, the Statute on Military Tribunals set up in localities placed under martial law and in the areas of military hostilities. A state of siege was declared in Moscow, Leningrad and other vitally important centres.

The enactments extended the competence of military tribunals, reorganised railway and water-transport courts into military tribunals, excluded the participation of people's assessors in the work of military tribunals and abrogated the right to appeal against tribunal judgements by way of cassation<sup>1</sup> in localities under martial law and in localities of military hostilities (but retained the system of protesting tribunal judgements by way of supervision),<sup>2</sup> extended the powers of the military command to check the legality of military tribunal judgements, including the right of military councils of fronts to sustain sentences and simultaneously inform the Military Division of the Supreme Court of the USSR or the procurator concerned of their opinion regarding the further examination of cases.

The war circumstances made it essential to wage a determined struggle against wreckers at the front and in the rear, deserters, spies, spreaders of false rumours, saboteurs, etc. It was vitally essential to strengthen state and labour discipline. The war witnessed the growth of the role played by military tribunals which dealt with the most dangerous crimes com-

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<sup>1</sup> For greater detail, see pp. 117-18.

<sup>2</sup> For greater detail, see p. 146.

mitted both at the front and in the rear. They conducted a series of trials of nazi criminals and their accomplices who committed atrocities in occupied territory. These trials helped to denounce the savage traits of nazism.

The complicated and rapidly changing war conditions required the judiciary, especially military judges, to be highly efficient, and to display courage and valour.

Lenin used to say in his time: "Since war has proved inevitable, everything must be devoted to the war effort: the least slackness or lack of drive must be punished by war-time laws. War means war, and let nobody in the rear or any peaceful occupation dare shirk this duty!"<sup>1</sup>

The war changed the cognizance of regional and territory courts. All cases of crimes against the state, of embezzlement of state and co-operative property were withdrawn from their cognizance and placed under the jurisdiction of military tribunals. The military authorities were entitled to submit to military tribunals for examination cases of black market speculation, wilful rowdyism and various other offences, if this was required by the wartime circumstances.

The railway and water-transport courts, reorganised into military tribunals, tried transport workers on a par with servicemen.

The war and its ravages and losses could not but affect the nature of crimes. The first war years saw the reduction of cases of rowdyism, thefts of personal property, domestic and some other crimes and simultaneously the appearance of new, highly dangerous *corpora delicti*, engendered by the specific conditions of the war: evasion of state service, embezzlement of evacuated cattle and effects, etc. Despite the grim war conditions the courts undeviatingly adhered to the main principles of justice: they held oral, direct and open proceedings, and carefully checked up the grounds for bringing the guilty up for trial. They often suspended the execution of sentences until the cessation of hostilities and imposed other measures of punishment that did not involve the deprivation of liberty.

During the war the Plenary Session of the Supreme Court was very active, giving guidance to courts on major questions involved in the qualification of crimes and on the appli-

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<sup>1</sup> V. I. Lenin, *Collected Works*, Vol. 31, p. 174.

cation of wartime Union laws. For instance, it provided explanations of great importance for judicial practice—about the classification of thefts of food and consumer goods rations (June 1942), about the classification of actions by persons who evaded wartime mobilisation for permanent work in industry and construction (September 1942), about the pronouncement by courts of riders (April 1943), etc.

Towards the end of the war the country was faced with another important task, that of restoring the network of courts on the territory previously occupied by the enemy. It was necessary to erect new buildings for courts, to train new judicial personnel, to supply them with the requisite legislative and other materials, in short to create conditions conducive to their work. The job of restoring the judicial system to normalcy, started in the middle of the war and continued throughout the last period of the war as the occupied areas of the country were liberated, was completed only after the war had ended.

## 6. THE JUDICIARY IN THE POST-WAR PERIOD

When the war was over, the Soviet people made supreme efforts to rehabilitate the war-ravaged industry, transport, agriculture, and to embark on peaceful construction.

In peace time there was no longer any need for legal enactments which had broadened the competence and cognizance of military tribunals, allowed the hearing of cases without the participation of people's assessors and limited the right to appeal against judgements pronounced in localities under martial law and in areas of hostilities, etc. All these and the other enactments occasioned by the war were repealed, the courts resuming their customary forms of activity.

The reorganisation of special transport courts was carried on step by step. At first the military tribunals for railway and water transport were reorganised into transport courts; for some time the railway and water transport courts existed separately, but in 1953 they were integrated into a single system of transport courts. On February 12, 1957 a law was passed to abolish transport courts. Since then all crimes

committed in the transport industry have been heard by people's courts, regional or republican Supreme Courts.

Another important post-war enactment was the ordinance adopted by the Presidium of the Supreme Soviet of the USSR on June 15, 1948, on the disciplinary responsibility of judges. It said that judges have a disciplinary responsibility to the disciplinary collegiums made up of judges. Such collegiums were set up in regional, territory and Republican Supreme Courts.

On May 24, 1955, the Presidium of the Supreme Soviet of the USSR approved the Statute on the Supervisory Powers of the Procurator's Office in the USSR, which vested supreme supervisory power to ensure the strict observance of the law by all ministries, institutions and also by all officials and ordinary citizens in the Procurator-General of the USSR.

In post-war years considerable changes have taken place in the administration of courts. In 1946, the People's Commissariat of Justice of the USSR was reorganised into a ministry responsible for guidance to the courts throughout the country. In May 1956, the Presidium of the USSR Supreme Soviet passed a decision on the abolition of the USSR Ministry of Justice, and transferred the functions of judicial administration to the ministries of justice of the Union Republics. Some time later the ministries were liquidated and their functions were assigned to the Supreme Courts of these republics.

In 1956, the Council of Ministers of the USSR set up a Juridical Commission, charged with the codification and systematisation of the Union legislation, a function formerly discharged by the USSR Ministry of Justice.

On February 12, 1957, the Supreme Soviet of the USSR approved the Statute on the Supreme Court of the USSR. Under Art. 1 of the Statute the Supreme Court of the USSR is the highest judicial organ of the Union. It is charged with the supervision of the judicial activities of all the judicial organs of the USSR and has the right to initiate legislation.

The following year, the Supreme Soviet adopted a number of major legislative acts regulating court proceedings, judiciary and other aspects of the courts' functioning. Chief among them are the Fundamentals of Legislation on the Judicial System of the USSR, the Union and Autonomous Republics, the Fundamentals of Legislation on Criminal

Procedure of the USSR and the Union Republics, the Fundamentals of Criminal Legislation of the USSR and the Union Republics, and also the Statute on Military Tribunals, the Law on Amending the Election of People's Courts, the Law on Criminal Responsibility for Crimes Against the State and the Law on Criminal Responsibility for Military Crimes.

The Fundamentals of Criminal Procedure set forth the most important principles by which the court is to be guided in hearing criminal cases. They introduced uniformity in the hearing of cases by all Soviet courts irrespective of the area where they function. The Fundamentals clearly defined the following tasks of criminal procedure: the speedy and complete detection of crimes, the exposure of guilty persons and the proper application of the law, in consequence of which every person who has committed a crime would suffer just punishment and no innocent person would be brought to trial and convicted.

According to the Fundamentals the court, the procurator and the investigating body should, within the limits of their jurisdiction, initiate criminal proceedings wherever the elements of crime are revealed and take all measures prescribed by the law to establish the fact of the crime and punish the guilty persons.

The Fundamentals explicitly state that no person is subject to arrest except by the order of the court or with the procurator's sanction; that a remand in custody can only be applied as a preventive measure to criminal cases for which the law provides imprisonment; and that persons may not be kept in custody during the investigation for more than two months, any departure from this principle being allowed only in exceptional cases and only with the sanction of the respective procurator, who may prolong this term for some time.

Justice is administered by the court alone and only subject to the observance of the principles enunciated in the Fundamentals (independence of judges, participation of people's assessors in court proceedings, public nature of trials, and so on), while the supervision over the courts is exercised by the Supreme Court of the USSR.

The Fundamentals define the purposes and methods of procurators' participation in court proceedings. While speaking in court, the procurator sustains the public indictment,

takes part in the investigation of evidence, sets forth his opinion on questions that arise and submits to the court bench his considerations regarding the application of criminal law. Should the procurator come to the conclusion, as a result of a judicial examination, that the data of criminal investigation do not confirm the charge brought against the defendant, he is duty bound to drop his charge and explain to the court his motives for so doing.

According to the Fundamentals, the accused has the right to know what he is charged with, to make statements in respect of the charge brought against him, to adduce evidence, submit petitions, have the services of a defence counsel, challenge the members of the court, and so on.

This law also defines the concrete rights and duties of the defence counsel, of the injured party and other persons participating in court proceedings. The procurator, defence counsel, defendant and participants in court proceedings enjoy equal rights in the presentation of evidence and its investigation and in the submission of petitions.

The court assesses the value of evidence in accordance with its inner convictions based on a full, comprehensive and objective examination of all the circumstances of the case. No evidence has predetermined value for the court.

The law also defines the procedure of appealing and protesting against the court's judgements and riders, the time-limit and the procedure for reviewing them. These and other provisions set forth in the Fundamentals of Criminal Procedure constitute a system of procedural guarantees of justice in accordance with the constitutional principles.

As far as the Fundamentals of Criminal Legislation are concerned, they contain the main principles of substantive law which the courts should apply in trials. They define the concept of crime and the purposes of punishment, and also describe penalties the courts may apply and the basic conditions for their application. In particular, they state that all persons committing criminal acts on the territory of the USSR shall be held responsible in accordance with the penal law operating on the scene and at the time of the crime.

A law which renders an act not liable to punishment or reduces the penalty for it acts retrospectively, i.e., is also applicable to acts committed before its promulgation. A law

which institutes a stricter punishment for an act or increases the penalty for it is not retroactive, unless otherwise provided for by the law.

A person who, at the time of the commission of a crime, is *non compos mentis*, i.e., is suffering from chronic mental disease, temporary mental affliction or feeble-mindedness, is not held criminally responsible. The court may apply compulsory medical treatment to such a person, who is previously examined by an appropriate medical institution. A person who, of his own free will, abandons a criminal act before its completion is criminally responsible only in the event of the act actually performed by him containing the elements of crime.

The Fundamentals define the purposes of punishment, emphasising that it is imposed not only as a penalty but also as a means of reform and re-education of convicted persons in a spirit of conscientious attitude to labour, strict observance of laws and respect for the rules of the socialist way of life. Punishment has also the aim of preventing fresh crimes both by convicts and by other persons. It is not intended to inflict physical suffering or humiliation.

Persons who have committed crimes may be sentenced to the following penalties: deprivation of liberty, exile, restricted residence, corrective labour without imprisonment, disqualification from holding a certain office or engaging in certain activities, public censure, and so on. Deprivation of liberty may be imposed for a period not exceeding ten years, and for especially grave crimes for a period not exceeding fifteen years. The period of deprivation of liberty to which a person may be sentenced if he has not reached the age of 18 years must not exceed ten years. A sentence of death by shooting is applied only as an exceptional measure for especially dangerous crimes. The death sentence may not be passed on persons under 18 years or on women who are pregnant at the time when the crime is committed or when a judgement is pronounced.

Punishment may be imposed by the court alone, which in passing sentences must take into consideration the nature of the crime committed and degree to which it is a danger to society, the character of the guilty person and attendant extenuating or aggravating circumstances.

The Fundamentals also lay down the time-limits for

charging persons with criminal offences and for the execution of sentences.

The Fundamentals of Civil Legislation of the USSR and the Union Republics adopted in December 1961 state that the economy of the period of the construction of the material and technical basis of communism is grounded in the socialist ownership of the means of production as represented by its two forms—state property (property of the whole people) and co-operative and collective-farm property. Personal property is a derivative of socialist property and is one of the means of satisfying the requirements of citizens.

The law protects both property and non-property rights of citizens. In particular, citizens or organisations have the right to sue at law for retraction of statements defamatory to their honour and dignity, provided the person circulating such statements fails to prove that they are true.

The Fundamentals of Civil Legislation also regulate the right of ownership. They state specifically that the owner has the powers of possession, use and disposal of property within the limits established by law. Personal property may include things intended to satisfy the material and cultural requirements of citizens. Every citizen may have in his personal ownership income and savings derived from his labour, a dwelling-house and a supplementary husbandry, household effects and furnishings. But personal property may not be used to derive unearned income.

The Fundamentals also contain basic rules governing contracts of sale, delivery, lease of property and carriage, disputes arising from payment and credit operations, copyright and law of invention and also obligations arising from injury caused to a person. The law also provides for the legal capacity of aliens and stateless persons.

Civil rights are protected by law, except insofar as they are exercised in contradiction to their purpose in society. They are protected in the statutory manner by the court of law, arbitral court and also by comrades' courts, and trade unions and other mass organisations. In cases specifically prescribed by law, civil rights are protected administratively. Full use in socialist society is made of commodity-money relations in conformity with their new content under socialism, and use is also made of such important instruments of

economic development as cost accounting<sup>1</sup>, money, price, cost price, profit, trade, credit and finance. All these relationships require legal regulation and sometimes necessitate the invocation of the court of law for settling outstanding disputes. The principles on which they are settled are set forth in the Fundamentals of Civil Legislation.

The Fundamentals of Civil Procedure of the USSR and the Union Republics regulate questions similar to those which are settled in the Fundamentals of Criminal Procedure but with respect to cases arising from civil legal relationships and specifically from disputes in the sphere of family, labour, property, collective-farm, administrative and other legal relationships.

The task of civil procedure is to examine and adjudicate civil cases correctly and expeditiously for the purpose of safeguarding the socialist system of economy and socialist property, protecting the political, labour, housing and other personal and property rights and lawful interests of citizens and also the rights and lawful interests of state institutions, enterprises and collective farms. These Fundamentals state that the courts have jurisdiction over suits about complaints concerning incorrect entries in electoral rolls, acts of administrative organs in connection with the unjustifiable imposition of fines, actions declaring a citizen absent or dead, or legally incompetent in consequence of mental deficiency or feeble-mindedness, and so on. Any person concerned has the right, in the manner established by law, to invoke a court for protection of his infringed or contested right or lawful interest. The parties participating in the adjudication of a civil case enjoy equal procedural rights. Citizens and juridical persons may plead their causes in court either personally or through their representatives (advocates and other persons).

The court may invite representatives of mass organisations to take part in civil proceedings if they wish to present their opinion on the dispute in question.

The court judgement becomes final upon the expiry of the period for bringing an appeal for cassation. Where a cassation appeal or a cassation protest has been brought, the judge-

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<sup>1</sup> A principle of socialist economic activity requiring that the results of planned economic operations should be commensurate with costs, that expenditures should be covered from incomes and that production should produce a profit.—*Ed.*

ment becomes final upon its examination by a higher court sitting in a cassation capacity. This court has the right to rescind the lower court's judgement and change it.

Aliens have the right to apply to the courts of the USSR and enjoy civil procedural rights on a par with Soviet citizens.

In line with the aforementioned Fundamentals all the Union Republics adopted, in 1959-61, criminal and criminal procedure codes and, in 1963-64, civil and civil procedure codes, in which they established all other legal institutions regulating the administration of justice according to their national and other specific features.

Especially fruitful in this respect was the period of 1965-71, when the Supreme Soviet of the USSR adopted the following major legislative acts: the Fundamentals of Legislation on Marriage and the Family, the Fundamentals of Labour Legislation, the Fundamentals of Corrective Labour Legislation, and a series of laws on the further extension of powers wielded by local self-government bodies (town and district Soviets of Working People's Deputies).

These and other laws which synthesised past experiences have largely improved the system of current legal rules and guarantees that make for the better functioning of the state apparatus.

Another important measure was taken to strengthen socialist legality: the autumn of 1970 saw the reappearance of the USSR Ministry of Justice and its local bodies. The Ministry was charged, among other functions, with the task of providing organisational guidance to all courts. This means that the ministerial bodies discharge their duties without interfering in the adjudication of criminal or civil cases.

The 24th CPSU Congress held in April 1971 emphasised the prime significance of further improvement in legislation and of strict observance of laws by all officials, ordinary citizens and institutions, and the great value of a perfect system of judicial and law-enforcement bodies for the Soviet socialist state.

## 7. PROMINENT LAWYERS

Dmitry Kursky was one of the organisers of the Soviet system of justice. He was born in Kiev in 1874, graduated from the Law Department of Moscow University in 1900.

He joined in the revolutionary movement in his young years and became a member of the Russian Social Democratic Labour Party in 1904. After the October Revolution, in March 1918, Kursky was appointed People's Commissar of Justice. He held this post till 1928.

Kursky took an active part in drafting the first decrees on courts, the Constitution of the Russian Federation and also its criminal, civil and family codes. In 1919, he participated in the elaboration and promulgation of the Basic Principles of Criminal Law. He edited several journals, collections and books on Soviet law. For some years he directed the Moscow Institute of Soviet Law.

Another organiser of the Soviet judicial system was Pyotr Stučka, who was born into a peasant's family near Riga in 1865. He graduated from the Law Department of St. Petersburg University in 1888. While a student, he took part in the revolutionary movement. He joined the RSDLP in 1903. After finishing the University, Stučka returned to Riga and became editor of the newspaper *Dienas lapa*. Immediately after the October 1917 uprising in Petrograd he joined the first Soviet Government as People's Commissar of Justice. In 1923, he was elected Chairman of the Supreme Court of the RSFSR.

In addition to his government work Stučka engaged in scientific and pedagogical activities. In 1919, he was elected a member of the Academy of Social Sciences. For many years he was professor at Moscow University and the first director of the Institute of Soviet Law. He was the author of some fundamental monographs, including *The Revolutionary Role of the State and Law*, *The Theory of the State and the Constitution of the RSFSR* (1921) and *Course of Soviet Civil Law*. He wrote over 150 scientific works in law. He also edited *The Encyclopaedia of the State and Law*, published in 1925-26.

Nikolai Krylenko made an important contribution to the building of the Soviet judiciary. He was born in 1885 in the Smolensk Region where his father was exiled under police surveillance for "political unreliability". In 1909, he graduated from the History and Philology Department of St. Petersburg University. In 1917, he took an active part in the Revolution. From 1918 onwards, he was Deputy People's Commissar of Justice and Procurator of the Russian Federation. In 1931, he was appointed People's Commissar of

Justice of the RSFSR and in 1936, People's Commissar of Justice of the USSR.

Krylenko was one of the organisers of the Supreme Court of the USSR and attended the first Plenary Session of the Supreme Court of the USSR, held between April 18 and 24, 1924. He took part in drafting the Constitutions of the Russian Federation and the USSR, and also the bill on the Procurator's Office. He also taught law in colleges and held the chair of criminal law at Moscow University. In 1934, he was awarded the degree of Doctor of State and Legal Sciences. He was the author of over 80 books.

A great deal towards strengthening socialist legality and Soviet justice was done by Vladimir Antonov-Saratovsky. He was born in Saratov in 1885 and graduated from the Law and the History and Philology departments of Moscow University. He joined the RSDLP in 1902. In September 1917, he was elected Chairman of the Saratov Soviet of Workers' and Soldiers' Deputies. From 1921 onwards he was Rector of the Sverdlov University in Moscow and later chairman of the Legislative Commission of the Soviet Government. Between 1923 and 1938, he was a member of the Supreme Court of the USSR and subsequently Chairman of the Judicial Division of the Supreme Court of the USSR for Criminal Cases.

Another prominent lawyer was Pyotr Krasikov, who was born into a lawyer's family in Krasnoyarsk. He graduated from the Law Department of St. Petersburg University and joined the revolutionary movement in the early 1890s. After the October Revolution he was appointed Deputy People's Commissar of Justice and in 1924, Procurator of the Supreme Court of the USSR. Between 1933 and 1938, he was Vice-Chairman of the Supreme Court of the USSR. Krasikov was the author of many articles on legal matters.

Alexander Vinokurov, a notable statesman, Lenin's friend and comrade-in-arms, was the first Chairman of the Supreme Court of the USSR. He was born in Dnepropetrovsk in 1869, graduated from Moscow University in 1894. At the end of 1917, soon after the October Revolution, he was elected Chairman of the First Petrograd Bolshevik Duma and in April 1918, he was appointed People's Commissar of Social Security. Vinokurov presided over the Supreme Court of the USSR between 1924 and 1938.

He was succeeded in this post by Ivan Golyakov who was born into a large peasant family in 1888. In May 1919, he joined the Red Army as a volunteer. In 1933, he was elected a member of the Supreme Court of the USSR and in 1938, its chairman. Golyakov was the author of over 40 books, including the fundamental research *The Court and Legality in the Russian Fiction of the 19th Century*. He also engaged in giving lectures and for many years headed the All-Union Institute of Legal Studies.

Between 1948 and 1957, the Supreme Court of the USSR was chaired by Anatoly Volin, who was born into a fisherman's family in the Krasnodar Territory in 1903. In 1930, he graduated from the Soviet Law Department of Leningrad University and lectured in colleges till 1936.

From 1957 to 1972 the Supreme Court of the USSR was presided over by Alexander Gorkin. He was born into a peasant family in the Tver Province in 1897. During the first post-revolutionary years he worked in Tver as Secretary to the City Soviet and later as Chairman of the Executive Committee of the Tver Provincial Soviet. In 1937, he was elected Secretary of the Central Executive Committee of the USSR, and in 1938, Secretary of the Presidium of the Supreme Soviet of the USSR.

In September 1972, A. Gorkin was succeeded by Lev Smirnov, an eminent lawyer who held before this appointment the post of the Chairman of the Supreme Court of the Russian Federation.

In 1946-51, Andrei Piontkovsky, an eminent jurist, was elected a member of the Supreme Court of the USSR. He was born in 1898 and in 1918 graduated from the Law Department of Kazan University. He is the author of many fundamental works on the theory of criminal law. He participated in drafting the Fundamentals of Criminal Legislation of the USSR and the Union Republics, the Criminal Code of the RSFSR and other legislative acts. He is a Merited Worker of Science and a Corresponding Member of the Academy of Sciences of the USSR.

Among major Soviet lawyers one should also mention Roman Rudenko who holds the post of the Procurator-General of the USSR since 1953. His brilliant performance as public prosecutor at the Nuremberg Trial and at other big trials won him the praise of both lawyers and the public at large.

## *Chapter II*

### **PRINCIPLES OF SOCIALIST JUSTICE**

#### **1. THE ELABORATION OF THE PRINCIPLES OF SOCIALIST JUSTICE**

As we have noted, the Soviet socialist state needed a new system of justice as to both form and content, purposes and tasks. It had to be initiated with the adoption of relevant laws, but to do so in the brief period of the October Revolution was practically impossible. For this reason recourse was had to some of the old laws, provided they did not run counter to revolutionary conscience and revolutionary legal consciousness. The task was complicated by the fact that the Republic needed laws not merely new ones but those based on socialist principles right from the beginning, from the very first days of the 1917 Revolution.

These principles were originally formulated in the first programme of the Russian Social-Democratic Labour Party, adopted in 1903, and were developed in Lenin's works on the state and revolution. This meant that by the time the Soviet power came into being, there had been a practical possibility of elaborating the most essential legislative acts based on the new, socialist principles.

Immediately after the Revolution these principles of socialist justice received legislative recognition in the first Decrees of Soviet government, specifically in Decree No. 1 on the courts and in the subsequent Decrees on the courts, adopted in 1917 and 1918.

To the general question as to what principles underlay socialist justice, the answer primarily was as follows: the socialist essence of the new Soviet courts was expressed, among other things, in the fact that judges were elected to

their office by the working people alone and that the courts were fully accessible to the population.

Of course, the reader should not imagine that right from 1917 the young Soviet state succeeded in formulating all the principles of socialist justice in a final and exhaustive form and, moreover, in implementing all of them in practice. This position was not achieved at once. The state needed time and a great deal of persistent work before these principles were expressed in law and in practice. The first post-revolution years saw only the initial, though very important, steps in outlining some of the major principles of socialist justice and in highlighting the need for the further improvement of these principles.

The present Programme of the CPSU passed by the 22nd Party Congress is a new stage in the further development and improvement of the principles of socialist justice. It says specifically:

“Justice in the USSR is exercised in full conformity with the law. It is based on truly democratic lines: election and accountability of the judges and people’s assessors, the right to recall them before the expiry of their term, the publicity of court proceedings and the participation of prosecutors and advocates from the general public in the work of the courts, with the courts and investigating and prosecuting bodies strictly observing legality and all the norms of judicial procedure. The democratic principles of justice will be developed and improved.”<sup>1</sup>

From this excerpt one may draw the following conclusions: an intrinsic feature of Soviet justice is constantly to develop and extend its democratic principles, the latter being characterised by the further strengthening of socialist legality, greater protection of the rights and lawful interests of citizens and extended participation of the public in the administration of justice. The Programme of the CPSU stresses the demand for the strictest observance of law in the working of courts and other legal bodies, and lays down the major principles of justice.

It must be stressed that Soviet legislative practice acts on the CPSU Programme which points to the need for the further development and improvement of the democratic

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<sup>1</sup> *The Road to Communism*, Moscow, 1961, p. 552.

principles of justice. Thus, in December 1958, the Supreme Soviet of the USSR adopted the Fundamentals of Legislation on the Judicial System of the USSR, the Union and Autonomous Republics and the Fundamentals of Criminal Procedure of the USSR and the Union Republics. That was a big step forward in the matter of improving the administration of justice. But the continued democratisation of the Soviet state and social system called for the solution of new tasks, those of transferring certain state functions in safeguarding public order and legality to non-government organisations. In this connection some changes and addenda were introduced in the Union and Republican legislation with a view to developing and improving the principles of justice. In particular, the lawmaker introduced public surety, that is the release by the court of persons who have committed first minor offences in the care of a mass organisation or a work collective on their petition; the legislature also provided for the participation of voluntary prosecutors and defence counsel drawn from among the public; it extended the jurisdiction of comrades' courts and set up voluntary people's patrols for the maintenance of public order.

The Fundamentals of Civil Legislation and the Fundamentals of Civil Procedure of the USSR and the Union Republics, passed in 1961, and the Fundamentals of Legislation on Marriage and the Family, adopted in 1968, developed and extended the democratic principles in the sphere of civil relationships.

The principles of Soviet justice develop and undergo further democratisation in conjunction with measures directed to the democratisation and evolution of the entire system of the state organs. The CPSU Programme says in this context: "*All-round extension and perfection of socialist democracy, active participation of all citizens in the administration of the state, in the management of economic and cultural development, improvement of the government apparatus and increased control over its activity by the people constitute the main direction in which socialist statehood develops in the period of the building of communism.*"<sup>1</sup> Socialist justice also develops in this direction.

The principles of socialist justice have received full and

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<sup>1</sup> *The Road to Communism*, p. 548.

comprehensive treatment in Soviet legal literature. The scholarly discussions resulted in their uniform understanding. But the way of classifying these principles and some other pertinent theoretical problems are still a matter for lively discussion. The author does not set himself the aim of presenting the different views of Soviet jurists on controversial questions and has, therefore, restricted himself to making a brief review of the principles enunciated in the legislative enactments.

## 2. ADMINISTRATION OF JUSTICE BY THE COURTS ALONE

Art. 102 of the USSR Constitution says: "In the USSR justice shall be administered by the Supreme Court of the USSR, the Supreme Courts of the Union Republics, the Courts of the Territories, Regions, Autonomous Republics, Autonomous Regions and National Areas, the District (Town) People's Courts and also by the military tribunals."

This means that the court alone, in the name of the state, may declare a person guilty of a crime and impose a criminal punishment on him.

In the sphere of family, marriage, labour and other civil relations and only in cases provided for by the law, the court alone has the authority to decide which of the parties to a dispute has violated the law, to decide which of the citizens concerned is to be deprived of personal property, labour and some other rights or limited in their exercise, and to apply other measures of coercion. All the other legal bodies or institutions (the procurator's offices, investigation agencies, the bar, organs of the Ministry of Justice, and so on) assist the courts in discharging their major functions.

In most criminal cases the court hearing is preceded by the large, complicated and exceedingly important work of collecting and investigating evidence. It is done by organs of inquiry (e.g., the militia, the commanders of military or naval units, etc.) and organs of preliminary investigation (e.g., the procurator's offices). According to Soviet procedural law this stage is called preliminary investigation. The term "preliminary" is used not accidentally. After the respective organ of inquiry or preliminary investigation has collected material and performed the necessary formalities,

the case with an indictment is transferred to the relevant procurator. The material is thoroughly verified by him and having satisfied himself that it provides grounds for court examination, the procurator submits the case to the court for consideration on its merits.

Inasmuch as the tasks of the investigator and procurator coincide with those of the court, for all of them are concerned to reveal the fact of crime, to detect guilty persons and objectively to study the adduced evidence of their guilt, an impression may be created that citizens suspected of a crime are considered guilty prior to trial. This impression is totally erroneous. The law says explicitly: "Justice in the USSR shall be administered by the court alone." It should be added that the administration of justice consists of two inextricably linked stages: the first stage, where the court decides whether an arraigned person is guilty or not, and the second stage, where it passes a decision on the application or non-application of penalties in respect of that person. Moreover, the court takes its decisions on these questions independently of the views of the investigator and procurator on the question of whether the indictment has been proved or not.

Thus, the conclusions arrived at by the investigator and procurator regarding the guilt of a person have a preliminary character and the court's judgement alone has the legal effect of recognising the arraigned person as guilty or non-guilty. The court alone decides on the penalty to be applied to the person guilty of a crime.

The principle that justice is exercised only by the courts has been confirmed by the Soviet Union in international agreements. Thus, in December 1948, the Soviet Union signed and later ratified the Universal Declaration of Human Rights, which says specifically that "everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence" (Art. 11).

### 3. ELECTIVE JUDICIARY

All links of the judiciary, beginning from the people's court and ending with the Supreme Court of the USSR, are formed on the basis of election. The Soviet law does not pro-

vide for the institution or the appointment of judges or of their replacement in any way save by election.

In his article "The Old and New Court", published in January 1918, Pyotr Stučka wrote: "Since the first day of the Revolution we had no doubt whatsoever that it is only on the ruins of bourgeois justice that we shall be able to erect the building of socialist justice, more modest in appearance but infinitely more stable in content. . . . There can be only one reply to the question: by what we are supposed to replace the class court we abolished and that reply is: by an elective people's court."<sup>1</sup>

These words uttered by a highly competent jurist and politician convey best of all the essence and importance of Lenin's principle of an elective judiciary.

The Soviet court has always functioned as an elective and collegiate body. But immediately after the 1917 Revolution people's judges were not elected directly and universally, since this was prevented by the situation caused by the foreign intervention and civil war and the resistance of the exploiting classes. At that time the courts were, as a rule, elected by local Soviets.

