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THE RUSSIAN JUDICIARY ACT OF 1922 AND SOME COMMENTS ON THE ADMINISTRATION OF JUSTICE IN THE SOVIET UNION

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During his recent research in the National Archives in Washington, Professor Boleslaw Szczesniak, of the University of Notre Dame, found two interesting texts which appear in their entirety following this article.¹ Attached to Dispatch No. 632 from the American Representative in Riga (1923) were: a summary in English of a report of the Acting Commissar of Justice of the Russian Republic, Krylenko,² on a bill concerning the organization of courts in the Republic, and the English translation of the final version of the act, as adopted on October 31, 1922.³ The act has never been published in English until now. This Judiciary Act set the foundation for the organization of courts in the Russian Republic, which—with some changes—is still valid today. The Russian pattern, of course, influenced, or was copied by, the other Soviet Republics.

That the abuses, arbitrariness, and corruption of the Tsarist administration incurred the wrath of the liberal as well as of the left wing of Russian public opinion needs no elaboration. However, the administration of justice in pre-revolutionary Russia, particularly after the reform of 1864, was quite liberal and satisfactory.⁴ The participation of assessors and justices of the peace who were elected added a democratic flavor to the system.

After a revolution, coup d' état or some other upheaval in the governmental system, the victorious new regime may select one of two ways to implement its political theories: either by a gradual replacement of the old law and institutions by new enactments and reorganization procedures, or by abolishing all that existed until then, creating a vacuum, and beginning to build a new order from scratch. Post-World-War II

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1. The texts were transcribed by Mr. Stefan Maczynski, at that time Prof. Szczesniak's assistant, and at present, Professor of Political Science at St. John Fisher College.

2. Krylenko became the Union's Commissar of Justice after this post was established in 1936, and then was purged and executed as a traitor.

3. The act was adopted in 1922; however, some authors state that the date is 1923. See, *e.g.*, GSOVSKI, *I SOVIET CIVIL LAW*, 233 n.1 (1948). It seems that the confusion is due to the fact that in the official publication of the act, *RUSSIAN SOCIALIST FEDERATED SOVIET REPUBLIC LAWS* at p. 902 (1923), the year has been erroneously given as 1923.

4. For details, see GSOVSKI & GRZYBOWSKI, *I GOVERNMENT, LAW AND COURTS IN THE SOVIET UNION AND EASTERN EUROPE* 511-13 (1959).

Poland may serve as an example of the first approach.⁵ An example of the second approach would be Communist China which declared the old legal order as extinct *in toto*, with the result that for a period of time the country did not live under any legal rules.⁶ In the field of the administration of justice, one possibility is to retain the old courts (with a gradual introduction of changes) and staff them as quickly as possible with new members, and the other—to abolish the old judicial system altogether. The triumphant bolsheviks, desirous of severing all connections with the “bourgeois” past, decided to take the latter step. The first case in a new court was heard on December 16, 1917.⁷

The vacuum created by the abolishment of the old machinery for the administration of justice was not filled overnight.⁸ The new regime had more urgent problems to take care of. The very question of its survival was at stake for quite a long time. Resistance on the part of “White” Russians and the moderates, internal struggles in the ranks of the communists, sporadic threats from some other groups such as the anarchists, independence claims of large minorities such as the Ukrainians, the war with Poland, which—initially successful—soon turned into a disaster, all those tribulations and uncertainties made the continued existence of the first communist state in the world subject to much doubt. *Silent leges inter arma*. In the general state of lawlessness, justice (or injustice) was administered by the strong, usually by the red army and the revolutionary police. Even after the first decrees on the establishment of the new courts were enacted, nobody hurried to have those de-

5. The pre-war Polish legal system was not abolished in a sweeping manner by the new communist government. Some laws and decrees abrogated old provisions which could seem at variance with the new political reality in the country. The government enacted some general principles and rules which lent themselves to various interpretations. Former Polish judicial decisions were declared by a plenary session of the Supreme Court, in 1948, as good law if not “repugnant to the present system of government and the statutes which are in force.” Wagner, *The Interplay of Planned Economy and Traditional Contract Rules in Poland*, 11 AM. J. COMP. L. 348, 364 (1962).

6. McAleary, *The People's Courts in Communist China*, 11 AM. J. COMP. L. 52 (1962). A somehow intermediate approach was taken by Yugoslavia. “All the Yugoslav laws enacted before the second world war were declared null and void by a law enacted in 1945. This law also prescribed that provisions of the former laws could be applied as ‘legal rules’ provided that they were not contrary to the new social system and that there were no new prescriptions regulating the matter in question.” KAPOR, INTRODUCTION TO THE GENERAL USAGES OF TRADE 4 (1964). (Published in the English translation by the Institute of Comparative Law in Belgrade.)

7. HAZARD, *SETTLING DISPUTES IN SOVIET SOCIETY* 1 (1960).

8. This state of affairs resulted in a deplorable atmosphere of lawlessness, in which the breaching of an obligation or the commission of an offense was indulged in by some persons taking advantage of their impunity. Even after the new tribunals were established, they lacked prestige and had a hard time in convincing the parties that their decisions should be respected. HAZARD, VIII LE DROIT SOVIETIQUE ET LE DÉPÉRISSEMENT DE L' ETAT 32 (1960). (In Univ. Libre de Bruxelles, Faculté de Droit, Travaux et Conférences.)

crees implemented. Besides, the decrees were sketchy and fragmentary. For example, initially there were no provisions for any appellate and supreme court jurisdiction.

For the English-speaking reader, there are some excellent publications describing the development of the judicial organization in the Soviet Union,⁹ and it seems unnecessary to repeat here the information, comments and analysis given by some outstanding scholars in the field of Soviet law. All that should be done in presenting the Judiciary Act of 1922 is to place it in its proper setting.

The first observation which comes to the mind of a student of the Soviet system in its historical development is the necessity of approaching the problem of the administration of justice by the courts in conjunction with the power of non-judicial bodies to impose penalties, the omnipotence of the communist party, and the discrepancy between the printed word and actual practice. The political reality in the Soviet Union is stronger than any theoretical considerations or nicely formulated rules on human rights, due process, rule of law, fair procedure, etc. All those terms may be used in the Western as well as in the Soviet legal systems, but their meaning and application may be completely different. It would be grossly misleading to rely only on the text of the statutes dealing with the administration of justice and draw far-reaching conclusions as to the situation in the Soviet Union. For example, the very concept of "democracy" and "democratic elections" conveys quite different connotations in the West and East. Therefore, the reading of some official Soviet publications¹⁰ without proper preparation and ability to take a comparative approach does not enable one to draw useful conclusions. And a disservice is rendered by Western commentators who despite frequent warnings by realistically minded comparatists¹¹ seemingly do not realize that statute books cannot be analyzed *in abstracto*, in detachment from the society in which they are being applied.¹²

To some extent, this discrepancy exists in every legal system. It would be an error, for instance, in studying the organization of American courts, to assume that all disputes are settled by the system of regular courts, ignoring administrative quasi-judicial procedures, frequent resort to arbitration in some types of controversies, and factors which prompt

9. And particularly, BERMAN, *JUSTICE IN THE U.S.S.R.* (1963). GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 4, at 511-87; GSOVSKI, *op. cit. supra* note 3, at 233-56, 836-46; HAZARD, *op. cit. supra* note 7.

10. Such as ROMASHKIN, *FUNDAMENTALS OF SOVIET LAW* (1962); or DENISOV & KIRICHENKO, *SOVIET STATE LAW* (1960).

11. See, *e.g.*, SCHLESINGER, *COMPARATIVE LAW* 491-97 (2d ed. 1959).

12. Such is apparently the case of DEKKERS, *PRINCIPES NOUVEAUX DE DROIT SOVIETIQUE* 11-16 (1962).

extra-judicial settlement, particularly in personal injury cases. In Soviet Russia extra-judicial considerations were, and to a large extent continue to be, determinative of the outcome of problems generated by human behavior on a scale hardly known in any other system.

On its face the Judiciary Act of 1922 and other Soviet enactments in this field may seem to have many democratic features in the Western meaning of the word, apt to mislead superficial observers. Thus (irrespective of whether popular participation in the government is advisable only in the legislative and executive branch or also in the judicial), it could appear that the democratization of the administration of justice was certainly brought about by such institutions as lay assessors in the courts, elected judges, and their responsibility with the possibility of their recall.

Upon a closer investigation, the advantages of such a "democratic" character of Soviet justice fade away for three reasons: first, resort to methods of administering justice outside of the regular system of courts; second, the way the courts were staffed and the way they functioned; and third, the role attributed to the law and the legal profession in the communist ideology.

Soon after the outbreak of the October Revolution, special Revolutionary Tribunals were established¹³ to crush the counter-revolutionaries, help the new regime to rid itself of the opposition and enable it to become more deeply entrenched. Indeed, they were unusually harsh whenever the defendants appeared to be enemies of the new order. Summary judgments and executions became routine.

Those special tribunals (abolished and replaced by military courts in 1922), with all their excesses and abuses, still had some features of judicial bodies and (at least in theory) were subjected to some rules of procedure. The contrary was true as to some other devices set up by the regime with the view of eliminating the "enemies of the people" from public life by the usual method of taking away their life or at least deporting them to faraway places, concentration or hard labor camps, where they had hardly any chance to survive due to overwork, starvation, lack of elementary medical care, and most primitive living conditions coupled with harsh treatment on the part of the guards and rough climate.

The most effective method to achieve this goal was an extraordinary committee known as the "Chrexvychaika" or Cheka which was granted unlimited powers to investigate any possible threat to the new regime or conspiracy against the government and to take any action however radical

13. Decree of Nov. 24, 1917, providing for the People's Tribunals as well as Revolutionary Tribunals.

that was deemed proper to eradicate the danger. Soon the Cheka became the master of life and death of millions of citizens. It was not subject to any control by the commissar (later: minister) of justice or courts. It was independent from any interference on the part of other organs of government and there were no appeals from its decisions. The lash of the Cheka reached into the ranks of the communist party itself, and its abuses became so flagrant that it was abolished after about four years of wild activity.

However, the situation hardly improved as the job done by the Cheka was continued by its successors. The next was the feared G.P.U. and, after the establishment of the Union in 1923, the O.G.P.U. The story repeated itself. Very soon this administrative organ became the most powerful, lawless, and hated organ in the country. The same may be said about the N.K.V.D., and later, the M.V.D., which took over the problem of "state security" after the abolition of the G.P.U.¹⁴

The notion of the "enemy of the people" became a catch-all term applicable to any one whose existence displeased the government or, sometimes, some influential governmental official. The best denunciation of the sad state of affairs occasioned by those abuses was made by Khrushchev himself who accused Stalin of inventing this concept, adding: "This term made possible the usage of the most cruel repression . . . against anyone who in any way disagreed with Stalin, against those who were only suspected of hostile intent, against those who had bad reputations."¹⁵

In order that proper authorities might learn about the "enemies of the people" and all instances of disloyalty or even criticism of the government, the institution of the informer became deeply entrenched in the Soviet system. Citizens were encouraged and even required in the name of higher interests of the state and the party to spy on others and report what they learned to the officials. This duty was imposed on everyone. Pupils were to inform on their teachers, wives on their husbands, and children on their parents. Those who complied were recognized as model citizens of the Soviet Union, sometimes as real heroes. But they incurred the wrath of the community in which they lived resulting in some instances in physical reaction and violence which in turn brought about bloody repressions. In a somewhat different context, the obligation of the citizens to contribute to the preservation of the existing order has been expressed in the statute on the Increase of the Role of the Society

14. It was followed by the M.G.B. and the K.G.B. See, GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 4, at 564.

15. GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 4, at 881.

in the Protection of the Social Order.¹⁶

The whole atmosphere in the Soviet Union, at least during the long Stalinist period, was one of terror.¹⁷ Not only was this fact clear to everyone, but it was even recognized by the government. One of the decrees, of September 5, 1918, was officially termed: "On the Red Terror."¹⁸

In the light of the extra-judicial methods of dealing with a person suspected of an unfriendly attitude towards the Soviet reality (and in general, "suspicion was tantamount to guilt"),¹⁹ it would seem that a defendant accused of a political crime would be happy to be brought before a regular court. In fact, he had little reason to rejoice. The odds against him were still tremendous, and in the great majority of cases his fate was sealed in advance of the trial. This was due to the second factor to be considered in examining the administration of justice in the Soviet Union: the method of staffing the courts, the way they were functioning, and the procedures which were applied in order to bring about a desired result of the case.

