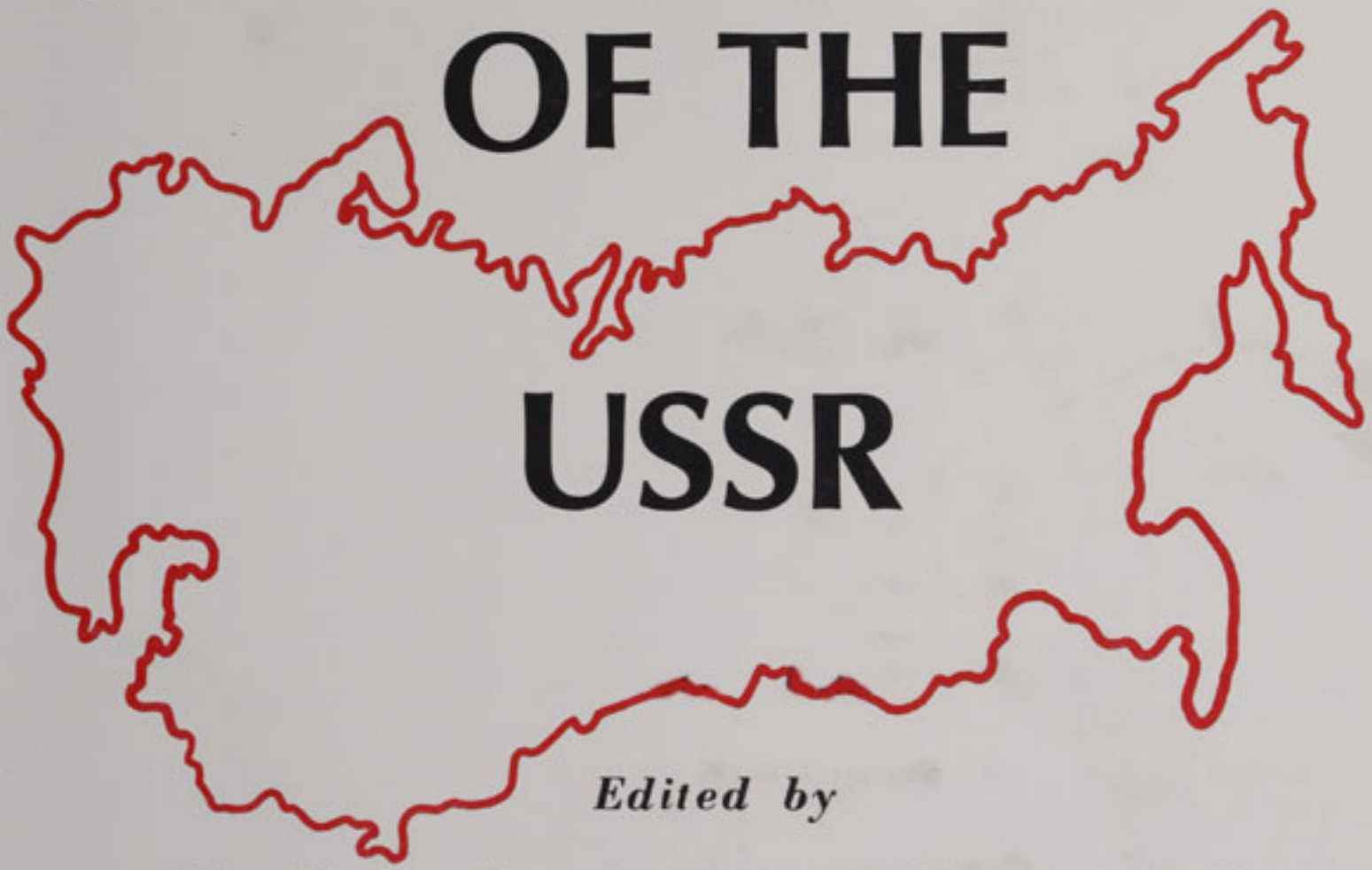
THE CRIMINAL JUSTICE SYSTEM OF THE USSR



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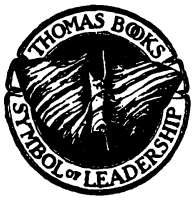

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PREFACE

THIS IS THE FIRST BOOK on the Criminal Justice System of the USSR written entirely by Scholars from the USSR, in collaboration with a U.S. academician, for publication in the U.S. As such it is a landmark in the history of joint projects between jurists from these two countries. The idea for such a project was developed during this writer's visit to the USSR in 1976. The visit itself was due to cooperative relations between this writer and the All Union Institute for the Study of Causes and Development of Measures of Crime Prevention and its distinguished Director, Professor Klotchkov, who is a Vice President of the International Association of Penal Law, of which I have the honor of being Secretary-General. The Association, since its inception in 1924, has maintained cooperative relations with the USSR, and many fruitful results have been obtained. Among these was the hosting in Moscow in December 1977 by the All Union Institute of one of the Association's Colloquia in preparation of its XII International Congress (held every five years and next time in Hamburg, Federal Republic of Germany, in September 1979). The theme of that Colloquium was "Crimes of Recklessness." It was the first time since the revolution of 1917 that the USSR officially hosted an international conference on a crime-related subject with open participation to the National Reporters of the Association's sixty-eight countries membership. The All Union Institute will publish the proceedings in a special issue of the *Revue Internationale de droit Penal* in 1979.

Such instances of scientific collaboration are not new in the area of law, but these projects are the first significant ones in the field of criminal justice. They were due in large measure to many years of cooperation between penalists from the USSR and other countries in the ambit of the International Association of Penal Law.