With the stabilisation of the situation in the country, its further economic and social development it was possible to confirm in the USSR Constitution, adopted in 1936, that an elective judiciary is a major principle implemented consistently in Soviet practice.

Under the Constitution of the USSR, the Supreme Court of the USSR is elected by the Supreme Soviet of the USSR for a term of five years. The Supreme Courts of the Union Republics are elected by the Supreme Soviets of the Union Republics, and the Supreme Courts of the Autonomous Republics are elected by the Supreme Soviets of the Autonomous Republics—all for a term of five years. As for the Supreme Courts of the Regions and National Areas, they are elected by the Soviets of the respective administrative divisions and also for a term of five years. People's judges of district (town) people's courts are elected by the citizens of the districts (towns) for a term of five years on the basis of universal, equal and direct suffrage by secret ballot.

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<sup>1</sup> P. Stučka, *Selected Writings on the Marxist-Leninist Theory of Law*, Riga, 1964, pp. 229, 235 (in Russian).

The *universal* principle of election implies that judges are elected by all citizens of the USSR who have reached the age of 18 years, irrespective of their race, nationality, place of residence, education, creed, social origin, property status and past activities. Women have the right to elect judges and be elected as such on equal terms with men.

The *equality* of election means that every citizen has only one vote and no elector has any advantage in respect to any other elector.

*Direct* election implies the election of people's judges by the people themselves, residing on the territory of a given district or town and the absence of any intermediate stages.

Lastly, the election of people's judges is held *secretly*, with voters filling in their ballot papers in the absence of anybody, including members of election commissions. This voting procedure guarantees the full freedom of choosing candidates by the electorate. To this we must add that the election expenses are fully borne by the state.

Under the Constitution of the USSR, people's assessors of district (town) people's courts are elected at general meetings of industrial, office and professional workers, and peasants in the place of their work or residence, and of servicemen in military units, for a term of two years.

In conformity with the Fundamentals of the Judicial System of the USSR, people's judges regularly report to their electors on their work and the activity of the court concerned, while judges of regional, territory and town courts as well as the courts of Autonomous Regions and National Areas report to the respective Soviets of Working People's Deputies. The Supreme Courts of the Union and Autonomous Republics account to their Supreme Soviets and the Supreme Court of the USSR accounts to the Soviet Parliament and between its sessions—to the Presidium of the Supreme Soviet of the USSR.

There is no doubt that this procedure of judges reporting back to the electorate or the organs which elected them is natural and conducive to the improvement of judicial work. The electors are entitled to know about the overall activity of the judge they elected and his court.

The reader may raise a question: does not the accountability of judges contradict the principle that judges are independent and subject to the law alone? The long-standing

practice of the Soviet court has shown that these apprehensions are unfounded. In their accounts to the electors the judges report on ways of combating crime and on the measures applied by the courts to prevent crimes and on the immediate tasks they face. These reports do not imply any interference on the part of electors in the adjudication of specific civil and criminal cases, which fact is inadmissible.

If a judge does not justify the electors' trust he may be recalled by them. This is an important feature of the democratic nature of the Soviet court. As Lenin put it, "No elective institution or representative assembly can be regarded as being truly democratic and really representative of the people's will unless the electors' right to recall those elected is accepted and exercised. This is a fundamental principle of true democracy. . . ."<sup>1</sup>

To prevent the right of electors to recall judges from becoming an instrument of pressure on them this procedure is strictly regulated by the law. This precludes the possibility of recalling a judge when his activity and judgements fully meet the requirements of the law.

Before 1958, both people's judges and people's assessors were elected for a term of three years. In December of that year it was considered advisable to elect judges to all links of the judicial system every five years. This lengthy period enables the judge to study the district he serves, to get acquainted with local conditions and to acquire experience. For this reason Art. 109 of the USSR Constitution was amended in 1958 to provide for a five-year term of sitting of the court bench. After this term expires the judge may be elected for a second time. In December 1958, the Supreme Soviet of the USSR reduced the term of service of people's assessors from three to two years, inspired by the desire to draw into the administration of justice ever more Soviet citizens.

In many states judges are appointed and not elected. Some bourgeois jurists claim that the judges should not be replaceable, and that this practice would consolidate their independence. Life, however, shows that this affirmation is unfounded, since the "greater independence of judges" is purely outward in appearance. The principle of judges being

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<sup>1</sup> V. I. Lenin, *Collected Works*, Vol. 26, p. 336.

permanently appointed contributes, in our opinion, to the appearance in them of feelings of superiority, self-confidence, conceit, and infallibility, these qualities being responsible for judicial errors and even arbitrary actions.

Moreover, in those states where judges are irremovable and appointed by the President or some other high person in office, they have to agree, willy-nilly, with the opinion of those who appointed them and to protect their interests. If we bear in mind that in most such states judges are appointed from among the members of propertied classes, it will become clear that such courts serve primarily the interests of the class whose representatives appointed them and with whom they are connected personally.

#### 4. PARTICIPATION OF PEOPLE'S ASSESSORS IN TRIALS. THE COLLEGIAL EXAMINATION OF CASES

Under the present law, all criminal and civil cases are adjudicated in courts of first instance, the exception being cases of petty hooliganism, minor thefts and certain insignificant civil cases. The cases are normally tried by three persons—the chairman (a permanent judge) and two people's assessors. This procedure applies to all courts—from the people's court to the Supreme Court of the USSR. But when a case is heard in cassation or supervision proceedings, that is, after it has been tried fully in a court of first instance, it is examined upon the appeal against the judgement by three permanent judges, that is, in the absence of people's assessors.

It should be stressed that in all courts the permanent judge and the people's assessors enjoy equal rights. The trial is directed by the judge who acts as chairman at court proceedings. All other questions concerning the substance of the case are settled by the bench collectively.

In the early Soviet years, people's assessors were elected in a peculiar way. The local Soviets used to compile lists of candidate assessors from among the citizens who had voting rights. At a later stage, lots were drawn to determine who would participate in a regular session of the people's court. Although this principle of choosing candidate assessors was elaborated in greater detail and the drawing of lots was

abolished, it was practically impossible to hold universal elections of people's assessors in the early Soviet years.

The USSR Constitution of 1936 and the 1938 Law on the Judicial System of the USSR established a new procedure of election—direct election of people's assessors to people's courts and indirect election of people's assessors to higher courts, that is, their election by Soviets. But this measure proved in practice to be inadequate. During elections lists of candidate assessors in each electoral district included between 100 and 150 persons, which seriously impeded the comprehensive discussion of every candidate. As a result the voters had a poor knowledge of the candidates nominated. This explains why in December 1958 the procedure of election was changed once again. Since that time people's assessors for people's courts are elected not in electoral districts but at general meetings of factory, office and professional workers, and peasants in the place of their residence or work, of students in the educational establishments, and of servicemen in military units. People's assessors for higher courts are, as heretofore, elected by the respective Soviets. This procedure allows for full discussion of every candidate.

Today every citizen of the USSR who has reached the age of 25 by election day can be elected a people's assessor. The law provides for no limitation on grounds of nationality, sex, education, political or religious views, and so on.

A total of 600,000 people are elected to all links of the Soviet judicial system throughout the country. At the last election of people's assessors 40 per cent of them were elected from among industrial workers and nearly 15 per cent from among farmers. Women constitute over 40 per cent of elected assessors. Practically all nationalities residing on the territory of a Union Republic are represented among people's assessors. By way of illustration we may cite the national composition of the assessors' body in Georgia: of 10,720 people's assessors Georgians number 8,390; Armenians, 705; Russians, 595; Azerbaijanians, 227; Abkhazians, 214; Ossets, 418, and so on.

People's assessors elected for two years are called to take the bench in rotation: they are empanelled by rota for not more than two weeks a year, except where a longer period is necessary to conclude the hearing of a major case opened with their participation.

People's assessors elected from among industrial, office and professional workers retain their regular wages or salaries while discharging their duties in court. People's assessors who are not factory or office workers are reimbursed for their expenses in connection with the discharge of their duties in court. The procedure and amount of reimbursement is fixed by the legislation of the Union Republics.

As said earlier, the people's assessors, when discharging their duties in court, enjoy the same rights as the judge. Before the court starts its proceedings they have the right to make themselves conversant with all the material of the case and take part in the administrative sitting where the question of the possibility of hearing the case on its merits at the trial is decided. At this stage they have the full right to question the accused persons, witnesses, experts, plaintiffs and respondents, examine exhibits, study documents, and so on, the presiding judge enjoying no privileges over the people's assessors.

All questions arising during a trial are settled by the court bench collectively. The equality of rights enjoyed by the people's assessors and the permanent judge is also observed in the courtroom where the bench passes a judgement or decision. Each member of the bench, including people's assessors, expresses his opinion on whether the fact of crime has been proved or not, on whether the defendant is guilty in each specific case. The presiding judge expresses his view and casts his vote last. If a member of the bench does not concur with the opinion of the two other members, he is obliged to sign the judgement or decision, but at the same time has the right to set out his minority opinion in writing, which is not made public but is entered in the record of the case. Cases in which a dissenting opinion has been entered are examined by a higher court in a cassation or supervision proceeding.

As is evident from the foregoing, the principle of people's assessors' participation in the trial of cases is closely interlinked with another important principle—the collegial adoption of judgements and judicial decisions. The presiding judge is vested with the function of directing the trial of cases, all procedural matters and all questions pertaining to the substance of cases always being settled by the whole bench.

People's assessors may be recalled before the expiry of their term, but only by the organ or electors who elected them. The procedure of recalling is governed by the relevant legislative acts.

The activity of people's assessors is not confined to their participation in court proceedings. As a rule, they conduct vast explanatory work among the population, make reports on legal subjects to electors, assist judges in the verification of the execution of judgements and decisions, and so on.

## 5. INDEPENDENCE OF JUDGES

Art. 112 of the Constitution of the USSR says: "Judges shall be independent and subject to the law alone." This constitutional tenet is reproduced in the Fundamentals of the Judicial System of the USSR (Art. 9), in the Fundamentals of Criminal and Civil Procedure of the USSR (Art. 10 and 9 respectively) and also in the Criminal Procedure and Civil Procedure Codes of all Union Republics.

The principle that judges are independent and are subject to the law alone is closely linked with the demand for the strict observance of law by the court itself. These two important principles underlie socialist justice.

Following the approval by the Soviet government of the Decrees on Peace, the Land and the Courts the subsequent development and improvement of legislation resulted in the promulgation of codes and other legislative and normative acts. Today the Soviet Union has a simple, democratic and easily understandable system of legal rules. However, the mere adoption of laws and the elaboration of a system of legislative enactments does not guarantee the consolidation and development of new social relations. To do this it is required that everybody should always unswervingly and consistently observe all the laws on the Statute Books.

Great importance attaches to the court which is called upon to prevent infringements of law and punish law-breakers. But since the court is the organ which is to combat all violations of law and to strengthen socialist legality, it is natural that it should itself observe legality in its own activity. The principle of legality in court proceedings implies the duty of the bench to be guided strictly by the law in the proclamation of all its decisions. This is implicitly stated in

Art. 6 of the Fundamentals of Legislation on the Judicial System of the USSR: "Justice in the USSR is administered in complete accordance with the legislation of the USSR and the legislation of the Union and Autonomous Republics."

The observance of law in the administration of justice has invariably been kept in mind by the Ministry of Justice and the Supreme Court of the USSR. The instruction, adopted by the Plenary Session of the Supreme Court of the USSR on March 18, 1963, says in part: "No breaches in legality may be justified by references to the need to intensify the eradication of crime. Every criminal case, regardless of the nature and gravity of the crime committed, of the official or social status of the defendant, must be adjudicated in strict conformity with the rules of criminal and procedural law."<sup>1</sup>

The Plenary Session of the Supreme Court drew the attention of all judges to the fact that it is highly inadmissible to divide breaches of the law into "significant" and "insignificant". It said to this effect: "Some judges consider so-called 'insignificant' formal departures from procedural law requirements admissible, forgetting the fact that undeviating observance of the statutory procedural rules is a *sine qua non* of ascertaining the truth in a case and of adopting a correct decision."<sup>2</sup>

It follows from the foregoing that it is completely inadmissible to make even the slightest departure from procedural law. Only by sticking to this condition can one hope that the truth in a case will be ascertained and that the court's decision will comply with the law.

While educating Soviet citizens in the spirit of the exact and undeviating implementation of the Soviet laws, the judges themselves must be a model in observing socialist legality. The meeting of this requirement is not only their moral and official duty, but also the indispensable condition of an effective eradication of crime. The realisation of the principle of legality in the administration of justice must be, in addition to anything else, secured by the requisite organisation of the judicial system and reliable procedural guarantees contained in the laws in force.

<sup>1</sup> *Collected Decisions of the Plenary Session of the Supreme Court of the USSR, 1924-70*, Moscow, 1970, p. 252 (in Russian).

<sup>2</sup> *Ibid.*

The principle of legality in court has its own specific features: by taking decisions the court applies the current law but does not create any new legal norms. Soviet legislation settles this problem in clear-cut terms. Art. 9 of the Statute of the Supreme Court of the USSR says that the Plenary Session of the Supreme Court "gives the courts guiding instructions on questions pertaining to the application of laws in judicial proceedings." This warrants the conclusion that the Supreme Court instructions do not create new norms of law but only explain to the courts the existing norms of the law in force. They merely explain how the legal norms should be applied to various situations and crimes.

The Soviet legal doctrine does not at all claim that the court does not depend on the policy pursued by the Soviet state, on the will of the working class and all working people, and on the tasks involved in building socialism. The Soviet people's will is expressed in the laws, by which the courts are bound to be strictly guided. Thus, when we speak about the independence of judges, we refer to the fact that the judges can and must adjudicate criminal and civil cases only in strict conformity with the law and independently of any external and extra-judicial factors, in the absence of intervention on the part of any bodies, officials or private citizens.

The independence of judges and their subordination to the law alone are two aspects of one thing. The first aspect is that the court is strictly guided by the law and the second implies that in adjudicating cases the judges are independent of any external intervention. Art. 10 of the Fundamentals of Criminal Procedure says on this score: "Judges and people's assessors shall adjudicate criminal cases on the basis of the law, in accordance with the socialist concept of justice and in conditions that preclude any outside influence on the judges." Art. 9 of the Fundamentals of Civil Procedure runs as follows: "Judges and people's assessors shall adjudicate civil cases on the basis of the law, in accordance with the socialist concept of justice and in conditions precluding any outside influence on the court." In practice this means that all persons speaking in court or appealing against its actions (the procurator, defence counsel, the injured party, and so on) are entitled to express their opinion and convince the court of the righteousness of their position, but that the

court passes its decision regardless of their opinions. Any interference in the adjudication of cases on the part of officials, government, Party or any other organs is totally impermissible.

The Soviet state seeks to implement the principle that judges are independent in their activity by adopting various legal guarantees and organisational measures. One of the most important guarantees is the election of judges on a democratic basis, which places the judge in a position that makes him independent of any official or of any form of interference in the adjudication of cases.

The lawmaker has also established special guarantees for the independence of judges in the examination of criminal and civil cases. For instance, the law provides that judgments and decisions on civil matters are to be issued in a special conference room to which nobody has access apart from judges and assessors. Further, the law stipulates that all court decisions are taken by a simple majority vote, the judge, who is in minority, being entitled to affix to the judgment his dissenting opinion. The law also provides for special disciplinary measures applicable to judges guilty of mishits in their work or misdemeanours in their behaviour. Judges have disciplinary responsibility to special disciplinary collegiums made up of judges only.

A judge can be recalled from his office by the electors alone, after a collective discussion of the matter. This procedure is specially regulated by the law to guarantee the all-round discussion and objective solution of the matter. Judges are not liable to criminal proceedings, cannot be dismissed or arrested without the sanction of the Presidium of the Supreme Soviet of a Republic; while judges of the Supreme Court of the USSR cannot be removed from office or arrested without the sanction of the Presidium of the Supreme Soviet of the USSR. This provision especially is a real guarantee of the independence of judges.

These legal guarantees apart, great importance attaches to the instructions issued on this point by the organs of the Communist Party, which exercises political guidance of the state. But Party leadership does not interfere administratively in judicial activity. Party bodies keep an eye on the state of the eradication of crime and other infringements of laws, on the measures adopted to prevent offences, on

the improvement of legal propaganda among the people; they render the courts assistance of an organisational character. Party bodies do not interfere in the adjudication of criminal and civil cases. Party directives ban any intervention by Party bodies in the administration of justice.

The same applies to the local Soviets. They have the right to hear reports made by judges on crime, on measures to strengthen legality, on measures to popularise Soviet laws and on general questions of judicial work. But the Soviets cannot interfere in the operational activity of people's courts, or in the adjudication of criminal and civil cases.

To provide additional guarantees for the independence of judges the lawmaker established that judges must appraise evidence according to their inner conviction, based on an all-round, complete and objective examination of all circumstances of the case as a whole and guided by the law and the socialist concept of justice. No evidence has a pre-determined effect for the court.

If the higher court quashes a court judgement in cassation or supervision proceedings, it cannot indicate what judgement or decision the court of first instance should pass, nor can it recognise facts not recognised by the court of first instance as ascertained facts. Thereby, the court of first instance, which hears the case for a second time, is not bound to pass a judgement coinciding with the recommendations of a higher court. It must review the case once again and appraise the evidence in a way that corresponds to the inner conviction of the judges hearing the case and deliver a judgement based on the circumstances verified at a court sitting.

## 6. THE PUBLIC NATURE OF TRIALS

Art. 111 of the Constitution of the USSR states that in all the courts of the country cases shall be heard in public, unless otherwise provided for by law. This principle means that judges carry out their work in full view of the people—all court sittings at which criminal or civil cases are heard are attended by citizens, all court decisions and the evidence underlying these decisions are made public, the judicial proceedings are widely covered by the press, radio and television.

Publicity in court is needed primarily for the purpose of increasing the educational effect of judicial examination and judgements amongst the population: the more people attend the court sittings, the more chances there are that lessons will be learned contributing to the prevention of further crimes.

On the other hand, public control over the work of judges contributes to the improvement of the quality of the trial. People attending trials have an opportunity of being convinced personally of the objectivity with which the trial is conducted, which is conducive to the spread of respect for the court and the work of judges.

Art. 12 of the Fundamentals of Criminal Legislation states: "In all courts cases shall be heard in public with the exception of those cases where publicity would be detrimental to the maintenance of state secrets. In addition to this, cases may be heard *in camera* by the considered decision of the court when they concern crimes committed by persons under the age of 16 years, in cases of sex crimes and also in other cases when it is deemed necessary to prevent the spread of information on the intimate sides of the lives of those concerned in the case. In all cases court judgements shall be pronounced in public."

The principle of the public hearing of civil suits is formulated similarly in Art. 11 of the Fundamentals of Civil Legislation. All this shows that exceptions in Soviet law are minimal and there is little reason to assert that it is advisable to hear in open trials cases involving the study of intimate human relations or sex crimes. In our opinion, there is no need for this. Other statutory limitations relate to the protection of state secrets. This practice is absolutely essential and is adopted by all countries.

In referring to the importance of holding public hearings of bribe-taking, Lenin wrote: "From the standpoint of principle it is essential not to leave such matters within the confines of bureaucratic institutions, but to bring them out into the public court—not so much for the sake of inflicting strict punishment (perhaps a reprimand will suffice), but for the sake of publicity and for dispelling the universal conviction that guilty persons are not punished. . . . We must not be afraid of the courts (our courts are proletarian) or of publicity, but must drag bureaucratic delays out into daylight for

the people's judgement: only in this way shall we manage to really cure this disease."<sup>1</sup>

Bearing in mind the educational influence of trials, we must not forget that they have a great educational effect on the defendants as well, for they are obliged to account not only to the court itself, but also to some extent to the representatives of the public, to their comrades and relatives who are present at the trial.

Of great importance in securing the educational impact of the trial are the businesslike atmosphere of hearing, the proper behaviour of the participants in proceedings, the judges' lack of bias towards them, the objective form of formulating questions by the court and the high quality of the documents it compiles.

A special role is played by the chairman, whose actions and behaviour must be subordinated to the main goal—the comprehensive, complete and objective investigation of the circumstances of each case.

The courts hold travelling sessions, i.e., hearings organised at local enterprises, institutions, collective or state farms and conducted with the strictest observance of all procedural guarantees. They are an effective means of educational work, for they attract many people to courtrooms and especially those interested in some particular case. These sessions take place, as a rule, at enterprises where a crime has been committed or where the defendant or the injured party has worked, for this practice may exercise the greatest educational effect on the people attending them.

The coverage of trials in the press is an important means of making them public. It stands to reason that the methods employed to give wide currency to cheap sensation or relish the most disgusting elements of crimes are alien to the socialist concept of justice. This kind of press coverage of trials tends to corrupt the unstable members of society, whereas the Soviet style of press coverage primarily pursues an educational purpose, serving to foster in its readers intolerance of crimes, respect for the law, the court and the rules of socialist community life.

Judicial proceedings in the Soviet Union are conducted orally, all evidence being verified by the court itself. In

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<sup>1</sup> V. I. Lenin, *Collected Works*, Vol. 36, pp. 555-56.

addition to checking up the materials of preliminary investigation, the court acquaints itself with all available evidence, discusses the value of every piece of evidence, reveals new evidence and makes an independent appraisal of it. The trial is conducted via personal and hence oral questioning by the court of all witnesses, defendants, injured parties and other persons participating therein.

Art. 37 of the Fundamentals of Criminal Legislation states: "A court of first instance, in hearing a case, shall examine the evidence of the case directly; question the defendants, the injured parties and witnesses; hear the findings of experts; examine exhibits, and read out records and other documents." In line with this provision Art. 43 of the Fundamentals contains the following rule: "The court shall base its judgement exclusively on the evidence examined at the trial."

Thus, in pronouncing its judgement the court cannot take into account evidence not verified by the court itself in open trial. According to the Criminal Procedure Codes of the Union Republics, the courts may confine themselves to the oral pronouncement of testimony given by witnesses and defendants at the stage of preliminary investigation only in exceptional cases. The court is duty bound to question all the requisite persons and obtain their personal oral explanations.

## 7. THE LANGUAGE OF JUDICIAL PROCEEDINGS

Under the Constitution of the USSR (Art. 110), judicial proceedings are conducted in the language of a Union or Autonomous Republic or of an Autonomous Region and in cases provided for by the Constitutions of the Union or Autonomous Republics, in the language of a National Area or of the majority of the district where the trial is held. All persons taking part in a trial, who do not know the language in which proceedings are being conducted, have the right to acquaint themselves with all the materials of the case through an interpreter and to speak in court in their native language. Documents concerning the investigation and the trial are handed to the accused person, translated into the language he understands.

This constitutional provision guarantees the equality of citizens before the law and the court, regardless of their nationality, and creates conditions for the complete defence of the interests of the persons accused of committing crimes. In consequence all those present at the trial have a real possibility to appraise the court's actions and draw correct conclusions from the case.

#### 8. THE RIGHT OF THE ACCUSED TO DEFENCE AND GUARANTEES OF THIS RIGHT

In speaking about the right of the accused to legal defence, provided for in Art. 111 of the Constitution of the USSR, we must bear in mind all the relevant legal norms which he can use to defend himself against the charge made. The defendant has the right to know what he is charged with, to get acquainted with the materials of the case before they are sent to court, to participate in the investigation of evidence during the trial, to challenge the judges and other participants in the trial, to appeal against the judgement, and so on. Objectively, all these rights constitute the defendant's right to defence.

The right to defence is sometimes understood by the layman merely as the defendant's right to have the services of an advocate (defence counsel). This conception is wrong, since the defendant's rights are protected by many other procedural guarantees. For instance, when a preliminary investigation is over, the investigator concerned is duty bound to present all the materials of the case to the defendant and enable him to study them and file the requisite petitions. Within three days before the court begins the trial, it is obliged to hand a copy of the indictment to the defendant, which guarantees him the real possibility of preparing himself for his defence in court.

Like the public prosecutor, the injured party and other participants in the trial, the defendant has the right to participate in the investigation of evidence, adduce new evidence, submit petitions and challenge the members of the bench, give explanations regarding the testimony by the injured party, witnesses and findings of experts. The accused has the right to the last plea in court.

The right to have defence counsel is of especial importance to the accused person. The law guarantees the provision of qualified legal aid. Every district and town has a legal aid bureau and a bar association staffed by professional lawyers, or advocates, whose function is to give legal aid to the population.

Before 1958, the defendant could use the services of defence counsel only at court sittings, but not at the stage of preliminary investigation. The Fundamentals of Criminal Procedure, acting on the need further to democratise criminal procedure, extended the right of the accused person to defence by allowing him to have a defence counsel either from the moment when he receives an indictment or when the preliminary investigation is terminated and he has been handed all the materials of the case for his perusal.

The law provides for the mandatory participation of defence counsel in a number of cases. In particular, his participation is mandatory in cases in which a prosecutor takes part, in cases of minors and of persons who by virtue of physical or psychic deficiency are incapable of defending themselves in court. If the defendant does not possess sufficient means to pay for an advocate's services, while the court recognises that the participation of defence counsel in a trial is mandatory, the relevant bar association, on the court's motion, is duty bound to appoint an advocate and pay him the requisite fees out of its funds.

To this must be added the defendant's right to defence guaranteed by the statutory procedure for appealing against court judgements. Every convicted person and his defence counsel have the right to appeal to a higher court against any decision taken by a lower court. If the case is to be examined in a court of second instance as a result of the appeal lodged by the defendant or his representative, the court is duty bound to inform the convicted person or his representative of the day of hearing, and they are entitled to be present during cassation proceedings and give their explanations.

Infringement of the right of the accused person to defence is a gross violation of the law and leads to the unconditional quashing of the court sentence or decision in question.

## 9. THE EQUALITY OF CITIZENS BEFORE THE LAW AND THE COURT

Art. 5 of the Fundamentals of Legislation on the Soviet Judicial System says: "Justice in the USSR shall be administered in accordance with the principle of the equality of all citizens before the law and the court irrespective of their social, property and official status, their nationality, race or religion." There are neither legal disabilities nor privileges for any national groups in the Soviet Union. Nobody can count on the court's treating one guilty person differently from another one who has committed a similar crime, other conditions being equal. The court is duty bound to apply the law, irrespective of nationality, origin, property or official status. This is facilitated both by legislation and by judicial activity aimed at combating all kinds of national enmity and inequality.

In December 1958, the Supreme Soviet of the USSR passed a Law on Criminal Responsibility for Crimes Against the State and qualified a violation of national or racial inequality as a state crime. This law provides for criminal liability for the propagation of racial or national enmity and hatred, likewise for a direct or indirect restriction of human rights or the institution of direct or indirect advantages for citizens on grounds of racial or national origin.

It is necessary to emphasise, however, that the main achievement in solving the national question in the Soviet Union consists in the abolition of the economic and cultural inequality of nations, in their attainment of actual equality in all spheres of social life, and not only in the establishment of criminal responsibility for the crimes of instigating national or racial enmity, etc. The abolition of actual inequality required much more time than the elaboration of legal norms relating to the political equality of nations. The solution of the national question in the USSR, the consolidation of the friendship of peoples in the multinational country constitutes one of the major achievements of socialism in the sphere of national relations.

The Soviet law protects not only national or racial equality, but also the equality of men and women in the socio-political, cultural and economic spheres. Art. 122 of the Constitution of the USSR accords women all rights. Infringement

of their right to participate in political, social and cultural activities constitutes a *corpus delicti*.

Soviet women play an important role in the judiciary, this being exemplified by the following figures. The Supreme Courts of the Union Republics have on their benches many women: they comprise 25 per cent of their members. Women also constitute over 33 per cent in the Supreme Courts of the Autonomous Republics, the courts of territories and regions. Every third judge in the people's courts—the main link of the judiciary—is a woman.

Persons of different creeds and atheists enjoy full equality before the law and the court. The latter does not seek to ascertain whether this or that participant in the trial is a believer or an atheist. Freedom of religious worship is protected by law.

#### 10. THE PRINCIPLES OF JUSTICE AND THE LEGAL STATUS OF ALIENS

The question of the rights and duties of foreign nationals who stay or reside on Soviet territory temporarily is also regulated in the Soviet Union in complete conformity with the principles of socialist justice. It must be stated that the Soviet state applies the principle of full equality to all aliens regardless of their national origin, sex, religion, creed, etc.

The law gives all aliens equality of status with Soviet citizens both in the sphere of civil, family, labour and other relations and in the sphere of criminal responsibility. Exemptions with regard to their legal status are few and do not go beyond the framework of the usual limitations applicable to the aliens in other states, in full conformity with international law and custom.

*Legislation on aliens.* Art. 14 of the Constitution of the USSR states that legislation on the rights of aliens comes within the jurisdiction of the USSR, which means that legislation in this sphere is all-Union and not Republican. In accordance with this constitutional provision, the rights of aliens are regulated by the norms contained, in the first place, in the following all-Union laws: the Fundamentals of Civil and Criminal Legislation, the Fundamentals of Legislation on Marriage and the Family, the 1938 Law on Citizenship of the USSR, the Merchant Marine Code of the

USSR (1968) and the Customs Code of the USSR, adopted in 1964.

Beside Soviet internal legislation the legal status of aliens in the USSR is governed by international treaties entered into by the USSR with other countries. In this connection the Fundamentals of Civil Legislation, for example, state that where an international treaty or agreement to which the USSR is party establishes rules other than those contained in Soviet civil legislation, the rules of the international treaty or agreement shall apply.

Prominent among the treaties and agreements now in force are the treaties on legal aid dealing with civil, family and criminal cases. Such treaties have been signed with the GDR, Bulgaria, Mongolia, Poland and other socialist states. Consular agreements and conventions, signed with many countries, including Austria, the FRG, also contain norms concerning aliens. Many legal questions are regulated in trade agreements concluded with Britain, Belgium, Sweden, Japan, Turkey and other states.

*Questions of citizenship.* Aliens and stateless persons resident in the USSR or abroad may be received into Soviet citizenship regardless of their nationality or race, but only by formal application to the Presidium of the Supreme Soviet of the USSR or of the Union Republic in which they are resident. Marriage of a foreign citizen of either sex does not entail the acquisition of Soviet citizenship. This question is settled according to the general procedure. Adoption of a Soviet citizen by an alien or vice versa does not entail any change of citizenship. Children between the ages of 14 and 18 are required to give their consent on change of citizenship. Soviet citizenship may be relinquished only in special cases provided for by an ordinance adopted by the Presidium of the Supreme Soviet of the USSR.