The quality, integrity and independence of the judges determines, according to the traditional approach, the level of the administration of justice in a given society. It has been rightfully observed that good judges may efficiently function in a poorly organized judicial system "just as a good mechanic can sometimes do excellent work with a poor machine."²⁰

In the Soviet Union, particularly in the early years, qualities of competence, integrity, and independence in judges were discouraged by the method of their selection. Being well versed in the law was not required. Political reliability was the test for eligibility. By virtue of art. 11 of the Judiciary Act of 1922, in order to become a People's Judge, one had to have the right "to vote, and to be elected to Soviets," and a two year record of "responsible political work" or three years experience working in "organs of Soviet justice" at a stated level. Thus, uncertain elements were eliminated.

Whether the judges were elected by the Soviets²¹ or the general elec-

16. Art. 1 of the statute states that "each Soviet citizen shall not only follow the rules of law, but shall act as a law enforcement officer and demand that others conform to the rules of socialist legal order." See GRZYBOWSKI, *SOVIET LEGAL INSTITUTIONS* 260-61 (1962).

17. For elaboration of this statement, see *e.g.*, HAZARD, *THE SOVIET SYSTEM OF GOVERNMENT* 66-80 (4th ed., 1964).

18. GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 4, at 565-66.

19. *Id.* at 880.

20. Hallows & De Witt, *The Need for Court Organization*, 1954 *WIS. L. REV.* 376.

21. This was the general pattern until 1949. The communist party assured for itself the selection of the members of the Soviets, who in turn elected the judges.

torate, or appointed, the decisive factor was always the wish of the communist party,²² and the position of a judge was usually held by party members. It has been reported that by 1935 the percentage of communists in the judiciary reached 95.5 in the lower courts and 99.6 in the higher courts, while in 1947 only 14.6% of judges and other high officials connected with the administration of justice had legal education at the university level, and 21.8% had received some legal training at the secondary level.²³

The traditional requirement that the judges should be independent in the performance of their functions was ridiculed for a long time and particularly by Vyshinsky who stated that such an approach "acquires, under the conditions of proletarian dictatorship, a counter-revolutionary character."²⁴ After the enactment of the Constitution of 1936, its art. 112 which provided that "Judges shall be independent and subject only to the law" was understood by Vyshinsky as referring to independence from personal and local influences only.²⁵ Some other commentators, like Karev,²⁶ agree that there is no question of independence of judges from the policy of the party and the government. A typical statement was laid down by Vyshinsky:

A court of whatever sort is an organ of the authority of the class dominant in a given state, defending and guarding its interests. . . . Bourgeois theorists strive to depict the court as an organ above classes and apart from politics, acting, supposedly, in the interests of all society and guided by commands of law and justice common to all mankind, instead of by the interests of the dominant class. Such a conception of the court's essence and tasks is, of course, radically false. It has always been an instrument in the hands of the dominant class, assuring the strengthening of its dominance and the protection of its interests.²⁷

However, other communist commentators claim that Soviet judges are independent in the true sense of the word. Curiously enough, after undermining the very possibility of an independent judiciary, Vyshinsky stated that "Soviet judges are independent, . . . being subordinated only to the law, which sets forth the will of the entire people, is independent

22. The 1936 constitutional provision that lower judges would be elected directly by the voters was not implemented until 1949.

23. Citing Soviet sources, GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 4, at 517.

24. *Id.* at 520.

25. *Ibid.*

26. GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 4, at 521.

27. VYSHINSKY, *THE LAW OF THE SOVIET STATE* 500 (1948).

of all influence and inducements whatsoever in deciding specific court matters."²⁸

Even if a Soviet judge should have decided to be truly independent, he would not be permitted to exercise his independence for long. If he dared to displease the government, several ways were available to eliminate him. First, there was always the possibility of resorting to repressive measures imposed by the security agencies of the state. Second, the judge could be recalled in the same manner in which he had been appointed or elected (see, for example, articles 13, 42, 57, of the Judiciary Act of 1922), with approval, in proper cases, of the commissar of justice. Third, far from the idea of irremovability of judges denounced by Lenin himself,²⁹ the term of office of Soviet judges is unusually short, and after its expiration the incumbent bears the risk of losing his job. By virtue of the Judiciary Act of 1922, the judges of the People's Courts and of the Provincial Courts were to be elected for only one year. In 1938, the term was raised to three years for lower judges, and to five for higher judges, and in 1958 the uniform term for all judges was set at five years.³⁰ Besides the possibility of recall, there were provisions about dismissal from office for cause (by a court's decision or as an outcome of disciplinary proceedings; articles 13, 42, 69, 84 of the Judiciary Act of 1922).

Again, there is no division of powers in the Soviet Union in the traditional sense, and the functioning of the courts and the decision-making is supervised by other branches of the government. Thus, for example art. 112 of the Constitution of 1936 provided that the Supreme Court of the Union "is accountable to the Supreme Soviet . . . and, in the intervals between its sessions, to the Presidium of the Supreme Soviet. . . ."³¹ Indeed, the courts' power is delegated to them by the Supreme Soviet (and the lower soviets) to which they are responsible. Should it be deemed proper, the Supreme Soviet has the final authority to reverse a judicial decision.³² And a control of the activities of the courts is exercised by the ministries of justice.³³

The institution of lay assessors (or "People's Jurors") could bring about an element of popular participation in the Soviet administration of

28. *Id.*, at 514. The principle of the independence of the judges and assessors is also expressed in art. 9 of the GENERAL PRINCIPLES OF THE ORGANIZATION OF COURTS of 1958 and in art. 7 of the RUSSIAN JUDICIARY ACT OF 1960, invoking art. 116 of the CONSTITUTION OF THE RUSSIAN REPUBLIC.

29. VYSHINSKY, *op. cit. supra* note 27, at 512.

30. GENERAL PRINCIPLES OF THE ORGANIZATION OF COURTS, arts. 19, 20, 22, 24, 26.

31. The same provision is repeated in art. 2 of the STATUTE OF THE SUPREME COURT OF THE U.S.S.R., adopted by the Supreme Soviet of the U.S.S.R. on February 12, 1957. For English text, see DENISOV & KIRICHENKO, *op. cit. supra* note 10, at 438.

32. HAZARD, *op. cit. supra* note 17, at 171.

33. For details, see *e.g.*, KULSKI, THE SOVIET REGIME 291 (1956).

justice.³⁴ The assessors are not comparable to jurors in the common law world. They exercise the regular functions of a judge, deciding with the professional member of the courts questions of law and fact.³⁵ However, because of the general atmosphere prevailing in the Soviet courts, the assessors hardly ever dared to contradict their professional colleagues. It seems that only one case was reported in which they outvoted a judge.³⁶ Besides, the selection of the assessors is such that it assures that they be politically reliable. As Krylenko pointed out in his report (see below), his system rejected "the principle of democratic elections from below, which in political life always leads to a casual comer being elected," and was founded on the principle "of singling out the staunchest representatives of the proletariat."³⁷ And art. 21 of the Judiciary Act of 1922 required consideration in their selection, "the level of their political development."

The seemingly "democratic" character of the Soviet courts was further undermined by many different devices which deprived the accused of the chance to defend himself effectively. It would require a long discussion to describe in full all the institutional and procedural rules which made it often impossible for the defendant to exonerate himself from the guilt attributed to him by the prosecutor with the judge often appearing to act as a second prosecutor.³⁸ Although some Soviet theorists asserted that the centuries old presumption of innocence existed in their legal system actual practice denied it repeatedly.³⁹ One of the critics of the Stalinist era of lawlessness was Khrushchev who confirmed in his denunciation of the older regime many facts branded by foreign observers long ago as the very negation of justice: forced confessions obtained by refined tortures, fabricated testimony, instructions given by the government to the prosecutor to bring about the conviction of given persons by any possible means.

The requirements of a fair trial and the rule "*nulla poena sine lege*" meant little. Frequently, defendants were tried secretly, *in absentia*, or without the benefit of a defense counsel. In some cases, during the period from 1934 to 1956, trials in the absence of the accused were mandatory.

34. There were no assessors in Revolutionary Courts, but there are assessors in other courts, including the Supreme Court of the Union.

35. The same is true in other European countries.

36. HAZARD, *op. cit. supra* note 17, at 177.

37. It will be noticed that Krylenko suggested that 50 per cent of the assessors be drawn from among the labor classes, and 25 per cent from among the Red Army and the peasants. In the final statute, the participation of the peasants was increased to 35 per cent at the expense of the military units.

38. HAZARD, *op. cit. supra* note 17, at 181.

39. *Id.* at 180; GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 4, at 904.

Death sentences could not be appealed and were immediately executory.⁴⁰ And penalties could be imposed even before the law which provided for them became effective, or by the application of "crime by analogy." The famous art. 16 of the Russian Criminal Code of 1926 (no longer in force) read as follows: "Where a socially dangerous act has not been expressly dealt with in the present code, the basis and limits of responsibility in respect thereof shall be determined in conformity with those articles of the code which deal with the crimes most closely resembling it."

An interesting instance of sentencing a defendant to death without the background of statutory authority in force at the time of the commission of the crime was recently analyzed by Professor Berman who spent the academic year 1961-1962 in Moscow. A decree of July 1, 1961, provided for the possibility of imposing the penalty of death for "black market" transactions in foreign currency. Applying the law retroactively, the Supreme Court of the Russian Republic sentenced two speculators to death. The rationalization of this result, given by some Soviet lawyers, was that "it was an exceptional case and that the public—which means, of course, the Party—had demanded it,"⁴¹ and that the Presidium of the Supreme Soviet, by an edict which was never published, authorized the Court to apply the law retroactively.

Soon after, the author and another American law professor had the opportunity to meet a distinguished legal scholar from the Soviet Union. During the conversation, the Russian jurist undertook to defend the outcome of the above speculators' case. To the remark that the imposition of a penalty which is not provided for in a law officially announced to the general public before the time the crime is committed violates the principles of legality, he answered that such a stand was too formalistic and technical.

