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SOVIET COMRADES' COURTS

HAROLD J. BERMAN* and JAMES W. SPINDLER**

INTRODUCTION

A major aspect of Soviet criminal law reform since 1959 has been the transfer of certain judicial functions to Comrades' Courts,¹ which are nonprofessional tribunals established to try petty offenses in enterprises, apartment houses, collective farms, universities, and elsewhere. These are called "social," rather than "state," agencies, because they are not staffed by civil servants but by volunteers and because they are conceived to perform a persuasive rather than a coercive function. Apart from their practical importance, they play an important part in symbolizing the theory that in the new period of "expanded construction of communism" there will be a decline in the use of formal and coercive sanctions and an increase in the use of informal and popular instruments of self-government. Under communism itself, the first stage of which, according to the 1961 Party Program, is to be achieved by 1980, this process of the dying out of the state, it is said, will be accelerated, as crime gradually disappears and such remnants of the past as the spirit of individualism and money-grubbing, the psychology of private property, and moral callousness cease to exist.²

Implicit in the institution of the Comrades' Courts is the belief that law, that is, official law promulgated and enforced by state agencies, is an instrument of coercion.³ The Comrades' Courts, on the other hand, are thought to be an instrument solely of persuasion, despite the fact

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¹ Comrades' Courts are to be distinguished from People's Courts, which are trial courts of general jurisdiction within the regular hierarchy of state tribunals. On the major tendencies of Soviet legal development in the post-Stalin period, see BERMAN, *JUSTICE IN THE U.S.S.R.* (2nd ed. 1963), Chapter 2.

² The theory of the gradual decline of formal and coercive sanctions in the period leading up to Communism has replaced Stalin's doctrine that the state must get stronger and stronger under socialism, prior to its "withering away" under communism. Stalin's doctrine provided a theoretical justification for terror. See Berman, *op. cit. supra* note 1, 90.

³ In recent years, however, some Soviet jurists have attacked the view that coercion is an essential part of the definition of law. See Golunskii, *K voprosu o poniatii pravovoi normy teorii sotsialisticheskogo prava*, (On the Question of the Concept of Legal Norms in the Theory of Socialist Law), *Sovetskoe Gosudarstvo i Pravo* (Soviet State and Law; hereafter cited as SGP), 1961, No. 4, p. 21. Cf. Berman, *op. cit. supra* note 1 at 91-94.

that they have the coercive power to impose a small fine (up to ten rubles) and can recommend eviction from an apartment, temporary demotion to a lower-paying job, or, in certain instances, dismissal or physical labor tasks for a short period. In order to emphasize the contrast between the persuasive character of the Comrades' Courts and the coercive character of the regular law-enforcing agencies, and in order also to exempt the Comrades' Courts from the requirements of the criminal and criminal-procedure codes, judicial and criminal terminology is avoided in the law governing Comrades' Courts. The person charged with an offense is not an "accused" (*obviniaemyi*), as in the regular criminal courts, but a "person brought before the Comrades' Court" (*litso privlekaemoe k tovarishcheskomu sudu*) or, if he is guilty, an "offender" (*narushitel'*). The Comrades' Court does not administer "punishment" (*nakazanie*) but only "measures of social pressure" (*mery obshchestvennogo vozdeistviia*), including the requirement of a public apology, warning, censure and reprimand.

The hearing itself is very informal. It is usually held in the social room (usually called the "red corner") of the factory, apartment house, neighborhood or collective farm. The judges are not civil servants but neighbors or fellow-workers, who, however, may be given some elementary training in law. Lawyers do not ordinarily participate in the argument. Attendance is open to all, and all are encouraged to make comments from the floor.

The Comrades' Court is not supposed to be so much concerned with determining whether the person charged has committed a particular disapproved act,⁴ as with influencing him and the whole collective to prevent the commission of such acts. The procedure is designed to show the offender the error of his ways and to strengthen communist morality both in him and in the group to which he belongs.

Many of the acts that are subject to the jurisdiction of the Comrades' Courts (such as drunkenness, maltreatment of children, petty theft) would constitute misdemeanors in most societies. Others, however, are offenses characteristic of the political doctrine of communist countries. Thus "speculation" (the buying up and reselling of goods by individuals for the purpose of making a profit), "hooliganism" (intentional acts violating public order in a coarse manner and ex-

⁴ Compare *Komentarii k novomu polozheniiu o tovarishcheskikh sudakh* (Commentary to the New Statute on Comrades' Courts), SOVIETSKAIA IUSTITSIIA (Soviet Justice), 1961, No. 19, at 24 (hereafter cited as *Commentary*). The *Commentary* was published in serial form in SOVIETSKAIA IUSTITSIIA (hereafter cited as *Sov. Jus.*), 1961, Nos. 17-23.

pressing clear disrespect toward society), anti-Soviet propaganda (including circulating or keeping literature which defames the Soviet system in order to undermine or weaken Soviet authority), teaching religion (except in special theological courses), and leading an "anti-social, parasitic way of life," are violations of law which may be punished severely in other tribunals,⁵ but if they are committed on a small scale or for the first time they may be subject to trial in the Comrades' Courts.

In addition, Comrades' Courts in enterprises are concerned chiefly with violations of labor discipline, such as lateness and absenteeism.

Some American scholars have treated the Comrades' Courts and parallel "social" agencies (such as the People's Patrol, which is a volunteer auxiliary police force) as a new disguise for political coercion. Thus Jeremy Azrael writes that the new social organizations represent "a simultaneous effort on the regime's part to increase its ideological legitimacy, to remove from its own shoulders the immediate onus for coercive measures, to force more and more citizens to become its active accomplices, and to extend its range of effective control. . . . What the Soviets envision, therefore, is a society in which every citizen will become a policeman, thus 'fulfilling and overfulfilling' Lenin's old aspiration that 'every Communist should be a Chekist,' a society which will in effect take on the character of a penal system. There will be a complete merger of law, morality, and even decorum, so that breaches of the latter two will be treated as crimes."⁶

Such assertions are highly misleading. Members of Comrades' Courts are not coerced to join nor do they have important coercive powers over the behavior of others. What the Soviets envision is just the opposite of what Azrael alleges: they envision a society in which there will be no crimes, and in which breaches of morality and decorum will be treated by comradely criticism and assistance. The purpose of the Comrades' Courts, and their practice, is to treat minor crimes as moral offenses rather than to treat moral offenses as crimes, and thereby to try to prevent moral offenders from becoming criminals. It

⁵ UGOLOVNIY KODEKS RSFSR (Criminal Code of the RSFSR), 1960, arts. 70, 142, 154, 206 (hereafter cited as RSFSR CRIMINAL CODE); VEDOMOSTI VERKHOVNOGO SOVETA RSFSR (Gazette of the Supreme Soviet of the RSFSR, hereafter cited as RSFSR VEDOMOSTI), 1961, No. 18, Item 273, translated in 13 Current Digest of the Soviet Press (hereafter cited as CDSP), No. 17, at 8-9. See commentary to Article 5, 1961 Statute *infra* p. 863. The RSFSR is the largest of the 15 Soviet republics, comprising approximately half the Soviet population.

⁶ Azrael, *Is Coercion Withering Away?*, 11 PROBLEMS OF COMMUNISM, No. 6, 9, at 12 and 16 (1962). Azrael is led to this position partly because he mistakenly links the Comrades' Courts with the anti-parasite laws. *Id.*, at 13.

is significant in this connection that prior to Stalin's death many of the offenses that are now subject to the limited sanctions of Comrades' Courts were severely punishable as crimes in the regular courts.

Other American writers have compared the Comrades' Courts to the secret police not in nature but in function: that is, they have viewed them as filling a vacuum left by the elimination of physical terror in the post-Stalin period—a vacuum in the available means of political control by the Party leadership.⁷ Of course it is true, in a general sense, that the Communist Party controls all aspects of social life in the Soviet Union. But overemphasis of this general truth, and exaggeration of the degree to which control is centralized and specific, may produce a very distorted picture. Assembling a group of neighbors in an apartment block, or a group of workers in a factory, and encouraging them to speak their minds about persons charged with wife-beating, drunkenness, absenteeism, and other petty offenses, is hardly to be satisfactorily explained in terms of a "transmission belt"⁸ for decisions taken at high Party levels. The Comrades' Courts have been instituted to help solve the very pressing problems of immorality and petty crime; to view them primarily as a means of political control is to blur their most distinctive features, since the regular courts, too, and indeed all state and social institutions in the Soviet Union are, in the broadest sense, a means of political control.

There is, indeed, a danger of abuse of the Comrades' Courts by the Communist Party—a danger which, because of their greater informality and their lack of a professional tradition, is more serious than in the case of the regular courts. For example, there is a danger that Party agencies, whether at higher or lower levels, may exert pressure

⁷ Thus Leon Lipson treats the Comrades' Courts as part of the "powerful machinery of control" required by the Soviet state. He writes: "In 1956-57, several of the old engines of control had gone out of order. The secret police had been cut down by decimation of its leadership and curtailment of its functions. Criminal liability for violations of labor discipline had gone out of fashion around 1951 in advance of formal repeal. The Special Boards (*Troiki*) of the Ministry of the Interior, which for nineteen years had sentenced hundreds of thousands of people—usually *in absentia*—to years of forced labor in concentration camps, had been quietly discontinued; the regular criminal courts were becoming more formal in their procedures. The non-courts help to fill this void." Lipson, *Role of the Public in the Processes of Soviet Justice: Non-Courts and In-Police* (Paper delivered at the Annual Meeting of the American Political Science Association, New York, 1963), at 17-18.

Similarly FAINSOD, *HOW RUSSIA IS RULED* (2nd ed. 1963), at 451, 125-26, refers to "social coercion as a supplement to and substitute for police coercion," apparently rejecting the Soviet distinction between "coercion" and "persuasion" ("pressure," "influence"). Fainsod also stresses Party control over the Comrades' Courts, and links them with the anti-parasite laws as a "definite retreat from legality."

⁸ Compare Swearer, *Popular Participation: Myths and Realities*, 9 PROBLEMS OF COMMUNISM, No. 5, 42, at 46 (1960). Swearer refers to the Comrades' Courts as "vigilante committees."

on the Comrades' Courts to condemn persons for acts which are neither immoral nor illegal—such as criticizing Party policies or Party leaders. It cannot simply be assumed, however, that because such abuse is possible it is therefore inevitable. The extent of the danger can only be assessed after an analysis of the safeguards which exist against it.

A second danger inherent in the system of Comrades' Courts lies in the vision of a distant time when the legal system will die out; this vision is dangerous not because it can ever be realized but because so long as it is held it lowers the prestige of law, reducing it to a temporary phenomenon, and thereby inhibits the achievement of true legal security. This danger, too, must be assessed in terms of counteracting factors. The initial tendency to "popularize" the Comrades' Courts by eliminating legal terminology and legal standards of decision has been combined with an opposite tendency to subject them to legal supervision and to insist that they conform to legal principles.

A third danger lies in the very use of standards and procedure borrowed from the judicial system in a manner that threatens their integrity. The tribunal is called a "court"; it hears argument; it hands down decisions that purport to be impartial and objective. Yet many of the procedural safeguards of the regular judicial system are lacking, and the members of the tribunal do not have the special legal education and professional experience necessary to assure that justice not only will be done but also will be seen to be done. The Comrades' Courts are, in effect, parasitic upon the regular legal system, deriving their nourishment from legal institutions yet distorting those institutions and threatening ultimately to supplant them. There is a danger that the people who participate in these quasi-judicial proceedings will identify them with law, and that their sense of such basic legal principles as the right to counsel, the presumption of innocence, the precise formulation of issues, and the like, will thereby become dulled. Again, however, there are countervailing factors, of which the most important is the attempt to maintain a sharp distinction between the role of the Comrades' Courts and that of the regular courts.

Finally, there is a danger inherent in the establishment of agencies whose task is to instill a spirit of voluntary cooperation and group self-discipline among factory workers, neighbors, collective farmers, students, and members of other social units. The stated goals of the Comrades' Courts, namely, the achievement of "a sense of collectivism and comradely mutual assistance and of respect for the dignity and

honor of citizens," are certainly laudable. Yet if petty misdeeds become the business of the whole community, to be criticized in public, there is a serious danger that no aspect of life will remain personal. One must, of course, make allowances for cultural differences: for many reasons Soviet people are highly conscious of their social solidarity. To the strong sense of collective kinship, or "groupness," which pervades Soviet life there is added a political and economic collectivism which has even eliminated the word "private" (*chastnyi*) from the Soviet vocabulary (except with reference to the "bourgeois" world), substituting the word "personal" (*lichnyi*). It is said that in the Soviet Union there is no essential conflict between the person and the society (or state), such as is suggested in the terminology of "private" and "public." Yet even the Soviets do not propose, in theory or in practice, to subject all personal thoughts and deeds to public scrutiny. The danger in the Comrades' Courts is that through them this may happen.

In addition, the emphasis in the procedure of the Comrades' Courts upon public apology and vows of repentance by the offender—even allowing, once again, for cultural conditions in which such displays are not considered abnormal—creates a danger that personal dignity will be sacrificed and, indeed, that hypocrisy and cynicism will prevail over the sense of comradeship and mutual respect. Confession to one's comrades, rather than to a Supreme Being, inevitably suggests the admonition, "let him who is without sin cast the first stone!"

A possible corrective to all these dangers is legality itself. Yet the Soviet leaders, though continuing to strengthen legality, do not seem to be convinced that it alone can keep alive the revolutionary dynamic of Communism. They have felt the need to create new, para-legal institutions which would foster a spirit of cooperation, self-sacrifice and enthusiasm, and, more concretely, which would draw large numbers of people into the struggle against crime and immorality. They have therefore introduced a system of social pressure, which does, indeed, in one sense replace the terror of the Stalin period, but which is quite unlike it in at least four respects: (1) it does not involve physical violence; (2) it is not secret; (3) it is not administered by a centralized state apparatus (the secret police); (4) it is not primarily directed against persons suspected of political or ideological opposition to the regime. Stalin restricted the sphere of legality to those social and economic activities that constituted no threat to his political

power. Where he felt even the slightest threat, he did not hesitate to resort to secret administrative procedures resulting in long sentences to labor camps or in death by shooting. His successors have denounced his acts of political terror as violations of socialist legality and have eliminated most of the legal institutions through which such terror was exercised. They have stressed the strengthening of the legal system as a bulwark against a return to "the cult of personality." On the other hand, the rejection of terror has left them with acute problems of social (as contrasted with political) control, for the terror under Stalin had the side-effect of providing means of inducing conformity to moral and legal standards. It is in this sense that the new dualism of law and social pressure is a substitute for the Stalinist dualism of law and terror. Yet it is far easier to contend, as the present Soviet leaders do, that social pressure does not infringe legality than to contend, as Stalin did, that terror does not infringe legality. "*We must instill respect for Soviet laws,*" Khrushchev stated at the 22nd Congress of the Communist Party in 1961.⁹ Yet he immediately added: "*We must make full use of both the force of law and the force of social pressure and influence.*"¹⁰

Against the dangers of the new institutions of social pressure, and particularly the Comrades' Courts, must be weighed not only the safeguards of legality but also their positive value in drawing the whole population into the task of preventing crime and building a new social order. "No society is altogether free," Leon Lipson writes,¹¹ from the conflict between reform "through improvement in procedural regularity and formality," on the one hand, and "through a broadening of the base of justice, bringing the law closer to the people," on the other. Also, as he states, "the Soviet Union is not the only country whose formal legal institutions are baffled and bothered by the high incidence of juvenile and post-juvenile delinquency, by breakdown of family and neighborhood loyalties, by disruption of old patterns of recreation, by *anomie* and psychic depression." If, indeed, the Comrades' Courts can succeed—even only partially—in cultivating the sense of law and justice of the Soviet people, in exposing and correcting criminal activity at its earliest stages, and in overcoming the *anomie* which

⁹ Khrushchev, XXII S'ezd KPSS, STENOGRAFICHESKII OTCHET (22nd Congress of the CPSU, Stenographic Record; Moscow, 1962), Vol. I, at 97. Cf. Shishov, *O sootnoshenii ugolovnogo nakazaniia i mer obshchestvennogo vozdeistviia v svete programmy KPSS* (On the Interrelations of Criminal Punishment and Measures of Social Pressure in the Light of the Program of the CPSU), SGP, 1962, No. 6, at 77.