The work on this book was carried out principally by my friend

and colleague Professor Savitski, who is also Deputy Secretary-General of the Association and as such works quite closely with me on the affairs of the Association. The scheme, contents, organization, and English editorship of the book was my task. The book's approach was predicated on the assumption that the U.S. and other English-reading audiences would be interested in learning from national experts about certain aspects of the USSR's criminal justice system, which are not otherwise available in the Western world's legal literature. The topics covered and the original (translated) documents appended are a unique source of primary information.

The preparation of this book was by no means as easy as it may otherwise appear to be due to distance and language difficulties, but it was performed in a spirit of friendly cooperation and efficiency. Professor Savitski worked very diligently on this project over the last two years. To coordinate our work we met over two years in such diverse places as Varna, Bulgaria; Vienna, Austria; Paris, France; Moscow, USSR; and Chicago, USA, to go over the various drafts. Indeed several drafts had to be made, corrected, and approved and in the performance of that work I am indebted to my assistant, Daniel Derby (J.D., DePaul; Teaching Assistant, DePaul University), for his meticulous work and good spirits in coping with it.

I am also grateful to Professor Kudriavtsev, one of the USSR's foremost legal scholars, for writing the Introduction and to Professor Hazard, one of the foremost Soviet law experts in the U.S., for writing the Foreword. It is hoped that this book will provide the reader with valuable information about criminal justice of the USSR and that it will stimulate more cooperative and collaborative works between jurists from the U.S. and the USSR.

M. CHERIF BASSIOUNI

Chicago

FOREWORD

THIS VOLUME WILL INDICATE to knowledgeable Western legal scholars how strongly European traditions have influenced Soviet draftsmen and practitioners. The Soviet legal system is indubitably a Romanist-inspired legal system, although modifications deemed necessary to adapt old patterns to the new socialist-type culture are numerous. One of the much debated points among Western scholars attempting to classify the Soviet system among the "families" of law identified for generations by comparatists is whether there has been any qualitative change as a result of this adaptation of a Romanist model to a socialist-type culture.

To some Westerners, Soviet procedural forms are so similar to those in use in Western Europe, and the code structures are so conventionally Romanist, that, when taken with Soviet attitudes toward sources of law solely in what the French would call *le droit écrit,* there is no basis for a claim of originality in the Soviet system. Other Westerners are prepared to accept the argument of Soviet jurists that there is novelty, although not always for the same reasons. To the Soviet jurist the Marxist approach and the elimination of private enterprise and the "market" have introduced qualitative change. To outsiders these features are, indeed, characteristic, but there is more tendency to stress the communal humanism of Soviet law in contrast to the individual humanism of Western systems, and even to emphasize the contrast in political structures between the communist-party-led system and the traditional Jeffersonian-type democracies. One of the contributions made by this volume is the opportunity it provides Anglophonic readers to judge for themselves the merits of the pros and cons among those who attempt to determine novelty in the Soviet system.

One point emerges in reading these essays: the Soviet approach has changed markedly since the early days when law was expected

soon to fade away as the handmaiden of a state that would wither as a classless society emerging from the abolition of capitalism.

There is now in place in the USSR a legal culture espousing a concept of "legality." Although there are points of difference with the Western concepts of "legality," there is evident a pressure for conformity to law. The capstone of the new legality is the 1977 Constitution; the English translation is included in this volume. It might be wise to end this observation with reference to one element of a constitutional system that will seem missing to students of constitutional law, particularly in the United States: judicial review. Without this feature, the Soviet Constitution will seem poorly and perhaps inadequately defended. There is no constitutional judicial review as in the United States or a supreme constitutional court as in the Federal Republic of Germany, Italy, or Egypt, not even a "constitutional council" such as the one provided by the 1958 French Constitution. Instead, the Procurator-General of the USSR is declared to be the constitutional defender, as he was in the 1936 Constitution of the USSR. He stands alone in that significant role.

An essay in this volume tells foreign readers what type of institution the Procurator-General represents and how he functions. Many are likely to see flaws in his position because he cannot challenge the constitutionality of legislation of the Supreme Soviet of the USSR. Further, one of his functions, while advantageous to the untutored citizen (he enters situations where administrative agencies have violated a citizen's rights), is at the same time a limitation of constitutional protection as understood in some legal systems. No citizen can proceed directly to court to defend his constitutional rights: he must proceed through the agencies of the Procurator-General. Because of this limitation, the Procurator-General is a buffer between citizen and offending state agency and could therefore be viewed as an undesirable limitation of a citizen's rights if he does not fulfill his tasks, depending upon how it is interpreted.

Soviet jurists are now active in strengthening and popularizing the USSR's 1977 Constitution's emphasis upon legality. For many of them, the 1977 Basic Law marked what they hope will be a

milestone, a departure forever from the excesses of the Stalin era, a new beginning on the road hopefully to be known for practices that conform to the procedural and substantive law reforms begun in 1958.

The new Soviet "legality" minimizes the flexibility formerly characteristic of the Soviet legal system. Legal education, as described in this volume, helps to accentuate the new emphasis upon conformity to law, as does the emphasis upon conformity to codes by judges. They are no longer admonished to give priority to a socialist conscience if it seems to them to be in contrast with the codes. There are still professional critics of leadership plans and of their implementation by the administrators of the state apparatus.

It is well to remember when reading the papers in this volume that no Soviet legal specialist works without a sense of the continuing impact of the Stalin years upon the contemporary legal culture. All know that there are still individuals who are impatient with legal procedures that seem to them to hamper flexible application of the rules of law. It would be wrong, however, to conclude that there is a desire on the part of such conservatives to return to the policies of the past, most notably those of the Great Purge in the late 1930s.

While Stalin's policies have been rejected, there is still to be noted at times a streak of intolerance with nonconformists even today. The hard-liners are not prepared to keep on trying to reform recidivits, nor are they prepared to listen to those who seem to them to be professional critics of leadership plans and of their implementation by the administrators of the state apparatus. It is this streak of intolerance still remaining that has not only caught the attention of Western students of the Soviet legal system and given rise to a crescendo of protests based on humanistic grounds, but it has also colored Western thinking generally on Soviet law.