Certainly the approach to legal rules may be either flexible or not, with a range of intermediate possible positions. It is also true that the common law tends to protect rigidly the rights of the accused, and recent developments in the United States have tended to make conviction extremely difficult if not impossible in many cases. Added to the old evidentiary obstacles which prevent finding a defendant guilty who undoubtedly committed the crime, such as the hearsay rule or the inadmissibility of unlawfully obtained evidence, are new ones. The Supreme Court has excluded the use of a voluntary confession and required that at every stage of the proceedings the defendant should have the advantage

40. GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 4, at 883.

41. Berman, *The Role of Soviet Jurists in the Struggle to Prevent a Return to Stalinist Terror*, 14 HARV. L. S. BULL., No. 3, at 3, 4 (Dec. 1962).

of counsel even if his crime is not a felony. Those rules, coupled with the impossibility of the prosecution to appeal based on an excessively broad interpretation of the protection against double jeopardy, make the United States a country in which it is difficult to fight the criminal. In their technical abidance by the defendant's constitutional rights in their broadest possible construction, the courts neglect the rights of the general public to protection against crime. The situation has deteriorated so much that in an address delivered in January, 1965, the President of the American Bar Association Lewis F. Powell asserted that there are good reasons for criminals to think that crime does pay, that "slow and fumbling justice can be evaded," and that "there is growing belief that recent Supreme Court decisions have tipped the scales of justice too far in favor of a criminal and subordinated the rights of law-abiding citizens."⁴²

This is one dangerous extreme for which the United States Supreme Court is hardly to be felicitated. Another one is the Soviet approach applied in the speculators' case. The crime that they committed was not a *malum per se*, and their conduct would not be objectionable in many legal systems. Yet, without a law providing for a capital punishment at the time of the offense they were sentenced to death. To some representatives of the communist world the shock of a traditionalist may seem puzzling. What is the life of one person worth compared to the overall goals of "progressive" social movements? Any objections may be branded as obsolete sentimentalism or unreasonable formalism and technicality. After all, in this case the defendants *were* clearly guilty. And the interests of the society may require that even those who are not guilty be subjected to punishment—either for the purpose of terror, or as victims of collective responsibility, or else as a method of deterring some conduct and serving as an example—such as provided for by a statute imposing a penalty of exile on the members of a family of an escapee from the armed forces to a foreign country even if they were unaware of his intention to run away.⁴³

Many of the differences between the administration of justice in the traditional and communist systems are due to fundamentally opposite

42. U.P.I. release, January 29, 1965. Recently, Judge Desmond, Chief Judge of the New York Court of Appeals, stated that the effect of the new Supreme Court decisions is to deprive "the public, not just the prosecutors and the police, of reliable, convincing, real evidence." Referring to the case of *Mapp v. Ohio*, the Judge asserted that its rule does not protect the average citizen "who never needs it," and continued: "What the rule does is to insure and safeguard the professional criminal . . ." *New York Times* of April 30, 1966.

43. HAZARD, LAW AND SOCIAL CHANGE IN THE U.S.S.R. 108 (1953).

views as to the very concept of the law and the role it should fulfill in the society.

According to Marxist-Leninist ideas, economic relations are the basis of every society, and all the rest, including the law, are only a superstructure, conditioned on the basis. All organs of a communist state, whether falling into the category of essentially executive, legislative or judicial, have one predominant duty: to advance the interests of the state in accordance with communist ideas. A striking example is a provision of the General Principles of the Organization of Courts of 1958 which, repeating previous enactments to the same effect, requires the courts to "educate the citizens of the U.S.S.R. in the spirit of devotion to the country and the cause of communism." This is hardly an education in the traditional meaning of the word. And yet, taking some Soviet texts and institutions on their face value, reinforced by comments received from some communist jurists, some Western commentators seem to view their legal system in the light of traditional ideas, seemingly misled by words and appearances. Thus, a Belgian writer, after a superficial venture into the problem and a short visit to the communist countries committed in his comments the gravest mistake of a comparatist by taking the printed word for granted without investigating the conditions in which it is to be given effect.⁴⁴

According to the communist doctrines, there is no such thing as objective justice. One of the recent treatises on "The Soviet Legal System"⁴⁵ opens with the quotation of a statement by Lenin: "A law is a political measure, it is politics." And as in a communist system the policy is formulated by the party, it is inconceivable that a court might thwart whatever decisions could be taken by the party. As the division of powers is not a necessary attribute of the communist organization of the society, the courts might as well not be established at all. It was decided to set them up for some important reasons,⁴⁶ but avowedly they were to maintain their political character. Said Krylenko: "Our judge is above all a politician, a worker in the political field . . . and therefore he must

44. DEKKERS, *op. cit. supra* note 12. The author's fallacies have been pointed out by HALL, *COMPARATIVE LAW AND SOCIAL THEORY* 102 (1963). Mr. Dekkers admits in the foreword to his booklet, that he "would never dare to publish those pages" without the benefit of his conversations with jurists from Moscow, Leningrad, Tbilisi, Warsaw, Prague and Bratislava, whose "expertise is equal to their devotion." It would be advisable to juxtapose Mr. Dekkers' work with studies going deeper into the problems, such as *e.g.*, HAZARD, *op. cit. supra* note 17, and in particular, with chapters: 4 on Controlled Mass Participation; 5 on Terror and its Rationalization; 9 on State Intervention in Private Affairs; and 13 on The Peril-Points.

45. By HAZARD & SHAPIRO (1962).

46. Those reasons are discussed in HAZARD, *op. cit. supra* note 17, at 169-71.

know what the government wants and guide his work accordingly. . . ."⁴⁷

Thus, the law is the dictate of the ruling class—it is an instrument of class struggle, and it should be administered accordingly. Other standards were applied by the courts to an accused from the workers' and peasants' class, and others to someone from former upper classes.⁴⁸ The social origin of the defendant, his past and economic situation could well be the determinative factor in sentencing him.⁴⁹ To what Vyshinsky had to say in connection with the independence of the judges, may be added his statement that "the courts represent various forms of the class struggle of the proletarian dictatorship,"⁵⁰ and Krylenko's remark that "the court is, in the first place, an agency for the protection of the interests of the ruling class and of a given social order."⁵¹

After what was said about the role of the courts and the judges in the Soviet system, it is hardly necessary to add that the prosecutor is a very powerful and feared person. That he has the right to appeal is not a unique feature of the Soviet system⁵² (incidentally, he can appeal both when he would like the penalty imposed by the court to be more severe or less severe); but as Krylenko pointed out in his report (see below), the prosecutor general was granted the power to "suspend" the decisions of the Supreme Court and submit them for final determination to the Presidium of the Central Executive Committee.⁵³

Even since recent reforms, the role of the procurator in the U.S.S.R. is strikingly more significant than in the traditional legal systems;⁵⁴ thus art. 14 of the General Principles of the Organization of Courts of 1958 provides that he "exercises control over the legality and the validity of judicial decisions, criminal or civil . . .,"⁵⁵ which in other systems would amount to usurping the function of the judiciary. And the procurator general exercises "supreme supervisory power to ensure the strict

47. GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 4, at 516.

48. HAZARD, *op. cit. supra* note 17, at 66.

49. GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 4, at 880; HAZARD, *op. cit. supra* note 43, at 98.

50. GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 4, at 520.

51. *Id.* at 516.

52. However, in the Soviet system his right to appeal is broader than that of private individuals who are permitted to appeal only once, to the immediately higher court, while the right of the prosecutor is not so limited.

53. The powers of the procurator were settled in the statute of May 22, 1922, five months before the adoption of the JUDICIARY ACT.

54. An unorthodox observation is that the important role of the prosecutor is obvious, for a keen person, from the very arrangement of his seat in the court room, which indicates that this position is not inferior to that of the judges. Hazard, *Furniture Arrangement as a Symbol of Judicial Roles*, 19 *Etc.*, No. 2, p. 181 (July, 1962).

55. A similar provision is found in art. 22 of the ORDINANCE ON THE SUPERVISORY POWERS OF THE PROCURATOR'S OFFICE in the U.S.S.R., May 24, 1955.

observance of the law by all ministries and institutions subordinated to them, as well as by officials and citizens. . . ."⁵⁶

As to attorneys-at-law, their position can hardly be compared to that in traditional legal systems. After an early attempt to eliminate the legal profession altogether, it was decided to retain it on reorganized foundations. Collegia or teams of lawyers were established in which they have to practice collectively. The role of the attorney is relevant to the problem of the organization of courts inasmuch as they are also considered as an element in the administration of justice. In exercising his duties in the Soviet Union, a defense attorney in a criminal case had to proceed with great caution. Traditionally, as Vyshinsky stated, their functions were merely "tolerated," and anyhow, they were required to have high political qualifications and to keep in mind primarily "the interests of the building up of socialism" rather than those of their clients.⁵⁷ Therefore, having a defense attorney was sometimes of questionable value for a defendant, the more so that a significant exception to the lawyer's duty to keep in confidence information that he received from his client was his obligation to decline the defense, and to report to proper authorities, in case he learned about the preparation or commitment of a counter-revolutionary crime.⁵⁸ After the reforms of 1958-1960, the position of defense attorneys became stronger. They are no longer treated by the courts and the prosecutors, "with contempt and disfavor,"⁵⁹ but all that they can do for the defendant is to "point out the unfortunate set of unfavorable circumstances which, by a haphazard interplay, pushed the culprit towards the commission of the crime."⁶⁰ The position of the Soviet attorney "will undoubtedly never equal that of a lawyer in Western Europe or of a lawyer in pre-revolutionary Russia."⁶¹

The foregoing observations should necessarily be kept in mind in order to understand the conditions and atmosphere in which the judicial system, laid down by the Judiciary Act of 1922, was to function for many years.⁶² A few other remarks are in order. First, most of what was said

56. *Id.* at art. 1, modeled after art. 113 of the Constitution. For a detailed analysis of the prosecutor's role, see MORGAN, *SOVIET ADMINISTRATIVE LEGALITY* (1962).

57. GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 4, at 561.

58. Strogovich, cited by KULSKI, *THE SOVIET REGIME* 301 (1956). Besides, "[t]he procedure of admission and threat of expulsion from the Bar association give a guarantee to the Government that Soviet attorney will function in utter loyalty to the Party." *Ibid.*

59. Fridieff, *L'Organisation Judiciaire Sovietique*, 14 *REV. INT. DR. COMP.* 725, 141 (1962).

60. *Ibid.*

61. *Ibid.*

62. The immediate background and analysis of the act has been given in detail by HAZARD, *SETTLING DISPUTES IN SOVIET SOCIETY* 176 (1960).

refers, quite naturally, to cases with a political or class flavor. In disputes between private individuals of the same social origin and standing, in which the party was absolutely not interested, there would be hardly any reason to resort to any kind of pressures or unorthodox settlement of the difficulty. Second, the act was enacted in the Russian Republic before the Soviet Union as a kind of a federation was called into being. The establishment of the Union and the drafting of its Constitution dates back to 1923; and its final ratification took place on January 31, 1924. A federal Judiciary Act was enacted in the same year. The Judiciary Act of 1922 established the bases of the Soviet court structure for a long period to follow. The next important federal statute on the court organization was enacted on August 16, 1938, after the 1936 Constitution went into effect. The present Russian Judiciary Act was enacted on October 27, 1960, after the federal General Principles of the Organization of Courts were adopted in 1958.