¹⁰ *Op. cit. supra* note 9. (Emphasis in original.)

¹¹ Lipson, *op. cit. supra* note 7, at 16-17.

plagues all modern societies, then we should study their operations not only for what they can teach us about the Soviet system but also for what they can teach us about our own situation.

Whether we are concerned with the Comrades' Courts as a possible threat to legality, or with their positive value, or both, it is necessary to analyze in detail the statutory framework within which they operate as well as reports of the practical implementation of the statutory provisions. We propose, therefore, to present the full text of the 1961 RSFSR Statute on Comrades' Courts, as amended in October 1963,¹² with an article-by-article commentary. Before doing this, however, we shall sketch the historical background of the 1961 Statute, for it was not fashioned out of whole cloth but is the culmination of about a dozen major enactments spanning the entire Soviet period. After our analysis of the 1961 Statute we shall present a general evaluation of the strengths and weaknesses of the system of Comrades' Courts.

HISTORICAL DEVELOPMENT OF SOVIET COMRADES' COURTS¹³

Since 1917 Comrades' Courts have experienced a full cycle of rise and fall before their resurrection in recent years. In the early days after the October Revolution, the formation of public (*glasnye*) Comrades' Courts was ordered "in the name of the workers' and peasants' regime in all companies, squadrons, and batteries" of the Red Army in the Petrograd military district. Jurisdiction included the trial of "crimes that belittle the rank of the citizen-soldier."¹⁴

Soon afterward Comrades' Courts for companies were formed in all parts of the army.¹⁵ Staffed by members elected by the companies, their purpose was to maintain the army's discipline and morale by considering "unimportant misdemeanors against military order, a soldier's duty and comradeship," including nonperformance of certain

¹² RSFSR VEDOMOSTI, No. 26, Item 371 (translated in 13 CDSP, No. 33, pp. 8-9). (The Statute is hereafter cited as 1961 Statute.) On October 23, 1963, the RSFSR amended the 1961 Statute. RSFSR VEDOMOSTI, No. 43, Item 750. The RSFSR statute is the model for similar statutes of other republics, and like the others is based on a 1959 draft federal statute on Comrades' Courts, which was never adopted. See note 54 *infra*.

¹³ We do not deal with prerevolutionary predecessors of Comrades' Courts, although there is some evidence of parallels to their activity. See Schroeder, *Gesellschaftsgerichte und Administrativjustiz im vorrevolutionären Russland*, 8 OSTEUROPA RECHT (1962), No. 4, at 292-305.

¹⁴ KRYLENKO, *SUDOSTROISTVO RSFSR* (The Judicial System of the RSFSR; Moscow, 1923), 35-36; cf. *Obshchestvennye sudy—vashmeishaja forma bor'by s pereshikama proshlogo* (Social Courts—A Most Important Form of Struggle Against Survivals of the Past), SGP, 1959, No. 5, 3, at 4.

¹⁵ SOBRANIE UZAKONENII I RASPORIAZHENII RSFSR (Collection of Laws and Regulations of the RSFSR), 1918, No. 55, Item 613 (hereafter cited in the form: SU, RSFSR, 1918, 55/613).

minor orders, waste of military property, insulting of comrades, drunkenness, gambling, and reprehensible conduct. Measures of pressure included a reprimand, temporary loss of leave, a fine of up to 300 rubles, and sentence to compulsory labor.¹⁶

The first civilian Comrades' Courts were formed in 1919, with the goal of raising labor discipline and the productivity of labor "to the highest limits."¹⁷ Organized in the local sections of trade unions, with appellate Comrades' Courts attached to provincial departments of labor,¹⁸ the Disciplinary Comrades' Courts (as they were then called) tried cases of violation of labor discipline, for which they could impose penalties that included the deprivation of freedom and dismissal from work. Such severe penalties were regarded as essential for the consolidation of Soviet power in the earliest years. At the same time, however, less coercive measures were available, such as a reprimand and the temporary deprivation of the right to vote and right to be elected in trade union elections.¹⁹

Not long after the formal introduction of the civilian Comrades' Courts, they were abolished in the railroad and water transport industries because of the ineffectiveness of persuasive measures in those industries.²⁰ This did not halt the general expansion of the Comrades' Courts, however, for a new decree in 1921 broadened their jurisdiction to include cases of hooliganism, indecent conduct, petty misappropriations of property at the enterprise or institution and certain other petty offenses.²¹ Referred to in the new decree as an "industrial-educational institution,"²² the Disciplinary Comrades' Courts retained the power to order dismissal and deprivation of freedom but the duration of these penalties was now limited to six months; at the same time they could impose certain new measures of social pressure, including reproof (*zamechanie*) with warning, working overtime for time missed, and reduction of the piece-work premium.²³

Decrees of the late 1920's added to the jurisdiction of Comrades' Courts cases of insults, beatings without bodily injuries, circulation of

¹⁶ *Id.*, arts. 5, 17, 18.

¹⁷ SU, RSFSR, 1919, 56/737, Preamble.

¹⁸ *Id.*, arts. 3, 8.

¹⁹ *Id.*, art. 9.

²⁰ SU, RSFSR, 1920, 10/65, 43/195; cf. Savitskii and Keizerov, *Razvitie pravovykh form organizatsii i deiatel'nosti tovarishcheskikh sudov* (The Development of Legal Forms of Organization and Activity of Comrades' Courts), *SGP*, 1961, No. 4, 37, at 41.

²¹ SU, RSFSR, 1921, 23-24/142, art. 8.

²² *Id.*, art. 10.

²³ *Id.*, art. 9.

false defamatory information, and certain petty thefts, misdemeanors, and civil suits.²⁴ Measures of pressure were considerably less harsh than previously, and entailed nothing more severe than a comradely warning, a social reprimand with or without publicity in the press, a fine of up to 10 rubles (to be paid to a social organization), or compensation for property damage up to 25 rubles. Guidance and supervision of the Comrades' Courts (then known by that simple name) were entrusted to the People's Commissariat of Justice, while the appellate structure was abolished by making the decisions of the local Comrades' Courts final and not subject to appeal. For the first time all members were elected by general meetings of the workers.

A decree of February 20, 1931, renamed these courts "Industrial Comrades' Courts" (*proizvodstvenno-tovarishcheskie sudy*) and, among other reforms, extended their jurisdiction still further (e.g., thefts up to 50 rubles and property controversies up to 50 rubles).²⁵ To the available measures of pressure were added the recommendation to the factory management of dismissal of an offender and the recommendation to the trade union of his temporary expulsion from the union.²⁶ Supervision of the courts now rested with the People's Courts, with guidance being performed by the All-Russian Central Council of Trade Unions, the People's Commissariat of Justice, and local trade-union organizations and judicial agencies.²⁷

On the basis of a federal decree of 1929 and of RSFSR decrees of 1930 and 1931, Comrades' Courts were formed also in rural areas and in housing associations and other residential units.²⁸ The "Rural Social Courts" (*sel'skie obshchestvennye sudy*) and the residential courts had jurisdiction over generally the same violations of public order as mentioned above for the industrial courts. The rural courts could also hear cases regarding maintenance of children, certain alimony and land controversies, and certain labor controversies if no more than 25 rubles was involved.²⁹ Although Comrades' Courts in housing develop-

²⁴ SU, RSFSR, 1928, 114/707; 1929, 67/662; 1930, 4/52; amended by 1930, 34/440. Although 4/52 is actually a decree of December 30, 1929, it will hereafter be referred to as a 1930 decree; it appears in the 1930 COLLECTION OF LAWS AND REGULATIONS OF THE RSFSR.

²⁵ SU, RSFSR, 1931, 14/160, art. 4.

²⁶ *Id.*, art. 13.

²⁷ *Id.*, arts. 16, 17.

²⁸ SOBRANIE ZAKONOV I RASPORIAZHENII SSSR (Collection of Laws and Regulations of the U.S.S.R.; hereafter cited as SZ, USSR), 1930, 51/531; SU, RSFSR, 1930, 51/629; amended 1931, 36/295. The typical urban resident lives in an apartment (*kvartira*) within a dwelling house (*dom*), which is part of a larger grouping of houses under a central housing operations office (*zhilishchno-eksploataatsionnaia kontora*) or housing management (*domoupravlenie*).

²⁹ SU, RSFSR, 1930, 51/629, art. 3.

ments had no jurisdiction over any labor or alimony cases, they could hear cases of certain petty thefts and thirteen categories of cases concerning the use of housing facilities.³⁰ Measures of pressure available to both the rural and residential courts were about the same as those available to the industrial courts, without the measures pertaining to dismissal or to temporary expulsion from a union. The rural courts could impose the additional penalty of compulsory performance of certain social work for up to five days.³¹ They were subject to guidance and supervision by both the People's Courts and the Procuracy;³² the residential courts were subject to guidance and supervision by the People's Courts only.³³

Through most of the 1930's the Comrades' Courts flourished. In 1932 twelve thousand Industrial Comrades' Courts were in operation in 13 regions of the RSFSR; their membership was close to 60,000 persons. In the same areas, 45,000 Rural Social Courts were functioning, with 780,000 persons participating as members. The volume of cases was not insignificant: in the first ten months of 1929, Comrades' Courts in the Leningrad province heard 3182 cases, while in the first half of 1931 the Rural Social Courts of the Tsentral'no-Chernozemny region heard 16,799 cases. The cases mainly involved such matters as insults, defamation, and beatings.³⁴ Compared with 1929, the number of persons judged by the People's Courts of the RSFSR in cases of private prosecution was reported to have been reduced in 1930 by 49.4%, in 1931 by 73.1%, in 1932 by 83.1%, and in 1933 ("when social courts were formed everywhere") by 93.5%.³⁵ In a decree of 1933 the Industrial Comrades' Courts were referred to as having become "genuine guides of socialist self-education and self-discipline of the broad masses of workers."³⁶

In 1938 the number of Comrades' Courts in the whole RSFSR was reported to be more than 45,000.³⁷ By the end of the 1930's, however, the activity of the courts diminished until by World War II they had virtually ceased to function. In a number of places they were dissolved outright. In Moscow's Kuibyshev and Frunze districts, Comrades' Courts remained active only at a few housing managements. In Lenin-

³⁰ SU, RSFSR, 1931, 36/295, art. 3.

³¹ SU, RSFSR, 1930, 51/629, art. 13.

³² *Id.*, art. 17.

³³ SU, RSFSR, 1931, 36/295, art. 13.

³⁴ SGP, 1959, No. 5, at 5.

³⁵ *Ibid.* These are the only statistics of this kind that have ever been published.

³⁶ Savitskii and Keizerov, *supra* note 20, at 39, note 11.

³⁷ AVDEEV & STRUNNIKOV, PRAVILA SOTSIALISTICHESKOGO OBSHCHEZHITILA (The Rules of Socialist Community Life; 1961), at 56.

grad, the executive committee of the city soviet abolished the Comrades' Courts in housing units.³⁸

The reasons given for the sharp decline are several. There was no single law comprehensively regulating the court's activity.³⁹ There was no provision for adequate guidance of them, especially in the case of the residential courts. Judicial agencies remained aloof and the unions found no effective means of control.⁴⁰ Yet because guidance of them was the responsibility primarily of the People's Courts, they became supplementary elements in the state judicial system, with but limited contact with the broad masses of society.⁴¹ Although Soviet writers list the war as another reason for the virtual disappearance of the courts, none of them have gone so far as to mention one of the main reasons, namely, that wartime and postwar legislation imposed such severe criminal penalties for comparatively minor offenses that the Comrades' Courts were in practice preempted.⁴² In 1940, for example, unjustified absenteeism, including tardiness and unauthorized quitting, which hitherto had been subject to disciplinary penalties only, were made crimes punishable in the regular courts.⁴³ Another principal reason for the decline of Comrades' Courts—also not mentioned by Soviet writers—may have been the lack of popular interest in them; assuming that there was no Party policy to eliminate them (there is no evidence of such policy), one must infer that industrial, residential and rural communities were not eager to maintain these voluntary agencies of group self-discipline.

After the war the decrees of 1930-31 concerning the industrial, residential, and rural Comrades' Courts were still in force, but the courts' activity remained very slight. In 1951, however, the criminal sanctions imposed in 1940 for absenteeism were apparently eliminated, although the prohibitions against absenteeism remained in force.⁴⁴ These offenses were now dealt with under a new federal Statute on Comrades' Courts in Enterprises and Institutions, enacted in 1951 but not published until 1958, whereby the hitherto broad jurisdiction of those courts was circumscribed to include only cases of violations of labor

³⁸ SGP, 1959, No. 5, note 20 at 5.

³⁹ Savitskii and Keizerov, *supra* note 20, at 39, note 12.

⁴⁰ *Ibid.*

⁴¹ SGP, 1959, No. 5, at 10.

⁴² Schlesinger, *Voluntary Militia and Courts*, 11 SOVIET STUDIES, No. 2, 1959, at 214-15.

⁴³ Edict of Presidium of Supreme Soviet of U.S.S.R., June 26, 1940, IZVESTIA, June 27, 1940.

⁴⁴ See Berman, *Soviet Law Reform—Dateline Moscow 1957*, 66 YALE L.J. 1191, 1202 note 45 (1957).

discipline and of rules of safety, and other industrial misdemeanors.⁴⁵ Included under these categories were cases of truancy without valid reasons, lateness or departure ahead of time from work, and appearing at work in an intoxicated condition, as well as a negligent attitude toward property of the enterprise or institution.⁴⁶ No longer were cases of insults, defamation, and beatings within their jurisdiction. Also, cases could be heard by a Comrades' Court only at the recommendation of the director of an enterprise or institution.⁴⁷ Measures of pressure available to the Industrial Comrades' Courts under the 1951 Statute were social censure, social reprimand, recommendation of demotion or dismissal to the enterprise management, and recommendation of transfer of the case to state judicial or investigatory agencies.⁴⁸

The 1951 Statute was first discussed in detail by Soviet writers only in the late 1950's, when they attacked it as unduly restrictive, and as stifling the work of the Comrades' Courts. Although restoring the Comrades' Courts at enterprises and institutions, the 1951 Statute, it was said, could not convert the courts into "an effective means of struggle for the re-education of unstable individual members of the collective."⁴⁹ And it could not revive the Comrades' Courts at housing managements, most of which courts had in fact ceased their work.⁵⁰

In his report to the 21st Communist Party Congress in 1959, Khrushchev paved the way for a drastic overhaul and revitalization of the Comrades' Courts. He said,

The time has come when greater attention should be paid to Comrades' Courts, which must seek chiefly to attain the prevention of a different kind of violation. They must examine not only questions of behavior on the job but also questions of everyday behavior and morality, facts of incorrect conduct by members of the collective who have permitted deviations from the standards of public order.

When the social Comrades' Courts are actively operating and the

⁴⁵ The Statute (*Polozhenie*) was issued by Decree No. 2520 of the Council of Ministers of the USSR of July 14, 1951, published only in *KHRONOLOGICHESKOE SOBRANIE ZAKONOV LITOVSKOI SSR, UKAZOV PRESIDIUMA VERKHOVNOGO SOVETA I POSTANOVLENIU PRAVITEL'STVA LITOVSKOI SSR* (Chronological Collection of Laws of the Lithuanian SSR, Edicts of the Presidium of the Supreme Soviet and Decrees of the Government of the Lithuanian SSR), Vol. III, 1951-1952, (Vilna, 1958), 313-15. The Statute itself (hereafter cited as 1951 Statute) is never referred to in detail by any Soviet writer.

⁴⁶ 1951 Statute, art. 3.

⁴⁷ 1951 Statute, art. 8.

⁴⁸ 1951 Statute, art. 12.

⁴⁹ Savitskii and Keizerov, *supra* note 20, at 40.