When confronted with these protests from abroad, Soviet jurists close ranks with the generalists who bridle every time they think the sovereignty of their state is impaired by Western criticism. Yet, when working quietly within the system, many of these same

jurists try undramatically by persuasion to influence the intolerant to move in the direction of "legality," as advantageous to achievement of professed Soviet values. It is people with legal training who believe that fair trials can favor and not hinder acceptance of the Soviet model both within and outside Soviet borders.

This volume bears witness to the intensity of feeling and commitment of those who toil in the research institutes that provide the materials for policy-makers. Further, it indicates how legal technicians have implemented those policies once they have been established.

While books on certain aspects of the legal system of the USSR are now in most Western languages, this specialized volume should be a welcomed addition. It goes beyond anything yet prepared by Soviet authors for foreign readers to acquaint them in depth with the substantive and procedural criminal law and the system of corrections in the USSR. An additional feature of importance is that an American specialist, Professor Bassiouni, shared in editing this book with Professor Savitski from the Academy of Sciences of the USSR. Professor Bassiouni's input increases the utility of the book to Western scholars by exploring significant issues of contemporary interest.

This is the first time that editors from different systems have sought jointly to explain what Soviet jurists have in mind when they speak of "legality" and what they are trying to do to implement their legal concepts. In that co-editorship there is promise of innovative exchange of ideas that cannot but stimulate future helpful comparisons.

JOHN N. HAZARD

New York City

INTRODUCTION

According to the French philosopher P. Golbach, "Justice is the foundation of all social values." This statement probably is true but somewhat exaggerated. The converse statement might be more correct: social values are the foundation of justice. However, it is clear they are closely connected. An effective system of justice is an indispensable element of a democratic society, an important means of protecting the rights and proper interests of citizens. Simultaneously, it is an effective means for teaching citizens to respect recognized social values.

It is not by chance that the task of organizing a system of justice on a truly democratic basis confronted Soviet society right after the October Revolution. It was on November 2, 1917, that the Decree on Courts No. 1 was issued, which liquidated old tsarist courts and established a new judicial system, based on the will of the working people. The Decree was signed by V. I. Lenin as Chairman of the Soviet of People's Commissars—the government of the Russian Soviet Federative Socialist Republic (RSFSR).

The need to reconstruct courts and investigative agencies (Lenin called this reconstruction a "breaking down" of the old judicial system) was due to the deep hostility of the former judicial system and of political and juridical institutions of tsarist Russia towards the people. These institutions were reactionary, bureaucratic in form, composed of tsarist officers who defended the interests of the bourgeoisie and landlords.

New People's Courts consisted of freely elected workers and peasants. "Having taken power in its hands," wrote V. I. Lenin, "the proletariate put forward a slogan: 'To elect judges from working people only by working people' and carried it out in all court organizations:"[1]

People's Courts have completely changed the nature of judicial

1. 38 V. I. Lenin, Complete Works 115 (5th ed.).

policy. They have eliminated the injustice and cruelty of the tsarist system. During the first months of Soviet power in the country, there was no developed legislation; new judges often relied on their "revolutionary consciousness." This did not prevent them from finding just, humane, and correct solutions. Because these judges were original representatives of the people, they were able to protect the people's interests, which they understood very well.

However, it became necessary to make uniform and systematic the People's Courts network and to create basic norms of civil, criminal, and procedural legislation. In July, 1918, People's Commissar of Justice D. I. Kursky said at the Second All-Russia Congress of Officers of Soviet Justice,

> We . . . are already leaving the stage when we said to our local practitioners: "We have broken the old courts, do create new ones, People's Courts, let them decide cases being directed by revolutionary conscience." Now we, in the center, can see that these courts need to have norms created for them. Let them be free in the mitigation of penalties to the extent they consider proper, let them relieve from responsibility if they believe a man is innocent, let them pardon if a man is an inadvertent criminal, let all this be, but the courts need norms for operation in order to focus attention on phenomena which undermine and may kill the great deed, which has been done by the Russian proletariat.[2]

New Soviet laws creating the courts, Procurator's Office, and militia and penitentiary institutions were elaborated based on such democratic principles as a wide participation of the citizens in the administration of justice, public trials, providing all accused persons the right of defense, equality of citizens before law and court, and humanism in application of the law. It is significant that as early as 1919 the Eighth Congress of the Communist Party acknowledged great success in the implementation of such principles in the practice of the new judicial system, declaring:

> In the area of punishments, courts organized in such a manner have already brought a basic change generously applying conditional conviction, introducing social censure as a measure of punishment,

2. III MATERIALS OF THE PEOPLE'S COMMISSARIAT OF JUSTICE 10 (1918).

> replacing deprivation of liberty with compulsory work at liberty, replacing prisons with educational institutions, and providing for the operation of comrade's courts.

Sixty years have now passed. The Soviet judicial system has progressively acquired more clearly outlined organizational forms, and now operates on the basis of detailed legislation. The democratic principles generated during the early revolutionary years have not faded but rather have spread and grown stronger. Now they are accurately reflected in detail in the new Constitution of the USSR, adopted on October 7, 1977.