*Entry and exit of aliens.* These questions are regulated by the Regulations Governing the Entry into the USSR and the Exit from the USSR, approved by the Council of Ministers of the USSR on June 19, 1959, and also by the Ordinance on Criminal Responsibility of Aliens and Stateless Persons for Malicious Violation of Movement Rules on Soviet Territory, adopted by the Presidium of the Supreme Soviet of the USSR on July 23, 1966 and by other enactments.

Soviet legislation follows the established practice adopted in most countries to the effect that aliens are admitted or expelled by duly authorised bodies. It contains no restrictions to admission to be imposed on account of political or religious views, race or nationality and the like.

An alien is allowed to enter the USSR or to leave it only if he has a special passport or other analogous document, with the appropriate Soviet entry or exit visa, unless special arrangements have been agreed upon between the Soviet Union and the country concerned.

Soviet law establishes criminal responsibility for violating the Soviet entry or exit rules. Thus, Art. 20 of the Law on the Responsibility for Crimes Against the State imposes a punishment of up to three years of imprisonment for exit from or entry into the country, or crossing the border without the proper passport or permission from the competent authorities. This does not apply to aliens who arrive in the USSR without due documents or special permission, if they do so to seek asylum in accordance with the Constitution of the USSR. This Law (Art. 21) also establishes criminal responsibility for entry into or exit from Soviet air space without due authorisation and deviation from air routes and the infraction of other rules governing international flights.

Aliens coming to the Soviet Union must observe all the customs and currency regulations that operate in the country, including the relevant articles of the Customs Code of 1964. In particular, their luggage undergoes customs inspection at points of arrival, this measure being prompted by the complete ban on bringing into the country firearms, narcotics, pornographic literature, printed matter prejudicial to the USSR and so on. At the same time aliens are entitled to bring into the country articles required for personal use. They are forbidden to take out of the country firearms, matériel, articles of ancient art (icons, paintings), and so on.

All aliens arriving in the Soviet Union or leaving it must fill in a customs declaration, which lists all their articles and valuables. The articles, currency and valuables not listed in a declaration are subject to confiscation. Foreign currency and various valuables may be brought into the country without any limitations, but in order to be taken out of the country they must be registered at the customs on entry.

A special residence permit is required for a long stay in the Soviet Union.<sup>1</sup> All persons who have arrived to stay temporarily or permanently and who have received a residence permit can freely travel about the country in the same way as Soviet citizens with the exception of certain specified localities, entry into which requires special permission from the official authorities. These limitations are imposed on state security grounds. Aliens who have violated the established rules of residence may be ejected to a permanent place of residence or fined. They may even be held criminally responsible, but only in special cases stipulated in law.

It is clear from the foregoing that Soviet legislation follows the universally recognised international entry and exit rules and does not contain any special restrictions inapplicable in other states.

*The rights and duties of aliens in civil relations.* The legal capacity of aliens is regulated by the Fundamentals of Civil Legislation of the USSR and the Union Republics. Art. 122 of the Fundamentals states: "Aliens shall enjoy in the USSR legal capacity equally with Soviet citizens. Exemptions may be established by the law of the USSR. The Council of Ministers of the USSR may impose retaliatory restrictions on citizens of countries imposing special limitations on the civil legal capacity of Soviet citizens."

Exceptions are made where this is necessary in the interests of state security or for the defence of the economic interests of the state. Some restrictions have been established for aliens in certain occupations and posts. For instance, the Regulations for the Election of People's Judges, adopted by the Union Republics, stipulate that only citizens of the said Republic, and hence Soviet citizens, may be elected people's judges. Under Art. 19 of the Air Law of the USSR, only citizens of the USSR may be crew members of civil aircraft listed in the State Register of the USSR. The Code of the Merchant Marine of the USSR lays down that only citizens of the USSR may serve as captains, first mates, radio-operators, navigators and engineers on board Soviet ships and the Statute on Preservation of Fish and on Regulation of Fish-

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<sup>1</sup> Tourists and other foreigners coming for a brief stay in the Soviet Union need not get a residence permit.—*Ed.*

ries in the USSR states that foreign nationals and juridical persons may not engage in fishing in Soviet waters unless this is provided for by agreements concluded between the USSR and other states.

As is evident from the examples cited, limitations on the choice of occupations engaged in by aliens do not go beyond the rules adopted in other states and in international law in general.

Aliens residing in the Soviet Union may enjoy personal possession of property, household articles and conveniences in the same way as any Soviet citizen. The Fundamentals of Civil Legislation state that every Soviet citizen may have in his personal ownership a dwelling-house and a supplementary husbandry, household effects and furnishings, a motor-car, savings and articles of personal use and convenience. However, this personal property may not be used to derive unearned income or to exploit the labour of others.

The Soviet law protects aliens' right of ownership on a par with that right as enjoyed by Soviet citizens. But aliens, like Soviet citizens, may not acquire land as property, open a shop or industrial enterprise, since in this country private ownership of the means of production has been abolished for all time. The land is owned exclusively by the state and may be distributed among citizens only for use. Individuals may not sell land or bequeath it to anybody. The right of aliens to dispose of effects brought in from abroad is restricted. For instance, they may not sell property and articles which were brought in on the condition that they would not be sold on Soviet territory.

Like Soviet citizens aliens are entitled to enter into civil contracts—of purchase and sale, the making of a gift, the hire of everyday things, a flat or country house, voluntary insurance, etc. In these cases they enjoy all civil rights and are subject to all the obligations applying to Soviet citizens. The *legal ability* of aliens, that is, their right to enter into these legal relations, is enjoyed by them when they reach full legal age, at 18.

Aliens residing in the USSR may inherit property on the same terms as Soviet citizens. They are entitled to acquire property by succession or by will, as well as to bequeath property to other persons.

Aliens enjoy copyright also on a basis of equality with Soviet citizens. Art. 97 of the Fundamentals of Civil Legislation says: "Copyright to works first published in the territory of the USSR, or unpublished but located within the territory of the USSR in some presentable form, shall be recognised as belonging to the author and his successors in law, regardless of their citizenship." However, if some literary work has been published abroad and is located there, foreign authors enjoy copyright in the USSR provided there is a special agreement signed between the USSR and the country concerned.

The civil procedural rights enjoyed by aliens in court are regulated by the Fundamentals of Civil Procedure of the USSR and the Union Republics. Art. 59 of the Fundamentals says that "aliens shall have the right to apply to the courts of the USSR and shall enjoy civil procedural rights equally with Soviet citizens.

"Foreign enterprises and organisations shall have the right to apply to the courts of the USSR and shall enjoy civil procedural rights for the protection of their interests."

Soviet rules of civil procedure apply in all civil, family or labour cases in which an alien is a participant. He enjoys the same rights in court procedure as Soviet citizens: he may give his own explanations, testimony, file petitions in his native language, have the services of an interpreter, challenge the members of the court, participate in the investigation of exhibits in court, appeal against a court decision, and so on.

Art. 58 of the Consular Charter of the USSR establishes that documents and instruments issued by government authorities abroad are accepted by Soviet authorities provided there is a consular certification. Treaties on legal aid for civil, family and criminal cases stipulate that documents, compiled in the countries with which the Soviet Union has concluded such treaties, are accepted by Soviet competent authorities without consular certification.

Aliens have also the right to apply to the offices of notaries public on the same terms as Soviet citizens.

Aliens in the USSR come under the full operation of Soviet labour laws. They are affected by the general provisions of labour legislation concerning employment, dismissal, wages, working hours, annual holidays, and so on. They

receive sickness and other benefits in the same way as Soviet citizens do, and the same kind of free medical treatment.

*Criminal responsibility of aliens.* The Fundamentals of Criminal Legislation of the USSR and the Union Republics provide that all persons committing criminal offences on Soviet territory are held responsible in accordance with the laws operating in the locality where the crime has been committed. Thus, under the general rule, aliens who have committed crimes on the territory of the USSR are brought to trial on equal terms with Soviet citizens. The law makes exceptions to this rule only for the members of diplomatic corps and for certain other foreign nationals, who by virtue of operative laws and international agreements cannot be tried by Soviet courts. In these cases the question of criminal responsibility of a person who enjoys diplomatic immunity is decided through diplomatic channels. For crimes committed outside the bounds of the USSR the alien residing in the Soviet Union is held criminally responsible only in cases provided for by international agreements signed by the USSR.

An alien against whom criminal proceedings are instituted is provided with the same procedural guarantees as the Soviet citizen. Under Soviet law citizens may be arrested only by court order or with the sanction of the procurator. If a citizen is arraigned, he has the right to appeal against any action taken by the investigator, procurator or judge. If an alien is accused of a crime, he is entitled to know what he is charged with, to give explanations on the merits of the charge, to adduce evidence, file petitions and acquaint himself with all material of the case as soon as the investigation is over.

Like any Soviet citizen, an alien charged with a crime is ensured the right to defence, including the right to invite defence counsel at his discretion. If he does not know the language in which the court proceedings are being conducted, he is guaranteed by the court the right to make statements, give evidence and submit petitions through an interpreter.

*Soviet legislation on marriage and the family as applied to aliens.* Marriages entered into by Soviet citizens with foreigners and also between foreigners are registered following the general procedure, with the exception to the provisions specified in Section V of the Fundamentals of Legisla-

tion of the USSR and the Union Republics on Marriage and the Family, adopted in June 1968. Where an international treaty or agreement to which the USSR is a party establishes other rules than those contained in these Fundamentals or any other legislative enactments on marriage and the family, the rules of the international treaty or agreement concerned shall apply.

Marriage between a Soviet citizen and an alien does not involve any change of citizenship. Moreover, in those cases where marriages between Soviet citizens and aliens are contracted outside the USSR but in accordance with the requirements of the law of the country on whose territory those persons reside and provided that the marriage is not fictitious, that the husband and wife have reached marriageable age and do not suffer from a mental disease, and so on, they are held to be valid.

Thus, the lawmaker does not create artificial barriers to the recognition of marriage. The question of recognising marriage between foreigners is settled in the same democratic spirit. In particular, marriages contracted between aliens on Soviet territory and registered in an embassy or consulate are recognised by Soviet courts given the condition of reciprocity and provided that at the time they entered marriage they were citizens of the state that accredited the ambassador or appointed the consul in the USSR. Marriages contracted by aliens outside the USSR under the laws of the respective state are held to be valid in the USSR as well.

The problem of the citizenship of children is settled in the Soviet Union in the following way: 1) if both spouses are citizens of the USSR, their child is recognised as a Soviet citizen irrespective of the place where it was born; 2) if the parents of a child have different citizenship, one of them being a citizen of the USSR, the child is recognised as a Soviet citizen, provided one of its parents resided on Soviet territory at the time the child was born; 3) if both parents resided outside the USSR at the time their child was born, its citizenship is decided by their mutual agreement.

In dealing with cases of the recognition or non-recognition of marriage, the Soviet court is guided by the rule that conditions for entering marriage by aliens are regulated by

Soviet law and not by their national law. Thus, the matrimonial codes of the Union Republics do not allow marriage if either of the two persons is already married or is duly certified as imbecile or insane. Neither can marriage be contracted by persons related in the ascending or the descending line, or between full- or half-brothers and sisters. Finally, marriage is not allowed if either of the partners has not attained the marriageable age of 18 (in some Union Republics the marriageable age is 16).

All these requirements apply to the registration of marriages between aliens likewise.

As far as personal and property relations between aliens—partners in a marriage—residing on Soviet territory are concerned, they are also regulated by the Soviet law. It gives each spouse a free choice of residence: husband and wife may live together or separately; change of residence by one of the spouses does not obligate the other to follow suit. Household matters are decided by mutual consent. The law also gives both spouses a free choice of occupation or profession.

The question of relations between parents and children is no less important. On this question the Soviet courts act on the principle that these relations are, as a general rule, governed by Soviet law if the child is resident in the USSR. According to this law, a child of foreign citizenship, living in the USSR, may be adopted by a Soviet citizen and an alien, too, may adopt a child of Soviet citizenship, if no contrary provision is made in international agreements concluded by the Soviet Union with other states. Soviet law does not recognise any disabilities in the adoption of children on account of race, nationality or creed of the adoptive parents or adoptees. Adoption by an alien of a child of Soviet citizenship does not involve any change in its citizenship.

A few words about the dissolution of marriage. Aliens obtain divorce in the same way as Soviet citizens. Dissolution of marriage between Soviet citizens and aliens decreed in another country under its law is recognised in the USSR, if one of the spouses lived, at the time of divorce, outside the Soviet Union.

Our brief review of the legal principles regulating the family and marriage relations shows the reader that the

operative Soviet legislation grants aliens practically the same rights as the Soviet citizens enjoy, the limitations and exceptions concerning aliens being of a minimal character.

In conclusion we would like to note that the Soviet courts strictly abide by the legal rules established for aliens, and cases arising are adjudicated by these courts in a spirit of legality, legal treaties and the rules of international law.

### *Chapter III*

## **THE SOVIET JUDICIAL SYSTEM AND OTHER LEGAL INSTITUTIONS**

### **1. THE SOVIET COURTS**

In the USSR justice is administered by the court. This exceedingly important state activity is performed by the judicial apparatus consisting of courts of different levels. All these links are interrelated and act smoothly as components of a single mechanism.

The importance of the tasks fulfilled in this sphere requires the organisation of the judiciary to be such as either to preclude the possibility of judicial errors or to detect and correct such errors in time, should they be made. This demand on the judicial apparatus made it necessary to set up several levels of courts, institute a smooth procedure of appealing against judgements, repealing and changing court decisions, introduce a system of supervision and control by a higher court over decisions of lower courts and establish rules to regulate the organisational activities of the courts and their structure. In a socialist state the judicial apparatus must be accessible to the population, its structure must be simple and its activities understandable to all citizens, not only to those who are versed in law. The hearing of a case must not be a bureaucratic procedure involving review in many courts. The trial must be simple and persuasive for all persons applying to court.

Even with the best organisation of judicial work this apparatus cannot cope with its tasks properly unless the adjudication of cases is assisted by other legal institutions and departments, including the organs of the Ministry of Justice,

the organs of preliminary inquiry, the procurator's offices and the bar. Their task is to assist the court in the objective examination of criminal and civil cases.

Of great importance for the proper administration of justice, the eradication of crime and violations of law and order is the participation of the public and its voluntary organisations. The Soviet legislation provides for the participation of the public in the maintenance of law and order on a definite scale and in definite forms.

The foregoing suggests that smooth administration of justice depends largely on the proper organisation and effective functioning of judicial activity, on the efficient co-ordination of the work of courts and other legal establishments and on the way the courts use the services of mass organisations in the attainment of set goals. Let us begin with the structure of Soviet judicial bodies.

The USSR consists of 15 Union Republics: the Russian Federation, the Ukrainian, Byelorussian, Uzbek, Kazakh, Georgian, Azerbaijanian, Armenian, Kirghiz, Turkmenian, Moldavian, Lithuanian, Latvian, Estonian and Tajik Soviet Socialist republics. The territory of each Union Republic is divided into administrative districts, each with an average population of 50,000 to 100,000 people. Some of the Union Republics (the RSFSR, Byelorussian, Ukrainian, Kazakh and Uzbek republics) have their districts united into regions or territories, directly subordinated to the republics.

Each republic is inhabited by a number of nationalities, some of which reside on the territory of several districts. Customarily, such districts are united into National Areas, Autonomous Regions or Autonomous Republics, which like territories and regions are subordinate to the respective Union Republic. The system of judicial bodies is adapted to this administrative-territorial division of the Union Republics.

The district (town) people's court is the primary link of the Soviet judiciary. The people's courts adjudicate over 90 per cent of all criminal and civil cases. They function in every district or town (not divided into districts). All in all, there are nearly 3,500 people's courts in the country, staffed by almost 8,000 people's judges.

The Union Republics which are divided into regions, territories, National Areas, Autonomous Regions and Autono-

mous Republics have a secondary link of the judiciary—the courts of the respective territorial units. These courts are superior bodies for all district people's courts. In those Union Republics which are not divided into regions or territories the district people's courts are directly subordinated to the Supreme Courts of the republics.

Thus, the Republican judicial system is very simple. In some republics it consists of three links: the district people's courts, the regional, territory and other courts equal to them in status and the Supreme Court of the Union Republic. In other republics it consists of two links: the district people's courts and the Supreme Court of the Union Republic.

The Supreme Court of the USSR is the highest link of the Soviet judiciary. It consists of three divisions—the division for criminal cases, the division for civil cases and the military division.

Every criminal or civil case, depending on its importance and some other characteristics, is subject to primary examination either by the people's court or regional or Supreme Court (the law strictly defines their cognizance). The court which hears civil or criminal cases fully on their merits and pronounces judgements in criminal cases or takes decisions in civil cases is called *the court of first instance*.

The judgement or decision passed by the court of first instance may be appealed or protested against before the higher court. In this case until the higher court (it is also called *the court of cassation*) examines the appeal in a criminal or civil case, the judgement or decision is not executed.

If the judgement and decision have not been appealed against within a statutory period, they come into force and are executed upon the expiry of the period. But the case may be examined *by way of supervision* despite the fact that the court of cassation has passed its decision. This procedure is applicable if the chairman of the higher court or the respective procurator appeals or protests against the judgement or decision, considering them or the findings of the cassation court to be illegal. The higher court is duty bound to examine this protest lodged by the court's chairman or the procurator. This procedure of reviewing cases is exclusive and is called *the supervision procedure*.

## 2. ORGANS OF PRELIMINARY INVESTIGATION

In accordance with Soviet legislation, all criminal cases pass through the stage of preliminary investigation before they are brought into the court, an exception being made for such minor crimes as battery or insult. This category of cases is usually called private prosecution cases.

In these cases citizens injured in a crime apply directly to court by making a relevant statement. In all other cases information about crimes goes to investigation bodies which are duty bound to take all the necessary measures to detain an offender as soon as possible, to ascertain the traces of a crime and to collect all other evidence on the fact of a crime and guilty persons within the statutory period.

The activities of the investigation bodies are strictly regulated by the law. The criminal procedure codes of the Union Republics state specifically which organ of investigation may investigate this or that case, what procedure should be applied, what rights and duties this organ possesses and what methods of collecting and investigating evidence it may use.

The activity of the organs of investigation is of a preliminary nature. This means that the court which is to examine a case is not committed to the conclusions of preliminary investigation and studies but assesses evidence anew. The task of the investigation bodies is to prepare the case for court hearing and to facilitate the court's collection and investigation of evidence. This procedure enables the court to examine cases objectively and comprehensively and to establish all the circumstances of the crime in a short time.

The 1936 Constitution of the USSR laid down the main principles of the work of the organs of preliminary investigation whose organisational structure has been preserved to this day. Today preliminary investigation is exercised in two forms:

a) *preliminary inquiry*, carried out by the investigators of the USSR Procurator's Office, the investigators of the USSR Ministry of the Interior and the investigators of the State Security Committee under the USSR Council of Ministers. The investigators are empowered by the law to conduct a preliminary investigation of the most complicated cases and of the most dangerous crimes;

b) *inquiry*, that is, the preliminary investigation of less dangerous crimes, carried out chiefly by the militia bodies constituting part of the USSR Ministry of the Interior and also by the commanders of military units in respect of servicemen, by governors of corrective labour institutions in respect of persons confined in places of remand, by fire department bodies in cases of violation of rules, for the prevention of fire and by labour protection inspectorates in cases of violation of safety engineering rules and labour protection rules. With few exceptions, an inquiry is conducted subject to the same procedural rules as are applicable to the inquiry carried out by investigators.

Despite the fact that all the aforementioned bodies belong to different departments, have their own structure and competence, they pursue common goals, discharge common tasks, observe a single procedural law and act on common principles. The legality of their activity is supervised by the Procurator-General of the USSR and the procurators subordinated to him.

Preliminary investigation is carried out in the following stages:

— the investigator or organ of inquiry is duty bound to accept and examine any statement from citizens on a crime that has been committed or is in preparation and is obliged to take decision on the merits of the statement within a statutory period;

— if the materials adduced or the statement made in this way contain any elements of a *corpus delicti*, the investigator or the organ of inquiry is duty bound to carry out a preliminary investigation, collect and examine all evidence, take measures to compensate for the damage inflicted by a crime, secure the summoning to court of an accused and other persons concerned and take other actions provided for by the criminal procedure law;

— upon the completion of the preliminary investigation of a criminal case, the investigator or the organ of inquiry sends the case with an indictment to the procurator for his approval;

— if the procurator, after verification, concurs with the indictment, he approves it and passes the case on to a court.

While discharging his duties, the investigator has the right to detain a person suspected of a crime, to question citizens

and officials as witnesses to the crime, to make the requisite searches and inspections, order an expert investigation, withdraw the requisite documents and exhibits during the investigation, select measures of prevention in respect to defendants (a written undertaking not to leave one's place of residence, bail, surety, arrest) and resort to other actions provided for by the criminal procedure law.

While making the inquest into a case, the investigator and the person conducting the inquiry are duty bound to take all measures prescribed by law for the full, comprehensive and objective study of all the circumstances of the case. They must make known all circumstances convicting or exonerating the accused and also all aggravating and extenuating circumstances. The law forbids the use of threats and other violent measures with a view to forcing the accused to give testimony.

Having recognised that the evidence collected is sufficient for compiling an indictment, and having acquainted the injured party, the plaintiff and the respondent with the materials of the case, the investigator must enable the defendant and his defence counsel to take cognizance of the relevant materials, hear their petitions and, if necessary, carry out an additional investigation.

All decisions taken by the investigator within his terms of reference with regard to the cases under his charge will be binding upon all citizens and officials in question. Persons in office and individual citizens are duty bound to assist the investigator in the discharge of his duties.

In the course of the inquiry or preliminary investigation the bodies conducting the inquiry and the investigator must ascertain the causes and conditions responsible for the commission of the crime and take measures for their elimination. Unless this is done it is impossible to hold that the case has been investigated fully, comprehensively and objectively. In other words, the detection and removal of the causes and conditions conducive to the commission of crimes are part and parcel of the investigation process.

The investigator and the body conducting an inquiry rely on the assistance of the public in detecting crimes and specifically in searching for the persons who committed them; and also in disclosing and removing the causes conducive to crimes. The public is drawn into the detection of crimes in

various forms: through meeting requests to assist the investigator made in the press or over the radio and television; through attending public meetings to hear the reports made by the investigator on relevant matters; through rendering assistance to the inquiry bodies by means of volunteer public order patrols, and so on. However, the investigator cannot charge a member of the public with performing procedural actions: interrogations, inspections, searches, etc. These kinds of actions may be performed only by the investigator or the person conducting the inquiry.

All decisions concerning the line of investigation and its conduct are taken by the investigator independently, with the exception of cases where the law requires the sanction of the procurator. Arrests, searches, seizures of correspondence and various other actions are performed by the investigator only with the sanction of the procurator given in writing. The investigator is fully responsible for the legality and timeliness of all requisite inquiry actions.

The procurator who supervises the investigation has the right to give instructions to the investigator in charge of all matters concerning the line and conduct of investigation. His instructions given in written form are obligatory for the investigator. Should the investigator disagree with the procurator's instructions as regards the qualification of a crime, the scope of the indictment, the dispatch of a case for adjudication in court or the quashing of a case, he is entitled to submit the case to a higher procurator with his objections in writing. In such instances the higher procurator either cancels the instructions of the lower procurator or transfers the case to another investigator.

The investigator in charge of a case has the right to entrust the organs conducting the inquiry (militia) with a search or other acts of investigation, and to demand the co-operation of the organ of inquiry in the implementation of individual acts of investigation concerning the case in hand.

The investigation departments and sections are directed by their chiefs and assistant chiefs, who supervise and control the work of routine investigators. These officials have the right to: 1) verify the process of investigation; 2) issue instructions in writing concerning the conduct of the investigation; 3) transfer the case to another investigator; 4) set up

groups of investigators to investigate major and complex cases; 5) consider complaints against the investigator's actions.

All persons and also institutions concerned with the outcome of investigations have the right to lodge their appeal against the investigator's actions both with the chief of the respective investigation department and with the relevant procurator.

The Procurator's Office of the USSR, the Ministry of the Interior of the USSR and the State Security Committee under the Council of Ministers of the USSR have their own investigation departments. They differ from one another chiefly in the scope of their competence. Their competence is defined in the Criminal Procedure Codes of the Union Republics. Briefly, it may be summarised as follows:

1) investigators from the Procurator's Office have the right to investigate any case, but in actual fact they carry out inquiries into the gravest crimes (murder, embezzlement on a large scale, rape, banditry, etc.) and also into cases of malfeasance and juvenile delinquency;

2) investigators from the USSR Ministry of the Interior have the right to institute proceedings against persons who have committed any crime, but in cases that come within the competence of the investigators of the procurator's offices, they only perform urgent actions and subsequently transfer the case to the investigator of the USSR Procurator's Office;

3) investigators from the Committee of State Security under the Council of Ministers of the USSR are charged with investigating cases of espionage and other especially dangerous crimes against the state.

Thus, the preliminary investigation is aimed at detecting crimes, at disclosing and exposing persons guilty of them, at ascertaining all the circumstances of cases and at taking crime preventive measures. This activity is performed by investigators, specially authorised persons, according to a strictly regulated procedure that guarantees the observance of the legitimate interests of the state and its citizens.

The investigator's job is to prepare the materials of the case in hand for its adjudication in court. For this reason the law says that the preliminary investigation has as its purpose the speedy and complete disclosure of crimes, the

exposure of the guilty so that every person who commits a crime shall suffer just punishment and no innocent person shall be charged or punished. In other words, the preliminary investigation is called upon to facilitate the objective and comprehensive administration of justice.

### 3. THE PROCURATOR AT THE PRELIMINARY INVESTIGATION IN COURT

Under Art. 113 of the Constitution of the USSR supreme supervisory power to ensure the strict observance of the law by all ministries, institutions, organisations, as well as officials and citizens generally is vested in the Procurator-General of the USSR.

The Procurator-General is appointed by the Supreme Soviet of the USSR for a term of seven years. Upon its expiry the Supreme Soviet may appoint him for a new constitutional term.

The Procurator-General is responsible and accountable to the Presidium of the Supreme Soviet of the USSR. Every year the Procurator-General submits his reports on his work to the Presidium of the Supreme Soviet.

Procurator's offices set up in the Union Republics, territories, regions, Autonomous Regions and National Areas are directed by the corresponding procurators appointed by the Procurator-General of the USSR.

Thus, the procurator's offices form a single centralised system; this system is headed by the Procurator-General who is in charge of all lower procurator's offices. The higher procurator has the right to change or rescind any decision passed by a lower procurator. Every higher procurator is fully responsible for the proper functioning of all lower procurator's offices.

The procurator's activity takes the following forms: 1) supervision of the strict observance of the laws by all ministries, departments and local government bodies, officials and citizens generally; 2) supervision of the observance of legality by the organs conducting inquiries and preliminary investigations; 3) supervision of the legality of and grounds for judicial judgements, decisions and orders; 4) supervision of the observance of the legality of keeping convicted persons in places of confinement.

Let us now deal with the rights and duties of the procurator in the preliminary investigation of criminal cases and in the examination of both criminal and civil cases in court; and also with the procurator's supervision of the legality of keeping convicts in places of confinement.

As it was stated before, preliminary investigations or inquiries are conducted in most criminal cases before they are examined in court. Supervision over the strict implementation of the law by investigators and persons conducting an inquiry is exercised by the procurator. The latter has the right to initiate proceedings against any person who has committed a crime and charge the respective investigator or body of inquiry to investigate the case. He must see to it that no citizen is subjected to unlawful and ungrounded criminal prosecution, or to any other unlawful restriction of his rights. He is also duty bound to watch over the strict observance by organs of inquiry and preliminary investigation of the statutory crime investigation procedure. Moreover, he supervises the strict observance of the laws by all investigators irrespective of the organ to which they belong, whether it is the Procurator's Office of the USSR, the Ministry of the Interior of the USSR or the State Security Committee under the Council of Ministers of the USSR.

By law no person can be arrested except by court order or with the sanction of a procurator. In deciding on the question of sanctioning an arrest, the procurator must thoroughly examine all the materials of the case under consideration and, in case of need, must personally interrogate the person whose arrest is being demanded.

In discharging these functions of supervision, the procurator has the right to give the organs of inquiry and preliminary investigation instructions on the investigation of offences, on the search for offenders in hiding, on the choice of restrictive measures with regard to the accused, and so on. Instructions given by a procurator to the organ of inquiry or preliminary investigation are made in writing and are binding on it. The organs of investigation are entitled to perform certain procedural acts (e.g., searches) only with the sanction of the procurator.

As was said above, every criminal case that has been fully investigated is submitted to the procurator for him to approve an indictment. If he concurs with the indictment, he

approves it and transfers it to the court with the request that the accused be brought to trial.

The procurator discharges important functions in the trial of criminal and civil cases, but he is not empowered to issue any instructions to the court regarding the adjudication of a case. Justice in the Soviet Union is administered by the court alone. All participants in the trial, including the procurator who takes part in the court proceedings, are subject to the procedural guidance of the presiding judge. The judge who presides over the court proceedings directs the judicial examination of cases and is responsible by law for a comprehensive and objective investigation in court of all the circumstances of the case. He has the right to reject irrelevant questions put by a procurator or defence counsel, to point out to the participants in the trial, including the procurator, procedural mistakes made, to adopt a rider on procedural infringements made by a procurator and forward it to a higher procurator with the request that he take relevant measures binding on a lower procurator.

Like other participants in the trial (defence counsel, injured party and others) he may question eyewitnesses and other persons interrogated in court, participate in the investigation of evidence in court, submit fresh evidence in court, challenge the members of the bench and other participants in the trial, enter his findings on the problems that arise in the trial. As soon as the court investigation is over, he pronounces an indictment. If he disagrees with the court's judgement, decision or rider, he may lodge his protest in a higher court, which passes a final decision on his protest.

The participation of the Procurator-General of the USSR in plenary sessions of the Supreme Court of the USSR is obligatory (as is also the participation of Republican procurators in plenary sessions of the Republican Supreme Courts). The Procurator-General has the right to bring before the Supreme Court of the USSR his motions on the substance of the questions under consideration.