⁵⁰ Chechina, *K voprosu o kompetentsii tovarishcheskikh sudov* (On the Problem of the Competence of Comrades' Courts), *IZVESTIA VYSSHIKH UCHBANYKH ZAVEDENII, PRAVOVEDENIE* (Journal of Higher Educational Institutions, Jurisprudence), 1959, No. 3, at 118-19.

public itself provides people for the ensuring of public order, then it will be considerably easier to fight against offenders. It will be possible to discern such an offender not only when he has already committed a misdemeanor or crime but also when there comes to light a deviation by him from standards of social conduct, which can lead him to anti-social acts. The people can in good time bring pressure to bear upon him, so as to suppress his wicked inclinations. It is necessary to undertake such measures as would prevent and then completely eliminate the appearance in individuals of any misdemeanors which cause harm to society. The main thing is that this is preventive treatment [*profilaktika*], educational work.⁵¹

Along with Khrushchev's pronouncements, the 21st Party Congress as a body considered the question of the role of the public, and especially of the Comrades' Courts, in the securing of public order. After the Party Congress, many columns and pages of print were devoted to increasing the public's role in the realm of law and morality. The USSR Supreme Court and the Procurator General of the USSR directed the People's Courts and procurators to turn over to Comrades' Courts and social organizations those minor cases that could be successfully dealt with by them.⁵² By October, 1959, there was published a draft statute on increasing the role of the public in the struggle against violations of Soviet legality and the rules of socialist community life, as well as drafts of model statutes on Comrades' Courts and on commissions for cases involving minors.⁵³

The 1959 Draft Statute on Comrades' Courts comprehensively provided not only for industrial, residential, and rural courts, but also for courts attached to organizations, higher and specialized secondary educational institutions, collective farms, producers' cooperatives and street committees.⁵⁴ All were to bear the name "Comrades' Courts." Twelve categories of offenses besides violations of labor discipline could be considered by the courts, with such new offenses as the shirking of socially useful labor and living a parasitic life, and illicit moonshining.⁵⁵ A new measure of social pressure was added to the courts'

⁵¹ XXI S'EZD KPSS, STENOGRAFICHESKII OTCHET (21st Congress of the CPSU, Stenographic Record; Moscow, 1959), Vol. I, at 104. Cf. KLINOV and PROKHOROV, V BOR'BE ZA SOTSIALISTICHESKUIU ZAKONNOST' (In the Struggle for Socialist Legality, 1961), at 28.

⁵² Decree No. 3, Plenum of USSR Supreme Court, June 19, 1959; Order No. 43, USSR Procurator General, July 20, 1959. Cf. GRZYBOWSKI, SOVIET LEGAL INSTITUTIONS: DOCTRINES AND SOCIAL FUNCTIONS (1962), at 256.

⁵³ IZVESTIA, Oct. 23, 1959, at 2, Oct. 24, 1959, at 2 (translated in 11 CDSP, No. 43, pp. 13-18).

⁵⁴ Draft: Model Statute on Comrades' Courts (hereafter cited as 1959 Draft Statute), IZVESTIA, Oct. 24, 1959, at 2 (translated in 11 CDSP, No. 43, at 15), art. 2.

⁵⁵ 1959 Draft Statute, art. 6.

powers, namely, making the offender apologize publicly to the victim or the collective; and the maximum fine was increased to 100 rubles and the maximum amount of civil compensation to 500 rubles.⁵⁶ The courts at enterprises, institutions, and organizations were to be under the direction of the trade union committees of those bodies, while the executive committees of the local soviets were to guide the rural and residential courts and courts attached to collective farms, producers' collectives, and street committees.⁵⁷ Further, the 1959 Draft Statute permitted more persons and groups to bring cases before Comrades' Courts, namely, the various social organizations, executive committees of local soviets, and judicial agencies, as well as individual citizens.⁵⁸

Publication of the Draft Statute inspired many rhapsodies over the imminent departure of coercion in Soviet law and its replacement by the new role of the public, as foreseen by Lenin. Thus one booklet stated:

The activity of the Comrades' Courts is nearing the time when, as Lenin pointed out, there will vanish "any need of force against people generally, of the *subordination* of one man to another, of one part of the population to another part, for people *will become accustomed* to complying with elementary conditions of the public *without force* and *without subordination*."⁵⁹

Even before concrete action upon the 1959 Draft Statute, indeed even before its publication, many courts began to operate as though the 1930-1931 decrees were in effect on a greatly enlarged scale. For example, in August 1959, rural social courts in the Tiimenskii region were empowered by the regional soviet executive committee to consider a much broader range of cases than any RSFSR legislation then permitted.⁶⁰ Many inactive courts were reactivated while others were formed for the first time. In Byelorussia, for instance, toward the end of 1960 about 5000 Comrades' Courts were functioning in industrial and agricultural areas; the majority were elected after the 21st Party Congress.⁶¹

⁵⁶ 1959 Draft Statute, art. 15. At the time of the 1959 Draft Statute, the ruble had not been revalued. The 1961 currency reform replaced ten old rubles with one new ruble and reduced all prices by ninety per cent. A new ruble is officially worth \$1.11. In more concrete terms, 50 rubles would be the price of a good pair of shoes, a year's rent, or a rail ticket from Moscow to Vladivostock.

⁵⁷ *Id.*, art. 19.

⁵⁸ *Id.*, art. 9.

⁵⁹ POKROVSKII AND GERSHANOV, O ROLI OBSHCHESTVENNOSTI V UKREPLENII SOTSIALISTICHESKOGO PRAVOPORIADKA (On the Role of the Public in Strengthening the Socialist Legal Order, 1960), at 20, quoting from Lenin, 25 *Works* (4th Russian ed., 1949), at 428. (Emphasis in original.)

⁶⁰ *Id.*, at 18-19.

⁶¹ Babitskii, *Tovarishcheskie sudy—vazhnaia forma obshchestvennogo vozdeistviia*

After nearly twenty months of national discussion of the 1959 Draft Statute, the Legislative Proposals Commissions of the USSR Supreme Soviet declared that it was ready for submission to the legislative bodies of the union republics.⁶² Less than a month later, on July 3, 1961, the Presidium of the RSFSR Supreme Soviet adopted a new Statute on Comrades' Courts.⁶³ Similar new statutes were passed in other union republics.⁶⁴ Under the 1961 Statute, the cases heard are approximately the same as those listed in the 1959 Draft Statute.⁶⁵ Measures of social pressure are nearly identical with those listed in the 1959 Draft Statute, the primary changes being the omission of the power to recommend dismissal from the enterprise and the omission of compensation by labor for damage caused.⁶⁶ Other features of the 1961 Statute are close to those of the 1959 Draft Statute, but there were also some important changes. In general, Comrades' Courts under both the Draft Statute and the Statute have broader goals than under the first decrees, they are closer and more responsible to the people, they are permitted more initiative and have jurisdiction over a far broader range of cases, and they are confined to less coercive measures of pressure.

THE 1961 RSFSR STATUTE ON COMRADES' COURTS

TASKS OF COMRADES' COURTS AND PROCEDURE FOR THEIR ORGANIZATION⁶⁷

Article I. Comrades' Courts are elected social agencies charged with actively contributing to the education of citizens in the spirit of a communist attitude toward labor and socialist

(Comrades' Courts—An Important Form of Social Pressure), in LEONENKO, SOVETSKAYA OBSHCHESTVENNOST' I UKREPLENIE PRAVOPORIADKA (The Soviet Public and the Strengthening of the Legal Order, 1961), 65, at 72.

⁶² *V Komissiiakh zakonodatel'nykh predlozhenii Soveta Soiuzo i Soveta Natsional'nostei* (In Legislative Proposals Commissions of the Soviet of the Union and the Soviet of Nationalities), PRAVDA, June 8, 1961, p. 2 (translated in 13 CDSP, No. 23, p. 20.)

⁶³ Note 12 *supra*.

⁶⁴ MIKHAILOVSKAYA, TOVARISHCHESKII SUD—VAZHNOE SREDSTVO KOMMUNISTICHESKOGO VOSPITANIA MASS (The Comrades' Court—an Important Means of Communist Education of the Masses; 1961), at 5.

⁶⁵ See 1961 STATUTE, art. 5, *supra* note 12. Although many offenses listed in the 1959 Draft Law were omitted from the 1961 Statute, most of them could still be considered by Comrades' Courts. See commentary, Article 5 *infra*, p. 863. The 1963 Amendments, cited *supra* note 12, specifically listed many of these offenses and added other cases to the jurisdiction of Comrades' Courts.

⁶⁶ See 1961 Statute, art. 15. The 1963 amendments, *supra* note 12, reinstated the recommendation of dismissal in certain instances and added the recommendation of "assignment to unqualified physical labor tasks" for up to 15 days for certain offenders, such as hooligans.

⁶⁷ This heading marks the first of the five parts of the Statute, as subdivided by its draftsmen; other parts are set off at arts. 5, 8, 14, 21.

property and the observance of the rules of socialist community life, and with developing among Soviet people a sense of collectivism and comradely mutual assistance and of respect for the dignity and honor of citizens. The chief duty of Comrades' Courts is to prevent violations of law and misdemeanors that cause harm to society, to educate people through persuasion and social pressure, and to create conditions of intolerance toward any antisocial acts. Comrades' Courts are invested with the trust of the collective, express its will and are responsible for it.

This article is identical with Article 1 of the 1959 Draft Statute, except for the addition of the final clause, whereby the courts are made responsible to the collective. It is by far the broadest statement of purpose in the series of enactments on Comrades' Courts dating from 1917. It clearly emphasizes the "social" character of the courts, and their moral-educational goal as well as the goal of ending lawlessness generally.

The first military and industrial Comrades' Courts were concerned only with discipline and the productivity of labor. The decree of 1928 speaks of the courts' being "organized for the consideration of cases concerning injuries and insults arising between persons working at . . . enterprises and institutions."⁶⁸ The 1930 decrees on the rural courts state as their aim "drawing the law-court closer to the people, . . . attracting to the work of the court the broad masses of working people, . . . relieving the People's Courts of the trial of petty criminal and civil cases"⁶⁹ and "simplifying the procedure for the trial of petty cases."⁷⁰ The 1931 decree on Industrial Comrades' Courts was adopted "for the purpose of the greatest attraction of the social spontaneous activity of the broad masses of workers and employees into the struggle against violations of labor discipline, against disrupters of production at enterprises and institutions as well as against the undermining of labor discipline by survivals of the old way of life (drunkenness, etc.)."⁷¹ The 1931 statute on residential courts was aimed at attracting the spontaneous activity of the broad masses of working people into the struggle against a thriftless attitude toward housing and toward the settlement of housing disputes.⁷² The 1951 statute

⁶⁸ SU, RSFSR, 1928, 114/707, art. 1.

⁶⁹ SZ, USSR, 1930, 51/531, preamble.

⁷⁰ SU, RSFSR, 1930, 51/629, preamble.

⁷¹ SU, RSFSR, 1931, 14/160, preamble.

⁷² SU, RSFSR, 1931, 36/295, preamble.

emphasized the struggle against violations of labor discipline as the primary goal of Comrades' Courts.⁷³

The 1961 Statute thus carries the basic policies of the earlier laws much further, giving them a more general and a more sweeping significance.

Article 2. Comrades' Courts in enterprises, institutions, organizations and higher and specialized secondary educational institutions shall be formed by decision of a general meeting of the workers and employees or of the students.

Comrades' Courts in collective farms and in dwelling houses served by housing operations offices or housing managements or united in street committees, as well as those in rural populated points and settlements, shall be formed by decision of a general meeting of collective farm members, dwelling house tenants or citizens of the village or settlement, with the consent of executive committees of the respective soviets of working people's deputies.

In large collectives Comrades' Courts may be formed in enterprise shops, collective farm brigades, etc.

Comrades' Courts may be formed in collectives numbering not less than 50 persons.

In particular instances, with the consent of the higher trade union agency or executive committee of the respective local soviet of working people's deputies, Comrades' Courts may be formed in collectives numbering less than 50 persons.

This provision differs from the corresponding article of the 1959 Draft Statute only in that the latter authorized formation of Comrades' Courts also in producers' cooperatives. Reference to producers' cooperatives is omitted throughout the 1961 Statute.

The enactments before 1959 directed the establishment of the courts without permitting the local option of a general meeting of persons affected. The prerequisite of consent by the local soviet to the establishment of rural, collective farm, and residential Comrades' Courts is also new in the 1959 Draft Statute and the 1961 Statute. It may stem from a soviet's possible reluctance to permit the formation of too many courts under it, as it is responsible for guiding all of them (see discussion of Article 21, below).

⁷³ 1951 Statute, *supra* note 45, art. 1.

The provision for forming courts in shops and brigades of large collectives is also new. It is based on the theory that a court organized for a large establishment, numbering in the thousands, may be too distant and formal, and may lack the more personal educational influence upon the individual and the collective which is present when the social unit is smaller.

Under the 1961 Statute as originally enacted, a minimum of 50 persons was required to be in a collective before it could establish a Comrades' Court; this was half the minimum number established in the 1951 Statute and in the 1931 laws for residential and industrial courts.⁷⁴ The reason for having any minimum at all is to prevent an undue proliferation of Comrades' Courts. With a minimum of 50 it is likely that virtually all Soviet citizens belong to at least one collective entitled to form a court and that most belong to more than one. Nevertheless, laws on Comrades' Courts in the Ukrainian and Tadzhik republics, and perhaps others, require no minimum number, and in 1963 the requirement was modified to permit Comrades' Courts to be established in collectives numbering under 50, with the consent of higher agencies.⁷⁵

Several Soviet writers have urged that in order to ensure that meetings to organize Comrades' Courts are not attended by merely a fraction of the collective, it would be desirable to establish a quorum of half to two-thirds of the collective.

Article 3. Comrades' Courts shall be elected for a term of two years by open ballot at general meetings of working people's collectives. Meetings to elect Comrades' Courts shall be called by factory plant or local trade union committees, the boards of collective farms or the executive committees of local soviets of working people's deputies, respectively.

Those receiving a majority vote with respect to the other candidates and more than half the votes of those present at the meeting shall be considered elected as members of the court.

The number of members of the court shall be fixed by the general meeting. Members of the court shall elect from among themselves by open vote a chairman of the Comrades' Court, deputy chairmen and a secretary of the court.

⁷⁴ *Id.*, art. 2; SU, RSFSR, 1931, 14/160, art. 1; 36/295, art. 1.

⁷⁵ MIKHAILOVSKAIA, *op. cit. supra* note 64, p. 7; IUDEL'SON, PRAKTICHESKOE POSOBIE DLIA TOVARISHCHESKIKH SUDOV (Practical Manual for Comrades' Courts, hereafter cited as MANUAL, 1961), at 17; 1963 Amendments, *supra* note 12.

The term of office has varied in past enactments: two years (1959 Draft Statute),⁷⁶ one year (1931 residential courts and 1951 industrial courts),⁷⁷ up to a year (1931 industrial courts),⁷⁸ six months (1921, 1928, 1930 decrees),⁷⁹ three months (company courts),⁸⁰ and the same term as the rural soviet (rural courts).⁸¹ The disciplinary courts of 1919 apparently had no particular term. The change from the 1959 Draft Statute to a one-year term under the 1961 Statute as originally enacted was made because of the establishment of a rule that all elected bodies of the primary social organizations should have one-year terms, and there appeared to be no reason to make an exception for Comrades' Courts.⁸² Another justification for the shorter term has been the desire to attract the greatest possible number of persons to the activity of the Comrades' Courts.⁸³ Yet the 1963 amendment restoring the two-year term suggests that these considerations were outweighed by others such as a desire to obtain more experienced members.