Doubtless, the course of development of the Soviet judicial system was neither simple, nor easy. In his speech referring to the discussions on the draft of the new Constitution in May, 1977, L. I. Brezhnev said:

> We know, comrades, that certain years after the adopting of the acting Constitution (Constitution of the USSR of 1936), were obscured by unlawful repressions, violations of the principles of socialist democracy, and of Leninist norms of party and state life. This was contrary to constitutional provisions. The Party has decisively condemned such practices, and they should never be repeated.[3]

For the past fifteen to twenty years, great efforts have been made to improve Soviet law, to create strong guarantees for the protection of citizens' rights, and for the prevention of breaches of trust and bureaucratic perversions. The new Constitution of the USSR emphasizes that the Soviet State and all its bodies function on the basis of socialist law to ensure the maintenance of law and order, and to safeguard the interests of society and the rights of citizens (Art. 4). This provision is particularly relevant to the system of justice. The Constitution consolidates such principles of the organization and functioning of the judicial system as the election of members of all the courts, the collegiality of the conduct by the courts of all civil and criminal trials, the independence of judges and lay members of courts, the equality of all citizens before the law and court, the presumption of innocence, public trials, the right of the ac-

3. L. I. BREZHNEV, ON THE CONSTITUTION OF THE USSR 18 (1977).

cused to conduct a defense and to have his own language used in court proceedings, etc.

The present work is aimed at acquainting the American reader with both the principles governing the organization and functioning of the present Soviet system of criminal justice and the fundamentals of current legislation in the USSR aimed at combatting crime and other misconduct. The core of the system consists of the institutions of justice—the Soviet courts—and they naturally receive most attention. However, the courts do not function in isolation from other state agencies. Crimes are investigated by the militia and the Procurator's Office, advocates defend the accused, procurators exercise supervision over law observance, and penitentiary institutions execute punishment. Activities of these agencies are described as well so that readers will have a complete image of the criminal justice system as a whole.

To understand correctly the peculiarities of the organization and activities of the criminal justice institutions of the USSR, one should remember that the USSR is a federative state, consisting of fifteen union republics. The Supreme Soviet of the USSR adopts Fundamentals of the legislation of the union and union republics in different branches of law—civil law, criminal law, criminal procedure, corrective labor law, etc. These Fundamentals contain only basic provisions of the corresponding branch of legislation, in accordance with which the union republics elaborate their own civil, criminal, criminal procedure, and other codes, providing detailed regulations.

The book gives an idea of the criminal, criminal procedure, and corrective labor legislation in the USSR and union republics. The limited size of the book does not allow an opportunity to explore all legislative provisions in detail; that is why the authors refer the reader in some cases to additional literature, where particular topics are examined more substantially. For the same reason, an analysis of the legislation of all the fifteen union republics is rather difficult to accomplish. As the reader will see, the text is illustrated primarily with examples from the legislation of the largest union republic, the Russian Federation.

The new Constitution of the USSR, in Article 69, declared that it is the internationalist duty of citizens of the USSR to

promote friendship and cooperation with peoples of other lands and help maintain and strengthen peace. This constitutional provision corresponds to the viewpoint of the authors, who are distinguished Soviet scholars, with knowledge of both juridical theory and practice. The main goal of the authors in writing this book is to objectively and sincerely inform the American reader about the Soviet system of criminal justice. To know each other well is an important condition for friendship and cooperation among nations. Friendship and cooperation are human values that are the foundation indispensable not only to justice but also to such equally important human values as enduring peace among peoples and states.

V. KUDRIAVTSEV

Moscow

ABBREVIATIONS

CLC: Corrective Labor Code of the Russian Soviet Federated Socialist Republic, adopted on February 18, 1970; *see* GAZETTE OF THE SUPREME SOVIET OF THE RSFSR No. 51, Item 1220 (1970).

CL Fundamentals: Fundamentals of Criminal Legislation of the USSR, Union and Autonomous Republics, adopted on December 25, 1958; *see* GAZETTE OF THE SUPREME SOVIET OF THE USSR No. 1, Item 6 (1959).

CLL Fundamentals: Fundamentals of Corrective Labor Legislation of the USSR and the Union Republics, adopted on July 11, 1969; *see* GAZETTE OF THE SUPREME SOVIET OF THE USSR No. 29, Item 247 (1969).

CPC: Criminal Procedure Code of the Russian Soviet Federated Socialist Republic, adopted on October 26, 1960; *see* GAZETTE OF THE SUPREME SOVIET OF THE USSR No. 40, Item 582 (1960).

CP Fundamentals: Fundamentals of Criminal Procedure of the USSR and Union Republics, promulgated on December 25, 1958; *see* GAZETTE OF THE SUPREME SOVIET OF THE USSR No. 1, Item 15 (1959).

LJS Fundamentals: Fundamentals of Legislation on the Judicial System of the USSR, Union and Autonomous Republics, adopted on December 25, 1958; *see* GAZETTE OF THE SUPREME SOVIET OF THE USSR No. 1, Item 12 (1959).

PCP: Penal Code of the Russian Soviet Federated Socialist Republic, adopted on October 27, 1960; *see* GAZETTE OF THE SUPREME SOVIET OF THE RSFSR No. 40, Item 24 (1960).

CONTENTS

The
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CHAPTER I

INSTITUTIONS FOR THE ADMINISTRATION OF CRIMINAL JUSTICE

V. M. SAVITSKY

Section 1. THE COURTS

1.1. Structure of the Judicial System

CHAPTER 20 OF THE Constitution of the USSR establishes basic principles governing legislation on functioning of the courts of all levels. These principles are further elaborated in the Fundamentals of Legislation on the Judicial System of the USSR and of the Union Republics (hereafter referred to as LJS Fundamentals), which were approved December 25, 1958,[1] and in judicial system acts later enacted by each of the Soviet union republics.

The purposes of socialist justice are to protect (a) the state and social system of the USSR, the socialist economic system, and socialist property; (b) the political, labor, housing, and other personal and property rights of Soviet citizens, guaranteed by the Constitution of the USSR and by the constitutions of the union and autonomous republics; and (c) the rights and lawful interests of state institutions, enterprises, collective farms *(kolkhozes)*, cooperatives, and other social organizations. A concomitant purpose is to ensure undeviating and strict observance of legality by all institutions, organizations, officials, and citizens of the USSR (Art. 2 of LJS Fundamentals).