Procurators have broad powers of supervision over the observance of legality in places of confinement. Under the Statute on the Supervisory Powers of the Procurator's Office in the USSR, they are empowered to verify the legality of and grounds for keeping persons in places of confinement, to check up whether convicted persons are released at the

right time from places of confinement, to supervise the observance of the legality of decisions taken to release convicts from places of confinement before the expiry of the term, to ensure that the statutory regime rules and the rules of labour for convicted persons are observed, to supervise the state of educational work among these persons, to verify whether deductions from their wages are made according to the law, to check up whether the orders and instructions of the administration of places of confinement conform to the law and to supervise the legality and the timeliness of considering convicted persons' complaints by the administration. In order to discharge these functions, the procurator has the right to inspect places of confinement at any time, to have unrestricted access to all their premises, to make a study of the documents on the basis of which the persons in question have been deprived of their liberty, to question prisoners in person and to demand personal explanations from the administration.

#### 4. THE SOVIET BAR

The accused is guaranteed the right to defence by Art. 111 of the Constitution of the USSR. Qualified legal aid is provided by collegiums of advocates, voluntary associations of persons professionally engaged in legal practice.<sup>1</sup> These collegiums function for the purpose of providing defence in court and also rendering other forms of legal aid to citizens, enterprises, institutions and organisations (Art. 12 and 13 of the Fundamentals of Legislation on the Judicial System of the USSR).

Defence in criminal cases apart, advocates have the right to represent in court the interests of citizens or juridical persons in civil cases, too. Moreover, they may represent the interests not only of the defendant, but also of the victim, plaintiff or respondent and also the interests of an institution or organisation. At the request of citizens, advocates draw up various legal documents, give consultation on legal

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<sup>1</sup> In the Soviet Union, legal practice differs from that of other countries: lawyers are not divided into barristers who plead cases in court and solicitors who prepare the material for the pleader. Every Soviet advocate prepares the material himself and is both solicitor and barrister.—*Ed.*

matters, represent the interests of the victims in various organisations, render legal aid to enterprises, institutions and collective farms, and plead on arbitration boards.

The main task and duty of the advocate is to give citizens and juridical persons the necessary legal aid by making use of all the means and ways provided for by the law, and to assist citizens held criminally liable to defend themselves against the charge, using all statutory means.

While discharging numerous and complicated duties, the advocate renders legal aid to citizens or juridical persons and also assists in the administration of justice in strict conformity with the law. Therefore, the work of the Soviet advocate has nothing in common with the unscrupulous use of "all means and methods" to safeguard the interests of a client. Soviet legal doctrine firmly rejects the use by the advocate of any illegal means and forms of defence running counter to law and morality. The Soviet advocate must not build up his defence by evading the law or resorting to fraud. This principle underlies the procedural and moral essence of the Soviet institution of defence (the bar). This task can be performed only by a lawyer who combines great professional experience with lofty moral qualities.

If the advocate comes to the conclusion that he cannot defend his client, that such defence contradicts his legal concepts and ethics, he must inform the client of this decision. If a mutual understanding is not achieved and if the accused or the defendant, despite the position taken by the advocate, does not wish to make use of the aid of another defence counsel, the advocate himself is not entitled to waive the defence he has undertaken. During the trial he must take all measures at his disposal to ascertain all the circumstances of the case exonerating the accused or the defendant and to tell the court everything that corroborates the defendant's version or mitigates his guilt.

This does not at all mean that the advocate cannot disagree with the accused or the defendant in the legal appraisal of their actions (if the defendant recognises the fact imputed to him) or in any other question. But the advocate should never act as prosecutor.

This fundamental principle advanced in Soviet legal literature on many occasions truly reflects the demands made by the law on the institution of defence, which implies that

defence counsel must employ all statutory means and ways of ascertaining circumstances exonerating the defendant or extenuating his guilt and must give the defendant the necessary legal aid.

Every Soviet citizen is free to pick any advocate, regardless of the place where he works or lives. The client may ask directly for any lawyer personally known or recommended to him. If he does not specify anyone in particular, the head of a legal aid bureau will assist in making the choice. If the advocate invited by a citizen is engaged in another case, the investigator or court must postpone, according to the law, the performance of the acts in which the invited advocate is to take part.

Cases may be heard in court with the participation not only of the defendant's advocate, but also of the advocates of the victim, plaintiff and respondent and of the advocates who represent the interests of state organisations.

The advocate's speeches and performance in court have a great educational impact on the persons who attend the trial and this makes him morally responsible for a correct ethical appraisal of the behaviour and actions of the persons who have committed a crime.

The Fundamentals of Legislation on the Judicial System of the USSR, the Union and Autonomous Republics adopted in 1958 established that the organisation and functioning of the bar should be regulated by the statutes to be adopted by each Union Republic. In line with this provision, every Union Republic passed the respective Statute of the Bar.

Acting on the general principles of Soviet law, all the Union Republics established similar organisational principles and structure of the bar. For instance, the Supreme Soviet of the Russian Federation approved the Statute of the Bar in the RSFSR on July 25, 1962.

Art. 1 of the said Statute states that for the purpose of providing defence in the preliminary investigation of cases and in court, representing the interests of the parties in civil cases adjudicated in court and arbitration boards, and also of rendering other forms of legal aid to citizens, enterprises, institutes and organisations, the Autonomous Republics, territories, regions and big cities set up advocates' collegiums which unite all advocates working in a city, region and territory.

The activity of advocates is necessary not only for the citizens who apply to the legal profession for assistance, but also for the proper administration of justice, which means that it is necessary for the state and society.

As distinct from the Russian Federation where advocates' collegiums are set up in every territory, region or big city, other Union Republics which are not divided into regions (e.g., Latvian, Armenian, Moldavian republics) have a single Republican collegium. Every Republican, territorial, regional and city advocates' collegium has several legal aid bureaus which unite groups of advocates usually working on the territory of one district. Where the district is large it has several legal aid bureaus and vice versa, where the districts are small, they may have one common bureau.

Organisationally, guidance and control over the activity of the advocates' collegiums are exercised by the local organs of the Ministry of Justice. They see to it that the activity of the bar proceed within the framework of current regulations, render assistance in the settlement of organisational matters and take measures to improve the advocates' qualification.

In the Soviet Union the functions of the advocate can be discharged only by persons who are citizens of the USSR and are members of the respective advocates' collegium. To qualify for admission to a lawyers' collegium a person must possess a higher legal education and to work for not less than two years in the capacity of a lawyer. Persons who have received a higher legal education but who have not the requisite two-year record of work in the capacity of a lawyer are admitted to the advocates' collegium only after they have served a specified period as probationers.

To be able to cope with the noble tasks confronting him a lawyer must fully dedicate himself to the administration of justice and be endowed with lofty moral qualities. He must provide an example of strict and undeviating observance of the Soviet laws; he must constantly improve his political and legal knowledge and qualifications and take an active part in the dissemination of the knowledge of law among the population. Persons who have been convicted by court and who do not possess the high moral and professional qualities of the Soviet lawyer cannot serve as advocates.

Advocates cannot take up cases which have been investi-

gated and handled with the participation of officials to whom they are related, if they have previously rendered legal aid to a person whose interests run counter to those of the client who has applied to them for help and also if they have participated in the trial of the case in the capacity of judge, investigator, procurator, person conducting an inquiry, witness, expert or interpreter. Advocates are not entitled to defend several defendants whose interests are mutually contradictory.

The law forbids advocates to divulge information which they receive from their clients in connection with the rendering of legal aid. To enable advocates to comply with this requirement, the law does not allow them to be questioned as witnesses about the circumstances made known to them in the discharge of the duty of defence counsel. The observance of the above-mentioned requirements is a firm guarantee that advocates shall perform their professional duties impartially.

In order that they may discharge their duties properly, the law has vested the advocates with certain rights. Where the defendant is a minor or where he is unable to defend his own interests because of mental or physical deficiencies, advocates are admitted into the case already at the stage of preliminary investigation, once the charge has been preferred. From the moment they enter the case, they may make notes in writing concerning entries in the minutes which should register acts of investigation fully and properly, attend the interrogation of the accused and other stages in the investigation.

As soon as the preliminary investigation is over the advocate and the accused together or separately have the right to familiarise themselves with all the materials of the case and extract all the necessary information. The advocate is entitled to file petitions requesting the holding of interrogations, to take all the excerpts he needs from the record, and so on. If the accused or the defendant is held in custody, the advocate has the right to visit him. With the permission of the investigator he may attend all stages in the investigation carried out at his request.

Once he has undertaken the defence of a person at a trial and has received for this purpose an attorney's writ issued by the local advocates' collegium, the advocate has the right

to visit the accused in custody, and deliberate with his client in all privacy, to familiarise himself with all the materials of the case, to challenge the participants in the trial, to present a variety of petitions to the court and to lodge complaints against the actions of a judge.

At the trial the advocate is an active participant in all the actions taken by the court: he participates in the questioning of the defendant and witnesses and also experts, submits evidence and, at the end of the hearing of the trial, pronounces his speech for the defence. He is also entitled to appeal against the court judgement in a court of cassation, to participate personally in its hearings and also to lodge appeals for handling the case by judicial supervision.

The work of advocates is paid for on a piece-work basis. The fee is fixed by the advocates' collegium for the conduct of simple or intricate criminal and civil cases. It depends on the amount of work done and the skill of the advocate employed. Moderate fees enable every citizen to make use of the advocate's services. All payments are made by clients to a local legal aid bureau, not to the advocate himself. According to the regulations, a definite amount (not less than 70 per cent) is placed to the personal credit of the advocate who has performed the work paid for. The remaining sum is used to defray the various expenses of the collegium, including the payment of the legal services rendered by advocates appointed to defend those accused who are unable to pay the necessary fees.

All advocates are allotted to legal aid bureaus set up by the collegiums on the territory on which they operate. The supreme governing body of the advocates' collegium is the general meeting (conference) of its members. By secret ballot the general meeting elects a presidium of the collegium, which in its turn elects from among its members the chairman and vice-chairmen. It has become the accepted practice to call such general membership meetings at least once a year. This is done either on the initiative of the collegium's presidium or at the request of not less than one-third of the membership. Such a meeting is competent to settle questions if it is attended by not less than two-thirds of the membership. The general meeting hears the reports on the activities of the presidium and the auditing committee and takes the necessary action on them. It likewise endorses the

composition of the collegium's staff, the estimate of its income and expenditures, the rules governing the conduct of its business and considers other questions that fall within its competence.

Between general meetings the presidium conducts all the practical activities of the collegium. The number of its members is fixed by the general meeting. The presidium deals with questions of improving the qualifications of advocates and educating them, admits lawyers into the collegium, allocates advocates to its legal aid bureaus, appoints or dismisses their managers. It verifies the fee payment procedures, deals with misdemeanours of the collegium members and applies disciplinary penalties to them (a rebuke, simple or strict reprimand and even expulsion from the advocates' collegium as an extreme measure).

It must be specially emphasised that, apart from all its other work, the presidium organises the study and generalisation of the materials in hand with a view to ascertaining conditions conducive to the committal of crimes and other infringements of law and, on this basis, to submitting to government and non-government organisations proposals aimed at removing these causes.

Every advocate has the right to elect and be elected to the collegium bodies and also to withdraw from them at any time.

The Soviet bar is an important section of the legal apparatus that helps the administration of justice in strict accordance with the law.

## 5. THE MINISTRY OF JUSTICE

At the end of 1970, it was decided to restore the all-Union Ministry of Justice. This decision was followed by others which re-established republican ministries of justice in the constituent republics and, in the executive committees of regional and territory Soviets, departments of justice subordinated to the corresponding ministries in the Union Republics.

Among the functions vested in the Ministries of Justice the most important are to provide organisational guidance to courts, offices of notaries public and other legal bodies and to codify legislation and educate citizens in law.

In directing courts with regard to organisation the USSR Ministry of Justice and republican ministries perform the following duties:

a) formulate proposals concerning the organisation of new courts and their location, structure and staffs; participate in the organisation of elections of judges and people's assessors;

b) initiate measures for the improvement of judges' qualifications and in appropriate cases raise the question of their disciplinary responsibility;

c) watch over the organisation of the work of courts and specifically over the terms of hearing cases in courts, the examination of citizens' complaints and over clerical work in court offices; render assistance to courts in the drawing up of their plans of activity, verify the work of bailiffs and finance courts and provide them with material and technical facilities;

d) study the judicial practice and where necessary submit, through the Minister of Justice, proposals to the Plenary Session of the Supreme Court of the USSR on the need to give proper legal interpretation to operative laws;

e) keep judicial statistics and discharge some other organisational functions.

In all their activity the departments of the Ministry of Justice must promote in every way the administration of justice without interfering in the adjudication of civil cases, and abiding strictly by the principle of the independence of judges in administering justice.

The codification of legislation and the drafting of new bills are also an important function of the Ministry, the function closely associated with the courts' activity. It takes official stock of all new laws and of all amendments to normative enactments; it draws conclusions on all bills submitted for the Government's consideration and independently drafts relevant bills. The Ministry is in charge of the All-Union Research Institute of Soviet Legislation, which conducts theoretical research into legislative work and pays a great deal of attention to the comparative study of law.

The Soviet government bodies focus their attention on the legal education of citizens. This is understandable, for infringements of the law may be reduced to a minimum if the citizens know the operative laws, understand them and show respect for them.

The Ministry carries out the extensive work of explaining the laws in force and for this purpose uses all mass media in order to make new laws known to the population and to explain them in popular form. It issues a popular magazine—*Man and Law*—designed to educate citizens in the spirit of respect for the laws and the rules of the socialist community. Together with the Ministry of Education, the Ministry of Higher Education and youth organisations, the Ministry of Justice adopts measures to familiarise youth with law. It regards this work as one of the main aspects of its legal propaganda.

The Ministry provides organisational guidance not only to courts, but to other juridical institutions as well. In particular, it keeps an eye on the activity of the bar, sees to it that it acts within the framework of the Statute of the Bar and renders assistance in the organisation of the work of these legal institutions.

The Ministry's departments organise and control the work of the notaries public and bailiffs. It is in charge of eight institutes and nearly 50 laboratories engaged in scientific research into judicial expertise. One such central institute—the All-Union Research Institute of Judicial Expertise—is the most authoritative institution in its sphere of activity.

The Ministry has an extensive system of juridical courses and seminars which train legal personnel and help them improve their qualifications. Judges, advocates and other lawyers periodically undergo retraining through these courses.

The Ministry provides methodological guidance to the legal service in the national economy. This means that it has the right to familiarise itself with the organisation of work in the legal departments and offices of legal advisers set up in economic ministries and at enterprises and institutions. It works out and issues its recommendations on the improvement of their work on the basis of its studies.

It also holds seminars to improve the qualifications of legal advisers and supplies other ministries and enterprises with information dealing with new legislation.

Guidance of the work of registrars' offices also figures prominently in the work of the Ministry.

Of great importance today is the development of legal relations between states. International treaties and agree-

ments which regulate a variety of legal problems constitute an important contribution to the cause of peace and social progress. The Soviet Union has a number of treaties and agreements with other states on mutual legal aid. The Ministry of Justice is called upon to implement these instruments with regard to the courts and other legal institutions.

The USSR has concluded mutual legal aid treaties with the People's Republic of Albania, the People's Republic of Bulgaria, the Czechoslovak Socialist Republic, the German Democratic Republic, the Hungarian People's Republic, the Korean People's Democratic Republic, the Mongolian People's Republic, the Polish People's Republic, the Socialist Republic of Rumania and the Socialist Federative Republic of Yugoslavia.

These treaties cover a wide range of problems of legal co-operation between the respective states. The contracting parties have undertaken to render each other legal aid in civil, family and criminal cases. To this end they have undertaken commitments to perform procedural actions upon mutual request, in particular, to draw up and forward documents, to produce and transfer exhibits, interrogate accused persons and eyewitnesses, hear expert findings, make judicial inspections, hand in requisite documents, etc.

When Soviet courts hear law suits or receive applications from foreign nationals and juridical persons belonging to the states with which the Soviet Union has concluded treaties on legal aid they take into consideration the fact that under these treaties these persons enjoy the same legal protection on Soviet territory as Soviet citizens and juridical persons. In particular, all aliens and foreign juridical persons have the free and unhindered right to apply to a Soviet court of law on equal terms with Soviet citizens and juridical persons. When the Soviet court implements a commission given by another state, it applies Soviet procedural law or it may, at the request of the institution giving the commission, apply the procedural law of the appropriate state if this does not run counter to the principles of Soviet legislation.

The implementation of treaty terms is ensured by a system of proper safeguards for the timely and full execution of commissions. For instance, under a treaty each party guarantees that witnesses and experts, subpoenaed ad testi-

ficandum, may not, regardless of their citizenship, be held criminally liable or placed in custody for crimes committed prior to the crossing of a state frontier. All the above-mentioned treaties state that their participants shall not demand compensation to cover expenses involved in rendering legal aid, that the contracting parties themselves shall bear all expenditures incurred in the execution of commissions.

The treaty sections on mutual aid in the sphere of civil and family law regulate in detail such problems as inheritance, relations between parents and children, etc. In particular, they state that valid decisions regarding divorce or nullification of marriage shall be mutually recognised on the territory of both contracting parties unless by the time a different decision has been arrived at by the court in that particular case.

Under these treaties, cases of disputing or establishing paternity as well as cases of establishing the fact of a child's birth in a given wedlock are settled by courts in accordance with the legislation of the country of which the child is a citizen by birth. All disputes in cases of trusteeship and guardianship are, as a rule, settled by the institutions of the country of citizenship of the person placed under trusteeship or guardianship.

In cases of inheriting property, drawing up wills and recognising wills as non-valid, the treaties act on the principle that citizens of either state signatory are placed on a par with the citizens of the country in which the inherited property is located.

The treaties define the procedure for rendering legal aid in criminal cases, particularly in cases of extraditing offenders, holding persons criminally liable by law, etc. In this connection they have settled the question of relinquishing objects acquired in a criminal way or which might be used as exhibits in a criminal case.

The parties to the treaties concerned shall, on the mutually agreed terms, periodically exchange information on current legislation and other legal matters.

Experience shows that inter-state treaties on legal aid are essential, their implementation contributing much to the consolidation of legal relations between the Soviet Union and other states. Every year Soviet legal institutions receive

hundreds of commissions from other states and in their turn send legal commissions abroad. Most often these commissions cover such cases as inheritance and dissolution of marriages, recovery of maintenance or compulsory execution of court decisions.

Apart from the listed treaties on legal aid the Soviet Union has entered into a number of international legal agreements. In 1967, the Soviet Union acceded to the Hague Convention on Civil Trials, signed in March 1954. The participants in the Convention include Austria, Belgium, Denmark, France, the Netherlands, Spain, Sweden, Switzerland and other countries. This international instrument provides for the mutual implementation of commissions on the handing over of legal documents, the mutual execution of decisions on the recovery of costs, etc. It stipulates that documents must be handed in and commissions executed in the way provided for by the legislation of the state to which a request is made. But at the request of an institution documents may be handed over in a special form or procedure provided they do not run counter to the principles of the state to which a request is made.

In organising the work of implementing international legal treaties and agreements, the organs of the USSR Ministry of Justice seek to secure their full and strict implementation.

## 6. ARBITRATION

State arbitration boards occupy a special place in the system of Soviet legal institutions. They examine economic and legal disputes that arise between socialist enterprises. As distinct from many other states the Soviet Union has no "economic courts". This is due to the fact that all Soviet enterprises and economic organisations are linked by a system of economic contracts, whose implementation is obligatory, and that contractual discipline is maintained and protected by the law. Of great importance for the successful performance of industry, agriculture, construction and transport is the proper organisation of the supply of enterprises, organisations, construction sites with equipment, raw and auxiliary materials; but the legal regulation of their mutual business relations is no less important.

The first years of Soviet rule already witnessed the operation of arbitration commissions set up to handle disputes that arose between economic organisations. But their competence was restricted, the greater part of such disputes being settled by common courts.

In May 1931, the Central Executive Committee and the Council of People's Commissars of the USSR passed a decision on the creation of *state arbitration boards* to settle disputes concerning property arising between enterprises and organisations belonging to different departments; and on the creation of *departmental arbitration boards* to settle disputes arising between economic organisations belonging to one and the same department.

The basic functions discharged by the state arbitration boards are as follows: protection of the legitimate interests of enterprises, organisations and institutions; the strengthening of co-operation between enterprises, organisations and institutions in fulfilling national economic plans; the exercise of an active influence on enterprises, organisations and institutions in their observance of laws and decisions passed by the Soviet Government on economic matters; the promotion of the fulfilment by enterprises and institutions of economic plans and planned assignments on the delivery of goods and other obligations undertaken by them in their economic activity.

The arbitration boards discharge these functions by settling economic disputes and by applying economic sanctions for the non-fulfilment of plans and planned targets for the delivery of goods, for the delivery of low-quality goods or incomplete sets and for other breaches of state discipline and contractual obligations.

The examination of cases by state arbitration boards differs from the trial of cases in courts.<sup>1</sup> The main difference lies in the following: 1) disputes settled by arbitration boards concern the relations between two or several enterprises of a socialist type (if one party to a dispute is a citizen, the dispute is heard by a court of law); 2) the boards examine cases in the presence of the parties to a dispute and under the direction of a state arbiter, that is, without

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<sup>1</sup> State arbitration boards, it must be added here, are not elected but are appointed in an administrative manner.—Ed.

the participation of people's assessors, as is the case in a court of law, which passes decisions by the whole bench in a conference room, that is to say, in the absence of the parties at issue. Therefore, the purpose of arbitration is to make an agreement acceptable to the parties to a dispute. In the event of disagreement between the parties, the decision is taken by the arbitrator himself.

Arbitration activities are regulated by special legislative acts (chief among them being the decree of the CEC and the Government of the USSR of May 3, 1931, which approved the Statute of State Arbitration, and the Decision of the Government of the USSR of August 17, 1960, which approved the Regulations Governing State Arbitration under the USSR Council of Ministers) and by relevant regulations and instructions issued in the Union Republics.

The questions arising in the arbitration practice which are not sufficiently well regulated by special normative acts are customarily settled on the basis of the civil procedure rules by which all courts of law are guided in their work.

Despite certain distinctions many principles of the work of state arbitration are similar to those of the courts of law. The arbitration boards must fully observe socialist legality, which means that they must examine and settle disputes within their jurisdiction, strictly in accordance with the laws and other normative enactments. Guided by the principle of ascertaining objective truth, the arbitration boards must establish the actual circumstances of a case in full conformity with the evidence considered, investigated and appraised by the arbiter himself. Both in a court of law and in an arbitration board, actions are brought chiefly by plaintiffs who have the right to determine the subject and grounds of a law suit, the amount of claims and also to renounce their claims, etc. On an arbitration board, the parties to a dispute are entitled to substantiate their claims, submit evidence, dispute arguments cited by the other party, question each other. As a rule, all arguments are enunciated orally, preference being given to oral findings of experts, although written documents and expert findings are not only permitted to be made public but in some cases have to be made public. Decisions taken by arbitration boards must be based exclusively on proof verified in arbitration

proceedings by the arbitrator and other participants in the dispute.

Today the system of state arbitration is patterned as follows: the Council of Ministers of the USSR is in charge of the State Arbitration Board seated in the capital of the country. It handles major and the most important disputes that arise between government and non-government organisations, including co-operative societies, and issues rules on the procedure of settling disputes by the state arbitration boards of the Union Republics. All Union Republics have their own state arbitration boards which are subordinated to the respective Republican Council of Ministers. On a lower level, arbitration boards are set up under the executive committees of regional and territory Soviets and the Councils of Ministers of Autonomous Republics. In such large cities as Moscow and Leningrad there are also state arbitration boards.

Departmental arbitration boards that serve ministries, supply and trading organisations function on the same principles as state arbitration boards. However, their competence covers economic disputes arising between those enterprises, organisations and institutions which form part of the respective ministries or departments and which have their own arbitration boards.

State arbitration boards consist of the Chief Arbitrator (Umpire) and regular arbitrators, the former exercising guidance over the whole work of these boards. He compiles internal regulations, distributes cases among arbitrators, supervises the procedure and terms of reviewing cases and also verifies the legality of decisions taken by other arbitrators. Within 30 days he may order the suspension of adopted decisions, change or repeal decisions passed by other arbitrators.

Every link in the system of state arbitration has a strictly defined cognizance of cases. This cognizance is delineated according to the following factors: 1) the subordination of litigants; 2) the amount of the sum claimed in disputes concerning property or the amount stipulated in a contract (in cases of disputes arising before a contract is signed); 3) the location of litigants.

The arbitration board examines cases most often upon applications submitted by the enterprises, institutions and

organisations concerned, sometimes on motions from the organs in charge of the arbitration board or at the initiative of the arbitrator, who is informed of serious infringements of legal norms by some enterprise or organisation.

In preparing for arbitration proceedings, the arbitrator has the right to demand the requisite documents and references, to appoint expert commissions where necessary, to summon officials for the purpose of giving preliminary explanations, and so on. It must be emphasised that responsible representatives of enterprises, institutions and organisations are both parties to a dispute and participants in arbitration proceedings.

In arbitration, a distinction is made between evidence in writing, exhibits, expert findings and personal explanations submitted by the representatives of both parties. It is generally accepted that witnesses' testimony should not be used in arbitration proceedings but many arbiters resort to this method of collecting and investigating evidence.

As a rule, an agreement must be reached by the parties concerned and becomes valid if it conforms to the requirements of the law. In the event of disagreement between the parties the arbitrator may take a personal decision. He may either postpone the hearing of a case (this is done in exceptional cases) or suspend the case (if a decision depends on the settlement of another case under consideration by a court of law, arbitration board or administrative body). The arbitrator is also entitled to quash the case either at the request of both parties or where a time-limit has elapsed, or if the respondent voluntarily paid his arrears or on other grounds. Naturally, the arbitrator can settle the case on its merits. The decision taken by him in arbitration proceedings is set forth in minutes.

*Maritime Arbitration Commission* is attached to the USSR Chamber of Commerce and Industry (Moscow). It settles by arbitration disputes over foreign trade, that is to say, disputes arising over awards for mutual aid rendered by sea or river ships, disputes stemming from collisions of sea and river ships, disputes arising out of the chartering of vessels, the transportation of freights, towing and rafting operations, and also disputes flowing from marine insurance. The competence of this commission covers disputes arising out of the infliction of damage to fishing vessels, nets and the

like, as well as out of the infliction of damage by fishing at sea. It also considers similar disputes arising from the navigation of sea or river vessels on international rivers.

The members of the Commission are appointed by the USSR Chamber of Commerce and Industry from among people possessing a knowledge of maritime law and marine insurance.

The Commission takes cognizance of disputes either on application in writing from the parties concerned, if there is mutual agreement to have the dispute settled by the Commission, or else the terms may be specified in a relevant contract of carriage by sea.

When a dispute is taken to the Maritime Arbitration Commission for settlement, either party has the right to pick the arbitrator it desires from among the Commission members. If they fail to choose an arbitrator, the latter is appointed by the chairman of the Commission.

Fees are collected to meet the expenses incurred in arbitration proceedings.

An appeal against the Commission's decision may be lodged with the civil division of the Supreme Court of the USSR. An appeal against an improper decision of the Commission or a protest may also be lodged by the procurator with the same division. Unless there is an appeal, the award takes legal effect upon the expiry of 30 days.

*Foreign Trade Arbitration Commission*, also attached to the USSR Chamber of Commerce and Industry, settles by arbitration disputes arising out of foreign trade contracts, particularly disputes arising between foreign firms and Soviet trading organisations. Its members are appointed by the USSR Chamber of Commerce and Industry from among representatives of trading, industrial and transport organisations and also from among persons with a knowledge of foreign trade.

The parties applying to this Commission to have their dispute settled may appoint at their own discretion representatives, including foreign nationals, to defend their interests in the Commission. Fees are collected to defray expenses incurred in the Commission's arbitration proceedings.

The awards of the Foreign Trade Arbitration Commission are final and not subject to appeal. The awards must be carried out by the party against whom the decision is passed

within the period specified by the Commission. If an award is not carried out within the stipulated period, it is enforceable in the manner provided for in the Civil Procedure Codes of the Union Republics.

#### 7. PARTICIPATION OF THE PUBLIC IN PREVENTING CRIMES AND CUTTING SHORT ANY INFRINGEMENT OF LAW

Most Soviet citizens take a conscious attitude to the rules of socialist community. They strictly abide by Soviet laws, selflessly work in production and voluntarily discharge public duties. However, there are still a number of people who commit all sorts of crimes and other anti-social misdeeds. To combat them is the prime duty of both state bodies and Soviet citizens. Moreover, the highly important task of eradicating crime can hardly be solved unless the maintenance of law and order is regarded as the duty by all members of society. For this reason measures are taken to evolve and improve the various forms of public participation in combating breaches of law and crimes. First of all it is a question of preventive work, for the main task is to detect and restrict in time wrong actions, to prevent people from committing a crime.

The effectiveness of community participation must be gauged not only from the number of people involved in taking preventive measures but primarily by the number of crimes and law infringements in fact prevented.

It stands to reason that the active participation of members of the community in maintaining law and order does not under any circumstances entail the dilution of the activity of the militia, procurators' offices and courts in the eradication of crimes, for success is guaranteed by a reasonable combination of persuasion and compulsion, that is to say, of public influence and measures adopted by state agencies.

Under socialism a criminal reprisal cannot be the chief instrument in consolidating law and order. Disregard of this important principle has always led to serious mistakes. The involvement of members of the public in combating crimes and other infringements of law is not a brief campaign, but a programmatic task facing the state and society

in the development and improvement of state administration and justice in the USSR.

We do not intend to examine the history of the voluntary social institutions designed to maintain public order in the country. We simply wish to highlight the main point in this sphere—how the gradual development of the democratic foundations of Soviet society has brought about a situation where certain functions of maintaining public order formerly discharged either by courts of law or administrative agencies are now discharged by non-government organisations, this new practice assuming a legislative form.

The participation of the public in combating crime and other breaches of law takes a variety of forms :

— members of the community take an active part in disclosing and investigating crimes, help investigators in detecting and detaining offenders, in conducting searches for objects stolen and criminal implements or assist in the removal of the causes and conditions conducive to the commission of crimes;

— non-government organisations are empowered by law to admit certain persons brought to trial to public warranty as a measure preventing them from evading court and investigation; in such cases the workers' collective voluntarily pledges themselves to ensure the appearance of the accused before the investigating officer and the court, and also stands guarantee for his good conduct;

— under certain circumstances the court may dismiss the case and refer it to a comrades' court;

— the court has the right to drop criminal proceedings with respect to a person who has not reached 18 years of age but who has committed a crime that presents no serious danger to society, and then to refer the case to a minors commission;

— in response to a public petition the court may dismiss the criminal case and release the accused person on the surety of a workers' collective, provided this is his first offence that presents no great social danger, and that the culprit shows sincere repentance;

— upon public request, the court may admit to its proceedings a voluntary prosecutor and defence counsel appointed by mass organisations;

— mass organisations may file petitions concerning conditional punishment and admission of the defendant to their surety for purposes of reform, this measure being applied both in cases of conditional punishment and in penalisation that involves no deprivation of liberty;

— mass organisations may submit petitions to court for the conditional release of the convicted person before the expiry of his term, for the commutation of his penalty, for the premature expunging of the conviction or for the reduction of the probationary period.