Open-ballot voting at general meetings has not always been provided. Under the 1918 decree elections in the company courts were general and direct, but by secret ballot.⁸⁴ Under the 1919 and 1921 decrees, only one of the members could be elected by a general meeting of a local union or a union of an enterprise with the remaining members to be named by the local factory administration and by the Board of the Trade Union or by the District Bureau of Trade Unions along with the Provincial Council of Trade Unions.⁸⁵ The members of rural Comrades' Courts under the 1930 statute were elected from among the members of the rural soviet and subject to confirmation by the district executive committee.⁸⁶ The 1931 decree on industrial courts permitted union committees to challenge the membership of the courts individually or as a body.⁸⁷ Under the 1951 Statute voting was by secret ballot at general meetings of workers and employees.⁸⁸

⁷⁶ 1959 Draft Statute, *supra* note 54, art. 3.

⁷⁷ SU, RSFSR, 1931, 26/295, art. 2; 1951 Statute, *supra* note 45, art. 7.

⁷⁸ SU, RSFSR, 1931, 14/160, art. 3.

⁷⁹ SU, RSFSR, 1921, 23-24/142, art. 5; 1928 114/707, art. 2; 193h, 4/52, art. 2.

⁸⁰ SU, RSFSR, 1918, 55/613, art. 6.

⁸¹ SU, USSR, 1930, 51/531, art. 1; SU, RSFSR, 1930, 51/629, art. 2.

⁸² ΜΙΚΗΛΙΩΣΚΑΙΑ, *op. cit. supra* note 64, at 8.

⁸³ Morshinin, *Vstrecha byla interesnoi* (The Meeting was Interesting), Sov. Ius., 1962, No. 3, at 22.

⁸⁴ SU, RSFSR, 1918, 55/613, art. 6.

⁸⁵ SU, RSFSR, 1919, 56/537, art. 3; 1921, 23-24/142, art. 3.

⁸⁶ SZ, USSR, 1930, 51/531, art. 1; SU, RSFSR, 1930, 51/629, art. 2.

⁸⁷ SU, RSFSR, 1931, 14/160, art. 3.

⁸⁸ 1951 Statute, *supra* note 45, art. 4.

Even today, open-ballot voting at general meetings is not universal. At a large housing management in Moscow, elections for the single Comrades' Court take place through conferences of representatives from different parts of the ten thousand member collective. The chairman of that court has proposed an amendment to Article 3 of the statute which would expressly authorize such a procedure in situations where a general meeting is impracticable.⁸⁹

The provision that trade union committees, collective farm boards and soviet executive committees shall call meetings to elect Comrades' Courts within their respective jurisdictions is new with the 1959 Draft Statute and the 1961 Statute. Under previous decrees no agencies were specifically granted power to call meetings.

Nothing is said in the 1959 Draft Statute or the 1961 Statute about the procedure for nomination of members of Comrades' Courts. Presumably the agency which calls the election meeting also proposes candidates.⁹⁰ The 1951 Statute authorized nominations by Party, trade union and Komsomol organizations as well as by individuals attending the election meeting.⁹¹ The omission of a comparable provision in the new law is not easy to explain; it could mean, as one writer has suggested, that Communist Party organizations are freer to control the composition of the Comrades' Courts,⁹² but it may be doubted whether the Party has a very great interest in exercising such a power. In any event, the Party would have ultimate control regardless of the nominating procedure established by statute, and in practice under the existing provisions nominations may be made from the floor.

The power of the general meeting to determine the maximum number of members of the courts dates from the 1928-1931 decrees on industrial courts. The earliest laws, the later laws on residential and rural courts, and the 1951 Statute, placed some limitations on the number either in terms of minimum or maximum or both.⁹³ In practice

⁸⁹ Makhnenko, *Glavnoe—vospitatel'naia rabota* (The Main Thing—Educational Work), *Sov. Ius.*, 1963, No. 2, 23, at 24.

⁹⁰ The East German Procurator General, writing on the Soviet Comrades' Courts, asserts that the union leaders propose the candidates for enterprise courts. Streit, *Über die Tätigkeit der Kameradschaftsgerichte in der UdSSR*, 15 *NEUE JUSTIZ*, 1961, at 282.

⁹¹ In only two previous enactments was the right of nomination spelled out: SU RSFSR, 1930, 51/629, art. 2, and 1951 Statute, *supra* note 45, art. 5.

⁹² Bilinsky, *Die 'gesellschaftliche Rechtspflege' in der Sowjet Union*, 4 *RECHT IN OST UND WEST*, 1960, 89, at 91.

⁹³ Compare SU, RSFSR, 1918, 55/613, art. 6; 1919, 56/537, art. 3; 1921, 23-24/142, art. 3; 1930, 51/629, art. 2; 1931, 36/295, art. 2; and 1951 Statute, *supra* note 45, art. 4 (with limits on number of members) with SU, RSFSR, 1928, 114/707, art. 2; 1930, 4/52, art. 2; 1931, 14/160, art. 3; 1959 Draft Statute, *supra* note 54, and 1961 Statute, *supra* note 12, art. 3 (general meeting sets upper limits).

today, Comrades' Courts have between five and fifteen members, most commonly between ten and fifteen.⁹⁴

Not since the two earliest decrees has provision been made for a secretary of the court.⁹⁵ In providing that the members of the court shall elect their own officers, the 1961 Statute once again harks back to the 1918 and 1919 decrees, as well as to the 1951 Statute.⁹⁶

It should be noted that Comrades' Courts meet outside of working hours and that all the activities of their members in preparation and follow-up of cases must take place during free time. (See Article 11.)

Article 4. Comrades' Courts shall report at least once a year on their activity to general meetings of working people's collectives.

Members of a Comrades' Court who fail to justify the trust placed in them may be recalled by a general meeting before expiration of the term. Election of new members of a Comrades' Court to replace those who have been recalled or have dropped out for other reasons shall be held in the manner provided in Articles 2 and 3 of the present Statute.

No enactment before 1959 except the 1930 RSFSR decree on Rural Social Courts provided for reports. Article 18 of that decree merely stated that "the rural soviet shall listen to summary reports of the Rural Social Court," with no minimum frequency of reports.⁹⁷ In its original form, the 1961 Statute provided for reports without specifying their frequency. Presumably, a report was ordinarily to be made at least at the annual election meeting.⁹⁸ The 1963 amendments made an annual report obligatory.⁹⁹

Nearly all previous decrees permitted the recall of members of the court. Before the 1959 Draft Statute and the 1961 Statute, only the 1918 decree provided for the filling of vacancies.¹⁰⁰

CASES CONSIDERED BY COMRADES' COURTS

Article 5. Comrades' Courts shall consider cases concerning:

(1) violations of labor discipline, including: absence without valid reasons, late arrival at work or departure from

⁹⁴ MANUAL, *supra* note 75, at 17.

⁹⁵ SU, 1918, 55/613, art. 7; 1919, 56/613, art. 7; 1919, 56/537, art. 4.

⁹⁶ *Ibid.*; 1951 Statute, *supra* note 45, art. 6.

⁹⁷ SU, RSFSR, 1930, 51/629, art. 18.

⁹⁸ Note 12 *supra*. This requirement is a codification of practice from 1959 to present. See *Commentary*, Sov. Jus., 1961 No. 18, at 23

⁹⁹ Note 12 *supra*.

¹⁰⁰ SU, RSFSR, 1918, 55/613, art. 9.

work before the end of the working day; poor quality of performance of work, idleness resulting from a worker's unconscientious attitude toward his duties; failure to observe rules of safety techniques and other rules of labor protection, except instances entailing criminal liability; destruction, loss or damage of inventory, instruments, materials or any other state or social property because of the unconscientious attitude of a person toward his duties, not resulting in significant damage;

(1a) the unwarranted use for personal purposes of means of transportation, agricultural equipment, machine-tools, instruments, raw materials or other property belonging to a state enterprise, institution, organization, collective farm or any other cooperative or social organization, if such actions do not cause harm to the specified enterprises, institutions or organizations;

(1b) petty hooliganism, petty speculation, petty theft [*khishchenie*] of state or social property, if committed for the first time, and also the theft [*krazha*] of inexpensive articles of consumption and everyday life found in the personal ownership of citizens, if committed for the first time, in an instance when the guilty person and the victim are members of one collective.

Note. The cases enumerated in the present paragraph shall be assigned to Comrades' Courts by agencies of the police or procuracy or by a court. In the event there is no Comrades' Court at the place of work or residence of an offender, and also if the information concerning the offender's personality and the circumstances of the case testify to the inappropriateness of considering it in a Comrades' Court, the case shall be considered in a district (city) People's Court in the legally established procedure.

(2) appearance in an intoxicated condition or unworthy conduct in public places or at work; the making of home-brewed liquor or other strong alcoholic beverages, committed for the first time, without the purpose of sale and in a small quantity;

(3) unworthy attitude toward women, failure to fulfill duties of rearing children, unworthy attitude toward parents;

(4) insults, circulation of false rumors defaming a member of a collective, beatings, or light bodily injuries not resulting in impairment of health, if these acts are first offenses; foul language;

(5) the damaging of trees or other greenery;

(6) the damaging of dwelling and other premises or of communal equipment, when the harm caused is not substantial; failure to observe rules of fire safety;

(7) violations of apartment or dormitory regulations; disputes between tenants concerning the use of auxiliary premises, house outbuildings, payment for communal services, payment of expenses for current repairs of places of general use, or concerning establishment of a procedure for the use of land plots by co-owners of house property;

(8) property disputes involving sums up to 50 rubles between citizens, if the parties to the dispute agree to consideration of the case in a Comrades' Court;

(8a) disputes over the procedure for using buildings that are the common property of two or several citizens, over the division of property of a collective-farm household or the allotment of a share of the collective-farm household, over the division of property between spouses, when the disputing parties agree to consideration of the case in a Comrades' Court;

(9) other antisocial acts not entailing criminal liability;

(10) administrative violations of law, if agencies and officials to whom the right of imposing a fine in an administrative procedure is granted consider it necessary to transfer such a case to the consideration of a Comrades' Court;

unwarranted exercise of rights, failing to render aid to a sick person, illegally practising medicine, acquiring property known to have been obtained by criminal means, and other criminal acts, if they do not represent a great social danger and agencies of the police or procuracy or a court consider it necessary to transfer such cases to the consideration of a Comrades' Court.

(1) Violations of labor discipline retain their traditional prominence among the categories of cases subject to the jurisdiction of Comrades'

Courts. Within this category the 1931 decree on industrial courts, the 1951 Statute and the 1959 Draft Statute made it an offense merely to display a negligent attitude toward state or social property, but the 1961 Statute required that actual damage flow from such negligence.¹⁰¹ The 1963 amendment retained the requirement of damage but substituted the phrase "an unconscientious attitude" for the earlier standard of negligence and enlarged the scope of the offense to include "any other state or social property," and not merely "inventory, instruments or materials." The wording of Paragraph 1 ("including") indicates that the specific violations listed are suggestive and not exhaustive.

A case arising at a metallurgical plant in Sverdlovsk illustrates one sort of violation of industrial safety regulations within the jurisdiction of Comrades' Courts. Kholin, the foreman of the repair construction shop, kindled a fire for heating the soil in a trench and left it without supervision. During the night the planking in the trench caught fire and smoke filled a part of the thermal shop. Workers of the shop were overcome by the fumes, until firemen put out the fire. Kholin was given a social censure by the Comrades' Court for violation of rules for fire protection in carrying out construction work.¹⁰²

(1a) This paragraph, added by the 1963 amendments, gives the Comrades' Courts jurisdiction over noncriminal acts of unwarranted interference with property rights of state or social organizations—acts that are not crimes because they do not amount to theft and cause no harm. Presumably the chauffeur of an enterprise who uses the enterprise's car for his own pleasure or the worker who takes home certain tools for temporary personal use would fall within the scope of this provision.

(1b) Also added in 1963, this paragraph significantly expands the express terms of jurisdiction of the Comrades' Courts. The 1959 Draft Statute had also empowered the Comrades' Courts to consider cases of petty speculation¹⁰³ petty theft of state or social property, and petty hooliganism,¹⁰⁴ when committed for the first time; moreover, the 1959

¹⁰¹ Compare SU, RSFSR, 1931, 14/160, art. 4b; 1951 Statute, *supra* note 45, art. 3; and 1959 Draft Statute, *supra* note 54, art. 5.

¹⁰² MANUAL, *supra* note 75, at 117.

¹⁰³ RSFSR Criminal Code, art. 154. Speculation is defined as "the buying up and reselling of goods or any other articles for the purpose of profit." See MANUAL, *supra* note 75, at 181-84.

¹⁰⁴ *Id.*, art. 206. Hooliganism is defined as "intentional acts violating public order in a coarse manner and expressing clear disrespect toward society." See MANUAL, *supra* note 75, at 175-79; Vakulenko, *Pravil'no kvalifitsirovat' khuliganstvo* (To Categorize Hooliganism Correctly), *SOTSIALISTICHESKAYA ZAKONNOST'* (Socialist Legality, hereafter cited as *Sots. ZAK.*), 1963, No. 2, at 32-35. Cf. "On Responsibility for Petty Hooliganism," Dec. 19, 1956, *Sovetskaya Rossiya* (Soviet Russia), Dec. 20,

Draft Statute did not contain the limitation that such cases could be considered only on assignment by agencies of the police or procuracy¹⁰⁵ or by the courts. The elimination of specific mention of these and other criminal offenses in the 1961 Statute as originally enacted may have signified a desire to restrict the jurisdiction of "popular justice" largely—though not entirely—to noncriminal matters; the new RSFSR Criminal Code, which was adopted on October 27, 1960, that is, after the promulgation of the 1959 Draft Statute and before the enactment of the 1961 Statute, lists a variety of minor crimes that can be transferred to the Comrades' Courts, but they are all less serious offenses than petty speculation, petty theft of state or social property, or petty hooliganism. Indeed, those three offenses probably plague Soviet society more than all other minor crimes taken together.

The introduction in 1963 of Paragraph 1b, and also of an amendment to Paragraph 10 of Article 5 (to be discussed below), substantially changes the style of the 1961 Statute. Prior to these amendments, Article 5 listed certain noncriminal antisocial acts as being within the jurisdiction of the Comrades' Courts, and then added two catchall provisions: "other antisocial acts not entailing criminal liability" (Paragraph 9) and "administrative and other minor violations of the law" upon transfer by the police, procuracy or courts (Paragraph 10). These two provisions are discussed in more detail below, but here it is relevant to point out that "other minor violations of the law" must be taken as referring to those crimes defined in the 1960 RSFSR Criminal Code which under Article 51 of the Code, could be assigned to Comrades' Courts if committed for the first time and if application of measures of social pressure are permitted for them. With respect to certain such crimes referred to in Paragraph 2 of Article 51, the Special Part of the Criminal Code expressly provides for the application of social pressure. These are: causing property damage to the state or to a social organization through deception or

1956, p. 1 (translated in 8 CDSP, No. 49, p. 18), amended April 27, 1961, RSFSR Vedomosti, 1961, 16/248 (translated in 13 CDSP, No. 17, p. 9).

violation of the legally established order, of one's actual or supposed right, causing substantial harm to citizens or to state or social organizations."

¹⁰⁵ "The Procuracy is the cornerstone of the Soviet legal system. It combines functions of our Department of Justice, Congressional investigating committees, and grand juries. It not only investigates and prosecutes crimes, but it supervises the entire system of administration of justice, and has power to investigate and protest to higher authorities (whether administrative or judicial) any abuse of law which comes to its attention." BERMAN, *JUSTICE IN THE U.S.S.R.* (2nd ed., 1963), at 74-75.

For a detailed analysis of legislation on the Procuracy, see Loeber, *The Soviet Procuracy and the Rights of the Individual Against the State*, 1 *JOURNAL OF THE INTERNATIONAL COMMISSION OF JURISTS*, 1957-58, No. 1, at 59.

abuse of trust if the elements of stealing are lacking (Article 94); appropriating valuable property that has been found or has turned up by accident, known to belong to the state or to a social organization (Article 97); maliciously evading the requirement to support needy parents (Article 123); leaving in danger a person needing immediate aid (Article 127, Paragraph 1); publicly insulting a representative of authority or of the public who is performing his duty of protecting public order (Article 192); the unwarranted exercise of rights (*samoupravstvo*) (Article 200);¹⁰⁶ threatening to kill, to inflict grave bodily injuries or to destroy property by arson (Article 207); acquiring or selling property known to have been acquired by criminal means (Article 208, Paragraph 1); illegally practising medicine (Article 221); and infringing the person or rights of citizens under the guise of performing religious ceremonies, in the absence of great social danger (Article 227, Note).¹⁰⁷

Also Article 51 of the Criminal Code provides that a case may be transferred to the jurisdiction of a Comrades' Court if it is one of "intentional light bodily injury or inflicting of beatings, not resulting in an impairment of health (Article 112, Paragraph 2), the circulation of false fabrications defaming a member of the collective (Article 130, Paragraph 1), [or] insult (Article 131)."