The judicial and extra-judicial ways of imposing penalties, as mentioned above, including the regular and long application of terror, seem to be so revolting that the natural question arises: how is it possible that such a situation could be tolerated for such a long period of time? There is no single reason for it. One reason among many others is the inane passiveness of the Russian people whose history accustomed them to suffer under a yoke, be it that of a totalitarian Czarist regime or of a Stalinist oppression.⁶³ Another is the method by which the communist minority imposed and maintained its grasp on the country, where the slightest opposition resulted in deportation, tortures, or death. Even so, individual or mass resistance was often heavy, and resulted in a variety of desperate acts including assassinations of some hated state officials or party agitators and refusal to carry out the laws or regulations. Naturally, savage reprisals followed, whole villages were exiled into Siberia and in order to crush the anti-governmental opposition in the Ukraine, literally millions of people were permitted to starve to death in the thirties. A reflection of the desire to live without terror was manifested in a spectacular way during the first weeks of the Soviet-German War in 1941, when large formations of the Red Army were surrendering to the Germans often without fighting, the inhabitants of the towns and vil-

63. A typical example of this attitude was demonstrated by an inmate at the Lubianka prison, who was confined because of a mere suspicion, without any evidence of his counter-revolutionary activities or feelings. After being submitted to tortures and initial despondency and bitterness, he found the measures against him as reasonable and justified them on the ground that the authorities can take no risk: maybe, it is better to punish many innocent people than to let one dangerous person pursue his activities.

lages were greeting the invaders with flowers, and the original advances of the German army were spectacular. It is an easy guess to assert that if the Nazis had been better politicians, and had known how to promote friendly feelings towards themselves, the Soviet Union would have collapsed. But for the victorious German forces, moderation and psychological strategy seemed unnecessary. Hatred was the *spiritus movens* of their actions, and a show of force seemed the most persuasive weapon in all circumstances. This resulted in a haphazard display of atrocities on the conquered territories and inhuman treatment of prisoners of war, including starvation and gas chambers. The news spread quickly and cemented resistance which contributed to the final collapse of the Reich. It may be recalled, again, that Soviet citizens who were found by the Allies on the German territories, either as prisoners of war or forced laborers, were reluctant to return to their country; as a matter of fact, thousands of them refused to go. But the Allies forced them to go back. Suicides among the repatriated were not uncommon.

And yet, one of the keen observers of the Soviet system, Professor Hazard, states that the Soviet people appear "in the main to have accepted terror during Stalin's time as a necessary evil."⁶⁴ That it was an evil can hardly be controverted. But it does not seem that the author was able to prove that it was necessary. The introductory statement to Professor Berman's comments on his stay in Russia appears to be more realistic: "In the Soviet Union today people in all walks of life welcome their Government's condemnation of the terror of the Stalin era."⁶⁵

The Russian Judiciary Act of 1922 was in force during the Stalin era, which began not long after the death of Lenin in January of 1924. After a short struggle for power following Stalin's death, Khrushchev emerged as the strongman and founder of a new era, which unexpectedly ended with his deposition in 1964. His criticism of Stalinist atrocities brought about some theoretical as well as practical changes in the Soviet system of government, in the direction of eliminating the most objectionable practices amounting to the travesty of justice. It remains to be seen whether Kosygin and Breshnev will establish an era of their own, and what developments await the administration of justice in the Soviet Union under their leadership.

Two features of the recent reforms should be mentioned. First, article 5 of the Federal General Principles of 1958 and of the Russian Act of 1960 proclaim the principle of equality of the citizens before the law and before the courts. A commentator observed that this provision

64. HAZARD, *op. cit.* *supra* note 62, at 71.

65. Berman, *supra* note 41, at 2.

can possibly be understood by some students of the Soviet system as evidence that the old class of "profiteers" disappeared from the Soviet economy.⁶⁶ Irrespective of factual considerations, the above provision marks an important theoretical change in the approach of the Soviet legislators to the administration of justice. The old dogma of class justice seems not to obtain any longer.

However, the seeds which were being sown for a long time continue to grow in various places. A good example is a recent study by a foremost Czech jurist who emphasizes the significance of the use of cybernetics in the realm of human behavior, and associates his attempt to make use of quantitative methods in the field of law with the provision of art. 18, sec. 2, of the Czechoslovak Constitution which provides for the application, "in the Society of toilers," of the "results of science relating to the direction of society and the planning of its future development."⁶⁷

The author discusses the possibility of using cybernetic machines for the purpose of arriving at judicial decisions. He distinguishes between simple and complex cases. In certain simple cases, after furnishing to the machine all relevant facts, the machine will provide the proper decision to the judge. Complex cases are those, in particular, in which there are alleviating and aggravating circumstances to be taken into consideration in the meting out of the penalty. In such a situation, the results arrived at by the machine (possibly, presented in a form of some alternatives), will be only guides or suggestions for a decision ultimately made by men.

In pointing out circumstances bearing on the severity of the punishment, the author lingers on "the problem of the class consideration (class consciousness) which, as is well known, is of great significance in law."⁶⁸ He proposes to feed the machine with the information as to the class identity of, for example, the perpetrator of a crime, such as: worker; privately operating farmer; farmer-member of a cooperative; official; former capitalist, etc. The machine should be so arranged that, after having received and digested the basic information, it would take into account also the class status of the accused. While the author points out that the use of the machine in such a situation should not be mechanical, as the machine cannot become "dialectical," he attaches importance to the class background of the defendant as an element bearing on the penalty

66. Ancel, *Introduction to Centre Francais de Droit Compare, LA REFORME PENALE SOVIETIQUE*, p. L n. 1 (1962). The author mixed up the federal law of 1958 and the Judiciary Act of the Russian Republic of 1960.

67. My attention to this book was drawn by Professor Benes, of Indiana University, who translated the relevant passages into English.

68. KNAPP, *O MOZNOSTI POUZITI KYBERNETICKYCH METOD V PRAVU* 111 (1963).

to be imposed.⁶⁹

Another feature of the recent reforms is that apparently all justice should be administered by a unified set of regular courts. Art. 7 of the Federal General Principles of Criminal Law of Dec. 25, 1958, provided as follows: "(A) dministration of justice in criminal matters belongs exclusively to the court. Nobody may be declared guilty of committing a crime and be subjected to penalty except by court sentence." However, at least three exceptions have to be noted.

First, the Military Tribunals were retained. Their obligation is "to combat any criminal encroachments on the security of the Soviet state, the fighting capacity of the Armed Forces, military discipline and rules of military service. . . ." ⁷⁰

Second, for minor acts of misbehavior, lack of discipline at work and petty offenses, comradely courts may be established in the various units of the Soviet life. They were first provided for in a decree of 1928 and subsequently came into near-oblivion before they were resurrected as a consequence of Khrushchev's appeal for greater popular participation in the administration of justice at the XXI Congress of 1959.⁷¹ The present regulations of the comradely courts were enacted by a decree of the Presidium of the Supreme Soviet on July 3, 1961. Art. 1 of the law indicated that their duties consist of "educating Soviet citizens in the spirit of communist attitude to work, . . . observance of the rules of socialist coexistence, promoting with the Soviet people the spirit of collectivism. . . ." ⁷²

The most important exception to the rule that a penalty may be imposed only by judicial organs is provided for, in some Republics, by "parasite" statutes. This time, the Russian Republic did not set the pattern, but followed it, after some hesitation. The Russian statute⁷³ deplors the fact that some persons "refuse to work honestly, . . . live from income which does not come from work, . . . exercise prohibited professions, engage in activities of free enterprise, in speculation, in begging, employ salaried manpower, derive income from . . . exploiting personal automo-

69. Simultaneously with the publication of the book, the same author published an article: Knapp, *On the Application of Cybernetics of Law*, 9 REV. CONTEMP. L. 15 (1963). There is no discussion of the class background of the accused in the article.

70. DENISOV & KIRICHENKO, SOVIET STATE LAW 307 (1960). For a short description of Military Tribunals see, e.g., Fridieff, *supra* note 59, at 735-38.

71. Ancel, *supra* note 66, at LV; GRZYBOWSKI, SOVIET LEGAL INSTITUTIONS 255 (1962).

72. GRZYBOWSKI, *op. cit. supra* note 71, at 256. For recent examples of cases decided by the comradely court of Moscow University Law School, see Sharlet, *Russia's Courts of Public Pressure*, 200 *The Nation*, January 18, 1965, No. 3, p. 55. See also, MORGAN, *LAW IN EASTERN EUROPE* (1963), chapter 7 on the Comrades' Courts.

73. Decree of the Supreme Soviet of the Russian Republic of May 4, 1961.

biles or building grounds . . . and commit other anti-social acts.”⁷⁴ The statute declares a severe fight against those “parasites,” who are subjected to an exile of two to five years with the obligation to work in places especially established for that purpose, and a forfeiture of their assets acquired not by working. The penalties are imposed either by the People’s Tribunals, or by “social decisions reached by collectivities of toilers of enterprises, workshops, administrations, organizations, kolkhozes. . . .” Such a decision can be taken after a warning to the “parasite” has been left unheeded; it should be approved by the Executive Committee of the local soviet, and cannot be appealed.

Such procedures like those envisaged by the rules on comradely courts and parasite statutes, together with provisions on assessors and lack of requirement that judges should have legal training, result in the de-emphasizing of the importance of the law and the legal profession. They may be a step in the direction of a classless society, foreseen by Marx and Engels, “in which disputes would be settled by the spontaneous, unofficial social pressure of the whole community, by the group sense of right and wrong or at least of expediency.”⁷⁵ The “withering away” of the state and the law, predicted by the founders of communism, advanced by Soviet jurists purged in the thirties and then postponed for an indefinite period of time (until capitalism will disappear everywhere, and communism reaches its final stage) may develop little by little, even though abidance by “socialist legality” should be an important feature of the society in the long period of transition. However, to every Marxist, law is only a by-product of the economic foundations of the society, overshadowed by communist ideology, politics, etc. Therefore, the author was not surprised when upon asking a prominent jurist from one of the communist countries whether his son would study law, he received the following answer: “Oh no! of course, he will do something more reasonable!”

In this connection, it is interesting to note the striking decrease in the number of students at many law schools in the Soviet Union (and particularly, in other republics than Russia). In 1963, there were less than 50% of law students as compared with 1956. There is an especially low enrollment in law schools in the Asiatic part of the Soviet Union, and in large cities like Kiev, Kishinev, Voronezh, Tashkent, Tbilisi, only 25

74. Listening to foreign broadcasts may also be treated as such an “anti-social act.” HAZARD, *op. cit. supra* note 62, at 79.

75. BERMAN, *JUSTICE IN THE U.S.S.R.* 280 (1963).

new law students are being admitted per year.⁷⁶ If there are few candidates, the conclusion may be that there is just lack of interest, and "more reasonable" fields are being selected; if admissions are limited by the authorities, maybe the government prefers that there should not be many trained lawyers, at least in non-Russian Republics.⁷⁷

Enclosure 2 in Despatch No. 632

REPORT OF THE ACTING COMMISSAR OF JUSTICE, COMRADE KRYLENKO, ON THE LEGISLATIVE BILL CONCERNING THE ORGANIZATION OF SOVIET LAW COURTS.

At the Night Session of the IV Session of the Central Executive Committee on October 23, 1922. (Summary from the Shorthand Account reproduced in the Official Publication ACT ORGANIZING LAW COURTS OF THE R.S.F.S.R., Moscow Edition of the People's Commissariat of Justice, 1922.)