PEOPLE'S COURT

The People's Court *(narodnyi sud)* is the main link of the Soviet judicial system. Such courts function in every district of big cities and in small towns that are not subdivided into districts. The structure of the People's Court is extremely simple: it is headed by a chairman, there are several judges (their num-

1. GAZETTE OF THE SUPREME SOVIET OF THE USSR Item 12 (1959).

ber depends on the volume of work in the particular district) and a corresponding number of people's or lay assessors (about 50 to 70 such persons per judge). Additionally, there are officers of the court and secretaries.

The chairman of the People's Court is appointed by the Soviet of People's Deputies of the court's district or town from among the judges elected from that district or town to the People's Court. The chairman sets basic guidelines for operation of the court, sets hours for receiving the public, supervises court activities, renders assistance to young judges, and presides at the more complicated trials.

Proximity to the population, simplicity of structure, and accessibility are the main reasons that induced the legislature to grant the People's Court general jurisdiction. Practically all criminal and civil cases (94 to 96 percent) are disposed of by such People's Courts. Such courts also handle all cases arising from administrative law violations, *i.e.*, complaints of citizens regarding actions of administrative organs, irregularities in voters' lists, charges of petty hooliganism, petty speculation, petty theft, etc.

The jurisdiction of the People's Court does not embrace certain complicated civil cases and the most serious criminal cases, such as banditry, theft of state or socialist property on a grand scale, aggravated intentional homicide, attempts on the life of a militiaman or a people's patrolman, and some other cases covered by Article 36 of the Criminal Procedure Code of the Russian Federal Republic (hereafter referred to as CPC).[2]

Middle-Tier Courts

Cases of such a character are submitted to higher courts, namely, regional courts, courts of autonomous territories, courts of autonomous regions, and supreme courts of autonomous republics. In Moscow, Leningrad, Kiev, and some other large cities there are city courts *(gorodskie sudy)* of equivalent stature and jurisdiction. Although they bear different names, all of these courts stand at the same level within the Soviet judicial system and constitute its middle tier.

2. The Code of Criminal Procedure of the RSFSR was approved October 27, 1960. *See* Gazette of the Supreme Soviet of the RSFSR No. 40, Item 592 (1960).

Every regional court or court of equivalent jurisdiction consists of a chairman, his deputies, members of the court, and lay or people's assessors. The work of the court is divided between judicial collegia (or panels), specializing in civil or criminal cases, and the plenum (assembly of all members) of the court.

When the court examines material evidence in a case, questions the accused, the victims, and witnesses, studies evidence or documents, and then passes judgment, it plays the role of a court of the first instance. The more important and more common function of such courts is to monitor the fairness and validity of judgments and sentences of People's Courts. These sentences are reviewed in response to appeals or protests by the accused, the alleged victim, the procurator, or other concerned parties.

In reviewing cases by way of cassation, *i.e.*, re-examining the judgment of a court of the first instance which has not yet come into legal effect,[3] the regional court plays the role of a court of cassation.

The presidium (a permanent executive committee) of a regional or other middle-tier court consists of the chairman of the court, his deputies, and several members of the court. The presidium of the court differs from the collegia for civil and criminal cases and from the People's Courts because it never exercises original jurisdiction and, therefore, never plays the role of a court of the first instance. It has other functions. They consist of reviewing judgments and sentences of People's Courts that have come into legal effect, as well as reviewing cassation decisions of various panels of the court. These review activities of the presidium of the court, which relate to judgments and sentences already having legal effect, are described as exercising judicial supervision over cases.

In contrast to the court collegia, the presidium of the court also deals with some organizational matters, hearing reports from the judicial collegia chairmen, discussing general problems of judicial practice, investigating the shortcomings of the judges

3. The sentence of the court is considered to come into force if, during the fixed time limit beginning from the day of its pronouncement (in the Russian Federal Republic the term is seven days), it was not appealed or protested by way of cassation.

of People's Courts, and if necessary imposing disciplinary measures.

Thus, regional and other middle-tier courts fulfill three main functions: examining cases as a court of the first instance, reviewing judgments and sentences of lower courts by way of cassation, and reconsidering judgments and sentences as an exercise of its power of judicial supervision.

Supreme Courts of the Union Republics

The next link in the Soviet judicial system is the supreme court of a union republic. It is the highest judicial body of a union republic and as such supervises judicial activity of all courts of the republic. The supreme court consists of collegia on civil and criminal cases, the presidium of the supreme court, and the plenum of the supreme court. The judgments of the supreme court are not subject to protest or appeal by way of cassation, and the supreme court of a union republic has the right of legislative initiative.

There is no law providing specifically an enumeration of cases that fall within the original jurisdiction of a union republic supreme court. Article 38 of the CPC provides that "the competence of the Supreme Court of the RSFSR may cover cases of some particular seriousness or of some particular social significance. Legal action regarding them is initiated by the Supreme Court itself or by the Procurator of the Republic." Hence, the supreme court of a union republic has a right to hear any case that, in normal conditions, would fall within the competence of a lower court but which by virtue of the concrete circumstances acquires special social significance.

Judgments and sentences of the regional or other middle-tier courts may be reviewed, upon appeal or protest, by way of cassation. Decisions and sentences which have come into legal effect may be examined by way of judicial supervision.[4] By way of judicial supervision, a supreme court of a union republic may also examine protests against decisions of the presidia of middle-tier courts. The presidium of the supreme court of a

4. In those union republics that are not subdivided into districts (the Lithuanian, Latvian, Estonian, Armenian, and Moldavian Soviet Socialist Republics), the supreme court fulfills these very functions in respect of People's Courts.

union republic also examines by way of judicial supervision protests against judgments, decisions, and sentences of collegia of the supreme court itself.