Paragraph 3 of Article 51 of the Code also permits transfer to Comrades' Courts of "any other petty crime, if because of the nature of the act committed and the personality of the guilty person he may be reformed with the help of measures of social pressure and without application of punishment."

The 1963 amendments to the 1961 Statute on Comrades' Courts add, in Paragraph 1b of Article 5, four new crimes to this list. Presumably the Criminal Code will be amended accordingly. In view of the decision to include reference to specific crimes in the Comrades' Court Statute itself, however, the police, procuracy, and courts now find themselves operating under two separate laws—the Statute and the Code—which do not coincide in all respects. Substantively, it may

¹⁰⁶ Unwarranted exercise of rights is defined as "the unwarranted exercise, in
¹⁰⁷ This last offense was added to the jurisdiction of Comrades' Courts by an amendment of July 25, 1962 to the RSFSR Criminal Code. One may be guilty under Article 227 if he organizes, directs or participates in a religious group that is connected with causing harm to citizens' health or otherwise infringing on them, with inducing them to refuse social and civic duties, or with drawing minors into the group, or if he systematically spreads propaganda encouraging the commission of such acts. The provision is apparently aimed at various religious sects such as Jehovah's Witnesses and Pentecostals but is inapplicable to the major Christian, Mohammedan and Jewish communities.

not matter very much, since both the Statute (in Article 5, Paragraph 10) and the Code (in Article 51, Paragraph 3) contain references to "other" criminal acts. Indeed, under Article 51, Paragraph 3, of the Criminal Code the police, procuracy and courts have had the same power to assign cases to the Comrades' Court that they now have been granted expressly in Paragraph 1b of the 1961 Statute as amended, and in fact they have been assigning some cases of petty speculation, petty theft and petty hooliganism.

(2) Previous enactments on Comrades' Courts referred to "petty cases of everyday negative aspects of life," such as violations of the internal routine in dwelling paces, brawls, petty cases of mischief, drunkenness, and the training of children in the use of alcohol.¹⁰⁸ The 1961 Statute lists various types of "unworthy conduct" in Paragraphs 2-7 of Article 5. The making of home-brewed liquor (*samogon*) or other strong alcoholic beverages was added to Paragraph 2 by the 1963 amendments.

(3) Paragraph 3 lists some other acts not previously suggested in legislation on Comrades' Courts. "Unworthy attitude" (*otnoshenie*) may also be translated "unworthy behavior." An example of an unworthy attitude toward parents is shown in the case of Ageev and the Trofimovs. The seventy-year-old Latatueva lived with her daughter and son-in-law, the Trofimovs, in an apartment of Housing Office No. 10, Smolny District, Leningrad. Latatueva was often beaten by a neighboring tenant, Ageev, a frequent drunkard. Both her daughter and son-in-law treated her in a hostile manner and made her life unbearable. When Ageev mocked and beat her, the Trofimovs turned deaf ears to her pleas for help. At the hearing of the Comrades' Court for the Housing Office, the tenants of the building sharply criticized the conducts of Ageev and the Trofimovs. The court imposed a social censure on them all, and ordered the Trofimovs to change their attitude toward Latatueva and to render her material aid. It is reported that later investigation showed that life had become normal for Latatueva, and that the offending parties had changed their attitudes toward her.¹⁰⁹

An unworthy attitude toward women is an addition since the 1959 Draft Law. The case of Goncharov illustrates this offense. Goncharov was a chauffeur at Autobase No. 23, Mosstroitrans, in the city of Kuntsevo. Three times he had been arrested for beating his wife and

¹⁰⁸ SU, RSFSR, 1929, 67/662, part B, art. 7g; 1930, 4/52, art. 3f.

¹⁰⁹ Mukhin and Turin, *Kak organizovat' rabotu tovarishcheskogo suda* (How to Organize the Work of the Comrades' Court), Sov. Ius., 1960, No. 4, 10 at 11.

for foul language, but the arrests had no effect on him. Subsequently he created new family rows while drunk, and his wife sought the help of the Comrades' Court at the autobase. It is reported that the irate criticisms of his home conduct which were made by some of the many workers in attendance at the hearing had so strong an impact on him that he became "a model family man" as well as a good worker.¹¹⁰

Although no such cases are reported, it is entirely possible that "failure to fulfill the duties of rearing children" may include attempting to give a child a religious upbringing, although that in itself is not a crime. Under the Family Code parents have been deprived of their parental rights because of providing an unhealthy home environment, and in such cases the religious character of the home environment has been considered one of the "unhealthy" factors.¹¹¹

(4) Insult and circulation of false rumors have been subject to the jurisdiction of Comrades' Courts under many of the earlier enactments.¹¹² Cases of beatings and light bodily injuries were added to Paragraph 4 by the 1963 amendments; previously, under Article 51, Paragraph 1, of the 1960 RSFSR Criminal Code, they were permitted to be transferred to Comrades' Courts by the police, procuracy or courts.

Abusive language is listed as a specific violation for the first time in the 1959 Draft Statute and the 1961 Statute. A typical report is that of the case of Loshtareva, a collective-farm worker, who at the request of her brigade was brought before a Comrades' Court in the Gorkii region for squabbling and defaming and insulting other women. After many in the collective exposed and denounced her repeated violations of public order, she is said to have changed her ways and to have begun to behave properly in the collective.¹¹³

(5) (6) The damaging of trees and other greenery is a new offense in the 1959 Draft Statute and the 1961 Statute; the damaging of premises was referred to in the 1931 decree on residential courts.¹¹⁴

¹¹⁰ Trukachev, *Iz opyta tovarishcheskikh sudov* (From the Experience of Comrades' Courts), Sov. Ius., 1960, No. 6, 9, at 10.

¹¹¹ Compare Azrael, *supra* note 6, at 11. Under Soviet law it is prohibited to teach religion outside of special theological courses, although religious worship is permitted. Children or youths who attend church are liable to expulsion from the Pioneer or Komsomol organizations.

¹¹² For insult, see *e.g.*, SU, RSFSR, 1918, 55/613, art. 17. The 1951 Statute notably omits such offenses. Note 45 *supra*, art. 3. For circulation of false rumors, see *e.g.*, SU, RSFSR, 1930, 4/52, art. 3a.

¹¹³ Fedotov, *Na predpriatii i na sele* (In the Enterprise and in the Village), Sov. Ius., 1960, No. 5, 6, at 7.

¹¹⁴ SU, RSFSR, 1931, 36/295, art. 3a; 1959 Draft Statute, *supra* note 54, art. 6, par. 7.

The 1963 amendments added failure to observe rules of fire safety.

(7) Paragraph 7 condenses the many categories of violations listed in the 1931 decree on residential courts.¹¹⁵ Cases arising today at Comrades' Courts in housing units, under Paragraphs 7 or 9, concern "squabbles caused by egoism, pettiness, and incorrect conduct of inadequately reared individual citizens,"¹¹⁶ including "violations of rules of socialist community life in communal apartments" and attempts of individual tenants to extend unlawfully their living space at the expense of neighbors.¹¹⁷ Thus it is reported that at one of the buildings of a Tbilisi housing management two men began to quarrel because they could not agree on how a clothesline should be hung in the yard. The quarrel grew into a fight. Had the tenants' representative in the building not been a sick old woman, she could probably have settled the quarrel. At the hearing of the Comrades' Court the offenders realized the wrongfulness of their conduct, forgave each other, and promised to live peacefully in the future. The Comrades' Court recommended a general meeting to elect a new tenants' representative.¹¹⁸

(8) Property disputes were first heard by Comrades' Courts under the 1930 decrees on rural courts and the 1931 decrees on industrial and residential courts. Under all of these, the maximum amount in dispute was limited to 50 old rubles. The present jurisdictional amount of 50 new rubles is equivalent to the 500-ruble amount stated in the 1959 Draft Statute, in view of the 1961 currency reform.¹¹⁹

The 1961 Statute introduces for the first time the prerequisite that the parties must agree to the hearing of the case in a Comrades' Court.

Property disputes are understood to include most civil claims for damages (other than personal injury), such as the failure to return property taken for temporary use, failure to pay a debt, taking possession of another's property or tools (but not theft), damage of another's property, and the like.¹²⁰

(8a) This paragraph, added by the 1963 amendments, elaborates the concept of "property disputes" and emphasizes the role of the Comrades' Courts in collective farms in settling disputes among members of households concerning shares in the commonly held property

¹¹⁵ SU, RSFSR 1931, 36/259 art. 3.

¹¹⁶ Makhnenko, *supra* note 89, at 23.

¹¹⁷ Sarkisov, *Nashi tovarishcheskii sud* (Our Comrades' Court), Sov. Ius., 1962, No. 23, at 22.

¹¹⁸ *Ibid.*

¹¹⁹ Note 56 *supra*.

¹²⁰ *Commentary*, Sov. Ius., 1961, No. 20, at 26. The 1963 amendments eliminated the requirement that the parties be members of the same collective.

of the household. Such disputes remain subject to adjudication in the regular courts unless the parties consent to the jurisdiction of the Comrades' Court.

(9) Paragraph 9 of Article 5 of the 1961 Statute, with its catchall provision for "other antisocial acts not entailing criminal liability" smacks of the doctrine of punishment of crime by analogy which was finally eliminated from Soviet criminal law in 1958.¹²¹ Indeed, it suggests that the Comrades' Court may take jurisdiction over any act whatsoever, legal or illegal, provided it considers the act to be antisocial. If this is a correct interpretation of Paragraph 9, the rest of Article 5 is superfluous.

When read in the light of its legislative history however, Paragraph 9 may be susceptible of a more restricted interpretation. The 1959 Draft Statute which contained no equivalent of Paragraph 9 gave the Comrades' Courts power to sentence persons to "resettlement" for two to five years for "avoiding socially useful work and leading an antisocial parasitic way of life." Shortly before the enactment of the 1961 Statute, this offense was made the subject of an edict of the Presidium of the Supreme Soviet of the RSFSR, under which resettlement of "parasites" was taken out of the hands of Comrades' Courts and placed within the jurisdiction of special administrative sessions of People's Courts and also "collectives" of working people.¹²² The "collectives" which may hear cases under the anti-parasite law are not Comrades' Courts and do not operate under the 1961 Statute on Comrades' Courts. At the same time, trials for parasitism in the People's Courts are not regulated by the Code of Criminal Procedure; the offense itself is said not to be a crime, and the sanction is technically distinguished from criminal punishment. In fact the overwhelming majority of cases of parasitism are heard in the People's Courts and not in the "collectives." However, a person may not be sentenced under the anti-parasite law unless he has already received a warning at the hands of a social organization or state agency. The 1961 Statute on Comrades' Courts omits specific reference to avoiding socially useful work and leading an antisocial parasitic way of life but it is clear that such conduct falls within the scope of "other antisocial acts not entailing criminal liability" under Paragraph 9. In

¹²¹ Compare Berman, *The Dilemma of Soviet Law Reform*, 76 HARV. L. REV. 929, 936-37 (1963).

¹²² RSFSR *Vedomosti* 1961, 18/273 (translated and discussed in Berman, *Justice in the U.S.S.R.* (2nd rev. ed., New York, 1963), pp. 291-298.)

practice persons charged as "parasites" in People's Courts have been previously warned by Comrades' Courts.

Thus a reasonable restriction of Paragraph 9 would limit it to conduct declared to be antisocial by Soviet statutes. Whether or not it will be read so restrictively remains to be seen. Indeed, even if this interpretation was in the minds of the framers of the 1961 Statute, it may be beyond the abilities of untrained members of Comrades' Courts to follow it.

(10) "Administrative violations" which may be transferred to Comrades' Courts include violations of regulations issued by administrative agencies, such as traffic regulations, regulations for keeping pets in cities, prohibitions against drinking liquor in particular places and the like.¹²³ Violations of such regulations may be fined directly by the police; appeals from such fines lie not to a judicial agency but to an administrative board.

As originally enacted, Paragraph 10 of the 1961 Statute lumped administrative violations with "other minor violations of law," and simply stated that both types of violations are within the jurisdiction of the Comrades' Courts if transferred by the police, procuracy or courts. The 1963 amendments make a clear distinction between administrative violations subject to fine, which may be transferred by the police or other agencies empowered to impose fines, and minor crimes, which may be assigned to Comrades' Courts by the police, procuracy or courts.

The limitation of the Comrades' Courts' jurisdiction over administrative violations and minor crimes to cases assigned by the regular law-enforcing agencies is significant. The 1959 Draft Statute made no such limitation; in Paragraphs 4-6 of Article 6, it listed a wide variety of minor crimes that were subject to the jurisdiction of the Comrades' Courts, including petty theft of state or social property, petty speculation and petty hooliganism, as well as petty poaching, petty violation of forestry regulations, illegal distilling of liquor, and a number of others. The 1961 Statute as originally enacted eliminated specific reference to these and all other crimes, probably because of the intervening enactment of the 1960 Criminal Code, which specified those minor crimes that could be transferred to Comrades' Courts.¹²⁴ Before the 1963 amendment, the unspecified "other minor violations

¹²³ LINENBURG AND LEONOVA, *TOVARISHCHESKII SUD NA PREDPRIATII* (The Comrades' Court in the Enterprise; 1961), at 41.

¹²⁴ See *supra* Commentary to Art. 5, Par. 1b.

of law" referred to in Paragraph 10 could be taken as referring to relevant articles of the Criminal Code. The 1963 amendment of Paragraph 10 lists several of the crimes that the Criminal Code makes transferable to Comrades' Courts, and catches up the remaining ones in the phrase "and other minor violations of law." However, both under the original 1961 Statute and the 1963 amendments it is clear that Comrades' Courts may not hear criminal cases except at the instance of the police the procuracy or the courts.

Article 6. The consideration of a case in Comrades' Courts shall be carried out at the offender's place of work or place of residence.

This article is amazingly simple, in the light of its many complicated predecessors. The 1959 Draft Statute required that cases of violations of labor discipline be heard at the defendant's place of work, and that other cases be heard either at the place of work or residence, depending on (a) whether the defendant is working, (b) where the defendant may receive the greatest educational influence, and (c) in a property dispute, whether the parties have agreed to some other arrangement.¹²⁵ Previous decrees made distinctions between the sorts of parties involved (*e.g.* workers, members of a family, social organizations of enterprises, superiors and subordinates) in determining what Comrades' Court should hear the case, defendant's or plaintiff's, at home or place of work.¹²⁶ Soviet commentators state that the 1961 Statute contains the implicit criterion that the choice between residence and place of work should depend on which would have the greatest educational pressure.¹²⁷

Article 7. Comrades' Courts shall not have the right to consider cases of violations of law or civil disputes in which judgments or court decisions have already been rendered.

A disciplinary penalty imposed by the management [of an enterprise, etc.] shall not exclude the possibility of considering the same offense in the Comrades' Court at the initiative of a social organization or of the Comrades' Court itself.

This is a new article, reflecting the desire to protect the principle that a person shall not be punished twice for the same offense and that civil judgments shall be final. (Technically, even without this provision double jeopardy would not be involved, since Comrades' Courts do

¹²⁵ 1959 Draft Statute, *supra* note 54, art. 7.

¹²⁶ *E.g.*, SU, RSFSR, 1930, 4/52, art. 4.

¹²⁷ МИХАЙЛОВСКАЯ, *op. cit.* *supra* note 64, at 17.

not "punish.") The second paragraph, however, which was not contained in the 1959 Draft Statute, is a weakening of the principle in the case of disciplinary penalties (which are also, technically, not "criminal punishment"), presumably in the interest of strengthening labor discipline.