Of great importance for the prevention of crime is the activity of comrades' courts, minors and watch commissions and people's patrols. These voluntary organisations function in unison with the courts and every judge must take maximum advantage of their help and at the same time assist them in every way.

*Comrades' courts.* The Communist Party's Programme adopted as early as 1919 at its Eighth Congress pinpointed the need for the gradual replacement of criminal punishment by educational measures, including measures applied by comrades' courts. The first such courts—they were called workers' disciplinary courts—appeared in 1919 and functioned until 1923. They stepped up their activity in the early 1930s, when the Union Republics adopted decisions to set up comrades' courts in factories, mills, offices, government and non-government organisations. They emphasised that these courts' main task was to combat breaches of labour discipline, survivals of the old way of life, drunkenness, etc. In June 1931, the Central Executive Committee and the Council of People's Commissars of the Russian Federation passed a decision to the effect that comrades' courts should also be set up in housing co-operatives, this measure being preceded by the formation of public courts in the countryside. This system of courts operating on a voluntary principle has done a great deal of useful work towards consolidating law and order and educating citizens in the spirit of respect for the laws and rules of socialist community.

New statutes on comrades' courts have been adopted by all republics since 1958. They reflect the great changes that have taken place in the social life of the country. In the RSFSR such a statute was approved by the Ordinance of the

Presidium of its Supreme Soviet on July 3, 1961. Subsequently, the Statute was amended and supplemented. In terms of content, the Statute on Comrades' Courts of the RSFSR is similar to the Statutes on Comrades' Courts adopted in other Union Republics.

Comrades' courts are informal elective bodies, set up to promote the education of citizens in a communist attitude to labour and observance of the rules of socialist community life, to develop a sense of collectivism, comradely mutual assistance and respect for the dignity and honour of citizens. These courts are formed by decision of general meetings held at enterprises, institutions, organisations, educational establishments, collective farms and in rural localities. They are elected for a term of two years by a show of hands. The size of the court's bench is decided by a general meeting. At least once a year these courts report on their activity to the general meetings of the people who elected them.

What is the competence of comrades' courts? They examine breaches of labour discipline, including failure to report for work without good reason, late arrival at work, poor workmanship, failure to observe safety rules and other labour protection regulations; cases involving the unauthorised use for personal purposes of transport vehicles, machine tools, raw materials and other property belonging to state enterprises, institutions, organisations and collective farms; cases of petty embezzlement of state or social property, of petty rowdyism committed for the first time, of first theft from members of the same workers' collective of household and personal objects of no great value; cases of maltreatment of women and parents, of failure to fulfil one's obligations in the upbringing of children, cases of misbehaviour, drunkenness, insults, circulation of unfounded rumours denigrating other persons; cases of infliction of slight bodily injuries; cases of damage to trees, plantations; cases of damage to dwellings and other premises; disputes involving property valued at under 50 rubles, where the parties to the dispute agree to apply to a comrades' court; cases of first offences which do not present a great danger to society, and where organs of the militia, procurator's offices and courts believe the cases should be examined by a comrades' court and not by a court of law.

All cases are examined in public with at least three members of the comrades' court present. Cases are usually heard at the delinquent's place of work or domicile. Where necessary the court must check up on the available materials before the case is heard in the comrades' court.

In trying cases some obligatory rules must be observed. For instance, the victim and the person brought before the court may challenge the presiding member and other members of the comrades' court. With the sanction of the presiding member everyone present may ask questions and speak on the substance of the case in hand. The results of a discussion are recorded in minutes. Decisions are taken by a majority of the court's members taking part in the examination of a case.

The comrades' court may apply the following persuasive measures: order the person brought before the court to make a public apology to the victim or the collective he works in; administer a comradely warning, public censure or reprimand; impose a fine of up to ten rubles and in cases of petty embezzlement or repeated petty embezzlement of property—up to 50 rubles; raise before the management the question of transferring the person concerned to a lower-paying job or his demotion; propose the guilty person's eviction from the apartment he occupies if he has made a public nuisance of himself; force him to make good the loss he has caused to the sum of not more than 50 rubles.

Where the comrades' court comes to the conclusion that the offender must be held criminally liable by law, it forwards all the materials in the case and its appropriate decision to a militia station, a procurator or a court of law.

The decision handed down by the comrades' court is final, but where it conflicts with the circumstances of the case or existing legislation, the corresponding trade union committee or executive committee of the local Soviet has the right to request the comrades' court to re-examine the case.

Decisions involving property sanctions (imposition of a fine, restitution of loss, etc.) are forwarded to a people's judge who, after verifying the materials submitted, and the legality of a decision passed, may issue a writ of execution for the enforcement of this decision by the bailiff concerned.

The general activity of a comrades' court is guided by the local trade union committee elected in the given enterprise, organisation or institution or by the corresponding local Soviet.

*Minors commissions* are an important form of public participation in combating juvenile delinquency. These commissions are set up under the executive committees of district and regional Soviets and also under the Councils of Ministers of Autonomous Republics and in several instances under the Councils of Ministers of Union Republics.

The activity of minors commissions is regulated by special statutes approved by the Presidiums of the Supreme Soviets of the Union Republics. A case in point is the RSFSR Statute on Minors Commissions adopted on June 3, 1967.

The main tasks of the commissions are the organisation of work to prevent child neglect and juvenile delinquency, to provide for the care of children and young people and the protection of their rights, to assist them in finding work and provide educational facilities for them.

To perform its duties the commissions enlist the assistance of mass organisations and voluntary helpers. They carry on their work by relying on the standing committees of Soviets, trade union, Komsomol, guardianship and other organisations.

Members of these commissions and voluntary inspectors selected from among voluntary helpers find and register children and young people in need of state and public aid and those who have left school and who are not working. Their task is to assist young people to obtain work or to enrol in a vocational or general school and also help parents to bring up children and to take other appropriate measures.

The commissions organise control over the behaviour of those young people who have served their sentence or who have been given a penalty other than deprivation of liberty. Where necessary, the commission takes measures to assist them in finding a job or entering a school.

The prevention of juvenile delinquency apart, the commissions ensure that managements of factories, institutions and state farms observe the regulations governing working conditions for young people. It should be noted here that managements may dismiss persons under the age of 18 only

in the manner laid down by the law and with the consent of a local minors commission.

The commissions exercise public control over juvenile labour colonies where convicted minors are kept and also over juvenile bureaus at militia stations, over neglected children's reception centres and similar educational and medical establishments for children. The commission members have the right to attend these institutions, demand from their administration information needed, personally interview minors placed in them and examine their complaints and applications.

The commissions are entitled to make submissions before the court of law in which they expound their opinion on the most advisable penalty to be imposed on a minor who has committed a crime, recommend that the sentence be commuted or that a juvenile be discharged prematurely.

The commissions are also vested with the extensive powers of independently examining cases on their merits: 1) of juveniles between the ages of 14 and 16 who have committed socially dangerous acts (crimes) for which they do not bear responsibility under the law; 2) of juveniles in relation to whom the court or the procurator have dropped or rejected the criminal proceedings on grounds of the insignificant character of the offence and the low age of the offender but have found it necessary to send the materials of the case to a minors commission.

In such cases after careful scrutiny of the relevant materials, the commission may apply the following sanctions to a juvenile delinquent: demand a public apology to the injured party, administer a reprimand, inform the parents' place of work about their child's misdeeds, place a minor in the care of a workers' collective, send him to a special educational institution for children and young people, etc.

In the event of the parents' malicious non-fulfilment of their obligations with respect to the bringing up of children, the commission may apply the following measures in relation to them: administer censure, transfer the material in the case to a comrades' court, require that damage to the value of 20 rubles caused by a juvenile be made good, impose a fine of up to 20 rubles, inform the management of the parents' place of work about their misbehaviour, make submissions to a court of law regarding deprivation

of parental rights if the abuse of these rights is established.

The commission may call for the necessary information and documents in cases considered, and may also call upon officials and individuals to give evidence. The presence of the young person whose case is being considered is mandatory. So also is the presence of his parents or persons acting *in loco parentis*. An appeal against the commission's decision may be lodged with the executive committee of a local Soviet.

*Watch commissions* are set up under the executive committees of district and town Soviets. The statutes of these commissions have been approved by the Presidiums of the Supreme Soviets of the Union Republics. In the RSFSR such a statute was approved on September 30, 1965. These commissions consist of representatives from government and non-government organisations, including trade unions and youth organisations and also of representatives from the largest enterprises and institutions. Customarily the commission comprises 12 to 15 members.

Candidates to the watch commission are nominated by mass organisations or workers' collectives from among persons with a good reputation. The final membership is approved by a local Soviet.

The watch commission may not enlist officers of the militia, procurator's offices, courts and members of the bar, i.e., persons who are associated in one way or another with the discharge of regular duties in corrective and corrective labour institutions.

The basic task of the watch commission is to exercise constant public control over the activity of corrective labour institutions and other bodies that enforce court sentences. This control covers the observance of the regime and conditions of keeping convicted persons, the organisation of their labour, general and vocational training and educational work.

The watch commission verifies the use of educational facilities and removes shortcomings at the places of work of persons released on surety by a workers' collective or of persons who are serving court sentences other than imprisonment. It also watches over the behaviour in everyday life and in public places of those persons, who have already been tried by a court of law more than once, and also ren-

ders assistance in providing persons returning from a place of confinement with jobs and living accommodation.

The commission members are vested with the right to pay visits to corrective labour institutions, to interview convicted persons and examine their complaints, familiarise themselves with their personal files, demand from the administration documents and references needed by the commission, hear at their sittings reports made by the administration of places of confinement and by other bodies which execute court sentences on their work of correcting and reforming convicted persons.

The commission may place before the executive committee of a Soviet proposals for the improvement of the functioning of corrective labour institutions. It may also submit petitions regarding pardons for convicted persons and, together with the administration of a corrective labour institution, make submissions before the court that a sentence be commuted or the convict be discharged before the expiry of his term.

The commission is entitled to verify the grounds for refusal to employ persons released from a place of confinement and to demand that he should be provided with a job.

Where necessary, invitations to attend the commission's sittings are sent to a procurator, governors of corrective labour institutions, representatives of mass organisations, managers of factories and institutions. The commission may summon a convict if this is required by the circumstances of the case.

Decisions made by the commission within its terms of reference must obligatorily be executed, and a report to this effect must be made to the commission within two weeks. An appeal against the commission's decision may be lodged with the executive committee of a district Soviet.

*People's voluntary patrols* for the maintenance of public order were first organised in 1959 on the initiative of factory and office workers in Leningrad, Sverdlovsk and various other cities.

To define the status of these patrols, to create for their members the requisite legal guarantees and to organise their activities in strict conformity with the law, the Councils of Ministers of the Union Republics approved the

Regulations Governing Voluntary Patrols for the Maintenance of Public Order. This measure was not prompted by any special situation. The patrols appeared as a natural development of Lenin's idea regarding the broad involvement of citizens in the running of the affairs of state. The Regulations state that the overwhelming majority of citizens work conscientiously, discharge their civic duties honestly and strictly abide by the laws, but that there are some who do not observe the norms of public conduct. The best method of influencing such persons is naturally not interference by the militia, but the active and timely prevention of infringements of the law by citizens themselves, who are vitally interested in the strengthening of public order.

People's patrols are composed from among the foremost industrial and office workers, collective farmers and students at enterprises, institutions, on collective farms and in educational establishments. The patrolmen elect their own commander. Their principal tasks are to maintain public order in the streets, parks and other places of public resort; combat neglect of children; detain persons committing crimes; prevent the commission of offences; and explain to the population the substance of the laws in force.

With these aims in view the patrolmen may demand that any citizen discontinue his wrong conduct, draw up a statement of the case of law infringement in the presence of eye-witnesses and forward it to the patrol's headquarters or to a militia station. If the offender puts up resistance he may be taken to a militia station where his liability is determined.

Threats to the life and health of a patrolman or offering unlawful resistance are punishable by law.

Day-to-day control over the legality of actions taken by patrolmen is exercised by voluntary organisations of those enterprises or organisations where the patrol was organised. Experience shows that this form of public participation in maintaining law and order is very effective.

Since the people's patrols are voluntary organisations, judges cannot direct their work, but they constantly assist them by explaining legal rules and spreading knowledge of Soviet laws.

Instances of public participation in combating law-breaking do not constitute measures of government (judicial)

intervention, but are purely voluntary; they must be clearly distinguished from judicial sanctions. In contradistinction to these sanctions measures of public influence do not contain elements of punishment but bear a purely educational character (except for the small fines imposed on people). The exertion of public influence does not entail any legal consequences, that is to say, does not involve convictions or any legal restrictions.

The positive results of public participation in combating offences in the Soviet Union are obvious for all to see.

## *Chapter IV*

### **THE COURTS OF THE UNION REPUBLICS**

#### **1. THE DISTRICT (TOWN) PEOPLE'S COURT**

The district (town) people's court is the basic unit of the Soviet judicial system, for it tries the overwhelming majority of all criminal and civil cases that involve a large variety of questions and affect the vital interests of citizens and the state. Compared with the other links of the judiciary the district court is more closely associated with the populace, being directly elected by them.

Prior to 1958, the country had a precinct system of people's courts, which meant that the territory of most districts was divided into precincts and each precinct had its own court headed by a people's judge. Thus, in one district there could be several independently functioning people's courts. This system, however, gave rise to some lack of unity in the work of courts in a district, to the loosening of the ties between courts and district organisations, to interference with the specialisation of judges, to inconveniences for citizens and to complications in the procedure for coordinating the courts' work and implementing their joint action.

The former precinct people's courts in every district and town not divided into wards were replaced by a single district (or town) people's court in accordance with the Fundamentals of Legislation on the Judicial System of the USSR, the Union and Autonomous Republics, adopted in 1958. Exceptions are allowed by the Law on the Judicial System of the RSFSR, where one people's court may serve the town and the adjacent rural district, and by the Law on the Judicial System of the Armenian Repub-

lic, where one people's court may serve two or more districts.

As experience shows, this reorganisation had a beneficial influence on the work of the district courts. The amalgamation of courts resulted in the concentration of three to five judges in one district (town) court, in the reallocation of their responsibilities and in the appointment of a court chairman in charge of all organisational work. The people's judges had an opportunity to exchange their experience, study and sum up judicial practice, analyse the incidence of convictions in a district or town, and on the basis of the available materials, submit proposals for the removal of causes and conditions conducive to the transgression of law. It also resulted in tightening up the control of the execution of court decisions.

*The election of district (town) people's courts.* Under the Constitution of the USSR, the people's judges of the district (town) people's courts are elected by the citizens of the district (town) on the basis of universal, equal and direct suffrage, by secret ballot for a term of five years; while the people's assessors of these courts are elected at general meetings of factory or office workers and of peasants at their place of work or residence and at meetings of servicemen in their military units for a term of two years. This procedure fully reflects the democratic nature of the Soviet electoral system, enables the voters to get acquainted with their candidates, ensures close and direct connection between the court and the electorate and promotes the implementation of Lenin's demand for the broadest possible participation of working people in running the affairs of state.

The procedure for the election of district (town) people's courts is laid down in the Regulations Governing the Election of District (Town) People's Courts, approved by the Presidium of the Supreme Soviet of each Union Republic.

The size of the district court bench (the number of judges and people's assessors) is determined by the executive committees of the territory, regional and town Soviets or Councils of Ministers of the Autonomous Republics or Councils of Ministers of Union Republics (Kirghizia) or the Presidiums of the Supreme Soviets of Union Republics (Azerbaijan, Lithuania).

The number of people's assessors to be elected by enterprises or institutions to a given court is determined by the executive committees of district Soviets.

Elections are held during one day for the entire Union Republic. Election day is appointed by the Presidium of the Supreme Soviet of a Union Republic, this being made public not later than 30 days prior to the election date.

The organisation and holding of elections may be illustrated from the example of the Russian Federation.

Under the Election Regulations elections of people's judges are organised in the Autonomous Republics by the Presidiums of their Supreme Soviets, while elections of people's judges in territories, regions, Autonomous Regions and National Areas are organised by the executive committees of the respective Soviets.

Regional and equivalent Soviets supervise the execution of the Election Regulations, examine complaints against wrong actions taken by the executive committees of district and town Soviets and issue final decisions on them. The direct organisational work of holding elections is done by district (town) Soviets.

The executive committees of district (town) Soviets must compile lists of electors in due time and make them known to all citizens of the respective districts. Every citizen is entitled to apply to the relevant executive committee of a local Soviet and submit complaints for its consideration, if he ascertains that mistakes have been made in the said list or that he is not included into it.

Moreover, the executive committees of district (town) Soviets set up electoral districts and precincts, register candidates for election as people's judges and scrutinise complaints filed against the actions of precinct electoral commissions. The local bodies of the Ministry of Justice also take an active part in the organisation of elections.

The right to nominate candidates is vested in non-government organisations, Party and Komsomol branches, trade unions, youth organisations and cultural societies, and also in general meetings of factory and office workers, peasants and servicemen.

Candidates for election as people's judges must meet only two requirements: they must enjoy the right of franchise and must have attained the age of 25 by election day.

Appeals against refusal to register a candidate can be lodged with regional, territory and other equivalent Soviets.

Only those candidates who have received a majority vote in secret ballot held in the relevant electoral district are recognised as being duly elected.

Elections of people's assessors are also announced by the Presidium of the Supreme Soviet of the respective Union Republic not less than 30 days before the expiry of the term of office of the outgoing assessors. All citizens who have attained the age of 18 take part in elections, exceptions being made with regard to persons duly certified by law as insane.

General meetings for the election of people's assessors are held at enterprises, institutions or collective and state farms, in military units and populated localities that have not less than 100 voters. If an enterprise has on its staff less than 100 workers who have the right to vote, it conducts elections jointly with other enterprises. Elected to the bench of a district (town) people's court are deemed to be those persons who have polled the greatest number of votes and not less than 50 per cent of the votes cast by those present at a general meeting.

It is a criminal offence to prevent others from the exercise of their rights to elect or be elected. The law says: anyone who by violence or by the use of threats or corruption prevents citizens from the exercise of their right to elect judges or people's assessors and to be elected to the court, and also officials or members of election commissions who forge ballot papers or incorrectly compute the votes cast are criminally liable under the Criminal Code of a Union Republic.

*The competence of the people's court.* As a court of first instance the people's court hears all criminal and civil cases with the exception of a small number of cases that come within the jurisdiction of other courts. This means for all practical purposes that nearly 95 per cent of all criminal cases are tried by people's courts.

These courts examine practically all civil cases with the exception of a small number of cases which have to be tried by higher courts in view of their complexity. This means that the people's courts take cognizance of all property disputes, law suits concerning the division of prop-

erty, unlawful dismissals and also housing disputes and actions relating to the collection of maintenance (alimony), etc.

The people's court also examines certain administrative cases. For instance, the judge himself handles administrative cases of petty rowdyism, petty speculation and malicious disobedience of lawful orders issued by militiamen or people's patrolmen. In such cases the judge personally scrutinises the minutes of acts recording a violation of public order duly compiled by a militiaman, questions the transgressor (and other persons where necessary) and passes a decision in which he either establishes that the fact of violating public order has not been proved or imposes a penalty on the transgressor. Most often the judge imposes a fine and in appropriate cases orders that the offender should be arrested for 15 days. In many cases he merely reports the matter to the transgressor's place of work or study in order that the respective mass organisation may apply measures of public influence to him.

The examination of cases in administrative session by a judge does not involve convictions or other legal consequences, which would otherwise ensue if the cases were adjudicated by a court of law.

On motions submitted by the administration of corrective labour institutions or watch commissions, the people's courts examine data relating to the conditional release of convicts from a penalty before the term has elapsed, to changes in the regime of holding in places of confinement convicted persons who have proved by their irreproachable behaviour that they have resolved to reform their ways.

The people's courts are taxed with the examination of complaints lodged by citizens in connection with the violation of their rights during the compilation of voters' lists for elections to local Soviets.

In addition to these functions the people's courts take measures aimed at preventing infringements of law. After studying the collected materials judges may and must submit to government, non-government and Party organisations their proposals for the removal of causes conducive to the commission of crimes and to other infringements of law. All organisations receiving such representations or court riders are duty bound to adopt measures on the abolition of

causes of crime and to report to the respective court on the results of this activity.

*The composition of the people's court.* The people's court includes people's judges and people's assessors elected in a statutory manner to a given district (town) people's court. The number of judges, as stated above, is determined by the corresponding Soviet on the basis of the amount of the work foreseen. Usually one judge is elected by every 30,000 to 35,000 residents, this election being supplemented by the election of some 70 or 80 people's assessors per every judge. As a result each assessor is enabled to fulfil his court duties in turn, taking part in court proceedings for two weeks.

To secure the efficient functioning of the people's court the latter has on its staff a bailiff, consultant, head clerk, regular clerk, secretaries, archivist, typist and auxiliary service personnel.

In a district where several people's judges have been elected the local Soviet gives its approval to the election of a district court chairman (senior justice) from among the elected judges. The basic rights and duties of a court chairman are set forth in the law. He chairs court sessions or appoints one of the judges to do this job, organises the study of judicial practice, verifies the work of the court office and supervises the court's organisational activities. He also deals with criminal and civil cases.

*Organisational work.* The planning of the court's work takes precedence over other organisational matters. The court draws up its plan every three months and includes in it all major aspects of its work: the summing up of the results of its judicial practice, the implementation of measures to improve judicial workers' qualifications, the making of reports to the electorate, the organisation of lectures and talks on legal subjects, the holding of seminars with the participation of people's assessors, etc. The plan also pinpoints the times of the execution of measures adopted, control being exercised by the chairman of the district (town) people's court.

The proper distribution of duties as between the workers of a district court and, primarily, between its judges is an important condition for its smooth functioning. As a rule the court approaches the distribution of duties between judges on a zonal and functional basis. In the first case,

every judge examines all criminal and civil cases and all materials relating to all infringements of law that arise in the district he is in charge of. In the second case, every judge scrutinises either criminal or civil cases. In other cases individual judges examine definite categories of cases, i.e., juvenile delinquency, labour disputes, housing cases, etc. The law does not lay down special guidelines concerning the principles of the court's organisation. Therefore, every people's court adopts a different method of organisation, depending on actual local conditions and on the experience and qualification of the judges.

The effectiveness of the court's work in safeguarding the rights and legitimate interests of citizens is largely dependent on the proper organisation of the reception of visitors and of the examination of their complaints and applications. The courts fix definite days and hours (in mornings and evenings) for the reception of citizens and make them known to the public. Visitors from other towns are received, as a rule, on the day they pay a visit to the court. Many judges receive people at enterprises, institutions and collective farms, their reception hours being fixed in advance. This practice helps to improve the servicing of the population, consolidates the ties between the judges and the community and enables them to study the local situation more thoroughly.

Of great importance is the proper organisation of reference work on legislation and judicial practice. All courts have library stocks of legal literature, the requisite legislative material, card indexes of legislation and judicial practice. This work is, as a rule, conducted by one of the court's consultants.

*The Hearing of Criminal and Civil Cases.* Under the law all criminal and civil cases in people's courts are tried collectively, by a judge and two people's assessors. The latter enjoy the same powers as the judge while discharging their duties in court. The statutory procedure of hearing civil and criminal cases is a real guarantee of the equality of rights between people's assessors and permanent judges. This equality is seen in the following rules: during a trial the people's assessors make decisions on an equal footing with the presiding judge; the judge is not entitled to parry a question raised by a people's assessor; he votes last in pass-

ing a judgement so that his authority does not influence the opinion of the people's assessors; both assessors and the judge have the right to reserve their individual opinion and have it recorded in the minutes.

All courts conduct seminars in order to improve the legal qualification of people's assessors, for which purpose they invite the most experienced judges, scholars and experts. At these seminars the assessors are familiarised with the basic questions of substantive and procedural law, with the principles of the Soviet court organisation, the rules of handling civil and criminal cases, decisions adopted by the Plenary Sessions of the Supreme Court of the USSR and the Supreme Courts of Union Republics and the results of the summing up of judicial practice.

Judges are duty bound to render assessors constant assistance. In particular the presiding judge must enable the assessors to study thoroughly all the materials regarding the case in hand and where necessary explain to them the substance of the relevant law or of the guiding instructions issued by a Plenary Session of the Supreme Court of the USSR. It stands to reason that this assistance and consultation should not under any circumstances influence the assessor's opinion regarding the substance of the case in hand prior to a trial.

The court session is the most important stage in the judge's work. It is here, in a courtroom, in the presence of the public, that the judge must study the evidence in the case in hand thoroughly and objectively and pass a judgement conforming strictly to law, that he must be just in respect to the defendants, be outspoken and convincing in the eyes of all those present and helpful in the prevention of crimes and other infringements of the law.

*Bailiffs.* In criminal cases court sentences that involve deprivation of liberty, corrective labour and other measures of compulsion are executed by the agencies of the USSR Ministry of the Interior, while court decisions in civil cases, including those on material recovery are implemented by the bailiffs who are on the staff of people's courts. These court officers are appointed by the chief of the department of Justice. The bailiff is to some extent a participant in the adjudication of cases: if he is a relative of any party to the case or has a direct or indirect per-

sonal interest in the outcome of the case he cannot execute a court's decision. He may be challenged, in which case this is examined by the whole panel of the court concerned.

Bailiffs have the duty of enforcing the following decisions:

- a) decisions, orders and riders in civil cases;
- b) judgements, orders and riders in criminal cases regarding material recovery;
- c) orders about fines imposed on persons who have committed an administrative misdemeanour;
- d) decisions passed by arbitration boards in cases provided for by the law;
- e) decisions taken by minors commissions;
- f) acts of execution notified by notaries public on the indisputable recovery of arrears, payments, etc.

All writs of execution are handed over to a bailiff through the court's secretary. Having received the documents and signed for them this court officer must take legal measures aimed at the speedy and effective execution of a decision. As a rule, he must inform the debtor five days in advance of the need to execute the respective decision voluntarily and warn him of the possibility of measures being taken to enforce execution. In certain cases the bailiff may and must apply measures of compulsion. To this end he may attach or sequester property and in the last resort may have it sold by auction or through a shop where second-hand goods are sold on commission (there is a list of belongings that cannot be attached); he may recover debts from the respondent's wages and recover certain things from a debtor under a court decision.

Recovery of debts from state institutions, enterprises and collective farms is made in the first place by dispatching a writ of execution to a bank or a credit institution which transmits money to the plaintiffs concerned.

*Prevention of infringements of the law by the court.* The main means of combating infringements of the law is to reduce and then eradicate crime by combining penal and civil means with measures of persuasion and public influence. For this reason the law provides that court during a trial must ascertain the causes and conditions responsible for crimes and adopt measures aimed at their removal.

The court's work of preventing crime takes diverse forms. During a trial the court examines questions relating to the substance of the case in hand, takes measures to establish conditions and circumstances conducive to the commission of a crime or a civil transgression of the law. The judicial investigation being over, the court, apart from imposing a sentence, may pass a rider, in which it indicates the causes and conditions that were conducive to the commission of a crime and suggests that the relative organisations adopt measures aimed at removing the said causes.

Of great importance for the prevention of crime is the participation of people's assessors in this work. Together with the judges they explain to the population the essentials of Soviet law and watch over the execution of court judgements and decisions.

In many courts this work is supervised by councils of people's assessors. They direct and organise the work of the latter. Most councils organise their work according to the following sections: the section on the check up of the behaviour of conditionally sentenced and conditionally released persons (people's assessors who attend this section pay their visits in their free time to conditionally sentenced or conditionally released persons, ascertain how they behave at home and at work, talk to them, see to it that they have permanent jobs, help them enrol in a school and improve their cultural standards); the section for combating juvenile delinquency (it sets itself the task of eliminating the causes of recidivism among juveniles); the section for the control over the execution of court riders (the people's assessors, members of this section, assist judges in seeing to it that officials in respect of whom court riders have been taken execute their injunctions in time and report to the court on the progress in the case concerned); the section for the verification of the execution of court decisions (it purports to assist bailiffs in executing court decisions in civil cases in time); and the section for rendering aid to comrades' courts (it helps courts to organise their work and to hold legal seminars with the participation of the members of comrades' courts).

*Forms of contact with the public.* The entire activity of the people's court must be conducted in close conjunction with the community. Let us cite some forms that are fixed in law.

We have already talked about the participation of public representatives in trials, i.e., voluntary prosecutors and defence counsel appointed by mass organisations. These persons may be admitted by a court of law to the examination of a case in court if they are authorised for this purpose by the public (a general meeting convened at an enterprise, institution or collective farm).

The members of the public are entitled by law to attend the trial, participate in the investigation of evidence and express their opinion on the substance of the case in hand. In passing a judgement or a decision the court may take their arguments into consideration if they are based on the materials in the file.

Of great educational importance is the process of placing convicted persons for reform in the custody of mass organisations—workers' collectives. The law stipulates that in cases of first, not dangerous offences and sincere repentance, the court may, subject to certain conditions, turn over such persons to the custody of a workers' collective, if a general meeting at an enterprise, institution or collective farm takes a decision to this effect and submits its request to the court.

We should also mention the ties that exist between the court and minors or watch commissions, which exercise public supervision over the procedure of serving sentences in places of confinement. Not infrequently warnings and materials issued by these commissions require the judge's intervention in order to abolish infringements of the law. At the same time the judge may enlist the assistance of these commissions in conducting their explanatory work and implementing measures aimed at preventing crime and other infringements of the law.

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In conclusion let us dwell on some organisational matters that are of vital importance for the functioning of people's courts.

Is it possible to replace a judge who is temporarily absent (for reasons of leave, illness, etc.) and how can this be done?

The law answers this question in the affirmative. Where the chairman of a people's court is temporarily absent, his

duties are discharged by a people's judge of the district concerned (the decision on his appointment is taken by the executive committee of a district Soviet) or by a people's judge from another district or by a people's assessor (the respective decisions being taken by the chief of justice department and the executive committee).