Krylenko first characterizes the old system, which contained two principles, as it were: on the one hand there were the People's Courts, Soviets of People's Judges, and the Commissariat of Justice, while on the other hand there were tribunals: military, transport, provincial, and supreme. The new law was to do away with this dualism and give a unified system of law courts. The makers of the new law were confronted with certain questions of greatest practical and political importance: first, who was eligible for People's Judge; secondly, how are People's Judges to be appointed; thirdly, how are People's Judges to be recalled from their posts; fourthly, to whom are they subordinated; and fifthly, how are People's Jurors to be selected and appointed.

As regards the first question, who is eligible for People's Judge, they must abandon the idea that everybody is eligible. The Legislative Bill under discussion provides that for this post is eligible only he who has active and passive suffrage, who has a previous two-years' record in responsible proletarian, public, trade-union or party work, or, as an alternative, who has been three years a People's Judge under the old system. Concerning the second question: how are People's Judges appointed, the Bill provides that candidates are to be proposed by the Provincial Court, and appointed for one year by the Provincial Executive Committee, with the right to recall any Judge from his post by resolution of the said Executive Committee, in which case the Commissariat of Justice must be apprised of the motives underlying such recall. The third question is: to whom are the People's Judges subordinated. The Bill subordinates them to the next higher court, the Provincial Court. This creates in the province a "strong fist," a legal center. And then the last question: how is the personnel of the People's Jurors to be made up. In this respect the Bill professes deliberately its class character, in that it provides that 50 percent of the jurors must be drawn from the labor classes, 25 percent from the Red Army, and 25 percent from "representatives of settlements, volosts, etc." In each uyezd (county) a special "Distribution Commission" is to be formed, which is to compile jurors' lists. The number of jurors required per uyezd (county) will vary between 800 and 1,000. This system deliberately breaks with "the principle of democratic elections from below, which in political life always leads to a casual comer being elected, while our system is based on the openly avowed electric principle of singling out the staunchest representatives of the proletariat." In this fashion the primary court is formed, that court which deals with 92 percent of all legal cases of the R.S.F.S.R., the People's Court with two jurors.

Now the next higher court. First of all, as regards the name it is to be given, the Bill proposes to call it the Provincial Tribunal (this name was eventually, after the debates, changed to "Provincial Court."—Note by translator). This Provincial Tribunal has three principal functions: first, it deals with cases of counter-revolution, banditism, murders, etc.; generally speaking, with such transgressions of the law which entail

76. *Izvestia*, August 4, 1964; cited by *Recht, Rechtswissenschaft und Justizausbildung*, OST & WEST, November 15, 1964, v. 8, No. 6, p. 240. (Brought to my attention by Dr. Fedynskyj, of Indiana University Law School.)

77. From among the five cities mentioned, only Voronezh is in the Russian Republic.

severer punishment; the second function is that the Tribunal acts as court of appeal in respect to lower court; and the third, that it is an organ of supervision. How are the Provincial Tribunals to be constructed, with or without jurors? With a view to observing uniformity of structure, the compilers of the Bill eventually decided to retain for this court too the institute of jurors. But "political expediency" required that even still greater vigor be exercised in the selection of jurors for the Provincial Tribunal. The Bill provides that in each province a Commission of seven members shall be formed, which will compile the list of jurors for the Provincial Tribunal. The jurors must have a two-years' record of work in public organizations. There will be about 100 to 200 jurors per province, and each of them will have to sit on the jury about six days in the year. Besides a Collegium of Appeals, the Provincial Tribunal is also to have a Disciplinary Collegium, the task of which is to supervise the People's Judges and People's Examining Magistrates. These Disciplinary Sections will deal only with two kinds of offences: first, "conduct incompatible with the dignity of a legal worker," and secondly, "the pronouncing by the judge of a number of verdicts, subsequently rescinded by the higher courts, 'contradictory to the spirit of our Soviet laws.'" "This latter handle for the institution of disciplinary proceedings is given to the Provincial Tribunals in order to maintain in legal practice a line of conduct which corresponds to the principles of the central Soviet Power." The Provincial Tribunal is to consist of 15 members, and in its Presidium, that is in the President and the two Vice-Presidents, special administrative and technical functions are to be vested. The Plenary Session has the right to raise questions of "interpretation of laws in connection with a concrete case."

As regards the Supreme Court of the R.S.F.S.R., it combines the functions of the old Supreme Tribunal with all its Collegiums (Sections): Military, Transport, Legal, and of Appeals, creating anew the Section for Civil Appeals, and taking over from the Commissariat of Justice all functions of supreme control of jurisdiction. As regards functions of administration and organization, this sphere of activity belongs, according to the Bill, entirely to the Commissariat of Justice. Thus, the just and expedient distribution of functions is one of the most signal achievements of the Bill. Transport Tribunals are left only in eight large towns. Speaking of Courts-Martial, Krylenko says that "their time was not come yet," they must still continue in existence, but they are a branch of the general system of courts, and they are subordinated to the Military Collegium (Section) of the Supreme Court.

The Plenary Session of the Supreme Court has the right to interpret the "Material" laws and the laws of legal procedure. "But by no means all laws of the R.S.F.S.R. We do not want to construct a new Senate." With a view to establishing closer contact between the Supreme Court and the Commissariat of Justice, the Public Prosecutor-General of the Republic is to be present at the sessions of the Supreme Court; he also has the right to suspend verdicts of that Court, and to submit them for settlement to the Presidium of the Central Executive Committee. The members of the Supreme Court are appointed and approved by the Presidium of the Central Executive Committee, the candidates to be nominated by the Commissar of Justice, and for military and transport courts by the respective Commissars.

Turning once more to the military and transport courts, Krylenko admits that they constitute a "gross drawback," that they "violate the whole system," but he contends that at the present moment they cannot be done without. Incidentally it transpires that these tribunals are without jurors. "There is one more drawback: that new system is not as simple as our present system: The People's Judge with two jurors, and then the same judge with six jurors. This simplicity had to be sacrificed to another aim, the aim of establishing a uniform line of conduct in Soviet criminal law. I feel constrained to point out that in our time, since we are resolved to have the New Economic Policy 'in earnest and for a long time' (Words said by Lenin—Note by Translator), it is necessary that we, the labor classes, have also law-courts of our own and keep them well in our hands, in order to maintain our dictatorship as a means of protecting the interests of the labor classes. This principal task has been clearly expressed in Article I of the Bill, with the reading of which I am going to conclude my report. That Article I reads as follows: "For the purpose of protecting the achievements of the proletarian revolution, safeguarding the interests of the State, the rights of the toilers and their associates, the following uniform system of courts of justice

shall function on the territory of the R.S.F.S.R." Should a bourgeois lawyer read this article, he would say: "From this article it follows that your courts function, in the first place, for the purpose of protecting the achievements of the proletarian revolution, and in the second place for safeguarding the rights of the toilers and their associations," in other words, they do not exist for the protection of rights of non-toilers and their associations; and from the point of view of formal logic such a formulation of the question would not be unfounded. To him we would reply: "Yes, you are perfectly right, the interests of the toilers are that principal aim for which our courts exist. To that aim we make subservient our entire system of administration of justice, that is to say the formal weapon of class self-defense in the hands of the labor masses. If for these aims, or on the road to the achievement of such aims, we have had, or in future shall have, to trample underfoot the rights of non-toilers or their organizations, our courts will not hesitate in doing so. . . ."

After this report was heard, a Commission was appointed to scrutinize the Bill. At the session on October 31, 1922, the revised Bill was submitted to the Executive Committee once more, and, after some minor amendments had been proposed and accepted, it eventually passed "unanimously." One of these amendments was that the middle court was called not the "Provincial Tribunal," but "Provincial Court."

Enclosure No. 3 in Despatch No. 632

ACT ORGANIZING THE SYSTEM OF LAW COURTS OF THE R.S.F.S.R.

Resolution of the Central Executive Committee Concerning the Introduction of the above Organizing Act, passed at the Fourth Session on October 31, 1922.

(Translation from the Official Publication of the Commissariat of Justice, Moscow, 1922.) Sjorslin v. I p. 233. The R.S.F.S.R. Judiciary Act of Oct. 31, 1922 (R.S.F.S.R. Laws 1922, text 902).

The Fourth Session of the Central Executive Committee, having heard on October 31, 1922, the report of the Commissariat of Justice concerning the legislative Bill on the organization of the law courts, as well as the amendments proposed by the Commission, has resolved on the following:

1. To accept the Bill as introduced by the Soviet of Commissars, together with the amendments to it, and to let it become law throughout the territory of the R.S.F.S.R. commencing January 1, 1923.

The Session of the Central Executive Committee invites the Executive Committees of all allied republics to introduce this law as passed by the Session also on the territories of their respective republics.

2. To make it incumbent upon the Central Executive Committee and the Commissariat of Justice to revise by that time, also the Code of Laws of Legal Procedure, making it conform to the new law passed.

3. Being desirous, at the same time, of raising the personnel of the court workers to a due level, the Session of the Central Executive Committee has resolved:

(a) To make it incumbent upon the Soviet of Commissars to improve the material conditions of the legal workers carried on the State Supply Roll in a measure which would correspond to the importance of the tasks entrusted to them; while the Provincial Executive Committees should in a similar fashion attend to the needs of the legal workers of these institutions which are maintained and supported on local resources;

(b) To make it incumbent upon the Commissariat of Justice and the Head-Committee of Trade and Technical Instruction to elaborate with the least possible delay, and to submit to the Soviet of Commissars a Bill concerning the opening, in the course of the year 1923, of no fewer than 10 law schools in various localities, and of one supreme law school in Moscow for the purpose of preparing a body of experienced legal workers.

Signed: President of the Central Executive Committee: M. Kalium.

Commissar of Justice: Kursky.

Secretary to the Central Executive Committee: A. Enukidze.

November 11, 1922.

ACT ORGANIZING THE SYSTEM OF LAW COURTS OF THE R.S.F.S.R.

Part I.

Chapter I.

Fundamental Provisions.

Article 1. For the purpose of protecting the achievements of the proletarian revolution, safeguarding the interests of the State, the rights of the toilers and their associations, the following uniform system of courts of justice shall function on the territory of the R.S.F.S.R.

1. The People's Court consisting of one permanent People's Judge.
2. The People's Court composed of the same permanent People's Judge and two People's Jurors.
3. The Provincial Court.
4. The Supreme Court of the R.S.F.S.R. and its Collegiums (Sections).

Article 2. For the examination of special cases which are more complicated, to deal with which special knowledge and certain practice is required, and in view of the particular danger inherent in criminal offenses of a certain kind to the military power of the Republic, or to its economic welfare, the following special courts shall function temporarily, parallel to the uniform system of People's Courts of the R.S.F.S.R.: (a) for offenses endangering the firmness and the power of the Red Army, Military Tribunals; (b) for more important offenses threatening the transport service, Military Transport Tribunals; (c) for infractions of the Labor Laws, 4 Special Labor Sessions of the People's Courts; (d) for cases in connection with land affairs, Land Commissions; and (e) for disputes concerning proprietary rights between State organs, Central and Local Arbitration Commissions formed at the Soviet of Labor and Defense and at the Provincial Economic Conferences. The principles of organization and the functions of such courts are stipulated in Part IV, Chapter XII, of the present Act.

Article 3. The People's Judge, acting by himself or conjointly with two People's Jurors, attends to his duties within his fixed district in the uyezd (county) or in the town. For such activity within his district he shall be responsible only to a court, or the next higher legal institution in the fashion set forth below.