PROCEDURE FOR CONSIDERATION OF CASES BY COMRADES' COURTS

Article 8. Comrades' Courts shall consider cases:

(1) at the recommendation of factory, plant or local trade union committees; of voluntary People's Patrols for the preservation of public order; of street, house, precinct, and block committees, and other social organizations; and of citizens' meetings;

(2) at the recommendation of executive committees of local soviets of working people's deputies, or of standing committees of soviets;

(3) upon reports of state agencies, directors of enterprises, institutions or organizations, or boards of collective farms;

(4) upon materials submitted by a court or procurator, or by a [police] inquiry agency with the consent of the procurator;

(5) upon citizens' petitions;

(6) upon the initiative of the Comrades' Court itself.

The principal additions in this article are Paragraphs 2 and 6. In the latter must also be read the opportunity for Comrades' Courts to bring offenders to the attention of leaders of the factory or social organizations.¹²⁸ The question of who is to be permitted to bring cases to Comrades' Courts was answered in a variety of ways in the earlier decrees. The 1951 Statute was the narrowest in this respect, only the directors of enterprises and institutions being permitted to initiate cases in the factory courts. The 1959 Draft Statute specifically provided that cases could be instituted by the heads of housing operations offices, by managers of apartment houses and by the Komsomol.¹²⁹ The Komsomol, being a "social organization," may institute cases under Paragraph 1; however, heads of housing offices and managers of apartment houses apparently do not now have that right.

¹²⁸ *Commentary*, Sov. Ius., 1961, No. 19, at 24.

¹²⁹ Compare 1951 Statute, *supra* note 45, art. 8, and 1959 Draft Statute, *supra* note 54, art. 9.

Article 9. A Comrades' Court shall consider cases within 15 days of the time they are filed. Cases concerning petty hooliganism and petty speculation shall be considered by the Comrades' Courts within seven days of the time they are filed. The time and place for considering a case shall be determined by the chairman of the Comrades' Court and shall be widely publicized among citizens.

The limit of 15 days is the longest ever expressly permitted in the history of the legislation on Comrades' Courts. It is an extension of five days over the 1959 Draft Statute, the 1951 Statute, and the 1930 decrees on rural courts,¹³⁰ and of 10 days over the 1930 and 1931 RSFSR decrees on residential courts and Industrial Comrades' Courts.¹³¹ The first three decrees (1918, 1919, 1921) set no limit at all. The 1928 and 1930 decrees on courts at institutions and enterprises set a limit of seven days.¹³² Under the current Article, the full limit of 15 days is regarded as necessary for only the most complicated cases which may require unusual time and effort in investigation and preparation. The Comrades' Courts are still expected to be able to hear most cases after much shortened periods of time, such as five to nine days.¹³³ The requirement that cases of petty hooliganism and petty speculation be heard within a week was added in 1963.

The third sentence of this article has no precedent in earlier decrees, only some of which provided for public or open sessions at all. The chairman's discretion in setting the time of the hearing can be used to good advantage. For example, it is reported that B asked the Comrades' Court of a housing office to require her neighbor, S, to make room in their communal kitchen for B's chair. S already had three of her own chairs in the apparently small kitchen. Upon being called before the court for its preliminary investigation, S refused to make room for the chair. The chairman did not set a time for a hearing, but explained to S the incorrectness of her conduct and then set a time within which she "must voluntarily make a space" for the chair. This she did in due time.¹³⁴

¹³⁰ 1959 Draft Statute, *supra* note 54, art. 10; 1951 Statute, *supra* note 45, art. 16; SZ, USSR, 1930, 51/531, art. 4; SU, RSFSR, 1930, 51/629, art. 9. The latter decree however, provided that labor cases be considered within five days.

¹³¹ SU, RSFSR, 1931, 36/295, art. 8; 1931, 14/160, art. 10.

¹³² SU, RSFSR, 1928, 114/707, art. 7; 1930, 4/52, art. 8.

¹³³ *Commentary*, Sov. Ius., 1961, No. 19, at 25.

¹³⁴ *Makhnenko*, *supra* note 89, at 24-25.

Often in cases which arise because of disputes among cohabitants of overcrowded apartment houses, the fifteen-day period between the time when suit in the Comrades' Court is filed and the time the hearing is scheduled is sufficient to bring about reconciliation and, consequently, cancellation of the hearing.

Article 10. Prior to consideration of a case in a Comrades' Court, the materials which have been filed must, when necessary, be checked.

Directors of enterprises, institutions or organizations, or other officials and citizens, are obliged, upon request of the Comrades' Court, to submit information and documents needed in a case.

The chairman of the court or the deputy chairman shall acquaint the person brought before the court with the available materials and, if there are grounds for considering the case in the Comrades' Court, shall establish who must be summoned as witnesses to the session of the court. The person brought before the court shall have the right to ask [the court] to request and obtain additional documents and to summon witnesses. When considering a case at the offender's place of residence the Comrades' Court shall in necessary instances adopt measures that ensure the participation in the session of the Comrades' Court of representatives of the collective in which the offender works.

Appearance of citizens upon summons of a Comrades' Court is mandatory.

The check spoken of in the first paragraph is performed by one or two members of the court, who talk with the parties and collect the pertinent materials and documents. One of the court's members becomes the reporter or spokesman for the hearing of the case.¹³⁵ Such a check was not expressly provided for by earlier decrees.

The second paragraph (which was also in the 1959 Draft Statute) has precedent only in the decree of 1921.¹³⁶ If directors or other officials or citizens do not cooperate in turning over documents and materials, then the Comrades' Court has the right to inform the appropriate Party and social organizations and through them to obtain the materials.

¹³⁵ *Commentary*, Sov. Ius., 1961, No. 19, at 24.

¹³⁶ SU, RSFSR, 1921, 23-24/142, art. 16; 1959 Draft Statute, *supra* note 54, art. 11.

But if the demands of the Comrades' Court are not valid, then the directors or citizens may refuse to comply.¹³⁷

The first sentence of the third paragraph is in substantial accord with previous provisions. The second sentence is an innovation dating from the 1951 Statute; it strengthens somewhat the position of the person brought before the court.¹³⁸

The final sentence of this paragraph, added in 1963, suggests that the residential Comrades' Court should in some cases take an interest in the offender's behavior at his place of work. It may be designed to permit the residential Comrades' Court more effectively to administer a warning in a case of a person charged with not performing socially useful work and leading an antisocial parasitic way of life.

The "mandatory" appearance of citizens upon receiving a summons is not enforced by any coercive sanction. The consequences of refusal to appear are specified in Article 12.

Article 11. Sessions of Comrades' Courts and performance by members of the court of duties connected with the considerations of a case shall be carried out in non-working time. Cases shall be considered publicly by not less than three members of a Comrades' Court.

A person brought before a Comrades' Court, a victim and parties to a dispute may challenge the presiding officer and members of the Comrades' Court if they have grounds to believe that the presiding officer or a member of the Comrades' Court may have a personal interest in the outcome of the case. The full Comrades' Court that considers a given case shall decide whether or not to sustain the challenge.

A Comrades' Court shall consider the available materials and hear explanations by the offender, victim and witnesses. Those attending the session may, with the permission of the Comrades' Court, ask questions or speak on the merits of the case being considered.

The Comrades' Court shall keep a record of the session.

The first paragraph presents no radical departures from the past,¹³⁹ except that the second sentence suggests the possibility of as many as all the members sitting on a case.

¹³⁷ *Commentary*, Sov. IUS., 1961, No. 19, at 25.

¹³⁸ See 1951 Statute, *supra* note 45, art. 9, and 1959 Draft Statute, *supra* note 54, art. 11.

¹³⁹ *E.g.*, SU, RSFSR, 1931, 14/160, art. 10.

The opportunity to challenge the members of the tribunal is an innovation, while the keeping of a record has not been authorized since the 1918 decree on company courts.¹⁴⁰ In the close quarters of a factory or apartment house or collective farm, the question of prejudice may be acute. One of the writers has personal knowledge of a case in which a woman brought before a residential Comrades' Court took one look at the tribunal and walked out, saying, "You are the same judges who decided against me in a case three months ago. You are prejudiced against me!"

The third paragraph, unlike provisions in pre-war decrees, specifically permits explanations by witnesses and participation by those in attendance. The latter, of course, is in keeping with the theme of widespread participation by the public that underlies the entire procedure. Although the person brought before the court is not specifically granted the "last word," as in earlier decrees on Comrades' Courts and as in regular criminal proceedings, he is still understood to have that privilege.¹⁴¹

Article 12. If a person who has been summoned to a Comrades' Court fails to appear at the session, the court shall postpone consideration of the case, ascertain the reasons for his failure to appear and, depending on the circumstances established, set another time for the hearing. Should that person again fail to appear in court without valid reasons, the Comrades' Court may consider the case in his absence.

With respect to a person who has been summoned to a Comrades' Court on the basis of materials received from the procuracy, a district (city) people's court or an inquiry agency and who fails to appear in the Comrades' Court, the materials shall be returned to those agencies for adoption of necessary measures.

The first paragraph of this article is similar to provisions in some of the earlier enactments. Like the 1961 Statute, the 1928 and 1930 decrees required postponement of the hearing if the offender failed to appear; the hearing was compulsory, however, if the offender failed to appear a second time.¹⁴² The subsequent pre-war decrees made

¹⁴⁰ SU, RSFSR, 1918, 55/613, art. 19. Only since October, 1963, are victims and parties to a dispute permitted to challenge. The word "personal" was added in October, 1963.

¹⁴¹ *Commentary*, Sov. Ius., 1961, No. 19, at 26.

¹⁴² SU, RSFSR, 1928, 114/707, art. 9; 1930, 4/52, art. 10.

postponement discretionary and, in addition, permitted dismissal or a hearing in the offender's absence if he failed to appear the first time.¹⁴³ The second paragraph was added after the 1959 Draft Statute, presumably in order to implement the provisions of the 1960 RSFSR Criminal Code relating to transfer of cases from the regular courts to the Comrades' Courts.

Non-appearance poses in acute form the underlying dilemma of the dualism of law and social pressure. Comrades' Courts cannot exert very effective pressure on an offender and on the collective when the offender is not present; yet to punish him for refusal to appear would tend to undermine the voluntary, "persuasive" character of the proceedings and to convert them into official, "coercive" measures. Article 10, Paragraph 4 ("Appearance of citizens upon summons of a Comrades' Court is mandatory") is therefore at best hortatory. A similar problem arises in connection with the obligation of officials and others to submit information and documents under Article 10 Paragraph 2.¹⁴⁴

If a Comrades' Court were given the power to compel an offender to be present or fine him for his absence (both have been suggested by Soviet critics), this would be an admission of its ineffectiveness as an instrument of persuasion—an admission, indeed, that it lacks the ability even to persuade the offender to come to the hearing. Hearing the case in the defendant's absence, on the other hand, is repugnant to all standards of fairness in criminal proceedings, and if Comrades' Court proceedings were considered judicial in nature it would be repugnant to Soviet law. This problem is largely ignored in Soviet legal literature—a fact which itself testifies to the extent to which it is embarrassing both to the theory and the practice of the Comrades' Courts.

Neither the 1961 statute nor the RSFSR Criminal Code and Code of Criminal Procedure state the consequences of failure to appear when a case has been transferred to the Comrades' Court by the procuracy, police, or courts.

Article 13. The decision of a Comrades' Court shall be taken by a majority vote of the members of the court participating in the consideration of the given case. The decision shall indicate the essential nature of the violation and the measure of pressure set by the court. The decision of the Comrades' Court

¹⁴³ SU, RSFSR, 1930, 51/629, art. 10; 1931, 14/160, art. 11; 1931, 36/295, art. 10.

¹⁴⁴ See text at 877.

shall be signed by those participating in it—the presiding officer and the members of the court—and shall be announced publicly and brought to general notice. If the case is considered at the offender's place of residence, the Comrades' Court may in addition bring its decision to the notice of social organizations at such person's place of work.

This article goes beyond its predecessors in specifying what must be in written form and signed by participating members of the court. Also, earlier decrees did not always require a public announcement of the decision.¹⁴⁵ No previous decree called for the decision to be brought to general notice, except insofar as some spoke of announcement "publicly" or at a "public session."

MEASURES OF SOCIAL PRESSURE APPLIED BY COMRADES' COURTS

Article 14. In considering a case and taking a decision, a Comrades' Court shall be guided by prevailing legislation, the present Statute and consciousness of its social duty.

The absence of such an article from any previous decree, except the 1959 Draft Statute and the 1918 decree on company courts, is surprising.¹⁴⁶ Unlike provisions in the 1918 decree, however, this article does not expressly require the court to arrive at its decision in accordance with the facts of the particular case. Such a requirement recommends itself as conforming with standard judicial practice. Its omission may reflect the fact that Comrades' Courts often judge the facts in advance and hold a hearing almost solely for its preventive and educational value.¹⁴⁷ Also, Article 18 of the Statute refers to remedial action available if a decision is found to be contrary to the facts in the case.

Article 15. A Comrades' Court may apply the following measures of pressure to the offender:

- (1) oblige the offender to apologize publicly to the victim or the collective;
- (2) administer a comradely warning [*preduprezhdenie*];
- (3) administer social censure [*poritsanie*];

¹⁴⁵ *E.g.*, SU, RSFSR, 1930, 51/629, art. 12. The final sentence was added in 1963 in harmony with the 1963 addition to the third paragraph of Article 10."

¹⁴⁶ 1959 Draft Statute, *supra* note 54, art. 14; SU, RSFSR, 1918, 55/613, art. 13.

¹⁴⁷ *Commentary, Sov. Ius.*, 1961, No. 19, at 24.

(4) administer a social reprimand [*vygovor*], with or without publication in the press;

(5) impose a fine of up to 10 rubles if the offense is not connected with a violation of labor discipline;

(6) place before the director of the enterprise, institution or organization the question of applying one of the following measures in accordance with prevailing labor legislation: transferring the offender to a lower-paying job or demoting him;

(6a) place before the director of the enterprise, institution or organization the question of dismissing, in the established procedure, persons who perform work connected with the education of minors and youth, or work connected with the disposition or keeping of material values, if the Comrades' Court, taking into account the character of the misdemeanors committed by such person, considers it impossible to entrust such work to him in the future;

(6b) place before the director of the enterprise, institution or organization the question of assigning persons who have committed petty hooliganism, petty speculation, petty theft of state or social property, theft of inexpensive articles of personal consumption or everyday life, beatings or light bodily injuries, to unskilled physical labor tasks in the same enterprise, institution or organization for a period of up to 15 days with pay.

(7) raise the question of evicting [*vyselenie*] the offender from his apartment for inability to get along with other tenants, [or] for his predatory attitude toward housing resources;

(8) a Comrades' Court may, in addition to applying the measures of influence provided in Paragraphs 1-7 of the present article, oblige the offender to make compensation, in an amount not exceeding 50 rubles, for damage caused by his illegal acts. When considering cases of petty speculation a Comrades' Court shall take a decision whether to transfer the articles of petty speculation to the income of the state.

Taken as a whole, the measures available under the 1961 Statute are much more lenient than those available to courts under the earlier

decrees. For example, under the 1919 decree, a defendant might have received a social reprimand, a temporary deprivation of the right to vote and the right to be elected in trade union elections, a one-month transfer to a lower job with lower rate of wages, assignment to heavy socially necessary work, or, in cases where the offender did not submit to labor discipline regardless of repeated penalties, dismissal from work and deprivation of freedom.¹⁴⁸ Of all these, only the social reprimand remains today as a measure of pressure.