The people's judges bear disciplinary responsibility for the neglect of their official duties and misdeeds that undermine the authority of justice. The procedure for settling conflicts of this type is laid down by special regulations approved by the Presidiums of the Republican Supreme Soviets. The Regulations Governing the Judges' Disciplinary Responsibility say specifically that the Soviet judge, elected by the people, must honour the confidence of the people and serve the country with exemplary honesty, strictly observing Soviet laws and morality and be irreproachable in his behaviour, thus earning the right to judge and educate others.

Cases of the disciplinary misdeeds on the part of judges are examined by special collegiums made up of judges.

The activity of the district people's court is directed organisationally by the regional (territory) department of justice.

## 2. THE REGIONAL, TERRITORY AND OTHER COURTS EQUAL IN STATUS

The administrative divisions—regions, territories, Autonomous Regions, National Areas and Autonomous Republics—have their respective courts. For purpose of convenience we shall designate them as “the courts of the middle echelon”, or “regional and other courts equal to them in status”. They occupy an intermediate position between district (town) people's courts and the Supreme Court of the Union Republic.

*The election of courts.* The election procedure for these courts is determined by the Constitutions of the Union Republics, the Fundamentals of Legislation on the Judicial System of the USSR and the laws on the Union Republic judicial systems. These courts are elected by sessions of the corresponding Soviets of regions, territories, Autonomous Regions, National Areas, and the Supreme Court of an

Autonomous Republic is elected by a session of its Supreme Soviet.

In contradistinction to the election of district (town) people's courts the election of the middle echelon courts is conducted not by secret ballot but by a show of hands at sessions held by regional, territory and other corresponding Soviets. The session elects a chairman of the court and his deputies in addition to court members and people's assessors. Chairmen, vice-chairmen of the Supreme Court of an Autonomous Republic and members of this court are elected by a session of the respective Republican Supreme Soviet.

The regional, territory and other courts equal in status are elected for a term of five years. The numerical strength of each court's bench is determined by the corresponding Soviet or Autonomous Republic Supreme Soviet.

*The jurisdiction of courts.* The above-mentioned courts act as courts of first instance by taking cognizance of some of the most intricate civil and criminal cases. They are also entitled to adjudicate any case which is cognizable by a district (town) people's court and which has arisen in a region or territory.

Every Union Republic compiles a list of crimes which are cognizable by regional, territory and other courts equal in status, but these crimes are, as a rule, highly dangerous offences like premeditated murder, rape, embezzlement on an especially large scale, larceny with aggravating circumstances and other similar criminal cases and also the most important civil cases which at the initiative of the court's chairman or procurator may be adjudicated by a regional court.

The Supreme Court of a republic may propose that a regional, territory or any other court equal in status takes cognizance of any civil case which the higher court deems it advisable to place within their jurisdiction.

The regional, territory and other courts of equal status have the right to consider, by way of cassation, appeals and protests against judgements, decisions and riders passed by the district (town) courts. The procedural law establishes that judgements and decisions passed by the district (town) court come into legal force not at once but after the elapse of a certain period of time. Under the legislation of the Russian Federation, for instance, a sentence in a criminal case

takes legal effect after seven days and a decision in a civil case—after ten days. Within this period the persons concerned are entitled to lodge an appeal with a higher court by way of cassation and the procurator may issue a protest within the same time. Once an appeal or protest has been made by way of cassation the sentence or the decision is not executed prior to the consideration of this appeal or protest by the higher court. If, however, an appeal or protest is not made within the indicated period, the court's judgement or decision automatically comes into legal force and is executed upon the expiry of the said term.

The right to appeal against a judgement by way of cassation belongs to the convicted person, advocate, victim, plaintiff, respondent and their legitimate representatives; while the right to appeal against a decision in a civil case is enjoyed by the plaintiff, respondent or their representatives.

The examination of a case in a supervisory capacity is still another important function of regional, territory and other courts equal in status. Experience has shown that a blunder made in a judgement or decision passed by a district people's court may sometimes be brought to light during the examination by way of cassation. Moreover, the judges of a court of cassation may also commit mistakes. Since Soviet legislation requires that every criminal case and every civil dispute be dealt with in strict conformity with the law, the lawmaker has provided for the examination of cases by way of supervision in addition to examination by way of cassation.

In practice the procedure of appealing against and reviewing cases means that the corresponding procurator or chairman of a higher court is entitled to submit his protest to the presidium of a regional, territory or other court equal in status, if he considers the respective judgement, decision or rider passed by a people's court to be wrong or unlawful. But this procedure is exceptional and applies only to quite a small number of cases.

*The composition of the court.* The regional, territory and other courts equal in status consist of their chairmen, deputy chairmen, court members and people's assessors.

All court members are distributed by the chairman according to divisions. The above-mentioned courts have two

divisions—a division for criminal cases and a division for civil cases—and also a court presidium.

The court presidium includes its chairman, his deputies and several members, their number being determined by the executive committee of the relevant Soviet. The number of members of the Supreme Court of an Autonomous Republic is determined by the Presidium of the Supreme Soviet of that republic. The personal composition of the presidium of every court is also approved by the executive committee of the corresponding Soviet or by the Presidium of the Supreme Soviet of an Autonomous Republic. The motion on the personal membership of the presidium is submitted by the chairman of a corresponding court.

*Court divisions.* Organisationally the work of court divisions is directed by the chairmen of the respective divisions. The candidate to the post of the chairman of a division is proposed by the chairman of a regional, territory or other court equal in status from among his deputies or court members, this candidate being approved by the executive committee of the corresponding Soviet or by the Presidium of the Supreme Soviet of an Autonomous Republic.

The criminal and civil divisions are charged in the first place with the hearing of criminal and civil cases which by law are placed under the jurisdiction of courts of first instance. Of no less importance is their duty of hearing appeals or protests against decisions, judgements or riders of district (town) courts by way of cassation within the statutory terms.

As courts of first instance, the above-mentioned divisions try cases in the presence of a presiding judge and two people's assessors; while as courts of cassation, they hear appeals or protests against decisions and judgements of district (town) courts in the presence of three permanent judges.

The decisions, judgements or riders passed by these divisions acting as courts of first instance may be appealed or protested against within the statutory term either with the criminal or with the civil division of the Supreme Court of a Union Republic as the case may be.

*The presidium of the court.* In those instances when people's courts have committed mistakes in their decisions, the courts sitting in cassation proceedings have not corrected

them, or when the case has not been considered by way of cassation, or when the court of cassation has made a mistake, the chairman of a regional, territory or other court equal in status, or the corresponding procurator of a region, territory, etc., may file a protest by way of supervision with the presidium of the regional or other court equal in status.

Protests by way of supervision filed with the presidium of a regional or other court equal in status may also be made by the Procurator-General of the USSR, the Procurator of a Union Republic, the Chairman of the Supreme Court of a Union Republic and their deputies.

The meetings of the court presidium must be attended by the respective procurator (of a region, territory, Autonomous Region, etc.). Decisions are taken by a simple majority vote of the members of the presidium who are present at the given meeting. The procurator informs the presidium of his opinion but does not take part in voting. The presidium's meeting is considered competent if attended by more than half of its members, but in any case by not less than three judges.

*The presiding judge of a regional court.* He has the right to chair sittings of court divisions. By law he also may lodge protests against judgements, decisions and riders passed by district (town) people's courts, against their judges' decisions on arraignment before the court and also against rulings adopted by court divisions by way of cassation.

Organisationally, the work of regional (territory) courts is guided by the Ministry of Justice of the respective Union Republic.

### 3. THE SUPREME COURT OF THE UNION REPUBLIC

Under the Constitutions of the Union Republics and the Fundamentals of Legislation on the Judicial System of the USSR (Art. 25) the Supreme Court is the highest judicial body of a republic.

*The election of the court.* The Supreme Court of a Union Republic is elected by the Supreme Soviet of that republic for a term of five years. This is done at its session by show of hands. The election of the Supreme Court by the supreme legislative organ of the republic is an important

guarantee of the independence of its judges. The numerical strength of the Supreme Court of a Union Republic is also established by the Supreme Soviet when it elects that court. In doing so it takes into consideration the volume of the work to be done, the need for rendering practical assistance to lower courts and other factors.

*The competence of the court.* Within its competence the Supreme Court performs the following acts:

a) it tries, as a court of first instance, civil and criminal cases over which it exercises its jurisdiction by law; it also has original jurisdiction over any case which is cognizable by a lower court if it is satisfied that the case merits its attention;

b) it hears, by way of cassation, appeals and protests against judgements, decisions and orders which have been passed by all other courts that operate on the territory of the Union Republic but which have not come into legal force;

c) it considers, by way of supervision, protests against judgements, decisions and orders passed by all courts of the republic unless they have been appealed against by way of cassation and have come into legal force;

d) it gives the courts guiding instructions on the application of Republican laws.

*The composition of the court.* The Supreme Court of a Union Republic consists of its chairman, vice-chairmen, members and people's assessors. It forms from among these persons a division for civil cases, a division for criminal cases, a plenary session of the court and a Presidium of the Court. In addition it has its own working apparatus which consists of people who are not judges. The structure of this apparatus is determined by the Presidium of the Supreme Soviet of each Union Republic. Structurally these apparatuses differ from each other, for the pattern of each Supreme Court and its apparatus is largely dependent on the volume of its work, this being determined to a great extent by the numerical strength of the Republic's population and by other factors. The Republican Supreme Courts have the following subsidiary departments: the statistics department, the appeals department, the department for the summing up of judicial practice, the department of systematisation and codification and also the court office, the economic and financial department, etc.

*Judicial divisions.* The respective divisions for criminal and civil cases are formed from among the court members. Every division is headed by its chairman, who is selected for this post by the Presidium of the Republican Supreme Soviet from among the court's vice-chairmen or members and is approved by the latter. A motion on a candidature to this post is made by the Chairman of the Supreme Court.

The chairman exercises general organisational guidance over his division, submits to the plenary session of the Supreme Court a report on the division's activity and organises within his division panels of justices for hearing cases (each panel consists of three members of the court). He is entitled to preside over any sitting of the division that hears a case.

To exercise original jurisdiction in civil and criminal cases is one of the chief duties discharged by the Supreme Court divisions. The current laws of each Union Republic state which cases may be tried by the Supreme Court divisions. But this question is regulated in various republics differently, for this depends on whether the Union Republic is divided into regions or not. In republics not divided into regions the most dangerous offences like premeditated murder, banditry, embezzlement on a large scale and others are dealt with by the Supreme Court divisions as courts of first instance. In those republics which are divided into regions, territories, and so on and, therefore, have the corresponding courts, the Supreme Court divisions hear only cases of particular complexity and those of especial public importance. The Supreme Court of a Union Republic may dispose of a case itself on the discretion of the court's chairman or the recommendation of an appropriate procurator.

The Republican Supreme Courts may withdraw any civil case from a district (town) people's court and also from a regional, territory or other court equal in status and dispose of it, provided the trial of this case is of especial public importance, or the case has acquired especial complexity. In addition, the Supreme Court of the USSR may propose that a Republican Supreme Court deal with a civil case itself acting as a court of first instance.

Another primary duty of Supreme Court divisions is to hear, by way of cassation, appeals and protests against the

judgements, decisions and riders passed by regional, territory or other courts equal in status and against the judgements, decisions and riders passed by district people's courts in those Union Republics which are not divided into regions.

Lastly, the Supreme Court divisions hear cases by way of supervision provided judgements, decisions and riders have not been appealed against within the terms of cassation and have come into legal force. Such judgements, decisions and riders may be protested against in the respective Supreme Court division by the Chairman of the Republican Supreme Court, the Republican procurator or their respective deputies.

*The court presidium.* Presidiums have been set up in the Supreme Courts of all Union Republics save Byelorussia. The presidium includes the court chairman and vice-chairmen and some court members whose number is determined by the Presidium of the Republican Supreme Soviet. The membership of the Supreme Court's Presidium is approved by the Presidium of the Republican Supreme Soviet on a motion proposed by the Supreme Court's chairman.

As a judicial body the Supreme Court Presidium hears only protests, made by way of supervision, against decisions, judgements and riders passed by the Republican Supreme Court divisions and also settles questions on the retrial of cases should new circumstances be discovered in respect of judgements handed down by the court divisions acting as courts of first instance.

Protests against judgements, decisions and riders passed by the court divisions may be lodged by way of supervision with a Republican Supreme Court presidium by the Chairman of the USSR Supreme Court, the Procurator-General and their respective deputies, the Chairman of the Union Republican Supreme Court, the Procurator of a Union Republic and their respective deputies.

Presidium decisions are taken by a simple majority vote. When the court presidium hears protests, its sitting must be attended by the Republican procurator who expresses his opinion on the merits of the protest under discussion.

*Supreme Court Plenary Session.* This is the highest organ of the Republican Supreme Court and consists of its chairman, vice-chairmen and all court members. It is convened

not less than once every two or three months. A session is quorate provided it is attended by at least two-thirds of its membership. It must also be attended by the Republican procurator, who participates in deliberations and expresses his opinion regarding the questions at issue. The Republican Minister of Justice is invited to take part in the session. Plenary session decisions are taken by a simple majority vote of those present.

The Supreme Court Plenary Session has extensive powers, its major function being to give guiding instructions on questions pertaining to the application of Republican laws in criminal and civil proceedings.

The Plenary Session may issue guiding explanations also on a motion proposed by the Republican Minister of Justice or procurator. In this case the Minister or the procurator forward to the Supreme Court their representations in which they set forth the reasons and grounds for their proposals, and request that the Plenary Session give the courts instructions or clarifications. After a discussion on the proposals submitted, the Plenary Session passes an appropriate decision by voting.

The Plenary Session of the Republican Supreme Court has the right to make representations to the Presidium of the Republican Supreme Soviet on questions to be settled legislatively and on matters concerning the interpretation of the laws in force.

*The court chairman.* The Republican Supreme Court is headed by its chairman who is elected by the Republican Supreme Soviet together with the entire bench. His terms of reference are wide: he chairs court division sittings (or selects any court member for this purpose), lodges in statutory manner protests against judgements, decisions, riders and rulings handed down by all courts and judges of the Republic, and he may suspend the execution of a judgement, decision or rider against which a protest has been made. He convenes the Court's Plenary Session, presides over its sittings and exercises organisational guidance over the court as a whole. In his absence the rights and duties of the court's chairman are exercised by his vice-chairman.

The law systematisation and codification departments of the Republican Supreme Courts take stock of current legislation and systematise judicial practice. All major court de-

cisions are entered on special card indexes, and every judge is thus enabled to receive a reference at any time and to discover what kinds of judgements, decisions and rulings have been made by higher courts on this score.

Of great importance is the proper organisation of the reception room of the Republican Supreme Court. In applying to a court of law every Soviet citizen has the right to get an attentive hearing and receive an exhaustive explanation on the question he is interested in. The work of the reception room is organised in such a way as to enable one of the court's judges to receive a resident of another town on the day he approaches the court and in case of necessity to enable the chairman of the Supreme Court or his deputies to receive him in two or three days.

Attaching great importance to the reception of citizens, the presidium of the Republican Supreme Court receives periodical information and reports on the work of its reception room and on the handling of appeals and complaints in the court departments and divisions.

The Republican Supreme Court has its own consultative scientific board. It is set up to strengthen the contacts between legal research institutes and to increase the participation of scientists in the discussion of questions that arise in judicial practice. This board consists of prominent jurists and experienced practitioners. Its membership is approved by the Plenary Session of the Republican Supreme Court.

Organisationally, the work of the Republican Supreme Courts is directed by the USSR Ministry of Justice.

## Chapter V

### THE SUPREME COURT OF THE USSR

#### 1. THE FORMATION, COMPOSITION AND STRUCTURE OF THE SUPREME COURT OF THE USSR

The formation, composition and structure of the Supreme Court of the USSR are regulated by the Statute of the Supreme Court of the USSR which became law on February 12, 1957.

Like all other courts of the Soviet Union the Supreme Court of the USSR is subject to election. Under Art.105 of the USSR Constitution the Supreme Court is elected by the Supreme Soviet of the USSR for a term of five years.

The Statute says: "The Supreme Court of the USSR consists of the Chairman of the Supreme Court of the USSR, Vice-Chairmen of the Supreme Court of the USSR, members of the Supreme Court of the USSR and people's assessors elected by the Supreme Soviet of the USSR, as well as Chairmen of the Supreme Courts of the Union Republics who are members of the Supreme Court of the USSR *ex officio*."

"The numerical strength of the Supreme Court of the USSR is established by the Supreme Soviet of the USSR when it elects the Supreme Court of the USSR."

In September 1972, the Supreme Court of the USSR was elected to include the chairman of the Supreme Court, two vice-chairmen, 16 members and 45 people's assessors. In addition, it includes 15 chairmen of the Supreme Courts of the Union Republics.

Art. 29 of the Fundamentals of Legislation on the Judicial System of the USSR and the Union and Autonomous Republics says that any citizen of the USSR who has the

right to vote and has attained the age of 25 years by election day may be elected judge or people's assessor. But taking into account the fact that the Supreme Court of the USSR is the highest judicial body of the country, persons who have a higher legal education and considerable experience of service in judicial bodies are usually nominated as candidate members of the court. Thus, in the 1972 election the Supreme Soviet of the USSR elected to the Supreme Court representatives of various nationalities who all possess higher legal education and a long record of service in the courts. The people's assessors elected in 1972 include 14 industrial workers, eight collective farmers and 14 intellectuals. One-third of the members are women who represent all 15 Union Republics.

The Chairmen of the Supreme Courts of the Union Republics who are *ex officio* members of the Supreme Court of the USSR enjoy equal rights with the other members of the court who are directly elected by the Supreme Soviet of the USSR. Their participation in the court's work is particularly important for the Supreme Court of the USSR and the courts of the Union Republics, for they help prepare, in a period indicated and confirmed by judicial practice, instructions for guidance on the application of legislation when hearing cases in courts, they create conditions for a proper and timely execution of the USSR Supreme Court decisions by the courts of the Union Republics and thereby promote the practical realisation of the uniform principles of socialist justice in all Union Republics. At the same time the courts of each republic themselves have their own representatives who can present and substantiate the views of the respective Supreme Court of a Union Republic on various matters. The Chairmen of the Republican Supreme Courts *participate* in all plenary sessions of the USSR Supreme Court, help to draft the instructions of the court's Plenary Sessions, discuss the reports submitted by the chairmen of the Supreme Court divisions and adjudicate criminal and civil cases heard by the court's Plenary Session by way of supervision and because of appeals made by the Chairman of the USSR Supreme Court or the Procurator-General of the USSR.

Regarding Art.34 of the Fundamentals of Legislation on the Judicial System of the USSR, the Supreme Court of

the USSR is accountable to the Supreme Soviet of the USSR and in the periods between its sessions to the Presidium of the Supreme Soviet of the USSR. The Statute also provides that the chairman, vice-chairmen and members of the Supreme Court of the USSR, as well as the people's assessors, may be released from their duties prior to the expiration of their term of office by the decision of the Supreme Soviet of the USSR and in the intervals between its sessions by the decision of the Presidium of the Supreme Soviet of the USSR, subject to subsequent confirmation by the Supreme Soviet of the USSR. The fact that the Supreme Court is accountable to the Supreme Soviet of the USSR does not make the chairman, vice-chairmen, members of the court and people's assessors dependent on the Supreme Soviet or its Presidium in the administration of justice in criminal or civil cases. Art.2 of the Statute says that in administering justice the members and people's assessors of the Supreme Court of the USSR are independent and subject only to law.

The structure of the USSR Supreme Court is defined by Art.6 of its Statute, which defines the form of the function of the Supreme Court thus: a) the Plenary Session of the Supreme Court; b) the division for civil cases; c) the division for criminal cases; d) the military division.

The formation of separate divisions enables the Supreme Court to use its members' specialisations and therefore ensures the most qualified handling of the most complicated and important criminal and civil cases. The inclusion of the military division reflects the implementation of the principle of the unity of the Soviet judiciary.

The Statute of the Supreme Court of the USSR defines the composition of the Plenary Session of the court, consisting of its chairman, vice-chairmen and members. The court's divisions are formed by the Plenary Session from among its members. Where necessary, the chairman of the court may rearrange the composition of the divisions, which are subject to subsequent confirmation by the Plenary Session.

Art.104 of the Constitution of the USSR defines the basic content of the activities of the Supreme Court in the following terms: "The Supreme Court of the USSR shall be the highest judicial organ. The Supreme Court of the USSR shall be charged with the supervision of the judicial acti-

vities of all the judicial bodies of the USSR and also of the judicial bodies of the Union Republics within the limits established by law." The Supreme Court has the right to initiate legislation.

Proceeding from these constitutional powers of the Supreme Court the Statute defines the competence of its Plenary Session and each of its divisions.

The Plenary Session of the Supreme Court of the USSR:

considers appeals by the Chairman of the Supreme Court of the USSR and the Procurator-General of the USSR against decisions, judgements and riders pronounced by the Supreme Court divisions and also against decisions taken by the Supreme Courts of the Union Republics if they contradict all-Union legislation or infringe the interests of other Union Republics;

considers materials which generalise judicial practice and statistics and gives the courts guiding instructions on the application of laws in legal proceedings;

makes representations to the Presidium of the Supreme Soviet of the USSR concerning questions to be settled legislatively, as well as questions relating to the interpretation of the laws of the USSR;

settles disputes arising between judicial bodies of the Union Republics;

hears reports made by the chairmen of the Supreme Court divisions on their activities.

The Plenary Session of the Supreme Court is convened by its Chairman not less than once in three months. It is considered competent if attended by not less than two-thirds of all of its members.

The participation of the Procurator-General of the USSR is required in the sittings of the Plenary Session. He participates in the discussion of all questions under consideration, presents his conclusions regarding the results of both the discussion and the appeals examined at the session. The sittings are also attended by the USSR Minister of Justice. Decisions are passed by a simple majority vote of the members of the Plenary Session in attendance at the given sitting. Neither the Procurator-General nor the Minister of Justice vote.

According to the Statute, as courts of first instance, the di-

visions try the most important civil and criminal cases over which they are given jurisdiction by law. In practice these divisions hear major cases which affect the interests of the Soviet Union as a whole or the interests of two or more Union Republics. The divisions, at the initiative of the Chairman of the Supreme Court of the USSR or on the recommendation of the Procurator-General of the USSR, dispose of such cases themselves.

As courts of first instance the divisions sit in session in criminal and civil cases in the presence of a presiding member of the Supreme Court and two people's assessors.

The decisions passed by the civil division and the judgements handed down by the criminal division or the military division are pronounced in the name of the Union of Soviet Socialist Republics, whereas the decisions and judgements passed by the Republican courts are pronounced in the name of the respective Union Republic.

The divisions for civil and criminal cases consider, in addition to original jurisdiction, in a supervisory capacity, the appeals of the Chairman of the Supreme Court of the USSR, of the Procurator-General of the USSR and their deputies, against decisions and judgements passed by the divisions of the Supreme Courts of the Union Republics, if such decisions and judgements contradict all-Union legislation or infringe the interests of other Union Republics.

The military division of the Supreme Court of the USSR considers, in a supervisory capacity, the appeals of the Chairman of the Supreme Court, the Procurator-General and their deputies and also of the chairman of the court's military division and the Chief Military Procurator against judgements, decisions and riders passed by military tribunals of the Arms and Services, military districts, army groups, fleets and armies. Moreover, it discharges the function of a court of cassation in respect of military tribunals.

The divisions hear appeals and protests by way of cassation and protests in a supervisory capacity in the presence of three members of the Supreme Court.

Under Art.15 of the Statute of the Supreme Court of the USSR the Chairman of the Supreme Court:

a) lodges with the Supreme Court protests against decisions, judgements and riders of the Supreme Court divisions, as well as protests against decisions, judgements and

rulings of the Supreme Courts of the Union Republics, against judgements and riders of the military tribunals of the Arms and Services, military districts, army groups, fleets and armies; he also lodges with the presidiums and plenary sessions of the Union Republican Supreme Courts protests against decisions, judgements and rulings of the Republican Supreme Courts if they contradict all-Union legislation or infringe upon the interests of other Union Republics;

b) presides over the plenary sessions of the Supreme Court and has the right to take upon himself the presidency of sittings of the Supreme Court divisions during the trial of any case;

c) exercises general organisational guidance of the work of the Supreme Court divisions;

d) ensures the preparation of materials concerning all questions to be considered by the plenary sessions of the Supreme Court;

e) directs the work of the Supreme Court apparatus.

These powers enjoyed by the Supreme Court Chairman demonstrate that the Statute defines sufficiently fully and precisely his terms of reference as those of a person who guides the work of the Supreme Court in addition to exercising certain procedural actions (lodging appeals by way of supervision, presiding at plenary sessions, etc.). In the absence of the Supreme Court Chairman his rights and duties are performed by the vice-chairman.

The chairmen of the Supreme Court divisions organise the work of the division members and consultants. A division member (judge) and consultants assigned to him study the appeals and applications of citizens and also study cases that are brought into the court by judicial supervision.

The Supreme Court of the USSR makes broad use of the various organisational methods for enlisting the aid of jurists and representatives of legal institutions for drafting the instructions to be issued by its Plenary Session or the representations to the Presidium of the Supreme Soviet of the USSR on questions to be settled through legislation and on questions involved in the interpretation of laws. The drafts of such documents are, as a rule, forwarded to higher law schools, legal scientific institutes, the Institute of State and Law of the USSR Academy of Sciences and to other research institutions for their assessment. Thus, the

Supreme Court invites scientists from the Institute of Pedagogy and the Institute of Psychology of the USSR Academy of Pedagogical Science to take part in discussions on questions concerning juvenile delinquency, and it invites lawyers and representatives of the All-Union Board for Copyright Protection of the Union of Soviet Writers and of the State Committee of the Council of Ministers of the USSR for the Printing and Publishing Industry and Book Sale and other institutions to draft instructions to be issued by the Plenary Session of the Supreme Court concerning the courts' hearing of disputes over copyright.

*The guiding instructions of the Supreme Court Plenary Session* on the application of legislation in the adjudication of cases by virtue of para (b), Art. 9 of the Statute of the Supreme Court of the USSR differ in their legal nature and content from the plenary session decisions in specified cases.

The difference in the legal nature of these instruments lies in the fact that a plenary session decision passed by way of judicial supervision in a specified case is binding only in a given case and only for the court which tried it. Such decisions are taken into account by the courts in the practical administration of justice, but they are not obligatory in the hearing of other cases, though they are similar by a *corpus delicti* or a civil relationship.

As for the instructions issued by the Plenary Session of the Supreme Court which contain explanations of the way legal rules are to be applied, they are relevant to all courts of the country. These instructions are obligatory not only for the adjudication of a particular criminal or civil case, but for all instances where an appropriate legal rule is applied. Since the Plenary Session gives explanations of legal rules by which all the courts have to be guided in the administration of justice, these explanations are also binding on the inquiry bodies and on all those who participate in trials.

Clarifications made by the Supreme Court Plenary Session do not lead to a new legal rule, as the session is only able to explain the mechanism of the operation of a law in force.

Proposals on the necessity of giving the courts appropriate instructions on applying legislation in judicial practice are submitted for the consideration of the Court's Plen-

ary Session either by the Chairman of the Supreme Court, by the Procurator-General of the USSR or by the Minister of Justice of the USSR.

The following circumstances may be grounds for this submission: judicial practice testifying to the erroneous application of legal norms; amendments to legislation, so that judicial practice needs the clarification of new questions that emerge in the application of this legislation; inquiries made by judges in connection with the various interpretation of legal rules, etc.

*The Supreme Court of the USSR has the right to initiate legislation.* Its Plenary Session is empowered to make representations to the Presidium of the Supreme Soviet of the USSR on questions to be settled legislatively and on questions involving the interpretation of the country's laws. This ensures a uniform approach to the execution by the courts of the laws in the Statute Books and thereby strengthens socialist legality in the state.

The legislation and judicial practice of the Supreme Court itself are systematised by its law systematisation department. This encompasses all laws passed both before 1917 and after Soviet power was established as a result of the October Revolution, and also includes the laws passed by all 15 Union Republics. Legislation is systematised according to a special card classifier which designates the branches into which Soviet law is divided, e.g., constitutional law, administrative law, international law, the judicial system of the USSR, criminal law, criminal procedure, etc. The corresponding sections of this classifier hold nearly 660 indexes containing normative material. This material is taken into account and systematised on the scale that is needed for its use by the Supreme Court in its adjudication of cases and in its supervision of the activities of the courts of the USSR and of the Union Republics.

Judicial practice is systematised by fixing the following data in card indexes: the instructions issued by the USSR Supreme Court plenary sessions on the application of legislation in the adjudication of cases; the instructions issued by the plenary sessions of the Union Republican Supreme Courts on the application of Republican legislation in the adjudication of criminal and civil cases; decisions taken by the Plenary Session and riders adopted by the Supreme

Court divisions in individual cases of fundamental importance.

The systematisation department has a special library containing manuals, monographs and other legal studies, foreign legal literature, reference books and other literature that can be used in judicial practice.

*Military judges* who serve on the panel of a military division are members of the Supreme Court and participate on an equal footing in the court's Plenary Session. The military division is headed by its chairman who provides general guidance of the division. The division's chairman is subordinate to the chairman of the Supreme Court. The division itself is accountable to the Plenary Session of the Supreme Court and its chairman gives periodical accounts of its work to the Plenary Session.

Under the law the military division has original jurisdiction in cases of exceptional importance and in cases concerning servicemen with the military rank of a general (admiral) or who hold the position of commander of a formation or who hold a position above that. As distinct from the criminal and civil divisions, the military division acts as a court of cassation. This means that it hears, within the terms of the statute, appeals and protests against judgements, decisions and riders, passed by the military tribunals of military districts, fleets, and armies.

Lastly the military division discharges the function of judicial supervision whereby it hears protests lodged in a supervisory capacity by the Chairman of the Supreme Court of the USSR, the Procurator-General and other persons authorised for this purpose against judgements, decisions and riders handed down by military tribunals. In their turn all the military division's decisions may be protested in a supervisory capacity by the Chairman of the Supreme Court of the USSR and by the Procurator-General with the Plenary Session of the Supreme Court of the USSR, which in this case adopts a final decision in any case considered by the military division.

It is most important to stress that the military tribunals base their activity on the same principles that are applied in regular courts: they abide by the legislation of the USSR, in particular by the Fundamentals of Criminal or Criminal Procedure Legislation of the USSR, the Law on the Re-

sponsibility for Crimes Against the State and by other all-Union legislative acts by which all regular courts are guided.