Article 4. The Provincial Court carries on its functions in the territory of that province or oblast in which it is formed, and, apart from dealing with cases coming within its competency, it exercises supervision over all courts in the territory of the province or oblast, except only the Travelling Sessions of the Supreme Court and the Military and Military-Transport Tribunals.

Article 5. The competency of the Supreme Court of the R.S.F.S.R. includes: legal control of all courts of justice of the R.S.F.S.R. without exception, examination of appeals against decisions of the Provincial Courts; examination, by way of control, of any case on which a verdict has been pronounced by any court of justice of the Republic; and trial of cases of particular importance to the State which in accordance with law come within the competency of the Supreme Court of the R.S.F.S.R.

Article 6. General supervision over the observance of laws, control over the conduct of preliminary examinations, and public prosecution in courts of law come within the competency of the State Public Prosecution.

Article 7. For preliminary examination of offenses indictable before courts of justice, People's Examining Magistrates are appointed who perform their duties within fixed divisions and who are attached to certain courts of law, under the supervision and control of the Public Prosecutors and the Provincial Courts.

Article 8. With a view to rendering the toilers legal assistance in civil cases, as well as in criminal cases before Provincial Courts, Collegiate bodies of "legal defenders" (counsel, solicitors?) are to be established under the control of the Provincial Courts.

Article 9. For the purpose of carrying out verdicts of court, the office of Bailiff is to be created in connection with Provincial Courts and People's Courts; and the office of Notary Public for the performance of acts required by the law.

Article 10. The competency, functions, and responsibilities of all above mentioned institutions and offices are fixed in corresponding chapters and articles of the present Act.

Chapter II

Appointment and Recall of People's Judges, and People's Courts Divisions.

Article 11. For the office of People's Judge is eligible every male and female citizen of the R.S.F.S.R. who is not disfranchised by verdict of court, and who complies with the following conditions:

(a) has the right to vote, and to be elected to Soviets,

(b) has not less than a two-years record of responsible political work in labor-peasant public, trade-union, or party labor organization, or a three-years record of practical work in organs of Soviet justice in capacities not below the office of People's Examining Magistrate.

Note: Persons expelled from public organization for disgraceful conduct are not eligible for the office of People's Judges.

Article 12. People's Judges are elected by the Provincial Executive Committees after nomination by the Provincial Court or the Commissariat of Justice, according to the number of People's Courts Divisions or Districts in the given province.

Article 13. People's Judges are elected for the period of one year, and may be re-elected. People's Judges may be re-called prior to the expiration of their term of office, or transferred to other courts within the province, solely by resolution of the Provincial Executive Committee which has appointed them, at the initiative of the Commissar of Justice or the said Executive Committee itself. In the latter event, however, the reasons for such a recall must be communicated in detail to the Commissar of Justice. Dismissal from the office of People's Judge may take place solely by verdict of court, or in accordance with the provisions contained in Articles 69 to 84 of the present Act.

Article 14. The number of People's Courts Divisions in each province, and the boundaries of such divisions, are to be fixed each time by resolution of the Provincial Court, and approved by the Provincial Executive Committee and the Commissariat of Justice. In the event the Commissariat of Justice does not agree with the fixing of divisions, it is entitled to demand the establishment of a certain minimum of People's Courts Division in the given province.

Chapter III

People's Jurors, and Impanelling of Jurors.

Article 15. For People's Juror are eligible all toiling citizens of the R.S.F.S.R. of both sexes, who have the right to vote and to be elected to local Soviets.

Article 16. For the office of People's Juror are not eligible persons disfranchised by verdict of court, or persons expelled from public and trade-union organizations for disgraceful acts and conduct.

Article 17. Each People's Juror shall participate in court proceedings no longer than six days in the year, and his participation is to continue uninterrupted the whole term fixed.

Note: Exceptions from this rule are mentioned in the Code of Criminal Procedure.

Article 18. The lists of People's Jurors for each People's Courts Division are compiled on the basis of three jurors per week, that is to say two jurors impanelled and one in reserve, which makes a total (52 x 3) of 156; adding 25 percent -39- for cases of nonappearance, and rounding the figure off, the total of jurors is fixed at two hundred to each people's court per year.

Article 19. The lists of People's Jurors are to be compiled once a year, by December 1. One month prior to that date a special Commission formed in each uyezd (division) center assigns a corresponding number of candidates to be elected—according to the number of People's Courts Divisions—to the industrial establishments, volosts and military units situated in the territory of the uyezd.

Article 20. The Special Commission for the Nomination of Jurors is to be presided over by a number of the local Uyezd Executive Committee, its members being the local assistant of the Provincial Public Prosecutor and one of the People's Judges of the uyezd. The candidates to be elected are to be assigned approximately as follows: 50 per cent of the jurors are to be drawn from the labor classes, 35 per cent from the settlements and volosts, and 15 per cent from military units. The lists of assigned vacancies

are to be sent to the respective Divisional People's Judges, works and factory committees, political commissars of military units, and volost executive committees.

Article 21. On receipt of the respective notice the works and factory committees, as well as the other institutions mentioned in the previous article, "attend to the election of candidates, taking into consideration the level of their political development"; the lists of candidates are exhibited for public notice at the works, on the premises of the volost executive committees, labor clubs, etc., and in the course of one week every toiler has the right to challenge any of the candidates, lodging his protest with the institution which has compiled the list, and stating the motives of his protest. After the protests have been scrutinized, the lists are sent by the respective institutions to the People's Judge.

Article 22. The challenged candidates have the right to lodge their protests against such challenges with the next higher analogous institution, the competent trade-union, the Uyezd Executive Committee, or the Political Section of the next higher military unit, etc., within one week, and these institutions are bound to consider and examine such protest within a similar period of time.

Article 23. On receipt of the lists, the People's Judge forwards a copy of them for confirmation to the President of the Uyezd Commission, and not waiting for their definite confirmation, proceeds to impanel the juries, selecting the jurors by alphabet.

Article 24. On receipt of the lists from all People's Judges of the uyezd, the Uyezd Commission (Article 20) compiles a general list from which it is entitled to exclude any such persons that for some reason or another do not come up to the standard required for a People's Juror, and of these included in the lists it compiles a special list of People's Jurors for participation in the Travelling Sessions of the Provincial Court.

Article 25. Persons excluded by the Uyezd Commission from the list of jurors shall be entitled to lodge a protest against such exclusion with the local executive committee the decision of which in this matter shall be regarded as final.

Article 26. On the arrival of the People's Jurors at the People's Court, the People's Judge shall be bound to explain to them their rights and functions, to make each of them sign a document to the effect that such explanation has been made to them, and to receive from them the solemn promise to perform their duties in accordance with their consciences.

Article 27. During the time the jurors are sitting on the jury they are to continue to draw their wages at the places of their respective employment, including also the time spent in travelling there and back. Persons drawing their means of subsistence from agricultural labor or domestic handicraft shall receive an extra allowance per diem fixed in accordance with the minimum wage in the given locality; such allowance to be paid by the Uyezd Executive Committee to the order of the People's Judge.

Article 28. In the event of sickness or other lawful causes for non-appearance of a juror to serve on the jury when his turn has arrived, his name shall automatically be transferred to the end of the list, of which fact he shall be apprised by the People's Judge.

Chapter IV

Location of People's Courts and the Judge's Offices. Accounts of the People's Judges.

Article 29. The address of the People's Court is to be brought to public notice. The expenditure in connection with the maintenance of the People's Judge's office is to be fixed by the People's Commissariat of Justice. The maintenance of the office shall be charged to the local Provincial Executive Committees, the necessary funds to be paid through the Provincial Court in accordance with Estimates.

Article 30. Each Divisional People's Court shall have a Secretary (Clerk of the Court) who shall be confirmed in his office by the Provincial Court on the representation of the People's Judge. Persons disqualified by verdicts of court or excluded from public organizations for disgraceful acts and conduct, shall not be eligible to the office of Secretary of People's Court.

Article 31. Direct control over the People's Judge's activity, including also the technical arrangements incumbent upon him, shall be exercised by the Provincial Court, to which the People's Judge shall also be subordinated in a disciplinary sense. Shape

and form of accounts, to be rendered by the People's Judge, financial or of any other description, and everything appertaining to them, shall be fixed by instructions of the Commissariat of Justice, and by orders and explanation of the Provincial Court.

Chapter V

People's Examining Magistrates.

Article 32. The office of People's Examining Magistrates is established at:

- (a) corresponding Magistrates Divisions,
- (b) at the Criminal Section of the Provincial Court,
- (c) at the Supreme Court of the R.S.F.S.R.,
- (d) at the Public Prosecution Department of the Commissariat of Justice, for the purpose of carrying on urgent examinations in important cases.

Article 33. The examining magistrates of the Division are named "People's Examining Magistrates," these at the Provincial Courts are called "Senior Examining Magistrates," and these at the Supreme Court or at the Public Prosecution Department of the Commissariat, "Examining Magistrates for important affairs."

Article 34. To the office of Examining Magistrate are not eligible:

- (a) persons disqualified by verdicts of court, or excluded from public organizations for disgraceful acts and conduct;
- (b) persons who have not at least a two-years record of Soviet legal work in a capacity not lower than that of Secretary of a People's Court, or who have not passed a corresponding examination at the Provincial Court;
- (c) persons who are not entitled to the vote at local Soviet elections;
- (d) persons who during the civil war have been disloyal to the Soviet regime, or have belonged to anti-Soviet political parties.

Article 35. The precincts of the Magisterial Divisions shall be fixed, and People's Examining Magistrates appointed, by resolutions of the Provincial Court which shall require the sanction of the Provincial Executive committee and the Commissars of Justice. People's Examining Magistrates may be removed from their offices by a mere resolution of the court at its own initiative, or at the representation of the Provincial Executive Committee or the Commissariat of Justice.

Article 36. Senior Examining Magistrates and Magistrates for Important Affairs shall be appointed, transferred, and recalled by resolutions of the respective institutions to which they are attached. All these examining magistrates exercise their functions throughout the territories within the scope of the respective institution to which they are attached.

Article 37. The Divisional People's Examining Magistrate employs the services of a secretary and a messenger. Funds for the maintenance of people's examining magistrates are assigned by the Provincial Court, the same as for the maintenance of People's Courts, in accordance with the estimates, from local resources. All the other examining magistrates are paid from the general State funds.

Article 38. In their relations with courts, the Public Prosecution Department, organs of investigation, and any other official authority, the examining magistrates shall be guided by the relevant provisions of the Code of Criminal Procedure, as well as by instructions and explanations emanating from the Commissariat of Justice and the Provincial Courts.

Part II

Chapter VI

The Provincial Court.

Article 39. The Provincial Court functions:

- (a) as the center of administration of justice in the province, and as the organ for direct supervision of the subordinated People's Courts;

- (b) as the organ for examining appeals lodged against the findings of the subordinate people's courts, and private complaints filed against their decisions of the mentioned courts;
- (c) as lower court in cases specified by the law.

Article 40. In accordance with the above the Provincial Court is composed of a President and two Vice-presidents, one of them for the Civil Section and the other for the Criminal Section; twelve Permanent Members of the Provincial Court, and Provincial People's Jurors who are called up for services on the jury in accordance with rules set forth below; further of a sufficient number of Provincial Court Secretaries and other officials required by the Provincial Court and the Institutions attached to it, in accordance with approved estimates.