(1) The public apology is a new measure of influence, not found in enactments before the 1959 Draft Statute. The apology before the collective, regarded as more severe a measure than the apology to be the victim, is imposed when the offender directly or indirectly manifests disrespect toward the whole collective, toward its industrial successes, the honor of labor, and the like.¹⁴⁹ In general, apologies, which are not recorded, are imposed for acts that do not result in serious consequences and where it is thought that the defendant's behavior will not require a lengthy period for correction. Sometimes the requirement of apology is also applied for more serious violations when the offender sincerely repents and voluntarily compensates for the damage caused by his acts.¹⁵⁰

(2) (3) (4) The comradely warning is intended for those cases when the offense is accidental.¹⁵¹ A social censure is administered "in the name of the collective," while a social reprimand, which is considered more severe, is administered "in the name of the public" (*obshchestvennost'*).¹⁵² The "press" in which the social reprimand may be published under Paragraph 4 refers to the factory newspaper and the district or city newspaper. The provision that the social reprimand may be ordered to be published does not exclude the publication of other decisions, or indeed of reports of any proceedings, in wall and factory newspapers, information bulletins, the local radio, and general meetings.¹⁵³

The social reprimand dates from the 1918 decree on company courts.¹⁵⁴ A "reproof with warning" was added in 1921.¹⁵⁵ The 1928 decree provided for comradely warnings (oral or entered

¹⁴⁸ SU, RSFSR, 1919, 56/537, art. 9.

¹⁴⁹ *Commentary*, Sov. Ius., 1961, No. 22, at 19.

¹⁵⁰ *Ibid.*

¹⁵¹ MANUAL, *supra* note 75, at 64.

¹⁵² *Id.*, at 65.

¹⁵³ *Commentary*, Sov. Ius., 1961, No. 23, at 19.

¹⁵⁴ SU, RSFSR, 1918, 55/613, art. 18.

¹⁵⁵ SU, RSFSR, 1921, 23-24/142, art. 9a.

in the record) and for social reprimands with or without press publicity.¹⁵⁶ Subsequent pre-war decrees typically provided for a simple comradely warning and a social reprimand with or without publicity. The 1951 Statute did not provide for a comradely warning, but introduced the social censure as a sanction milder than the social reprimand.¹⁵⁷ Provision for all three measures of pressure is introduced for the first time in the 1959 Draft Statute and the 1961 Statute.

(5) A small fine has been a standard measure of pressure, permitted regularly since 1928 and also in the decree on company courts.¹⁵⁸ The proviso that a fine may not be imposed for an offense connected with a violation of labor discipline is wholly new with the 1961 Statute. This limitation is explained by the fact that Soviet labor law does not permit the imposition of a fine as a sanction for the commission of a disciplinary offense.¹⁵⁹

(6) Paragraph 6, authorizing the Comrades' Court to recommend transfer to a lower-paying job or demotion, is milder than former corresponding provisions. The 1919 decree permitted the Comrades' Court itself to decide whether the defendant should be transferred to a lower-paying job or, in extreme cases, dismissed altogether.¹⁶⁰ The 1921 decree limited the period of dismissal to six months.¹⁶¹ The intervening decrees eliminated such provisions entirely, but the 1931 decree on Industrial Comrades' Courts permitted those courts to recommend dismissal, as well as temporary expulsion from the union.¹⁶² Both the 1951 Statute and the 1959 Draft Statute authorized the Comrades' Court to recommend dismissal.¹⁶³ In the discussion preceding the adoption of the 1961 Statute it was said that under the Draft Statute very many instances occurred of Comrades' Courts simply recommending dismissal without first using their full range of lesser measures (which took more time and trouble to apply effectively). In other words, that measure was applied in order to eliminate a worker from the collective without first trying to help him.¹⁶⁴

¹⁵⁶ SU, RSFSR, 1928, 114/707, art. 11.

¹⁵⁷ 1951 Statute, *supra* note 45, art. 12.

¹⁵⁸ SU, RSFSR, 1918, 55/613, art. 18; 1928, 114/707, art. 11.

¹⁵⁹ Pokrovskii and Gershanov, *Proekt primernogo polozheniia o tovarishcheskikh sudakh* (The Draft of the Model Statute on Comrades' Courts), *Sov. Ius.* 1959, No. 12, 5, at 8.

¹⁶⁰ SU, RSFSR, 1919, 56/537, art. 9.

¹⁶¹ SU, RSFSR, 1921, 23-24/142, art. 9h.

¹⁶² SU, RSFSR, 1931, 14/160, art. 13e-f.

¹⁶³ 1951 Statute, *supra* note 45, art. 12; 1959 Draft Statute, *supra* note 54, art. 15.

¹⁶⁴ *E.g.*, Balandin, *Tovarishcheskii sud na Stalingradskom traktornom* (The Comrades' Court at the Stalingrad Tractor [Factory]), *Sov. Ius.*, 1960, No. 8, 12, at 13.

A Comrades' Court is supposed to recommend demotion or transfer to a lower-paying job only after other forms of pressure have been applied and the whole range of possible measures has been exhausted, including individual conversations, discussion in social organizations, and criticism in the wall press. Typically (Soviet writers state) the offender has repeatedly and flagrantly violated established rules, as, for example, by repeatedly being late to work without valid reasons.¹⁶⁵ Such a measure of pressure would also be warranted if a person committed only once a serious offense, such as being late to work, and then numerous less serious violations.¹⁶⁶ There must have been a violation of labor discipline—not some other offense—for this measure to be applied.¹⁶⁷ The phrase in this paragraph, "in accordance with prevailing labor legislation," refers principally to the requirement of Soviet labor law that the disciplinary penalties of demotion or transfer to a lower-paying job may not exceed a period of three months.¹⁶⁸ In certain enterprises special regulations on disciplinary liability indicate those disciplinary violations for which it is appropriate to raise the question of transfer or demotion.¹⁶⁹

If the recommendation for transfer or demotion is accepted by the manager, the worker may appeal in the grievance procedure, with ultimate recourse to the courts.

In illustrating Paragraph 6 of Article 15, a Soviet writer reports the case of a worker in a Rostov tobacco plant named Makeeva who was brought before the factory Comrades' Court for trying to steal cigarettes in the plant. The Comrades' Court recommended that the manager temporarily demote her, and the manager did demote her to a lower-paying job for one month. Also members of the Comrades' Court reportedly checked on her conduct at home and at work for several months.¹⁷⁰ One may doubt whether demotion was an appropriate penalty, since the account does not indicate repeated or flagrant violations of discipline on the part of Makeeva. Indeed, her offense does not appear to be a violation of labor discipline but rather attempted theft of state property, to which demotion is not applicable.

It is questionable in any event whether an institution dedicated to methods of moral persuasion and education should be able to levy fines

¹⁶⁵ *Commentary*, Sov. Ius., 1961, No. 23, at 20.

¹⁶⁶ *Ibid.*

¹⁶⁷ MIKHAILOVSKAYA *supra* note 64, at 26.

¹⁶⁸ *Commentary*, Sov. Ius., 1961, No. 23, at 20.

¹⁶⁹ *Ibid.*

¹⁷⁰ Kondrakov, *Na pravi'nom puti* (On the Right Track), Sov. Ius., 1962, No. 8, at 23

in the manner of People's Courts and administrative bodies, or to recommend temporary demotion and transfer to a lower-paying job which have the effect of fines. A fine is considered by Soviet jurists to be a coercive penalty. None of them have referred in print to the inconsistency implicit in the power of the Comrades' Court to impose fines, but in 1962 one of the writers heard a Soviet law professor in Moscow make that point very forcefully in a lecture to his class.

(6a) Added in 1963, this paragraph reinstates the sanction of a recommendation of dismissal, limited, however, to two classes of employees holding positions considered to require trust. If the employee has managerial responsibilities, he may be dismissed by the director, with a right of appeal to higher administrative authorities. If he does not have managerial responsibilities, the recommendation of the Comrades' Court would have to be considered by the trade union committee of the factory or plant and decided under the Labor Code, and the employee has a right of appeal to the courts against an adverse decision. Article 47 of the RSFSR Labor Code provides that a worker or employee may be discharged if he is "unfit to do the work."

(6b) This paragraph, also added in 1963, permits a more severe sanction for the offenses added in paragraphs 1b and 4 of Article 5. It is reminiscent of disciplinary penalties in armed forces in various countries, such as KP duty in the United States Army.

(7) Recommending eviction is regarded by at least one Soviet commentator as the most severe measure of pressure available to a Comrades' Court.¹⁷¹ The force of this observation lies in the acute Soviet housing shortage. However, a decree of the Plenum of the USSR Supreme Court somewhat mitigates the harshness of the sanction. First, the tenant must be a "malicious" violator of rules of socialist community life.¹⁷² Secondly, as with transfer or demotion, eviction is to be recommended only after other educational measures, such as warnings, have failed.¹⁷³ Finally and most important, in considering the recommendation the People's Court may not order eviction unless it can provide specific living quarters for the evicted person to occupy. In its decision it must indicate the street, number, and apartment number of the evicted person's new quarters. Moreover, non-

¹⁷¹ *Commentary*, Sov. Ius., 1961, No. 23, at 20.

¹⁷² Decree No. 6, Plenum of USSR Supreme Court, Sept. 17, 1960, art. 2; see Sov. Ius., 1960, No. 14, at 25.

¹⁷³ *Ibid.*; *Commentary*, Sov. Ius., 1961, No. 23, at 20.

offending members of the evicted person's family need not move.¹⁷⁴ It may be noted that the Russian term translated as eviction (*vyselenie*) has the connotation also of resettlement and is the same word as that used in the anti-parasite laws discussed earlier.

Thus it is reported that a husband and wife, Zubchenko and Fedorova, were recommended for eviction from their quarters at a Rostov housing management because of their exceptionally coarse and cynical attitude toward their neighbors and inability to live with them. They had failed to heed warnings of the public. In recommending eviction the Comrades' Court noted the availability of a specific dwelling to which the offenders could move.¹⁷⁵

The question of eviction would normally be raised before People's Courts by housing agencies, executive committees of local soviets or the procuracy.¹⁷⁶ Soviet housing law permits the People's Court to order eviction for a variety of reasons, including those listed also in Paragraph 7 of Article 15 of the 1961 Statute. The 1963 amendment eliminated from Paragraph 7 malicious failure to pay rent, which up to that time had been the basis of most cases of initiation of eviction in the Comrades' Courts. Inability to get along with other tenants, as illustrated in the Rostov eviction case, and a predatory attitude toward housing facilities were said to be comparatively rare grounds for raising the question. Before the 1959 Draft Statute, no legislation on Comrades' Courts permitted the use of this measure at all.

Whereas demotion is in principle limited to offenses of labor discipline, eviction would seem to offer greater possibility for abuse. Inability to get along with other tenants could conceivably be charged against someone whose only offense is that he does not follow the proper ideological line in discussions with his fellow-tenants, and hence gets into arguments with them. Despite the fact that Comrades' Courts cannot by themselves accomplish either demotion or eviction, their power to initiate the proceedings gives them severe weapons to wield against deviators from any of the rules and attitudes of communist morality. The possible use of the Comrades' Courts as a curb on freedom of speech, though it is nowhere mentioned by Soviet writers, inevitably lurks in the background of an effort to use informal popular pressure to instill a communist morality.

¹⁷⁴ Decree No. 6, Plenum of USSR Supreme Court, Sept. 17, 1960, art. 3; see *Sov. Ius.*, 1960, No. 14, at 25.

¹⁷⁵ Kondrakov, *supra* note 170.

¹⁷⁶ *Commentary*, *Sov. Ius.*, 1961, No. 23, at 20-21.

(8) As in Soviet civil law generally, the requirement of making compensation may be imposed in cases of material physical harm, but not for "moral" harm, such as that caused by insults, defamation, and an unworthy attitude toward women.¹⁷⁷ This provision dates from the 1930 decree on Comrades' Courts, which permitted compensation of up to 25 rubles.¹⁷⁸ Subsequent decrees raised the maximum to 50 (old) rubles. The provision for forfeiture to the state, added in 1963, is in conformity with Article 154 of the RSFSR Criminal Code, which authorizes confiscation in cases of petty speculation.

Article 16. A Comrades' Court may confine itself to public consideration of a case and not apply the measures of social pressure specified in Article 15 if the offender, having sincerely repented, publicly apologizes to the collective or the victim and voluntarily compensates for damage done.

If there are no grounds for condemnation, a Comrades' Court shall acquit the person brought before it.

In considering property or other civil law disputes, a Comrades' Court shall satisfy the claim fully or in part or reject it, or terminate the case if there has been a reconciliation of the parties to the dispute.

The Comrades' Court shall inform social organizations and officials of the reasons and conditions uncovered by it that facilitated the commission of the violation of law or other offense.

Except for the third paragraph, this Article is entirely new. The first paragraph gives the offender the opportunity to apologize voluntarily instead of waiting to be ordered to do so or possibly incurring a more severe sentence. A touching example of repentance and apology is reported in the case of Berezin, a worker at a sawmill in the Gorkii region. The day after a holiday, he did not return to work but instead continued his celebrations and while drunk kicked up a row. At the hearing of the Comrades' Court, Berezin, a first offender, hung his head low while his comrades rebuked him. Finally, he said, "I've suffered much and felt deeply at this time. I give a worker's word of honor: I'll never again permit anything like this. I beg you to trust me."¹⁷⁹

¹⁷⁷ *Id.*, at 21.

¹⁷⁸ SU, RSFSR, 1930, 4/52, art. 12.

¹⁷⁹ MANUAL, *supra* note 75, at 63.

Acquittal was not specifically mentioned in the earlier enactments on Comrades' Courts.

Reconciliation of the parties was specifically provided for only in the 1931 RSFSR decree on Rural Social Courts, in which it was also stated that if the reconciliation substantially violated the interests of one of the parties, then the court must reach a decision on the merits. This proviso is to be inferred in the 1961 Statute.¹⁸⁰ Reports have been given of a very high percentage of settlements by reconciliation in advance of a public hearing.¹⁸¹

The final paragraph is an addition since the 1959 Draft Statute, apparently inserted with the hope of securing the cooperation of organizations and officials in preventing recurrences of particular offenses. An example of the application of this provision is found in a case in the Karelian city of Lakhdenpokh'ia in which the Comrades' Court decided that in a repair construction office where three offenders worked, the leisure time of young workers was badly organized. After giving the offenders a social reprimand for violations not described in the account of the case, the Comrades' Court directed the attention of the party, trade union and Komsomol organizations of the office to the necessity of strengthening their political and educational work with youth.¹⁸²

Article 17. If a Comrades' Court, in considering a case, becomes convinced of the necessity of holding the offender criminally or administratively responsible, it shall take a decision to turn the materials over to the appropriate agencies.

If a Comrades' Court, in examining a property or other civil law dispute, comes to the conclusion that it cannot resolve a case because of its complexity, it shall transfer the case to a district (city) People's Court.

The first paragraph dates from the earliest decrees. Under Article 4 of the 1928 decree, the mere indication of some kind of crime not within the jurisdiction of the Comrades' Court required transfer of the case to "general judicial agencies."¹⁸³ Under the present article,

¹⁸⁰ *Commentary*, Sov. Ius., 1961, No. 21, at 21; Cf. with SU, RSFSR, 1930, 51/629, art. 11.

¹⁸¹ See Makhnenko, *supra* note 89, at 24; MANUAL, *supra* note 75, at 38; Griboedov, *Iz praktiki raboty tovarishcheskikh sudov* (From the Practice of the Work of Comrades' Courts), Sov. Ius., 1963, No. 14, at 21.

¹⁸² Andreeva, *Odin iz semisot* (One out of Seven Hundred), SOTS. ZAK., 1963, No. 1, at 75.

¹⁸³ SU, RSFSR, 1928, 114/707, art. 4.

the Comrades' Court has discretion to transfer or not to transfer the case.

In addition to disclosure of crimes not apparent from the initial declaration against a person, defiance of a Comrades' Court seems to be a common reason for transfer of the case.¹⁸⁴ For example, one Martynova was found to lead "an unworthy form of life" and to violate rules of socialist community life. Repeated warnings by the police and discussion of her conduct by the People's Patrol were without effect. Even at the hearing by the Comrades' Court she was defiant. Therefore, the court decided to refer to the police the question of banishing her from the city, in accordance with the anti-parasite law of the RSFSR.¹⁸⁵

The second paragraph, relating to transfer of complex civil cases to the regular courts, is totally new. It is based on the recognition of the limitations of legal knowledge of members of Comrades' Courts.