Thus, all judicial functions of the supreme court of a union republic are fulfilled by its collegia and presidium. The role of the plenum of the supreme court, therefore, is supervisory in character. The plenum constitutes the highest level of judicial control within a union republic. In the majority of supreme courts of union republics, the plenum itself does not hear cases. On the basis of generalized judicial practice and statistics, and judgments of the supreme court itself, plenary sessions of the supreme court issue guidelines for judicial practice and republican legislation.[5] The plenum also brings before legislative bodies proposals for specific legislation and proposed interpretations of existing legislation. The plenum consists of the chairman, his deputies, and all the members of the supreme court of the union republic. The participation in plenary sessions by the procurator of the union republic is obligatory.

The supreme court of the republic provides uniformity and direction to activities of judicial bodies only within that union republic. To coordinate judicial activity throughout the USSR and provide needed uniformity of judicial practice on that wide scale is the task of the Supreme Court of the USSR.

Supreme Court of the USSR

The Supreme Court of the USSR consists of a chairman (the Chief Justice), his deputies, members of the Supreme Court, and people's assessors. The Supreme Court of the USSR consists of the collegium on civil cases, collegium on criminal cases, and military collegium. It also functions through plenary sessions, *i.e.*, the Plenum of the Supreme Court of the USSR.[6]

5. Ch. Shein, *On Leading Interpretations Given by the Plenums of the Supreme Court of the USSR*, Gazette of the Supreme Court of the USSR No. 3, Item 44 (1962). The quantitative side of this activity may be illustrated, for example, by these figures: in the period from 1961 to 1972, the Supreme Court of the RSFSR gave 65 guiding interpretations; *see* Soviet Justice No. 24, Item 5 (1972).

6. The composition, structure, and competence of the Supreme Court of the USSR are defined by the Regulations on the Supreme Court of the USSR, approved on February 12, 1957. *See* Gazette of the Supreme Soviet of the USSR No. 4, Item 85 (1957). *See also* Art. 152 of the USSR Constitution.

The collegia of the Supreme Court of the USSR function as courts of the first instance for the hearing of certain classes of extraordinary seriousness, as provided by law. Thus, for example, in 1972 the collegium on criminal cases heard charges of gross violations of rules of safety engineering at an electronics plant in Minsk, Byelorussia. As a result of an explosion in a section of that plant that turned out cases for television sets, many people were killed, much equipment was destroyed, and serious damage to buildings was caused. Those responsible were sentenced to deprivation of liberty.[7]

The collegia of the Supreme Court of the USSR also exercise the power of judicial supervision over cases when the Chief Justice of the USSR and the Procurator-General of the USSR protest judgments and sentences of the supreme courts of union republics on the grounds they contradict the legislation of the USSR or infringe upon the interests of other union republics. The Supreme Court of the USSR does not hear cases by way of cassation.

The highest judicial authority is the Plenum of the Supreme Court of the USSR, which meets four times a year. The Plenum consists of the Chief Justice of the USSR, his deputy chairmen in the Supreme Court, the members of the Supreme Court, and the chairmen of the supreme courts of the union republics *ex officio*. The Procurator-General of the USSR and the Minister of Justice participate in such plenary sessions.

The main task of the Plenum of the Supreme Court of the USSR is to consider the patterns of judicial practice and court statistics throughout the USSR and to elaborate guidelines for the courts. Some examples of guidelines in the field of criminal justice that have been issued by the Plenum during recent years follow: "On the improvement of organization of trial proceedings and strengthening of their ethical and educational impact" (Resolution of February 25, 1967); "On the practice of hearing criminal cases by way of cassation" (Resolution of December 17, 1971); "On the application by courts of legislation on combatting recidivistic crime" (June 25, 1975); "On

7. For the details of the case *see* SUPREME COURT OF THE USSR 417-421 (L. Smirniv, V. Kulikov, & B. Nikiforov eds. 1974; Moscow, "Juriditcheskaya Literatura" Publ. House).

further improvement of judicial activity in crime prevention" (December 3, 1976); "On judicial practice of application of legislation on juvenile delinquency cases and on inveigling of juveniles into criminal and other kinds of anti-social activity" (December 3, 1976.)[8]

In accordance with the recommendations of the Plenum, the Supreme Court of the USSR submits to the Presidium of the Supreme Soviet of the USSR proposals on the improvement of legislation currently in force and on the interpretation of laws of the USSR. It also exercises the right of legislative initiative vested in it by Article 113 of the USSR Constitution. Additionally, the Plenum of the Supreme Court considers protests of the Chief Justice of the USSR and of the Procurator-General of the USSR of decisions of the presidiums and the plenums of the supreme courts of the union republics on the grounds that they contradict USSR legislation or infringe the interests of other union republics.[9]

For deep and more comprehensive studies of matters connected with judicial practice, in 1962 the Supreme Court of the USSR organized a Scientific Advisory Council of distinguished scholars, researchers, and practitioners in the Soviet Union. This Council is a consultative agency. Virtually all complex judicial matters upon which the Supreme Court in its plenary sessions is called to express its opinion are referred for preliminary discussion in the Scientific Advisory Councils.[10]

Military Tribunals

Military tribunals are the remaining facet of the Soviet court system. Such tribunals are assigned the task of applying socialist justice in acting against threats to the security of the USSR, to

8. All the guiding interpretations given by the Plenum of the Supreme Court of the USSR, as well as the most important judgments on concrete cases, are published in the Gazette of the Supreme Court of the USSR, which is published six times a year. In addition, systematized Collections of the Plenum of the USSR Supreme Court Decisions are published. The last one was published in 1974.