Article 41. The president and the vice-presidents must have a record of not less than three years practical legal work, in the capacity of people's judge or members of the revolutionary tribunal, in addition to answering the requirements established for filling the office of People's judges (see Article 11 of this Act). As Members of the Provincial Court are eligible only persons who have worked not less than two years in the above mentioned capacities.

Note: Deviations from this rule are admissible only with the consent of the Commissariat of Justice.

Article 42. The president, vice-president and members of the Provincial Courts are elected by the Provincial Executive Committee for one year, subject to the sanction of the Commissar of Justice who in his turn has the right to nominate also his own candidates for president, vice-president, and members of the Provincial Court. On expiration of their term these persons may be reelected. The recall, however, or the dismissal of a president (or vice-president) of the Provincial Court prior to the expiration of his term by a mere resolution of the Provincial Executive Committee, without the sanction of the Commissar of Justice, is absolutely inadmissible, unless it is done in execution of a verdict of court, or ordered as a disciplinary measure by the competent section of the Supreme Court. The same rules apply also to members of the Provincial Court.

Article 43. In the event of the Commissar of Justice withholding his confirmation of the elected president (and vice-president) of the Provincial Court, and the inability of the Provincial Executive Committee to nominate other candidates, the Commissars of Justice may appoint the said officials at his own discretion.

Article 44. People's Jurors for participation in the sessions of the Provincial Court are called up in accordance with a special list of citizens who have a record of not less than two years' work in public and trade-union organizations. Such lists shall be compiled at the initiative of the Provincial Court by a special commission which is to be presided over by a member of the Provincial Executive Committee specially appointed by that Committee, two members of the Provincial Court as appointed by the President of such Court, the Provincial Public Prosecutor, and three members of the Provincial Trade Unions Soviet as appointed by the latter. The lists are subject to sanction by the Provincial Executive Committee which has the right to challenge candidates, its findings in this respect to be considered as final.

Article 45. The provincial People's jurors are elected to the number of no fewer than 200 persons, of whom no fewer than 25 must be people's judges who are by preference to participate in the sessions of the Civil Section of the Provincial Court. The requirements stipulated in Articles 15, 16, 17, 24, 25, 27 and 28 of this Act, and referring to the jurors of people's courts, apply also to the jurors of the Provincial Courts.

Article 46. As secretaries of sections of the Provincial Court shall be eligible only persons who answer the conditions established for candidates for posts not lower than People's Examining Magistrates.

One of the secretaries is to be named Senior Secretary of the Provincial Court.

Article 47. The remaining institutions and officials attached to the Provincial Court shall function in accordance with rules specially to be established.

Chapter VII

Functions of the Provincial Court.

Article 48. The President and the two Vice-presidents are wholly responsible for the correct and lawful carrying on of work in the Provincial Court, and for correct and lawful compliance with all existing rules and regulations, by the Court itself, as well as all subordinate institutions.

Article 49. In accordance with the above, the competency of the President shall be as follows:

- (a) To distribute and appoint the duties of the members of the Provincial Court of the various sections; to make representations to the Provincial Executive Committee for confirmation of People's Judges and People's Examining Magistrates; to ensure correct compilation, and in due time, of the lists of People's Jurors; to ensure the issue of funds to the People's Courts and the People's Examining Magistrates in due time; and to see that their accounts are properly rendered; to compile and submit accounts and reports concerning the Provincial Court and the People's Courts to the Provincial Executive Committee and to the Commissariat of Justice; to control the clerical work, as well as the financial, material, and other accounts of the Provincial Court, and all correspondence of the Court with the Commissariat of Justice and other departments of State; to control the activity of notaries public and the body of legal defense, (attorneys-at-law—Note by Translator.)
- (b) To appoint plenary sessions of the Provincial Court, to preside over the same, to examine all matters submitted, and to submit at his own initiative to the plenary sessions of the Provincial Court matter within the competency of that Court, including: preparation of material bearing upon disciplinary responsibility of People's Examining Magistrates, People's Judges, members of the body of legal defense, and other officials; and imposition of disciplinary punishment upon People's Judges, People's Examining Magistrates, and other officials, as far as such power is vested in the President.

Article 50. The Plenary Session of the Provincial Court is composed of all members of the Court available at that moment, but of not less than half of their total number, the participation of the Provincial Public Prosecutor or his Assistant being obligatory. The competency of the Plenary Sessions of the Court is as follows:

- (a) To deal with all questions concerning the fixing of the numbers and extent of People's Courts Divisions; the transfer of People's Judges within the jurisdiction of the Provincial Court; the fixing of the numbers and extent of Examining Magistrate's Divisions; the appointment and transfer of such magistrates; the examination of accounts of people's judges and of relevant reports of members of the Provincial Court appointed for this purpose by the President; the appointment of scrutiny commissions to investigate the activity of people's judges and people's examining magistrates; and the examination of reports in connection with such scrutinies; the elaboration of instructions and regulations relating to the conduct of business of the Provincial Court.
- (b) To examine all questions connected with the institution of disciplinary proceedings against people's judges and people's examining magistrates, as well as other officials subordinate to the Provincial Court, including members of the Provincial Court itself; to pass resolutions concerning the temporary suspension from office of people's judges and people's examining magistrates, pending final settlement of their cases; and to arrange the appointment of the Disciplinary Collegium of the Provincial Court.
- (c) To examine questions submitted by the president of the Provincial Court, or by any separate session of the ordinary or the Appeals Section, or by the Provincial Public Prosecutor, resulting from insufficient clearness or

incompleteness of the existing laws; but solely, each time, in connection with some concrete case or decision, and submitting at the same time all considerations in connection with such questions to the Supreme Court.

Article 51. If the person presiding over the session agrees with the finding of the plenary session—with the exception of cases mentioned in clause “c” of the previous Article—such decision shall immediately be carried into effect; but if there is discrepancy of opinion, the entire material shall be submitted to the Commissariat of Justice or the Supreme Court, or the Provincial Executive Committee concerned, for decision. If the Provincial Public Prosecutor objects to the finding of the plenary session of the Provincial Court, such objection cannot delay the execution of such decision of the Provincial Court.

Article 52. The Criminal Section of the Provincial Court consists of 7 permanent members of the Provincial Court, including the Chief of the Section who is to be one of the Vice-Presidents, and comprises the Criminal Sub-section, as well as the Sub-section of Criminal Appeals. The sessions of the Sub-section of Appeals are composed of three Permanent Members, and the sessions of the Criminal Sub-section of one Permanent Member of the Provincial Court and two Provincial People's Jurors who are called up from service by resolution of a special organizing session of the Criminal Sub-section, according to the list of jurors in the possession of the Provincial Court. The appointment of members of the Criminal Section to the Criminal and Appeals sessions, as well as the appointment of presidents of travelling sessions of the Criminal Sub-section, comes within the competency of the Vice-President presiding over the Section, and requires the sanction of the President of the Provincial Court. The President of the Provincial Court is free to preside, at his own discretion, at the hearing of any case dealt with by the Appeals Sub-section of the Criminal section of the Provincial Court.

Article 53. The Civil Section of the Provincial Court is to consist also of seven members, including the Chief of the Section who is to be one of the Vice-Presidents, and comprises the Civil Sub-section and the Sub-section of Civil Appeals. The latter is to be composed of three Permanent Members of the Provincial Court, including the Chief of the Section—one of the Vice-Presidents—and the former of one Permanent Member who acts as president, and two People's Jurors drawn for preference from the number of People's Judges enrolled as people's jurors (Article 45 of the Act). The appointment of members of the Civil Section of the ordinary civil or appeals sessions, as well as the appointment of presidents for the travelling sessions, rests with the Chief of the Section and requires the sanction of the President of the Provincial Court. The People's Jurors are called up by a special organizing session of the Section, at which session, however, participate only Permanent Members of the Provincial Court. The President of the Provincial Court is free to preside, at his own discretion, at the hearing of any appeal case by the Civil Section of the Provincial Court.

Note: The re-arrangement of the members of the Provincial courts in sub-sections, the forming of special bodies of members not belonging to one or the other sub-section for the hearing of special cases, likewise the application to the Commissariat of Justice for an increase of the number of the members of the Provincial Court to meet contingencies, shall, consequent upon the increase in the volume of work, come within the competency of, and be attended to by, the President of the Provincial Court, with the concurrence of both Vice-Presidents.

Article 54. The Disciplinary Collegium of the Provincial Court is to consist of three persons, including the President or one of the Vice-Presidents of the Provincial Court, all of whom are to be elected by the Plenary Session of the Provincial Court.

Part III

Chapter VIII

The Supreme Court of the R.S.F.S.R.

Article 55. The Supreme Court of the R.S.F.S.R. (Article 5 of the Act) is to comprise the following:

- (a) The Presidium of the Supreme Court;
- (b) The Plenary Session of the Supreme Court;
- (c) The Criminal and Civil Appeals Sections of the Supreme Court;
- (d) The Legal Collegium, the Military and the Military-Transport Collegium of the Supreme Court;
- (e) The Disciplinary Collegium of the Supreme Court.

Article 56. The (appointment of) the President and the members of the Supreme Court requires the sanction of the Presidium of the Central Executive Committee. The President of the Supreme Court, the Vice-President, and the Chiefs (presidents) of the Legal, the Military, and the Military-Transport Collegium are appointed direct by the Presidium of the Central Executive Committee, while the remaining members of the Supreme Court are appointed on the representation of the Commissar of Justice. The members of the Military and of the Military-Transport Collegium are appointed by the Presidium of the Central Executive Committee on the representation of the Revolutionary Military Soviet of the Republic and the Commissariat of Roads of Communication, with the recommendation of the Commissar of Justice.

Article 57. The President and the Members of the Supreme Court cannot be recalled or removed from their offices except by resolution of the Presidium of the Central Executive Committee.

Note: All other officials attached to the Supreme Court and its component sections and parts, public prosecutors, secretaries to legal collegiums, and examining magistrates for important cases, are appointed and recalled in accordance with rules and regulations existing in respect to such offices.

Article 58. In autonomous republics and territorial unions there may be established Territorial Branches of the Supreme Court by special resolutions of the All-Russian Central Executive Committee; the Members of such Branch Courts are appointed by the Central Executive Committees of the respective republics or by a special Organizing Act which is to be sanctioned by the President of the All-Russian Central Executive Committee; the President and the Vice-President of such Branches must, however, at any rate be approved by the Presidium of the All-Russian Central Executive Committee.

Chapter IX

Limits of Competency of the Presidium and of the Plenary Sessions of the Supreme Court.

Article 59. The President of the Supreme Court, the Vice-President, the Chiefs of the Appeals Collegiums, the Chief of the Legal Collegium, and the Chiefs of the Military-Transport Collegiums constitute the Presidium of the Supreme Court, the competency of which is as follows:

1. Concerning the management and the administration of the Supreme Court and its subordinate institutions and officials:
 - (a) The assigning of their duties to the various members of the Supreme Court;
 - (b) The examination and confirmation of accounts and reports of the separate Collegiums and sections, and the compilation of accounts and reports embracing the entire Supreme Court.
2. In respect of control of legal institutions:
 - (a) The appointment of special inquiries into, and investigation of, the activity of provincial courts and other courts of equal status, at the initiative of the Public Prosecutor of the Republic, and hearing the results of such inquiries;
 - (b) The institution of disciplinary proceedings against the members of the Supreme Court, the presidents of provincial courts and of other courts of equal status, as well as against vicepresidents, either in consequence of inquiries held, or upon individual information received from the

Public Prosecutor of the Republic, and the imposition of disciplinary punishment upon the officials mentioned within the limits of the power vested in the Presidium.