Under Art.4 of the Fundamentals of Criminal Legislation, the military tribunals apply the Criminal Code of that Union Republic where a crime has been committed, and the Criminal Procedure Code of that Republic where the case is tried. Where there is a need to satisfy the civil action in the trial of a criminal case, the military tribunal is guided by the Civil Code of that Union Republic in which the crime has been committed.

## 2. THE CONSULTATIVE SCIENTIFIC BOARD

The idea of setting up a consultative scientific board under the Supreme Court of the USSR came into being in 1962. Originally it was planned that it should act on a voluntary basis, with the participation of eminent lawyers. The main task of this body was supposed to be the elaboration of theoretical questions which emanate from the legal problems to be discussed by the Supreme Court of the USSR.

In December 1962, the Supreme Court Plenary Session adopted a decision whereby the Consultative Scientific Board was organised to improve the quality of the preparation of materials mostly from judicial practice to be discussed at the court's Plenary Session.

The decision also stated that the Board's activity must promote closer contacts between the courts and the legal scientific institutions. At that time the Supreme Court Chairman approved the membership of the Board.

Today the Board consists of 30 members, prominent jurists playing the leading role. Five of them have the title of Merited Worker of Science, two of them are Corresponding Members of the USSR Academy of Sciences and 21 hold the degree of Doctor of Law.

Throughout its existence the Board has made wide use of a variety of forms and methods of work. In addition to its regular plenary sittings at which various legal theoretical problems were discussed, it held scientific-cum-practical conferences attended by a large number of scientific workers from many cities of the Soviet Union and also by judges from various republics. The Board members also participate

in the diffusion of judicial practice, make reports to judges from Union Republics, prepare consultations on the most complicated theoretical problems, etc.

Having summed up and highly appraised the Board's work for several years, the Supreme Court Plenary Session elaborated and approved the Statute of the Consultative Scientific Board. The draft statute was submitted for discussion at the Plenary Session of the Supreme Court and was adopted by it in June 1967. The Statute formulates the tasks and purposes of the Board, defines the basic forms, methods and procedures of its work and also defines the rights of the Board's members.

According to the Statute, the Consultative Scientific Board elaborates scientifically substantiated recommendations on the fundamental, complex problems of judicial practice. Its activity is used to add to the strengthening of socialist legality in the administration of justice.

In view of the great value attached to the Board's practical activity its membership is endorsed by the Supreme Court Plenary Session following a motion by the Chairman of the Supreme Court. According to the Statute, the Board studies questions arising in judicial practice, makes appropriate recommendations and gives its conclusions on the drafts of instructions issued by the Supreme Court Plenary Session; on the materials that sum up judicial practice and statistics; on the draft representations to be made by the Supreme Court to the Presidium of the Supreme Soviet of the USSR; on questions to be settled legislatively; on the draft instructions, methodological letters and other documents elaborated by the Supreme Court; and on legal disputes that arise in judicial practice. The Board may also discuss theoretical studies and practical manuals on judicial practice, criminal and civil procedure and criminal and civil law.

In a description of the approximate range of the Board's activities, it must be emphasised that all the Board's recommendations are of a consultative nature, that they deal with the general issues of law and under no circumstances should affect or predetermine specific decisions in criminal and civil cases.

Taking into account the fact that Union Republican Supreme Courts also have their own consultative scientific

boards, the Statute states that the Consultative Scientific Board under the USSR Supreme Court must give methodological assistance to the Republican boards in the organisation of their work.

The principles on which the Board's activity is organised are very simple. The Supreme Court Chairman appoints the chairman and the scientific secretary of the Board, his decision being subject to approval by the Court's Plenary Session. The draft plan of the Board's work, prepared by an initiative group, is endorsed at the plenary sitting of the Board. Small working groups may be set up to elaborate individual complex problems in different branches of law. They prepare their proposals and submit them for the consideration of the plenary sitting of the Board.

The Board chairman guides the sittings, defines the range of questions to be discussed by the Board and takes measures for the realisation of its recommendations. The learned secretary makes preparations for the Board's sittings and prepares relevant documents for it.

To enable the Board's members to become acquainted with current judicial practice they join groups of judicial workers who travel across the country to study legal problems that arise in the work of Union Republics' courts; the Board's members take an active part in raising the judges' qualifications by lecturing and reporting to them. The members are also entitled to attend the plenary sessions of the Supreme Court of the USSR with the sanction of its Chairman and to participate in the discussion of general questions of fundamental importance to judicial practice.

As a rule, the Board's sittings are held once in three months. Every member may speak at these sittings and defend his point of view. An absent member may comment in writing. In order to elicit the opinion of a majority of members the Chairman may put certain questions to the vote. After the debate on a particular question the Board adopts a reasoned recommendation on the motion which is brought to the notice of the members of the Supreme Court Plenary Session.

In speaking about the practical work of the Board it is necessary to point out that nearly all draft instructions issued by the Supreme Court Plenary Session have been discussed by the Board in advance.

## *Chapter VI*

### **THE TRIAL**

#### **1. PRELIMINARIES TO THE HEARING OF A CRIMINAL CASE**

The procedure for hearing criminal and civil cases in Soviet courts is regulated by the relevant codes for criminal and civil procedure of the Union Republics. In each Republic this procedure has its own specific features associated with the national and other conditions in each republic. But since all-Union laws underlie all Republican codes, these procedural divergencies are not so substantial, this making it possible to provide a general description of the trial.

First, both civil and criminal cases that fall within original jurisdiction are adjudicated in the same people's courts and by the same judges. These cases are only tried by special civil and criminal divisions when they act as courts of cassation or supervision.

Criminal cases are tried under a different procedure from civil disputes and, therefore, it is advisable to deal with these procedures separately. One must bear in mind, however, that both criminal and civil procedures are applied according to uniform principles, as stated above.

The trial itself is preceded by the prosecution of the accused before the court. At this stage the judge considers questions which when settled must remove all circumstances which may hinder the examination of a case on its merits and must insure a complete and fair investigation of evidence in the court session. After he is presented with a criminal case, the judge studies it carefully and ascertains in the first place whether the given court is competent to judge it or not, whether the guilty person's actions contain

elements of a crime or not, whether there are circumstances that involve the discontinuance or suspension of cases, whether the indictment was drawn up in strict conformity with the law and whether measures were taken to compensate the damage inflicted by a crime.

Having studied the case the judge informs all the interested persons about it and takes other organisational measures connected with its preparation for a hearing. In particular, the judge must consider petitions or applications filed by citizens or organisations relevant to the case in hand. In doing this the judge has the right to call in those persons who filed the appropriate petitions. He promptly informs them about the results of handling these petitions. If their petitions are declined this does not prevent the persons concerned from filing them again but at the trial stage.

Where there are sufficient grounds for the case to be adjudicated in court the judge, without prejudice to the issue of the guilt or innocence of the accused, orders the prosecution of this person. His decision means that in his opinion there are no legal or administrative obstacles to the hearing of this case on its merits in a court session.

Should the judge disagree with the conclusions set out in the indictment or where it is necessary to change the preventive measures that have been adopted for the accused at a preliminary investigation, the case is examined at an administrative sitting of the court, attended as it is by the judge, two people's assessors and the procurator. The presence of the procurator is mandatory because he has approved the indictment on whose validity the judge makes his decision.

The examination of a case at an administrative sitting of the court begins with the judge's report in which he expresses any doubts or disagreements which he has with the conclusions of the indictment or he submits his proposal to alter the preventive measure for discussion, following which the members of the bench hear the procurator's arguments. Where necessary, the court may hear persons who have filed their petitions concerning the examination of this case. The law prohibits witnesses or experts being called in to the court's administrative sitting.

As a result of examining the case according to this procedure, the court may adopt a decision on its further in-

vestigation, may dismiss it or dispatch it to another court that may take cognizance of it. If, however, the judge acknowledges that the collected evidence enables the court to consider the case on its merits, the bench at the administrative sitting adopts a ruling on the prosecution of the accused before the court.

As noted earlier, this ruling in no way predetermines the question of whether the crime has been proved or not or whether the accused is found guilty or not. It chiefly concerns procedural and organisational matters. At this stage, however, the court may drop certain points from the indictment and apply a law on a less grave crime so that the new charge should be similar in circumstances to the charge formulated in the indictment.

Such questions as the participation in the hearing of a procurator, the admission of a voluntary prosecutor and voluntary defence counsel, the calling of persons to be questioned in court, the appointment of the time and place of the trial are decided at this stage. The judges must enable the defendant, his defence counsel, the victim, the plaintiff and the respondent and their representatives to become acquainted with all the materials in the case (it should be noted that the advocate and the defendant himself have already had occasion to familiarise themselves with all the materials in the case at the stage of preliminary investigation).

Before the trial the court must provide the defendant with a copy of the indictment. If the judge or the court which met in an administrative sitting introduced changes in the indictment, the defendant is also given a copy of the judge's decision or of the court's ruling on this score. The hearing of the case in court cannot begin less than three days after the defendant has received these documents.

## 2. THE COURT IN SESSION IN CRIMINAL CASES

By law criminal proceedings in court may be initiated not later than 14 days after the decision on prosecution has been taken. This rule is an important guarantee for a prompt and speedy examination of cases in court.

On the appointed day and at the fixed hour the presid-

ing judge opens the court's session and announces which particular case is to be adjudicated first. When the judges enter the courtroom all those present rise. While addressing the court and testifying before it the participants in the trial likewise rise. All those present in the courtroom implicitly submit to the orders of the presiding judge. Persons under 16 years of age are not allowed to be present in the courtroom unless summoned to the court.

As soon as the court establishes the fact that the witnesses are present it explains to them their rights and duties and they are warned of their responsibility if they give deliberately false testimony. Witnesses who have come before questioning time are taken out of the court and are admitted to it by rota. This rule is designed to avoid pressure being brought on other witnesses.

Then the judge announces the composition of the bench and ascertains whether the participants in the trial challenge the court, the procurator, experts, the interpreter and the secretary of the court session on the grounds that they may be directly or indirectly concerned in this case. The court also explains in detail the rights and duties enjoyed by the defendant, plaintiff, respondent and experts. After this the judge inquires whether those participating in the trial request that new witnesses and experts be summoned to study fresh evidence and other documents. Upon hearing such requests and opinions held by other trial participants, the court considers whether to satisfy or reject these requests and states the reasons. The court's refusal to meet a request does not deprive the trial participants of the right to file petitions in the subsequent stages of the trial. It should be borne in mind that the court may, at its own initiative, summon any fresh witnesses, appoint new experts and demand further documents, etc. All this completes the preliminary stage of the court session and the court proceeds to the next stage, the judicial examination of a case.

This stage begins with the reading of the indictment, this being followed by the hearing of opinions held by the trial participants regarding the sequence of questioning the defendants, witnesses, experts and the procedure of studying other evidence. Thereupon the court proceeds to the discussion in sequence of every piece of evidence and circumstance in the case. This study is conducted with due obser-

vance of the rules that guarantee a comprehensive and objective examination of available facts and their proper appraisal.

We shall dwell here only on the main provisions by which the Soviet court is guided in its examination of evidence at its sittings. The law makes it incumbent on the court of first instance to hear oral explanations of defendants, victims, witnesses and other persons and also to closely inspect and verify other evidence. Only where it is impossible to subpoena witnesses or in other special cases may the court restrict itself to the reading of minutes or other documents collected by the investigating officers or submitted by the trial participants.

The trial in every case is conducted without interruption, i.e., the same judges are not allowed to examine other cases until the hearing of the particular case is over. This ensures that the requirement for direct, verbal and uninterrupted judicial examination, which is a major condition for a fair trial, is fulfilled. It should be noted in this context that the trial *in absentio* is permitted only in those exceptional cases for which provision is made by law, unless this prevents the court from ascertaining the truth in a case (for instance, the defendant is beyond the USSR frontiers and avoids his appearance in court). If the defendant fails to appear in court its sitting must be postponed and the bench is empowered to summon him by compulsion or to change the preventive measure taken in respect of him, should he avoid appearing in court without good reason.

Every case must be tried with the participation of the same members of the court concerned. Should a judge have to quit the bench, he is replaced by another judge and the judicial examination is repeated, except for the cases where a special reserve judge participated in the trial and was present throughout the court's session.

The session is directed by the presiding judge who is obligated to take the appropriate measures to ensure a comprehensive and objective investigation of the circumstances in the case at hand. He must seek to ascertain the truth, to eliminate from the judicial examination all irrelevant facts and to contribute in every way to the greater educational impact of the trial on its participants and those present in the courtroom.

As stated before, the procurator takes part in the court's session by presenting the case for the prosecution on behalf of the state. He participates in the examination of evidence, gives his opinion on questions arising in the course of the trial, acquaints the court with his opinion about the defendant's guilt or otherwise and advises the judges on the application of criminal law and a suitable sentence. If in the course of the trial the procurator comes to the conclusion that the defendant is not guilty it is his duty to withdraw the indictment and explain his motives to the court. But the procurator's refusal to support the prosecution does not relieve the court of its duty of continuing the examination of the case and settle the question of the defendant's guilt, or otherwise, on general grounds. Should the procurator disagree with any decision of the court, he may and must lodge his protest against it with a higher court.

An active part in the trial is played by the advocate (defence counsel). He takes part in the investigation of evidence, tells the court his opinion of the questions that arise during the trial, files petitions to the court, gives his views on the substance of the indictment, etc. In hearings defence counsel enjoys the same rights as the other trial participants, including the procurator.

Where the court has admitted voluntary defending and prosecuting counsel to the trial of a criminal case, they are also entitled to participate in the investigation of evidence, to express their opinion on whether the indictment is proved or not, on the degree of danger the crime presents to society and to set forth their considerations on the application or non-application of punishment.

It must be specially stressed that the court tries cases only as far as they concern the defendants and only in accordance with the indictment on which they have been prosecuted. Alterations to the indictment by the court are permitted only in a case where they do not worsen the defendant's position and do not prejudice his right to defence. If alterations to the indictment aggravate the defendant's position the court must send the case back for a fresh preliminary investigation.

The entire run of court proceedings is fixed in detail in the minutes compiled by a secretary of the court's sitting, the minutes being signed by the presiding judge and the

secretary. The participants in the trial have the right to familiarise themselves with these minutes and make comments regarding entries in them.

After all the pieces of evidence are examined in court the presiding judge asks all the participants in the trial whether they wish to supplement the judicial examination. On hearing their petitions the court settles questions on their merits and this is followed by the statement of the presiding judge that the judicial examination is over.

Now the court proceeds to the hearing of the case—the speeches of the public prosecutor (procurator) and also of the plaintiff, respondent and their representatives, defence counsel (advocate) and the defendant, if the advocate does not participate in the trial. Where the voluntary defending and prosecuting counsel take part in court proceedings they have an opportunity of expressing their point of view.

The court cannot limit the time of speeches, but the presiding judge has the right to stop the persons who participate in the debate if they deal with irrelevant matters.

After the hearing of the argument the defendant is given the last plea. The court cannot limit the time of his statement and during his plea nobody can put questions to him. The court then immediately retires to a conference-room to consider its judgement.<sup>1</sup> No one except the judges directly concerned in the case may enter the chamber in which they confer. The judges cannot divulge the nature of the discussion in the conference-room. The secrecy of their conference is an important guarantee of the judges' independence.

In reaching their verdict and passing sentence the judges settle the following questions: Did the action of which the defendant is accused take place? Does his action constitute an offence? Is the defendant liable to punishment? If so, what punishment? Under what criminal law? What decision should be taken regarding any civil action? What is to be done with exhibits?, and so on and so forth.

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<sup>1</sup> In Soviet criminal proceedings there is no jury in the Anglo-Saxon sense of the term and, therefore, there is no separate verdict. The judgement of the court includes the verdict and reasons for it, and the sentence passed by a judge and two people's assessors. In a civil case the court findings are called decisions.—*Ed.*

Each question must be raised in such a form as to warrant the reply either in the affirmative or negative. All questions are settled by a simple majority vote, the presiding judge casting his vote last. If the presiding judge or a people's assessor disagrees with some section of the judgement he may express his particular opinion in writing and this document is attached to the case concerned. This particular opinion is not made public in the courtroom, but it is examined and assessed by a higher court when it sits in cassation or supervision proceedings. After the judgement is signed by all judges the court returns to the courtroom and the presiding judge pronounces the judgement.

A judgement with the verdict of not guilty is brought into execution immediately. If the defendant is kept in custody he is being released in the courtroom.

In addition to the judgement the court, given certain grounds, adopts a special rider in which it draws the attention of officials or other citizens to the causes and conditions, which, in the opinion of the court, have contributed to the crime concerned being committed. In this case the court proposes that adequate measures should be taken to remove these causes. The court has the right and duty to propose to the relevant body that it should consider the question of the responsibility of persons who by their behaviour helped to create the conditions for this crime to be committed.

### 3. THE COURT IN SESSION IN CIVIL CASES

The court of law commences the trial of civil cases on the following grounds: a) upon declaration by a citizen applying for protection of his right or lawful interest; b) upon declaration by the procurator who protects the interests of the state, of enterprises, institutions or individual citizens; c) upon declaration by instruments of state administration, trade unions, enterprises, collective farms and other co-operative and mass organisations applying to the court for protection of their rights and interests and of those of other persons.

In the Soviet Union there are no special courts to adjudicate civil cases; therefore, they are tried by the same courts that hear criminal cases.

Like criminal cases civil cases are tried by courts of first instance by a panel composed of a judge and two people's assessors, the latter enjoying equal rights with the presiding judge in deciding all matters that arise in hearing the case and making a decision. Cases on appeal for cassation and cases reviewed by way of judicial supervision are heard by a bench composed of three judges. All questions arising during the trial of a case are settled by the judges with a simple majority vote.

The judge or a people's assessor may not participate in the trial of a case if they are relatives to the parties in the dispute, or acted as witnesses in its examination, or are directly or indirectly interested in the outcome of the case.

The courts have civil jurisdiction over the following cases: a) disputes arising out of civil, family, labour and collective-farm legal relations where at least one of the parties to the dispute is a citizen or a collective-farm worker (an association of peasants on co-operative lines); b) disputes arising from contracts of freight carriage in international freight air traffic between clients and transport organisations; c) cases arising out of administrative legal relations (complaints concerning acts of administrative organisations, e.g., imposition of fines, incorrect entries in electoral rolls, complaints on the collection of taxes and duties); d) actions subject to the rules for special proceedings (declaring a citizen absent or dead, declaring property as ownerless, complaints against actions by notaries public, statements on the restitution of rights recorded in lost documents, etc.).

It must be added that the courts also hear on general grounds civil cases in which aliens or foreign enterprises or organisations participate. In some cases the law permits the settlement of disputes in arbitral boards, e.g., the Maritime Arbitration Commission of the USSR Chamber of Commerce and Industry and the Foreign Trade Arbitration Commission (see pp. 92-94 of this book). It follows from the foregoing that individual citizens and also institutions, enterprises and organisations which enjoy the rights of juridical persons may be parties to civil proceedings, that is, plaintiffs and respondents, and that the parties enjoy equal procedural rights.

The participation of the procurator is of great importance for the adjudication of civil cases as he may sue if

this is warranted by the protection of state and social interests or if the procurator deems it necessary to safeguard the individual's interests. The procurator who participates in a case has the right to study all the material recorded on the case, to submit evidence, file petitions, make conclusions on questions arising during the trial in court and perform other procedural acts provided by law.

Each party may authorise its representative to plead in court. It may be represented, in particular, by an advocate. In this case his powers are confirmed by letters of representation issued by a local legal aid bureau. The rights and interests of minors and also of citizens who are unable to protect their own rights due to illness or for any other reason may be represented by their parents or guardians who are called "lawful representatives".

Under the statutory rules the court may make it incumbent on a plaintiff and a respondent to pay court costs (they consist of a state tax and the costs incurred by the proceedings). The plaintiffs are excused from payment of court costs for the benefit of the state in certain cases: in suits for maintenance, in suits issuing from copyright, in suits for recovery of wages, etc. The court or judge may, depending on the economic position of the parties to a dispute, postpone the payment of court costs or permit the payment in instalments.

The judge, having scrutinised the complaint received, may himself refuse to entertain it if the cause is not subject to trial by courts, and provided another final court decision has been made in a dispute between the same parties over the same case; also, provided the complaint has been filed on behalf of the plaintiff by a person not empowered to plead the case. If the judge refuses to recognise the complaint in question he enters a reasoned ruling to that effect. This refusal to take heed of the complaint may be appealed against in a higher court.

At the participants' request or on his own initiative the judge may and must take steps to secure collection of the claim if the court satisfies it. With this aim in view he may, prior to the trial of a case, arrest the respondent's property or prohibit the sale or transfer by him of articles and other property. At the same time the judge may take into consideration a counter-claim, provided there is a connection

between the counter-claim and the original claim and joint examination of them will expedite the proper handling of the dispute in question.

To secure the expeditious and proper adjudication of a case the judge who accepts the complaint may put questions to the plaintiff regarding his claim and propose that additional evidence should be submitted by him. Where necessary, the judge summons the respondent and ascertains what objections he has to the civil action and what evidence to this effect he has at his disposal. At this particular stage he settles the question of inviting the procurator and duly authorised representatives of mass organisations to take part in court proceedings. Thereupon he orders that witnesses be subpoenaed and that in urgent cases exhibits and documents be inspected in court. Upon recognising that the case has been prepared sufficiently well, the judge issues a ruling on its trial in court.

The examination of a case on its merits begins with the judge's report in which he sets forth the substance of the case and materials submitted by the parties. Then he asks the respondent whether he recognises the merits of the plaintiff's claim or whether the parties want to make a compromise. If the parties agree to strike a compromise the court passes a ruling to this effect and simultaneously terminates proceedings. If the parties fail to reach a compromise the court proceeds to the hearing of the case by the plaintiff and respondent and by other participants in the trial.

Every witness is questioned separately. Those witnesses who have not given their testimony cannot be present in the courtroom, while those who have been questioned remain in the courtroom till the trial is over unless the court allows them to retire earlier. Before giving testimony the witnesses are warned of their responsibility if they refuse to testify and if they submit deliberately false evidence. Thus, the witnesses are duty bound under the Soviet law to give testimony if they know something about the case in hand.

While giving their testimony the witnesses may make use of their records and documents. Personal correspondence may be made public in court only with the consent of all the correspondents. Otherwise the correspondence is heard and investigated *in camera*.

Exhibits and written documents which cannot be submitted to the court directly are inspected by the entire bench on the spot. Expert findings are heard in a court session. Moreover, experts may be questioned by all participants in the trial.

All pieces of evidence having been examined the presiding judge finds out whether any participant in the trial wants to supplement the evidence in the case. Having examined such motions the court declares that the judicial investigation is over and proceeds to hearing the pleas of the parties and the procurator's concluding speech.

The pleas consist of the statements by the plaintiff, the respondent and their representatives and also by the duly authorised representatives from non-government organisations and administrative bodies if they represent the interests of state organisations and also by other persons. After this the participants in the trial make their speeches, and the procurator participating in the case sets forth his opinion on the merits of the case in hand.

Judgement is made in a conference-room and then is pronounced in the courtroom, the presiding judge explaining the substance of the decision, the procedure and the term of appeal. The court judgement takes legal effect when the period for bringing an appeal for cassation (usually ten days) has expired. Where a cassation appeal has been brought, or a cassation protest has been filed by the procurator, the judgement becomes final when it has been examined by a higher court.

It should be noted here that as soon as the judgement comes into legal force, the court that has passed it has the right to postpone the execution of its decision or to permit execution in instalments and also to modify the methods and procedures of its execution.

## *Chapter VII*

### **CRIMINAL PUNISHMENT**

#### **1. PURPOSES, TASKS AND TYPES OF PUNISHMENT**

Criminal punishment of persons who have committed crimes is one of the forms of state compulsion in the campaign against crime. Any criminal punishment is always associated with the restriction of the rights and interests of convicted persons. Those who are convicted to deprivation of liberty are restricted in freedom of movement, communication with others, etc., and those who are fined or convicted to corrective labour suffer from certain material privations. This aspect of punishment must be regarded as a retribution for the offence committed.

However, punishment in Soviet criminal law cannot be retribution alone, it serves its purpose only where it also contributes to the reformation of the offender, re-educating him to respect laws, to have a conscientious attitude to labour and to the rules of the socialist community.

Proceeding from this provision, Art. 20 of the Fundamentals of Criminal Legislation of the USSR and the Union Republics states: "Punishment is not merely retribution for the offence. It also aims at the rehabilitation and re-education of the offender in the spirit of an honest attitude to labour, strict adherence to the law and respect for the rules of socialist community life. It also aims at the prevention of new offences both on the part of those convicted and on the part of others. Punishment does not aim at inflicting physical suffering or lowering human dignity." This definition applies to all types of penalties, provided for by Soviet criminal legislation. Corrective labour institutions and other

bodies which execute sentences as well as the courts which mete out punishment are guided by this principle.

It is equally important to stress that punishment is more than retribution for the crime committed, but it is of immense importance for the prevention of crimes, above all of similar crimes, which it serves to prevent both on the part of the convicted persons and of other unstable members of society. It is pertinent to refer in this context to the apt tenet of Lenin's, who said that "the preventive significance of punishment is not in its severity, but in its inevitableness".<sup>1</sup>

The more exact and just the punishment for the acts committed the greater will be the educational value of a court sentence. A penalty must be imposed first of all according to the gravity of the crime committed, the personality of the offender, the nature of his guilt and other circumstances relevant to the case in hand, in other words, an individually considered sanction is meted out to every person brought before the court.

Punishment is meted out only to persons who have committed socially dangerous acts either wilfully or through negligence and acts which are strictly defined and recognised by the law as a crime. Criminal punishment is imposed only by sentence of a court of law.

The Fundamentals of Criminal Legislation of the USSR and the Union Republics (Art. 21) make provision for the following *basic penalties*: deprivation of liberty, exile, restricted residence, corrective labour without imprisonment, disqualification from a specified office or activity, fines and public censure. In addition to these basic penalties, the following *supplementary penalties* may be imposed: confiscation of property, deprivation of military or other special rank. Posting to a disciplinary battalion may also be applied in the case of military personnel.

The Fundamentals of Criminal Legislation allow the Union Republics to supplement this list of penalties. In this connection the Criminal Code of the RSFSR provides for the dismissal from a post and the imposition of restitution as coercive sanctions, while the Criminal Codes of the Ukrainian, Uzbek and Kazakh republics provide for the deprivation of parental rights.

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<sup>1</sup> V. I. Lenin, *Collected Works*, Vol. 4, p. 398.

By the *basic penalties* one must have in mind those which are imposed only as the main and independent sanctions; they cannot be added to other types of punishment for the same crime. The *supplementary penalties*, such as confiscation of property, deprivation of military or other special rank, may be imposed only in addition to the basic penalty for the same offence.

Some penalties, for instance, exile, restricted residence, fines, imposition of restitution, dismissal, disqualification from a specified office or activity may be applied both as the main and supplementary sanctions.

Capital punishment—a sentence of death by shooting—is permitted only as an exceptional measure until such time as it will be completely abolished by law. It is applicable only in cases laid down by law—in cases of especially grave crimes. The list of such cases is very small and strictly defined by law. The death sentence may not be passed on persons under the age of 18 years at the time the crime is committed or on women who are pregnant at the time the crime is committed or at the time a sentence is passed. Neither may a sentence of death be passed on women who are pregnant at the time the sentence is brought into execution.

*Deprivation of liberty* may be imposed for a period not exceeding ten years and for a period not exceeding fifteen years for exceptionally grave crimes and for especially dangerous habitual criminals. The list of the latter crimes is very small and is strictly defined by law. The period of deprivation of liberty to which a person may be sentenced if he has not reached the age of 18 years at the time the crime is committed must not exceed ten years.

Under Soviet criminal law deprivation of liberty is one of the most grave penalties. Therefore, the period of imprisonment is determined in each particular instance strictly within the limits indicated in each article of a criminal code and for each *corpus delicti*.

One should bear in mind that remand in custody is included by the court in the term of punishment if the person concerned is sentenced to imprisonment. Where the person concerned is sentenced to corrective labour, one day on remand is counted as three days of corrective labour.

As a rule, most articles in the Criminal Codes of the Union Republics indicate for each *corpus delicti* only the maximum of deprivation of liberty, but some articles also provide for the minimum term of imprisonment. The court may not exceed the sanction stipulated by each article, but taking into account the exceptional circumstances in the case concerned and the personality of the guilty it may impose a penalty below the minimum provided for by the law for the crime committed or apply another, milder punishment. The court may reduce the penalty but it must give a reason for its decision to this effect.

While sentencing a person to a term of imprisonment the court at the same time indicates in what colony the convict must serve his sentence. There are several types of reformatories with different regimes. Therefore, it is exceedingly important for the court to impose a just term of imprisonment and also to choose the type of colony which would in the best way contribute to his rehabilitation.

Under the law of 1970, the court, which sentences a convicted person up to 3 years of imprisonment, may settle in each instance the question of whether the person should be sent to a place of confinement or whether for purposes of his rehabilitation his sentence should be suspended, this person assuming the obligation to work in a factory determined by the respective organ of the Ministry of the Interior.

*Exile* is the removal of a convicted person from his place of residence and his obligatory settlement in a specified area. *Restricted residence* is the removal of a convicted person from his place of residence with a prohibition against living in certain places. These penalties may be imposed for periods up to five years. Under the law exile and restricted residence may not be applied to persons who have not reached the age of 18 at the time the crime is committed, to pregnant women and women with dependent children under the age of eight years and disabled persons.

*Corrective labour without imprisonment* is one of the most widely applied penalties imposed by a court of law in those cases where convicted persons may be reformed and re-educated without deprivation of liberty. This penalty is applicable for terms from one month to one year and the sentence is served either at the convicted person's place of work or at some other place in the vicinity of his residence,

according to the instruction of the appropriate body. The convict is transferred to another place if he has no permanent employment or if the court deems it necessary to increase the punitive impact of corrective labour. Deductions from the earnings of a person sentenced to corrective labour are made for the benefit of the state to an amount from five to 20 per cent of his earnings.

As far as disabled persons are concerned, the court may substitute a fine or public censure for corrective labour. Provided they show a conscientious attitude to work and exemplary conduct the court may, at the request of mass organisations, include the period of corrective labour in their general record of service after they have served the term of corrective labour in full. Where the convicted person evades serving his term of corrective labour at his permanent place of work, the court may replace it by corrective labour elsewhere, but this time in accordance with the instruction issued by the organisation responsible for the enforcement of this penalty. Where the convicted person evades performing his corrective labour in this place, too, the court may replace this penalty by deprivation of liberty, every three days of non-served corrective labour being counted as one day of imprisonment.