9. In the period from 1967 to 1972, the Plenum of the Supreme Court of the USSR examined 82 civil and 500 criminal cases. *See* Gazette of the Supreme Court of the USSR No. 5, Item 6 (1972).

10. Gazette of the Supreme Court of the USSR No. 2, Item 11 (1971).

the fighting capacity of its armed forces, and to discipline and order in the military services (Art. 2 of the Regulations on Military Tribunals).[11]

Jurisdiction of military tribunals extends to all cases of crimes committed by persons in military service or by reservists in training camps, to crimes committed by officers, sergeants, and rank and file of the organs of State security, and to crimes committed by persons in charge of penitentiary institutions. In addition, military tribunals hear espionage cases regardless of whether those accused of such acts are military or civilian.

All cases within the jurisdiction of military tribunals are divided among them according to the military rank of the defendant and to the degree of social danger of the act committed. The highest organ of the system of military justice is the military collegium of the Supreme Court of the USSR. As a court of the first instance, it examines cases of extraordinary seriousness (including cases of crimes committed by generals or admirals) and also reviews appeals and protests by way of cassation. It also handles protests against judgments, sentences, and rulings of military tribunals of the middle tier by way of judicial supervision.

Summary

This brief survey has demonstrated the unitarian principle of the Soviet judicial system, the interrelations between particular links of the integral chain, and the jurisdictional allocations of the various subsystems. It is not by chance that the Soviet judicial system is called *unitarian.* It is intentionally organized in such a way that all the links of the system, including military tribunals, form an integral and harmonious unity. All the courts are organized in strict correlation to the state structure of the USSR and to its territorial and administrative divisions. Rulings of the only supreme judicial organ of the USSR, the Supreme Court of the USSR, ensure uniformity of all the courts. All the courts have the same purposes and tasks laid down by Articles 2 and 3 of the Fundamentals of Judicial Law. All the courts fol-

11. This Act, defining the tasks, structure, and competence of military tribunals, was promulgated on December 25, 1958. *See* GAZETTE OF THE SUPREME COURT OF THE USSR No. 1, Item 14 (1959).

low unitarian basic rules of proceedings established by the Fundamentals of Criminal Procedure of the USSR and Union Republics (CP Fundamentals).[12] Finally, the same principles form the basis for the composition of all courts. This composition merits further consideration.

1.2. Composition of the Courts

One of the basic principles for the composition of all courts is their *elective nature*. In the USSR, all members of courts in the judicial system, beginning with People's Courts and ending with the Supreme Court, are elected either by direct suffrage or by the deputies of the corresponding unit (district, region, republic, etc.).

Members of the People's Court are elected directly by population of the district or town. People's judges are elected by universal, direct, and equal suffrage for the term of five years. People's assessors are elected at general meetings of co-workers, employees, and collective farmers *(kolkhozniks)* at the places of their work or residence, and at meetings of persons in the military at their units, for the term of two-and-one-half years, by simple voting by a show of hands. Any citizen of the USSR who has reached the age of twenty-five and enjoys his suffrage rights may be elected a judge or a people's assessor.[13]

Elections of people's judges are by electoral district, a district or town being divided into as many electoral districts as the number of judges to be elected to the given court. Each electoral district elects one people's judge. All the preparatory work is conducted by the executive committee of appropriate Soviets of People's Deputies in cooperation with local organs of the Ministry of Justice.

The right to nominate candidates to be people's judges is given to public organizations and to societies of working people as well as to the general meetings of citizens. All the candidates

12. The Fundamentals of Criminal Procedure were promulgated on December 25, 1958. *See* GAZETTE OF THE SUPREME SOVIET OF THE USSR No. 1, Item 15 (1959).

13. Regulations on the election of regional level People's Courts in the RSFSR were approved on October 28, 1960. *See* GAZETTE OF THE SUPREME SOVIET OF THE RSFSR No. 41, Item 608 (1960). *See also* Art. 152 of the USSR CONSTITUTION.

are registered by the executive committees of appropriate Soviets. After that, their names are automatically placed on the ballot. The candidate receiving a majority of the votes is elected.[14]

It should be mentioned that until 1959 people's assessors of district (town) People's Courts were elected for the term of three years. The term is now two-and-one-half years, providing an increased possibility for rotating citizens into the administration of justice.

People's judges may be removed before the expiration of their terms of office at the initiative of voters. People's assessors may be removed through a recall vote similar to that by which they are elected.[15]

An initiative to recall a judge or people's assessor may be raised by public organizations and at general meetings of working people, as well as by the local organ of the Ministry of Justice. The executive committee of the regional Soviet examines the matter and schedules voting on the recall. Recalls of judges are decided by a show of hands at meetings of electors of the district (recalls of people's assessors are decided at meetings of working people) where they were elected. If the majority of votes is for the recall, a judge or a people's assessor is considered to be recalled from the post. The executive committees of district councils are charged with surveillance over the order of recall.[16]

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14. In 1976, in all the union republics, elections of people's judges were held. A total of 9,230 persons were elected; 95 percent had a university education (in comparison, in 1960, the figure was 71 percent; in 1965, 80.9 percent; in 1970, 87.6 percent). Three-quarters of the judges were re-elected. Among those newly elected, one-half were under forty years of age. More than one-half of people's judges are Communist Party members. One-third are women. (*See Pravda,* April 17, 1976).

15. Regulations on the manner for recall of judges and people's assessors of the courts of the RSFSR were approved on October 5, 1961. *See* GAZETTE OF THE SUPREME SOVIET OF THE RSFSR No. 40, Item 558 (1961).