- (c) The convoking of plenary sessions of the Supreme Court.

Note: At the sessions of the Presidium the Assistant Public Prosecutor of the Republic (Public Prosecutor of the Supreme Court) shall be bound to participate with an advisory vote.

Article 60. The plenary sessions of the Supreme Court are to consist of all available members of the Supreme Court, but of no fewer than one half of their number, and shall be presided over by the President or the Vice-President; the Public Prosecutor of the Republic or his Senior Assistant are bound to be present at such sessions; the competency of the Sessions is as follows:

1. The correct interpretation of the laws concerning questions of "legal practice," on the initiative of the various Collegiums or special sessions of one or another Collegium, or on the representation of the Presidium of the Supreme Court, the Public Prosecutor of the Republic, or his Assistant attached to the Supreme Court.
2. The investigation, alteration and revision of judgements of ordinary or appeals collegiums of the Supreme Court and of any other court in the Republic, on the representation of the Presidium of the Central Executive Committee, the Public Prosecutor of the Republic, the Presidium of the Supreme Court, and in consequence of protests lodged by the presidents of the sessions of such collegiums or by the public prosecutors attached to them.
3. The election of the Disciplinary Collegium of the Supreme Court.
4. The examination of all other questions submitted to the Plenary Session of the Supreme Court.

Chapter X

Personnel of the Appeals and Ordinary Collegiums (Sections) of the Supreme Court.

Article 61. The Appeals Sections function under the personal supervision and management of the President of the Supreme Court. His direct assistants in the Appeals Section are the president's of the Criminal and Civil Appeals Sub-sections of the Supreme Court. The President has the right to preside over the examination of any case dealt with by the appeals sub-sections.

Article 62. The ordinary session of an appeals collegium (sub-section) is to be composed of three persons: the chairman, and two members out of the eight permanent members of the appeals sub-sections (four per each sub-section).

To the Criminal and Civil Appeals sub-sections are attached two Assistant-Public Prosecutors of the Supreme Court to each.

Article 63. The Vice-President of the Supreme Court has within his competency all matters dealt with by the Supreme Court without previous examination by any lower court; his direct assistants are the chairman of the judicial (ordinary) collegium (section), and the chairman of the military and the military transport sections of the Supreme Court.

Article 64. The Judicial (ordinary) Section consists of the Chairman (president) of the Section, and four members. A session of the section is to be made up of three participants, including the chairman. As chairman of the Judicial Section may act also the Vice-President of the Supreme Court.

Two Assistant-Public Prosecutors of the Supreme Court are attached to the Judicial Session.

Article 65. The Military and the Military-Transport Sections consist each of a president, vice-president, and four members of the Supreme Court.

A session of each section is also to be composed of three participants, including the chairman, and two members who are to be told off for duty by a mode to be fixed by the president of each section.

To the military and the military-transport sections two assistant-public prosecutors of the Supreme Court are attached, one to each.

Article 66. For the judicial sections of the Supreme Tribunal a uniform preliminary investigation department is to be established to be made up of examining magistrates for important affairs; further a uniform record system for the registration of cases under examination, which is to be under the supervision of the Public Prosecutor of the Supreme Court and the Vice-President who has the entire judicial part of the Supreme Court under him.

Article 67. The mode of appointing and approving members of sessions, of rendering accounts and reports, and of supervision of local military and military-transport legal institutions subordinate to the military and military-transport sections is dealt with by special rules set forth below (Chapter XII).

Article 68. The Disciplinary Section of the Supreme Court is composed of three persons from the number of the Members of the Supreme Court, including the "presiding member" of the Presidium, all of whom are elected by the Plenary Session of the Supreme Court.

Chapter XI

Disciplinary Liability of Legal Workers.

Article 69. The Public Prosecutor of the Republic has the right to institute disciplinary proceedings against all persons, without exception, working in legal institutions of the R.S.F.S.R.

Article 70. The President of the Supreme Court and the Assistant-Public Prosecutor of the Republic attached to the Supreme Court have the right to institute disciplinary proceedings in respect to all legal workers employed in institutions subordinate to the Supreme Court, that is to say, presidents of sections and members of sections of the Supreme Court, presidents and vice-presidents of Provincial Courts and courts of equal status, Provincial Public Prosecutors and the Assistants (deputies), and all officials attached to the Provincial Court.

Article 71. The presidents of the Provincial Courts and Provincial Public Prosecutors have the right to institute disciplinary proceedings against all persons employed in institutions subordinate to the Provincial Courts.

Article 72. The president and the Public Prosecutors of the Military and the Military-Transport Sections of the Supreme Court have the right to institute disciplinary proceedings against all persons employed in subordinate institutions.

Article 73. As reasons for instituting disciplinary proceedings the following shall be regarded:

- (a) Offences committed by, and conduct or actions of, legal workers, which, although not constituting criminal offences, are yet incompatible with the dignity of legal workers, irrespective of whether such conduct or actions have taken place while in an official capacity or not.
- (b) Revision, by the Supreme Court, of a number of judgements and findings pronounced by legal workers, which are not in keeping with the general spirit of the laws of the R.S.F.S.R. and the interests of the masses of the toilers.

Articles 74. The following disciplinary punishments may be imposed:

- (a) Reprimand;
- (b) Severe reprimand;
- (c) Transfer and reduction to a lower grade of office;
- (d) Dismissal from service and withdrawal of the right to work in legal capacities for a fixed period.

Article 75. Disciplinary proceedings may be instituted not later than one year after the incriminated offence has been committed.

Article 76. Disciplinary proceedings instituted in consequence of a complaint lodged by a private person cannot be dropped at the request of the complainant.

Article 77. Prior to the trial of the case by the Disciplinary Section the latter is to collect the necessary evidence, to hear the explanations of the accused, and may instruct a member of the Section, or a member of the Provincial Court, or a People's Judge, as the case may be, to conduct personal investigation.

Article 78. The Disciplinary Section shall inform the accused of the date when the case is to be examined, and the accused may be present at the session to give personal explanations.

Article 79. If required the Disciplinary Section may summon the accused to appear at the trial, in which case it shall be compulsory for the accused to put in an appearance.

Article 80. The Disciplinary Section is not bound to any formalities; the mode of conducting the case is entirely left to the discretion of the Section, on the condition, however, that if the Section resolves to hear the Public Prosecutor on the subject, it shall also after him hear the accused.

Article 81. Members of the Section may be challenged in the ordinary way.

Article 82. The decisions of the Disciplinary Section are called "resolutions," the records of the sessions are to be kept in the form of records of the organizing sessions of the court, stating the names of the persons present at the session.

Article 83. Appeals against resolutions of disciplinary sections of Provincial Courts may be lodged with the Supreme Court within seven days. Resolutions of the Disciplinary Section of the Supreme Court cannot be appealed against.

Article 84. If, in the case dealt with, the Disciplinary Section perceives characteristics of an indictable criminal offence, the Section shall be held to suspend proceedings and to hand over the case to the competent criminal investigation authorities.

Part IV

Chapter XII

Special Judicial Institutions (Courts) for Special Offenses.

Article 85. The military and military-transport legal institutions of the R.S.F.S.R. and of all allied and autonomous Republics function under the general control and supervision of the Commissariat of Justice and the Supreme Court of the R.S.F.S.R. The organization and the immediate supervision over the activity of the military and military-transport legal institutions are incumbent upon the Military and the Military-Transport Sections of the Supreme Court.

Article 86. The following are military legal institutions:

- (a) Military District or Front Tribunals—attached to the Revolutionary Military Soviets of Military Districts or Fronts;
- (b) Military Corps Tribunals—attached to Army Corps;
- (c) Divisional Sections of District Tribunals—attached to divisions;

In times of war or at the theater of war Military Army Tribunals or Military territorial Tribunals may be organized in addition to the above; also branches of Military Corps Tribunals may be attached to divisions on active service in the field. The number of Military Tribunals in action, in times of war as well as of peace, shall be fixed each time by resolution of the Presidium of the Supreme Court, on the representation of the Military Section of the Supreme Court.

Article 87. Transport Tribunals are established:

In Moscow, Petrograd, Kharkov, Rostov-on-Don, Omsk, Tashkent, and Smolensk.

The liquidation of existing transport tribunals, and the foundation of new ones, are to take place by resolution, each time, of the Presidium of the Supreme Court, on the representation of the Military-Transport Section of the Supreme Court.

Article 88. The Military Tribunal of the District of the Front is to consist of its President, Vice-President, and four members elected by the Military Section from the number of candidates nominated by the Revolutionary Military Soviet of the District or the Front, or by the commander of the forces, and approved by the Military Collegium, with the concurrence of the Revolutionary Military Soviet of the Republic.

The Military Corps Tribunal consists of a President and four members selected by the Military Section of the Supreme Court from the number of candidates nominated by the Revolutionary Military Soviet of the District or the Front.

The Military Tribunal of the Division consists of President, Vice-President, and four members approved by the Military Tribunal of the District or the Front.

Article 89. The Transport Tribunals consist of a President, a Vice-President, and four Members, nominated by the District Plenipotentiary of the Commissariat of Roads

of Communication and approved by the Military-Transport Section of the Supreme Court, with the concurrence of the Commissariat of Ways of Communication.

Note: According to the volume of business to be dealt with, the number of members may in the separate Transport Tribunals be increased to seven, by resolution of the Presidium of the Supreme Court.

Article 90. The Military and Military-Transport Sections have the right to transfer and remove at any time the presidents and the members of Military and Transport Tribunals, giving notice of it at the same time to the Revolutionary Military Soviets concerned, or to the Commissar of Ways of Communication.

Article 91. In all disciplinary matters the Military Tribunals attached to the districts corps and armies, and the Transport District Tribunals, are subordinate to the Disciplinary Section of the Supreme Court; and the Military Tribunals at the divisions—to the disciplinary sections of the Military District and Corps Tribunals.

Article 92. Labor Sessions of People's Courts are to be formed at each Provincial Court, and are to consist of one permanent people's judge, and two permanent members of court: one appointed by the local Provincial Trade Union Soviet, and the other by the local Provincial Labor Section; and shall function in the same fashion, and according to the same rules as the People's Courts.

Article 93. Appeals against decisions of the Labor Session are to be lodged in the usual fashion with the Provincial Court which is charged with immediate supervision and control of the Labor Sessions of the People's Court (Article 4 of the Act.) Conditions of eligibility to the post of people's judge presiding over labor session, and the mode of his appointment and recall, are the same as in the case of all other People's Courts of the province.

Article 94. The Land and Arbitration Commissions formed for the settlement of land and property disputes between State organs (decree of May 24, 1922, Collection of Laws, 1922, No. 428; and decree of September 21, 1922, Collection of Laws, 1922, No. 769) function in accordance with their respective promulgated organization acts, and are subordinate to the Commissariat of Justice and its organs; in the province—to the plenary sessions of the Provincial Courts and the Public Prosecutor's Department, and in the center—to the Supreme Court and the Public Prosecutor of the Republic (Articles 4, 5 and cause 2 of Article 60 of the Act).

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