*Disqualification from a specified office or activity* may be for a term of from one to five years. This penalty may be inflicted when the crime committed is connected with the convicted person's occupation or office held. In practice the courts use this penalty where, for instance, a person has been guilty of systematic breaches of trading rules or of deception of buyers. In this case the court may interdict that he continue to work in trading establishments. If a doctor is guilty of performing abortions under insanitary conditions he may be prohibited from engaging in his medical occupation.

*Fine* is a monetary penalty inflicted by the court. The amount of a fine is determined by the gravity of the crime committed taking into account the economic position of the guilty person. Therefore, the fine must not be beyond the capacity of a convicted person to pay and in any case its payment must not entail serious material or other consequences.

*Dismissal from office* may be imposed by the court in

those cases where a person has committed a crime by virtue of the office he held, and the court considers it either impossible or ill-advised to allow him to continue to occupy that office. Dismissal from office should be differentiated from another penalty—deprivation of the right to occupy a certain post. Dismissal from office does not deprive the convicted person of the right to be employed at some other institution or enterprise at the same job, whereas disqualification from office does not allow this.

*Restitution* may be imposed in a case where the court acknowledges that the guilty person himself is able to remove the consequences of his wrongful actions. This may take the form of compensation for material damage inflicted or public apology to the victim, etc. Where the convicted person fails to discharge his duty of restitution within the period fixed by the court, the latter may substitute corrective labour, a fine or public censure for the previous penalty.

*Public censure* is censure of the guilty person by the court, which, where deemed necessary, is brought to the notice of the general public through the press or by other means. This penalty, as distinct from similar measures of influence brought to bear upon people by mass organisations, represents special punishment which is meted out in the name of a state organisation, e.g., the court of law, and which means conviction for the person concerned. It should be emphasised that public censure must be pronounced by the court in public, through its judgement, in the courtroom. Where necessary, this judgement is brought to the notice of the public through the press, by radio and other means.

*Confiscation of property* is defined as the compulsory deprivation of part or of all the property constituting the personal belongings of the convicted person, without compensation, and its conversion into state property. The court must indicate what part of the property should be confiscated or what confiscated articles should be transferred to the state. But the bailiff may not confiscate essentials which belong to the convicted person and members of his family. The list of articles and things not subject to confiscation is strictly established by law.

*Deprivation of military or other special rank, titles of*

*honour and also orders and medals* is applied by the court where it sentences persons for grave crimes, in relation to which the law contains an express indictment. If the court deems it necessary it may apply to the body which awarded the convicted person his order or medal or granted him his honorary title to deprive this person of the order or medal or the title of honour.

As stated, the court imposes penalties within the limits laid down by the article of the law determining responsibility for the crime committed. In passing sentence the court takes into consideration the nature of the crime committed and the degree to which it is a danger to society, the character of the guilty person and attendant extenuating or aggravating circumstances.

Circumstances which are recognised in law as mitigating criminal responsibility are as follows: committing a crime as the result of grave personal or family circumstances; committing a crime under the influence of threats or compulsion or by force of material or other dependence; committing a crime under the influence of strong mental excitement caused by unlawful acts on the part of the victim; crimes committed by a minor or by a woman who is pregnant; committing a crime during defensive action, although the action exceeds that which is essential to self-defence; the sincere repentance or voluntary surrender to the authorities; the illness of a convicted person, his old age, the existence of under-age children who are dependent on him, etc.

Circumstances which are recognised in law as aggravating a crime are as follows: a crime committed by a person who has a criminal record; a crime committed by an organised group; a crime committed for personal gain or other base motives; committing a crime with grave consequences; involving excessive cruelty; employing generally dangerous means; taking advantage of natural calamity; slandering patently non-guilty persons, etc.

*Suspended sentence.* If the court, in passing a sentence of deprivation of liberty or corrective labour, after due consideration of the circumstances of the case and the character of the defendant, comes to the conclusion that it would be inexpedient for the offender to serve the sentence, it may stay the execution of the sentence on the condition

that the convicted person does not commit a similar or some other crime of equal gravity during *the period of probation*.

The term of the probationary period which the court may impose is set from one to five years. In consideration of the circumstances of the case, the character of the accused and also the requests of mass organisations at his place of work the court may confide the re-education and reformation of the conditionally sentenced person to those organisations. If a conditionally sentenced person commits a fresh crime during the probationary period the court may add the whole or part of the unserved former sentence to that passed on a new conviction.

*Placing an offender in the care of mass organisations for purposes of reform.* A person who has committed a crime may be released from criminal responsibility by the decision of a court of law, the entire material in the case being submitted for consideration by a comrades' court. The court usually takes such a decision provided a person is a first offender and if his personality warrants the conclusion that he may be reformed without inflicting a penalty and through measures of public influence.

If the nature of the offence and the character of the offender do not constitute great social danger, and if the act did not entail serious consequences, and if the offender shows sincere repentance, he may be freed from criminal responsibility and punishment and placed in the care of the mass organisation who lodge the petition to the court for purposes of rehabilitation on his release. The law does not permit the release on surety of persons who have been already tried for a premeditated crime, or who do not plead guilty, or who for any reason insist on a court hearing.

A mass organisation may withdraw its surety if the person concerned does not, during the course of a year, justify its confidence and fails to observe the rules of socialist community life. A resolution regarding the withdrawal of surety is addressed to the court in order that the question of the offender's criminal responsibility for the offence in connection with which he was released on surety may be considered.

*Compulsory measures of a medical and educational nature.* Persons who have committed a crime, but are unable to account for their actions or to govern them as a result of

mental deficiency or some other abnormal state, may be subjected, by the court's decision, to compulsory medical treatment. Alcoholics or drug addicts who have committed a crime are liable both to punishment and compulsory medical treatment. The treatment is terminated by the court when a motion is submitted by the medical institution where the person undergoes treatment.

If the court finds it appropriate not to apply a penalty to a person under the age of 18 years who has committed a crime it may impose the following compulsory educational measures: serve a warning on him, issue a reprimand, order him to make a public apology to the injured party, place a minor under the strict surveillance of his parents or of his workers' collective, place a minor in a medical and educational establishment specially catering for children and young people, and so on. All these educational measures do not themselves constitute criminal punishment and are imposed in place of a penalty. Their application does not create a criminal record, nor does it entail other legal consequences.

## 2. THE PROCEDURE OF SERVING COURT SENTENCES

As stated, punishment does not aim at inflicting physical suffering or degrading human dignity. Therefore, court sentences should not be merely retributive but should contribute to the offender's rehabilitation, his re-education towards an honest attitude to work and make him a law-abiding member of the socialist community.

The procedure of serving court sentences is regulated by the criminal, criminal procedure and corrective labour legislation of the USSR and the Union Republics. They define the conditions for serving sentences and for applying the influence of measures of corrective labour to persons who have been sentenced to deprivation of liberty, exile, restricted residence and corrective labour (without imprisonment) and to other penalties.

Criminal punishment or measures of the influence of corrective labour may be imposed only by sentence of a court of law that has come into legal force. No other deci-

sion by any other government or non-government body may serve as a ground for applying a penalty.

The court sentences of deprivation of liberty, exile, restricted residence and of corrective labour (without imprisonment) are executed by the corrective labour institutions of the Ministries of the Interior of the USSR and of the Union Republics.

Persons sentenced for the first time to deprivation of liberty serve sentence, as a rule, within the bounds of the Union Republic on whose territory they were convicted or resided prior to arrest. In exceptional cases, to ensure the more successful correction and reform of the convicted offenders, they may be sent to serve sentence in corresponding corrective labour institutions of another Union Republic.

The main means of rehabilitating convicted persons are the regime of serving sentence, useful social labour, political and educational activity, general educational, vocational and technical training. These means must be applied in each specific case taking due note of the nature and degree of the danger of a crime committed to society, the personality of the offender and also of his conduct and attitude to his work in places of confinement.

Persons serving their sentences have their rights restricted within the limits stipulated by law and also on account of the restrictions of the court sentence itself in respect to every individual. The legal status of foreign nationals and also of stateless persons convicted by a Soviet court is also regulated by current legislation and restrictions on their rights may be imposed by the court strictly within the framework provided for by the law in force.

The Soviet public participates in the rehabilitation of convicted offenders and also in exercising control over the activity of the administration of corrective labour institutions. The forms and procedures for this participation are established by the legislation of each Union Republic (see, for instance, watch commissions on pp. 101-102).

The Procurator-General of the USSR and the procurators subordinate to him exercise supervision over the exact observance of the law on the execution of the sentences of deprivation of liberty, exile, restricted residence and corrective labour without imprisonment and of other sentences. The administration of corrective labour institutions must

carry out the procurator's proposals concerning the observance of rules for serving sentences. It must forward to him complaints lodged or applications made by convicted offenders within 24 hours.

The corrective labour institutions in which persons serve their sentences of deprivation of liberty include: corrective labour colonies for adult offenders; educational labour colonies for minors between 14 and 18 years of age; prisons for the most dangerous offenders.

Convicted persons are kept in corrective labour institutions in accordance with the following rules: men and women, minors and adults are kept separately. First offenders sentenced to deprivation of liberty are kept separately from those who have already served a sentence of imprisonment; first offenders for minor criminal offences are kept separately from those convicted for major offences; dangerous recidivists are also kept separately. The legislation of the Union Republics may provide for other categories of convicted persons also being kept separately.

Persons convicted for their first minor offence serve their sentences in corrective labour colonies with a general regime; persons convicted for first major offence—in colonies with a reinforced regime; persons who have previously served sentences of imprisonment—in colonies with a strict regime; recidivists considered by the court to be particularly dangerous—in colonies with a special regime. Persons who have begun to reform and who, therefore, have been transferred from other corrective labour colonies to a colony with a more liberal regime serve their sentences in settlement colonies. This transfer is effected by a court decision, provided the colony's administration and the respective watch commission submit evidence to the court testifying to the offender's good conduct.

A person sentenced to deprivation of liberty must serve, as a rule, the entire sentence in one corrective labour institution. The transfer of this person from one colony to another is allowed only with the sanction of higher officials of a Republican Ministry of the Interior and in agreement with the Procurator's Office.

The transfer of a prisoner from one colony to another colony with a different type of regime may be made by the court alone but with the observance of certain guarantees.

This procedure precludes an unwarranted transfer of a prisoner from one place to another which would sometimes adversely affect the educational work in a colony.

These transfers may be effected either because of a prisoner's extremely bad conduct (in this case he is transferred by a court decision to a colony with a stricter regime), or due to his unswerving observance of the regime and proper attitude to work (in this case, to encourage him, he may be transferred by a court decision to a colony with a less severe regime).

Corrective labour legislation strictly regulates the rules (or the regime) for keeping prisoners: they must abide by the internal regulations and their use of money is restricted (they are allowed to purchase foodstuffs and prime necessities according to the rates established for every type of colony). They have brief visits and receive parcels, delivered by mail or in person, send and receive money and also correspond according to the rules and rates established for each type of colony.

As distinct from the regime in other types of corrective labour colonies, the offenders in settlement colonies are kept without a guard but under surveillance; they have the right of free movement within the bounds of the colony's territory in the day-time and with the permission of the administration may travel outside the colony's territory.

Given good behaviour and a conscientious attitude to work, a convicted person may be given additional privileges to encourage him.

Irrespective of the regime set for them prisoners are allowed to receive and buy printed matter without restriction. They are also allowed to receive mail without restriction.

The prisoners' participation in work is a major condition for their reform and re-education. Every prisoner must work in his place of detention, for his rehabilitation is impossible without this condition. The colony administration must employ convicts with due consideration of their state of health, their capacity for work and, if possible, their profession.

As a rule, prisoners work in enterprises or workshops belonging to corrective labour institutions. Work in these enterprises or workshops is organised on the same princi-

ples as in other state establishments, but the entire economic activity is subordinate to the task of rehabilitating prisoners.

An eight-hour working day is established for persons serving sentences in corrective labour colonies and prisons. They are given one free day a week and are released from work on public holidays. As distinct from the general labour legislation, the prisoners working in the colony's enterprises or workshops have no right to a paid vacation while serving sentences and their work is not credited to their general labour record. The labour protection and safety rules provided for by law for all state enterprises are observed in the organisation of their work. If a prisoner has become disabled at work while serving his sentence, after his release he will have the right to a pension in accordance with the procedure prescribed by the legislation of the USSR.

Prisoners are paid for their work according to the quantity and quality produced at the rates operating at state enterprises. Prisoners refund from the earnings credited to them the cost of food and clothing. After this expenditure has been refunded deductions are made from their earnings on the strength of writs of execution issued by a court of law (for instance, for maintenance of children and to compensate for the damage inflicted by a crime). Prisoners may be employed without remuneration only in the work of planning a place of confinement and also in the work of improving their cultural and living conditions.

All these main conditions and methods of rehabilitating convicts have nothing to do with claims about the notorious "forced labour". Enterprises employing prisoners are not run at a profit, for their main task is to educate prisoners, to see that work should not be a burden but should help to inculcate self-discipline, that it should be a source of moral satisfaction, provide them with a qualification and thereby contribute to their rehabilitation.

Extensive educational work is carried on among prisoners. It is aimed at inculcating in them respect for the rules of socialist community life, a conscientious attitude to work and a diligent treatment of property and at raising their cultural level and developing their constructive initiative.

The active participation of prisoners in educational matters is encouraged in every way and is regarded as a sign

of their reform. In all corrective labour institutions they are provided with general educational eight-year schooling.

Compulsory vocational training is organised for prisoners who have no trade. This rule allows the labour process to be put to more effective use for the re-education of prisoners and also creates better conditions for their employment after they are released from a place of detention.

Voluntary organisations of prisoners are established in places of confinement under the guidance of the administration of these institutions, for the purpose of instilling a collective spirit, encouraging positive initiative, and also of using the influence of the workers' collective to correct and reform prisoners.

The following measures of encouragement for good behaviour and a conscientious attitude to work are applied to prisoners: a vote of thanks, presentation of an honour certificate, awarding a bonus, permission to receive additional parcels and to have additional visits by relatives and friends, transfer to a corrective labour colony with a lighter regime, etc. And vice versa, for violations of the regime of serving sentences and for other illegal actions the following penalties may be applied to convicts: reprimand, extra duty for cleaning premises, deprivation of regular visits, cancellation of improved conditions, etc.

The administration of places of detention must provide prisoners with the necessary accommodations and other conditions, in particular, allot them individual sleeping places and bed linen, supply them with clothing, underwear and footwear according to season and give them the requisite food rations.

There are requisite medical institutions in places of detention where medical care is free of charge.

Corrective labour without imprisonment occupies a large place among penalties. As a rule, the convicted offender serves his sentence at his place of work, deductions from his earnings being made for the benefit of the state every month during his sentence according to the amount fixed by the court sentence, but not exceeding 20 per cent. Where the convicted person has no permanent job, the respective body of a Republican Ministry of the Interior sends him to enterprises or institutions where there are vacancies. It is assumed that persons serving their sentences of corrective

labour without imprisonment are corrected and re-educated through their participation in socially useful work and chiefly under the educational influence of the workers' collective at the enterprise where they work and where the workers check up on their conduct. An element of retribution in this type of punishment consists in deducting a certain sum of money out of the offender's earnings. But, of course, the emotional experiences caused by the very fact of conviction are of no less importance as a moral factor in this process.

The convict may receive a vote of thanks for good behaviour and a conscientious attitude to work, and for transgressing the established procedure of serving sentences he may be cautioned or reprimanded.

Where an offender wilfully evades serving his sentence, the court alone may replace the remaining part of the sentence of corrective labour without imprisonment by a sentence of deprivation of liberty on the basis of the following calculation: three days of corrective labour are counted as one day of imprisonment.

The legal institution of conditional release from punishment before the term is completed or of the substitution of a milder penalty is a major incentive towards rehabilitation for offenders sentenced to deprivation of liberty, corrective labour, exile or restricted residence.

Premature conditional discharge or commutation of sentence may be applied to convicted offenders provided they prove that they have reformed by their exemplary behaviour and conscientious attitude to work. In such cases the administration of places of detention together with watch commissions make a requisite presentation to a court of law. The judge appoints the day and the hour of hearing submitted evidence. If the court is satisfied that the submitted evidence and explanations by the offender himself testify to the fact that he has reformed by showing his exemplary behaviour and conscientious attitude to work it may commute his sentence before the term expires or replace part of the remaining unserved sentence by a less severe one. In this case the offender may also be released from supplementary penalties, such as disqualification from a specified office or activity.

If a person who has been conditionally released from a

penalty commits a fresh crime during the remaining period of his sentence the court will add all or part of the unserved term to the new sentence.

The rule providing for conditional release before the sentence has been served or the substitution of a milder penalty for the part not served is generally applicable only after no less than half the sentence has been served or, in the case of a grave offence, after at least two-thirds of the sentence has been served. The law prohibits premature and conditional discharge or remission of sentence in the case of especially dangerous recidivists and some other especially dangerous offenders.

Persons released from places of detention are provided with free travel to their place of residence or work and also with food or money while travelling, and may be given a financial grant to buy clothing and footwear suitable for the season.

As soon as they arrive at the place where they intend to reside, the local authorities must provide employment for them within two weeks and, where necessary, help them to obtain living accommodation at their place of work. The workers' collective is charged with the duty of continuing with educational work of such persons.

Under Soviet law criminal responsibility for many offences is for the juvenile from the age of 14. Young persons between the ages of 14 and 18 serve sentences of deprivation of liberty in special institutions termed labour colonies for juveniles. These exist separately from corrective labour colonies for adults. It is the responsibility of juvenile labour colonies to reform and re-educate convicted offenders in the spirit of an honest attitude to work, strict adherence to the laws and respect for the rules of socialist community life.

The general provisions of serving sentences by adults, enunciated above, also apply to the serving of sentences by juveniles. But the latter procedure has its own distinguishing features and is much more liberal, with the elements of education predominating.

Juvenile labour colonies are divided into two categories: general regime colonies and strict regime colonies. The former are for juveniles serving their first sentence and the latter for young offenders who have already served sen-

tences of imprisonment and also those sentenced for the first time for especially grave offences.

The category of labour colony in which a juvenile offender serves his sentence is decided by the court when passing judgement. When a juvenile offender reaches the age of 18 he may be transferred to a corrective labour colony for adult offenders, the transfer being made by a ruling of the court on the submission by the administration of a colony for juvenile offenders. If the court comes to the conclusion that because of the need to consolidate the results of reform and re-education and to prevent the interruption of general studies or vocational training, transfer to a corrective labour colony for adults is inexpedient, a young offender may be permitted to stay in his colony for yet another year according to the decision of the court or the governor of the juvenile colony, agreed with the respective minors commission and with the procurator.

Labour colonies for juveniles are located in places that satisfy all health requirements. They must have properly equipped living quarters, workshops, a secondary school, canteen, mess club, library, sports grounds, medical and sanitary facilities and other premises necessary for the normal functioning of the colony.

Inmates are provided with fixed amounts of food, clothing, footwear and other equipment and services free of charge. Public health establishments and their personnel provide medical services for inmates.

The law provides for public participation in control over the detention of juvenile offenders, over the education and vocational training they receive, over the organisation of their work and also over their rehabilitation. This responsibility rests with the minors commissions set up under the executive committees of the Soviets in the area where the colony is situated (see pp. 99-101 of this book).

The law places the following obligations on inmates: strictly to adhere to the colony regulations; to be courteous; to work and study conscientiously; to observe the rules of labour protection and industrial safety; carefully to safeguard socialist property; to observe the rules of personal hygiene; to take part in the care and maintenance of the colony; to maintain good order and to restrain other inmates from disorderly behaviour.

The most important aspect of the functioning of the labour colonies for juveniles is educational activity and the inculcation of habits of socially useful work. Inmates receive general education in a colony school in accordance with the curricula laid down by the Republican Ministry of Education and use the same textbooks as other schools. Textbooks, exercise books and other stationery are provided free of charge. On completion of school pupils receive certificates of the standard type. Inmates without a trade receive vocational training and thus acquire good qualifications.

Inmates who already have a trade or who have acquired a trade while in a juvenile labour colony work in vocational training workshops and are employed in constructional, agricultural and other jobs. The work of inmates is organised in conformity with the regulations governing juvenile labour and industrial safety, laid down by labour legislation. They are paid for their work according to its quantity and quality at rates in general operation in the national economy.

The inmates also take part in political, cultural and sports activities. Educational work is carried out with each inmate on the basis of an in-depth study of his personality. Lectures and talks on various topics are held; the inmates read newspapers, magazines and books, listen to the radio, etc.

Competitions for the title of best specialist in a particular trade and of best pupil in school, organised on a voluntary principle, are beneficial. The inmates are encouraged to take part in amateur drama, instrumental and other groups, and in natural science and technical circles. Books, magazines, newspapers, musical instruments and sports equipment are supplied free of charge. The participation of inmates in cultural events along with good behaviour and a conscientious attitude to work and study are regarded as a sign of correction and reform.

The educational work in a juvenile labour colony is conducted by a team of teachers who, together with the administration, are responsible for the rehabilitation of the inmates and for preparing them for socially useful work.

In each colony there is an educational council made up of pedagogues, teachers, vocational training staff and senior officials. It functions as a consultative body under the colony governor and helps him settle questions arising in cultural

and educational work and in the vocational training of inmates.

Great importance is attached to public participation in the educational work of the colonies. The establishment of patronage over juvenile labour colonies by factories, state farms, cultural and educational institutions has in recent years become widespread. To organise this patronage the enterprises or institutions set up social councils made up of representatives of mass organisations. The council members regularly visit the colonies and assist their administration in the work of re-educating inmates.

To instil the habit of active participation in community life colony councils of inmates are formed, these being supplemented by various commissions to deal with studies, sports and cultural activities. The councils of inmates work under the guidance of the colony's administration. By their exemplary conduct and by supporting various organisational measures the council members help the administration and the teachers to improve the educational work in the colony.

Those discharged from juvenile labour colonies are, as a rule, sent to their parents or persons acting *in loco parentis*. Local minors commissions are required to assist the young persons in obtaining work or resuming studies, and to supervise their conduct. There are cases in which the return of a juvenile to his parents or to persons acting *in loco parentis* is not possible (when such persons cannot be traced or when they have been deprived of parental or guardian's rights, for example). In such cases the minors commissions in the area where the young person formerly resided must take steps to find work for the young person in his trade or to arrange for his studies and also secure accommodation and a suitable environment. To this end the administration of a colony must, not less than a month prior to a proposed discharge, inform in writing the appropriate minors commission where the young person will reside and take with the minors commission decisions on the settlement of family affairs, on his employment or on the arrangements for his further study.

The administration of the juvenile labour colony must verify the return of a young person to his place of residence, his employment or resumption of study and, where necessary, assist him in these matters.

## CONCLUSION

Judicial activity will be much more effective, if all other aspects of state activity are regulated in a proper legalistic way. For this reason great importance is attached in the Soviet Union to the further development of legislation, to better legal regulation of relations in the national economy, to the legal education of citizens, and to the enforcement of crime prevention measures.

The last two years alone have seen the adoption of some important all-Union laws, including the Fundamentals of Legislation on Marriage and the Family, the Fundamentals of Land Legislation, and the Status of Soviet Deputies.

The scope of legislation enacted and envisaged testifies to the fact that the Soviet Union is now passing through another stage of legal codification which is to contribute to the further consolidation of the Soviet state and the development of socialist democracy.

At the end of 1972 the USSR Ministry of Justice, together with jurists and representatives of other ministries, drafted a plan for submitting new bills. This plan will take several years to put into action and provides for the elaboration of a bill on the state economic planning, draft fundamentals of legislation of the USSR on public education, a draft law on accounting and statistics and other bills.

These bills will be prepared with the participation of eminent jurists, deputies, representatives of workers' collectives, statesmen and public figures. The most important of them will be discussed by the people throughout the country, as was the case in the past with the draft Funda-

mentals of Labour Legislation and the draft Fundamentals of Land Legislation.

*The Collected Laws of the USSR* which the USSR Ministry of Justice started to publish at the end of 1972 will play a big role in consolidating and improving Soviet legislation. This collection will consist of 40 to 50 volumes and will include all legislative enactments and Government decisions adopted since the formation of the Union of Soviet Socialist Republics in 1922. It will be compiled according to branches of law, each of them having a separate section: the state system, labour, finances, capital construction, transport and so on. Similar collections of current legislation will be published in every Union Republic.

The major task formulated by the 24th CPSU Congress for the Soviet state over the next few years is to ensure considerable further improvement in the Soviet people's material and cultural standards of living. This is to be achieved on the basis of a high rate of boosting production, scientific and technological progress and further growth of labour productivity. To solve the huge economic tasks the state needs vast material resources: finances, raw materials, machine-tools, and also qualified cadres of engineers and workers. But it is no less important to secure smooth and comprehensive legal regulation of all aspects of the economic performance of socialist enterprises. With this end in view the Soviet state has taken vigorous measures to improve the legal work in the national economy. In June 1972, the Soviet Government approved the Statute of the Legal Service in the National Economy. It regulates the fundamental questions of legal work in factories, mills, collective and state farms and defines the structure of the legal service, its tasks and functions, the rights and duties of its units. The gist of this Statute may be summarised as follows: all enterprises and economic organisations shall have their own juridical departments or legal advisers. The latter shall participate in preparing and concluding economic contracts, strengthen labour and state discipline, prevent embezzlement and the production of articles of poor quality, and secure the strict observance of labour and safety engineering rules.

A smoothly working legal service in industry will greatly promote the effective functioning of the law courts and arbitration bodies.

Information about the laws in force, promptly placed at the disposal of citizens, and the inculcation in the latter of respect for the law and rules of socialist community are of prime importance for the prevention and eradication of crime. Here it is pertinent to note that the legal education of citizens is carried on both by legal institutions and by other governmental, non-governmental and economic organisations.

Teaching young people to respect the law is undoubtedly a central problem of the legal education of citizens, which is being tackled by educational, professional, technical and other establishments with the active participation of lawyers.

In 1972, the Soviet Ministries of Education and Justice passed a joint decision concerning the improved teaching of Soviet law in general educational schools, teachers training colleges and institutes. In accordance with this decision, a basic course in Soviet law has already been introduced in many schools in 1972. It will be included in the curricula of all other schools in 1973.

Local Soviets play a big part in the legal education of the population. In Estonia, Latvia, Moldavia and some other Union Republics the district Soviets discuss problems of legal education at their sessions.

Legal aid bureaus, run on a voluntary basis and set up by trade unions at factories, state or collective farms, render effective legal assistance to people. Today a total of 10,000 such legal aid bureaus function in the country. Every citizen is entitled to receive free legal advice on any question that interests him, the advice being given by experienced lawyers in their free time.

Lectures on legal topics are a good form of legal education. Every year Soviet lawyers deliver over 1,200,000 such lectures. The so-called people's universities which function in many towns have law departments. These universities provide evening tuition. Classes are attended free of charge by those citizens who wish to become conversant with legal issues. Popular lectures are given by prominent jurists, judges and procurators. In the last two years the number of universities with law departments has risen from 900 to 1,900 and their student body from 150,000 to 400,000.

The press and the other mass media have a great part to play in the propagation of legal knowledge. Soviet papers,

journals and magazines are devoting more and more attention to legal problems. To make the published materials maximally useful, judicial officers periodically invite newspaper and magazine editors to discuss at conferences the nature and orientation of these materials. These officers and editors produce joint recommendations on the coverage of specific legal problems and the forms of their presentation to the reader.

The new legal magazine, *Man and Law* issued by the USSR Ministry of Justice, is very popular among the population. This magazine caters for a broad circle of readers and has a circulation of 3 million copies. It features legal and moral articles, prints new laws and ordinances, and publishes recommendations and advice on various legal problems.

The State Committee on Television and Radio co-operates with judicial bodies in arranging permanent radio and television broadcasts on the problems of state, law and morality. The regular TV and radio "Man and Law" series takes the form of providing advice on issues affecting different branches of law.

The main aim of legal education is that every citizen should acquire a good knowledge of the laws and a personal conviction that he should respect them and behave accordingly to them.

The prevention of crime and other infringements of law, and dealing with other tasks facing judicial bodies depend largely on the training of legal personnel. Today lawyers are trained by 14 juridical institutes and higher schools and by the law departments of 35 state universities. Moreover, every year about 60,000 people take evening classes or correspondence courses. The enrolment of students in higher legal establishments in 1972 was 50 per cent higher than in 1960. Curricula and legal syllabuses are drawn up in these institutes with the active participation of the USSR Ministry of Justice, the Procurator's Office and the Supreme Court.

Of no less importance is the improvement of lawyers' qualifications. All judges and procurators need additional training every four or five years. With this end in view the USSR Ministry of Justice and the USSR Procurator's Office have set up the All-Union Institute for the Improvement of Legal Qualifications, and the republican ministries

of justice have organised extension courses. This institute and the courses provide further training for judges, advocates, notaries, legal advisers, bailiffs and other legal workers, as well as school teachers of law. Their curricula include lectures and seminars on recent legislation, philosophy, sociology, economics, etc.

Soviet jurisprudence is called upon to play a big part in the further improvement of the judiciary, the strengthening of socialist legality, the training of specialists, and the elaboration of bills.

The Soviet Union has a considerable number of legal research institutes. The USSR Ministry of Justice is in charge of the Institute of Soviet Legislation headed by Professor I. S. Samoshchenko. This scientific research centre is engaged in the theoretical elaboration of problems of legislation and the comparative study of law. The USSR Academy of Sciences incorporates the Institute of State and Law, directed by Professor V. M. Chkhikvadze. This institute is the country's leading scientific centre which conducts theoretical studies in practically all branches of law. One might also mention the Institute for the Study of Causes of Crime and Its Prevention, headed by Professor V. M. Kudryavtsev, and the Central Research Institute for Judicial Expertise under the USSR Ministry of Justice, directed by Dr. A. R. Shlyakhov. These and other legal research institutes render great assistance to the Soviet judiciary and procurator's offices in the elaboration of problems concerning the prevention and eradication of crime.

Recent years have seen the more active development of ties between Soviet and foreign lawyers, as well as growing contacts between Soviet legal institutions and those under the UN aegis. These contacts contribute to better understanding and a more fruitful exchange of views, and involve increasing groups of lawyers in the settlement of outstanding problems of law and the movement for universal peace and progress.

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