16. An example is the Decree of the Presidium of the Supreme Soviet of the Azerbaijan Soviet Socialist Republic of September 5, 1975: "On scheduling voting about recall ahead of the term of the people's judge of Shemachinsky district A. Abassov." The question of his recall was raised by a meeting of workers and employees of the M. Sabir collective farm *(sovkhoz)* in connection with mean behavior of the judge. After voting, he was relieved of his post. *See* GAZETTE OF THE SUPREME SOVIET OF THE AZERBAIJAN SSR No. 17 (1975).

Higher courts are also formed on the basis of election. Elections are carried out not by the population directly but by their deputies at sessions of corresponding organs of state power. Thus, members of district and territorial courts or the courts of autonomous republics and autonomous regions, as well as people's assessors to them, are elected at sessions of regional, territorial, etc., Soviets of People's Deputies. Judges and people's assessors to supreme courts of union and autonomous republics are elected at sessions of Supreme Soviets of these republics, and judges and people's assessors to the Supreme Court of the USSR are elected at sessions of the Supreme Soviet of the USSR. The chairman, deputy chairmen, and members of military tribunals are elected by the Presidium of the Supreme Soviet of the USSR. The term of office for judges and assessors of all such courts is five years, but they can be recalled before the expiration of their term of office (Art. 152 of the Constitution of the USSR). During recent years in the country as a whole, there are about 700,000 people's assessors on the various courts.

Election to the courts of such a great number of judges and people's assessors provides for consistent translation into reality of the next principle—*collegiate examination* of cases. In the USSR, no civil or criminal case is ever decided by a single judge. Only the collegium is empowered to be the arbiter of a person's destiny.[17]

In all courts of the first instance, cases are examined by a collegium of three persons: a judge and two people's assessors (Art. 154 of the USSR Constitution). This rule is true for all courts sitting as courts of the first instance. Fairness of the decision is enhanced by the collegiate approach and further assured through reviews by way of cassation or judicial supervision. The presidium of the court conducts such review if the majority of the members are present. The plenum of the court does so if at least two-thirds of the members are present (Art. 8 of the LJS Fundamentals).

17. A people's judge is empowered to individually consider only certain administrative offenses (petty hooliganism, petty stealing, etc.). He may also, sitting alone, consider cases involving offenses of a noncriminal nature. Administrative penalties awarded in such cases are fines up to 50 rubles, corrective labor up to two months, and arrest up to fifteen days.

Thus all the questions that may arise during the examination of the case are discussed collegiately (collectively), with all judges participating having equal rights, and decisions are by majority vote. However, collegiality does not provide for participation of people's assessors in review by cassation or judicial supervision. The crucial role for people's assessors is at trial.

People's assessors are called upon on a rotational basis and serve not longer than two weeks per year, except when it becomes necessary to prolong the term in order to finish a trial that began with their participation. While serving on the court, people's assessors continue to receive their normal wages plus compensation for any other expenses connected with their court duties (Art. 31 and 32 of LJS Fundamentals).

People's assessors have equal rights with the judge presiding at the judicial session (Art. 154 of the USSR Constitution). They constitute the majority in the judicial bench. For that reason, even in case of disagreement with the judge, they always can pass a sentence which they consider the most appropriate. The judge in such a case must nevertheless sign the judgment, but he can state on paper his own opinion, which is not openly announced at trial but is attached to the case materials (Art. 306-307 of the CPC).

Any violation of the law of equal voting of people's assessors necessarily renders the judgment voidable. In one case, a court's judgment of conviction was found on review to have been entered despite the fact that both people's assessors were against the opinion of the judge. Because the judgment of the court did not reflect the opinion of the majority of the collegium, the Supreme Court of the USSR cancelled the judgment.[18] In another case, judgment was cancelled because the sentence was not signed by people's assessors.[19]

A necessary condition for sound and lawful administration of justice is independence of judges from any extraneous influence. The principle according to which *judges are independent and subject only to law* is established by Article 155 of the USSR

18. Collected Rulings of the Plenum and Judgments of the Collegia of the Supreme Court of the USSR on the Points of Criminal Process 1946-1962, at 16-17 (1964; Moscow, "Juriditcheskaya Literatura" Publ. House).

19. Gazette of the Supreme Court of the USSR No. 2, Item 25 (1973).

Constitution. Translation of this principle into reality is ensured first by the election of all court members from the bottom to the top; then by periodical reports on their activity by them—both judges and people's assessors—to the electors; and then by establishing a special process (when there is consent of the higher organs of power of the USSR or of a union republic) for criminal prosecution of judges and people's assessors and their removal or arrest. This principle also is served by the legally established rules that judges assess evidence in accordance with their inner convictions based on a comprehensive, thorough, and objective examination of all the materials of the case in their aggregate (Art. 17 of CP Fundamentals), that judicial consultations about the judgment of the court remain secret (Art. 302 of the CPC), and other rules.

Some Western critics attempt to cast doubt on the reality of the constitutional principle of the independence of Soviet judges and their subordination only to the law. Most often they refer to two circumstances: in the first place, they argue, judges who are Communist Party members are obliged to adhere to Party discipline; and, in the second place, judges can be recalled. Both arguments, however, miss their target.

Party discipline does presume the subordination of Party members to the decisions and instructions of Party organs. But these very organs are strictly forbidden to interfere in examination by courts of specific criminal and civil cases. In this connection, the Central Committee of the Communist Party of the Soviet Union (CPSU) in 1954 passed a special decision.[20] If top officials of the local Party organs try to instruct judges or to pressure them, the end is invariably the same in the long run: such officials are removed from their posts and prosecuted for abuse of power. To discourage others, these instances are reported by the press.[21] Thus, it is Party discipline that guards the independence of judges.

As for the reference to the absence in the USSR of the principle of unchangeability of judges, it should be said that this principle can hardly serve as a guarantee for their independence.

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20. Party Life No. 6, at 16 (1954).
21. *Pravda*, Feb. 2, 1965; March 3, 1966; Aug. 10, 1975.