Article 18. The decision of a Comrades' Court shall be final. If a decision taken is contrary to the facts in the case or to prevailing legislation, the appropriate factory, plant or local trade union committee or executive committee of a local soviet of working people's deputies shall have the right to suggest that the Comrades' Court reconsider the case.

Although the decrees of 1919 and 1921 provided a right of appeal from decisions of the local Disciplinary Comrades' Courts,¹⁸⁶ since 1928, every decree has contained the provisions that decisions of the local Comrades' Courts are final and not subject to appeal. However, "finality" in Soviet legal parlance does not connote irrevocability but only means that there is no right of appeal to a higher agency of the same type (such as a Comrades' Court of a district, city, or region).¹⁸⁷ Thus the decrees of 1928 and 1929 permitted agencies of the procuracy to suspend execution of a decision of a Comrades' Court and to transfer the case to an appropriate regular court, if the case was not within the competence of the Comrades' Court or if it applied a measure of pressure it had no right to impose. Sub-

¹⁸⁴ E.g., *MANUAL*, *supra* note 75, at 46, and Shadrin, *Obshchestvennost' na strazhe sotsialisticheskogo pravoporiadka* (The Public on Guard over the Socialist Legal Order), *SOTS. ZAK.*, 1962, No. 12, at 33.

¹⁸⁵ Andreeva, *supra* note 182, at 76.

¹⁸⁶ SU, RSFSR, 1919, 56/537, art. 8; 1921, 23-24/142, art. 11. An appeal was taken to a Provincial Disciplinary Comrades' Court.

¹⁸⁷ Iudel'son, *Organizatsiia i deiatel'nost' tovarishcheskikh sudov* (The Organization and Activity of Comrades' Courts), *Sov. Ius.*, 1961, No. 3, at 14.

sequent RSFSR decrees granted this power to the procuracy and the People's Judges, and then to the People's Judges alone.¹⁸⁸

Although procuracy and court review is eliminated under Article 18 of the 1961 Statute, it reappears in Article 19 in cases imposing a fine or awarding damages. Judicial action is also required in cases of recommendations of eviction, and a worker who has been transferred, demoted or dismissed may have recourse to the courts.

In theory the procuracy, as general guardian of legality, has the power to protest decisions of Comrades' Courts, under the USSR Statute on Procuracy Supervision, but as of 1963 it seems not to have exercised such power.¹⁸⁹

In keeping with the theme of dealing with criminality through social organizations, the present law for the first time makes the decision of a Comrades' Court subject to review by the appropriate trade union committee. To this is added, however, also for the first time, the possibility of review by the local soviet executive committee, which is the highest executive agency of the locality (city or region) and which is the state agency primarily responsible for supervising the work of residential and rural Comrades' Courts. Note that the reviewing body may only suggest that the case be reconsidered; it cannot suspend execution of the decision. The right of review extends to what in the United States would be considered errors of fact and errors of law. A decision is said to be illegal if it contradicts substantive legal norms or if procedural requirements are violated, as, for example, if the defendant is not summoned to the hearing.¹⁹⁰ If the Comrades' Court itself discovers an error after the case is decided, then it must raise before the appropriate agency the question of a reconsideration. By doing this, the court demonstrates its "concern for principles and its ability to decide cases objectively."¹⁹¹

Article 19. A decision of a Comrades' Court awarding compensation for harm or imposing a fine, or a decision concerning some other property exaction, must be executed within the time specified in the decision. If the decision is not executed

¹⁸⁸ SU, RSFSR, 1928, 114/707, art. 13; SU, RSFSR, 1930, 4/52, art. 14; SZ, USSR, 1930, 51/531, art. 7; SU, RSFSR, 1930, 51/629, art. 14; SU, RSFSR, 1931, 36/295, art. 14.

¹⁸⁹ Savitskii, *Uchastie obshchestvennosti v bor'be s pravonarusheniiami i garantii so tsialisticheskogo zakonosti* (The Participation of the Public in the Struggle Against Violations of Law and the Safeguards of Socialist Legality) SGP, 1963, No. 5, 80, at 84.

¹⁹⁰ Iudel'son, *supra* note 187.

¹⁹¹ *Commentary*, Sov. Ius., 1961, No. 23, at 20.

within the established time, and also for executing the decision of a Comrades' Court to transfer the articles of petty speculation to the income of the state, the chairman of the Comrades' Court shall refer the case to a People's Judge, who after checking the materials submitted and the legality of the decision shall issue a writ of execution to be executed by a sheriff.

If the decision of a Comrades' Court is illegal, the People's Judge shall refuse to issue a writ of execution, giving the grounds for such refusal in the decision and informing the appropriate trade union committee or executive committee of the soviet of working people's deputies, so that it may decide whether the case should be considered again.

Money collected from persons subject to a fine shall go into the state budget under a procedure established by law.

Earlier laws on Comrades' Courts provided for various means of execution of fines and money awards, including withholding of wages by employers and levying of execution by sheriffs.¹⁹² None granted automatic review by a judge of a People's Court, as under the present Article. It should be noted that although refusal by a People's Judge to issue a writ of execution may be reviewed by a trade union or soviet executive committee, these agencies can only decide that the case be reconsidered by the Comrades' Court. The same conflict is again possible after a second hearing of the case.

The reference to execution of a decision to transfer articles of petty speculation to the state was added in 1963 in correspondence with the amendment of Article 15, paragraph 8, under which the Comrades' Court was empowered to take such a decision.

Under earlier enactments, fines imposed by Comrades' Courts always went to some social or cultural organization, usually local. Now they go through the local organs of the State Bank into the state budget. This is a change even from the 1959 Draft Statute.¹⁹³ No

¹⁹² SU, RSFSR, 1928, 114/707, art. 14; 1930, 4/52, art. 15; 1930, 51/629, art. 15; 1931, 14/160, art. 15.

¹⁹³ Presumably the collective would tend to take a greater interest in the work of the court if it knew that the fines were to go for the use of local social and cultural organizations. As an editorial in *SOVETSKOE GOSUDARSTVO I PRAVO* put it, "Citizens certainly should know where all the money which is exacted in accordance with a decision of the social court will be spent." *Obshchestvennye sudy—vazhnaia forma bor'by s perezhitkami proshlogo* (Social Courts—A Most Important Form of Struggle Against Survivals of the Past), SGP, 1959, No. 5, 3, at 9.

available commentary has suggested the reason for the change. Possibly the earlier rule permitted corrupt practices.

Article 20. The decision of a Comrades' Court to administer a comradely warning, social censure or social reprimand shall remain in force for two years. If the person against whom the decision has been rendered does not commit a new violation of the law within this period, the imposed measure shall be considered removed.

Upon petition of a social organization, the director of an enterprise or institution or the board of a collective farm, or on application by the person brought to the Comrades' Court, or on its own initiative, a Comrades' Court shall have the right to remove the aforementioned imposed measures before expiration of the two-year period. Decisions to this effect shall be brought to general notice.

This article is a complete departure from former decrees, which, through absence of provision on the matter, implied that these measures of pressure were to remain in force for the life of the offender. The present Statute offers an additional incentive to the offender to mend his ways as soon as possible before the end of the term. Members of Comrades' Courts are supposed to visit the offender or the former disputants to ascertain how they are getting along after their encounter with the Comrades' Court.¹⁹⁴

DIRECTION OF THE COMRADES' COURTS

Article 21. Comrades' Courts at enterprises, institutions, organizations, and higher and specialized secondary educational institutions shall be under the guidance of the factory, plant or local trade union committees. Comrades' Courts at collective farms and in dwelling houses served by housing-operations offices and housing managements or united in street committees and also in rural populated points and settlements shall function under the guidance of the executive committees of the local soviets of working people's deputies.

In earlier decrees, direction (*rukovodstvo*) of the Comrades' Courts was entrusted to central state agencies (namely, the All-Russian

¹⁹⁴ For examples of such concern after the hearing, see *MANUAL*, *supra* note 75, at 74-75. The 1963 Amendments, *supra* note 12, changed the period from one year to two.

Central Council of Trade Unions and the People's Commissariat of Justice) and to the courts.¹⁹⁵

The local unions or soviet executive committees, which now direct the work of Comrades' Courts, may attend their sessions and offer constructive criticism there. They may also hear periodic reports of the activity of the Comrades' Courts, with members of the Courts participating in the discussion. Sometimes in a large enterprise a particular trade union committee member may be made specially responsible for the work of the Comrades' Court, so that the Court and the committee may effectively maintain contact with each other. There may be an opportunity to attend special courses at a "social university" or "institute of legal knowledge."¹⁹⁶ Seminars may be organized for chairmen and deputies to discuss shortcomings of the Courts' activity, to discuss various problems, and to hear reports by People's Judges.¹⁹⁷

In a local soviet executive committee, different groups of deputies may be entrusted with the constant supervision of the work of the Courts according to districts or sections and deputies may periodically acquaint themselves with the work of particular Courts and offer them help.¹⁹⁸ It must be remembered that the supervisory activities are to be performed voluntarily outside of working hours.

More than one Comrades' Court has reported that a People's Judge has attended the Court's sessions and offered advice, and that members of the Comrades' Court have attended sessions of the People's Court.¹⁹⁹ Some commentators believe that systematic help ought to be rendered by the regular judicial agencies.²⁰⁰

Article 22. Technical services of Comrades' Courts shall be entrusted to the administration of enterprises, institutions, organizations, housing operations offices or housing manage-

¹⁹⁵ SU, RSFSR, 1921, 23-24/142, art. 17; SU, RSFSR, 1928, 114/707, art. 15; SU, RSFSR, 1930, 4/52, art. 16; SZ, USSR, 1930, 51/531, art. 8; SU, RSFSR, 1930, 51/629, art. 17; SU, RSFSR, 1931, 14/160, art. 17; SU, RSFSR, 1931, 36/295, art. 13.

¹⁹⁶ For a description of such a "university," see Semenov and Iakushev, *Obshchestvennyi universitet pravovykh znaniy* (The Social University of Legal Knowledge), Sov. Ius., 1960, No. 4, at 15.

¹⁹⁷ Linenburt and Leonova, *supra* note 123, at 24.

¹⁹⁸ *Commentary*, Sov. Ius., 1961, No. 18, at 22-23; see also MIKHAILOVSKAIA, *supra* note 64, at 30-31; and for a more detailed account of a rural soviet's guidance of courts under it, see Makarov, *Kak my pomogaem sel'skim tovarishcheskim sudam* ("How We Help Rural Comrades' Courts"), Sov. Ius., 1960, No. 14, at 11.

¹⁹⁹ E.g., Anishchenko and Nikolaev, *Na predpriatii i na sele* (In the Enterprise and in the Village), Sov. Ius., 1960, No. 5, 5, at 6.

²⁰⁰ Pokrovskii and Gershanov, *supra* note 159, at 9.

ments, or to boards of collective farms or executive committees of rural or settlement soviets of working people's deputies.

This article is similar to provisions in the decrees of 1930 and 1931. By technical services are meant the providing of a place for sessions of the Court, a room for the members of the court, stationery and typing facilities, and the like.²⁰¹

STRENGTHS AND WEAKNESSES OF THE COMRADES' COURTS

In 1963 over 197,000 Comrades' Courts are reported to have been in existence in the Soviet Union.²⁰² Only a thorough field-study could disclose the nature and scope of their actual operations. In the absences of such a field-study or of adequate statistical data, it is necessary to rely on Soviet reports of particular cases and of the work of Comrades' Courts in particular places, as well as on "internal criticism" of the Statute, in order to determine their strengths and weaknesses. In addition, a few non-Soviet observers, including one of the writers of this article, have had the opportunity to see some Comrades' Courts in action.

Some Soviet reports claim considerable success for the Comrades' Courts in particular places. Thus it is stated that because of their work there has been a drastic reduction in the number of antisocial acts committed in the Stalingrad tractor plant,²⁰³ in a housing management in Pinsk,²⁰⁴ in the Gorkii collective farm of the Kalingrad region,²⁰⁵ and elsewhere. Several reports tell of the exemplary behavior of persons after they have been brought before Comrades' Courts.²⁰⁶ Other reports tell of requests by offenders to be sent before a People's Court rather than to have to face their collective;²⁰⁷ such requests are thought to testify to the important educational effect of having to stand up in front of tens or hundreds of one's fellow-workers or neighbors,²⁰⁸ and to hear comradely criticism and discussion of

²⁰¹ MANUAL *supra*, note 75, at 81.

²⁰² Kaznin, *Sud tovarishchei* (The Court of Comrades), PRAVDA, Nov. 13, 1963, at 4. See Savitskii, *supra* note 189, at 86, note 16.

²⁰³ Balandin, *supra* note 164, at 13.

²⁰⁴ Skomorokhov, *Is This a Private Affair?* IZVESTIA, July 27, 1960, at 4 (translated in 12 CDSP, No. 30, at 30-31).

²⁰⁵ Galkina and Prasolov, *Tovarishcheskii sud v nashem kolkhoze* (The Comrades' Court in Our Collective Farm), SOV. IUS., 1960, No. 11, 12, at 13.

²⁰⁶ Kirichenko and Orlov, *Roľ tovarishcheskikh sudov v ukreplenii trudovoi distsipliny* (The Role of Comrades' Courts in Strengthening Labor Discipline), SOTSIALISTICHESKII TRUD (Socialist Labor), 1960, No. 11, 31, at 34.

²⁰⁷ MIKHAILOVSKAIA, *supra* note 64, at 19.

²⁰⁸ Pokrovskii and Gershanov, *supra* note 59, at 19.

one's behavior.²⁰⁹ The success of the Comrades' Courts is also measured by Soviet writers in part by the estimate that as a result of their revitalization there has been a reduction of about 25 per cent in the number of cases heard by the People's Courts.²¹⁰

It would be a mistake to discount the Soviet claims of success as mere propaganda, or to judge them by standards appropriate to our own conditions. Given the relatively crowded apartment houses, low living standards, and production pressures of Soviet life, and the relative weakness of traditional social controls exercised in other societies by voluntary church, welfare, neighborhood, professional and other agencies, the Comrades' Courts can play an important role in maintaining peace, order and morale in the units in which they operate. The 1961 Statute is carefully and intelligently drafted to promote these ends.

At the same time Soviet writers report many examples of abuses in the practice of the Comrades' Courts. In some instances improper procedures have been used for selecting the court: thus in a good many enterprises, it is reported, only three persons are elected to be members of the court, as a nucleus (*iadro*), and these alternate as chairmen of individual sessions, selecting two persons from the audience to sit with them for the particular case;²¹¹ and in some places the entire membership of the Comrades' Court sits and makes decisions.²¹²

In addition, there is considerable Soviet criticism of the level of competence of the elected members of Comrades' Courts. In some instances persons have been elected who do not have the respect of their comrades, and in other instances persons have been elected who are too busy with other social duties to play a responsible part.²¹³

The sessions of Comrades' Courts sometimes degenerate into a kind of hurly-burly, disrupted by the presence of drunks and by the irrelevant remarks of busybodies.²¹⁴ On the other hand, some Comrades' Courts operate with too great formality, imitating the procedure of People's Courts by requiring the audience to stand when the court

²⁰⁹ Savitskii and Keizerov, *supra* note 20, at 42.

²¹⁰ This is the estimate of a high official of the RSFSR Ministry of Justice, given to one of the writers in May, 1962.

²¹¹ Linenbourg and Leonova, *supra* note 123, at 20-21.

²¹² *Id.*, at 84.

²¹³ Mikhailovskaia, *supra* note 64, at 9.

²¹⁴ Linenbourg and Leonova, *supra* note 123, at 84. For a more recent report on abuses in the operation of a Comrades' Court, cf. *Spravedlivyi, tovarishcheskii* (Just and Comradely), *Izvestia*, June 1, 1963, at 4 (translated in 15 CDSP, No. 22, at 28-29), and the sequel in *Izvestia*, August 23, 1963, at 4 (translated in 15 CDSP, No. 34, at 42).

enters, calling the person brought before the tribunal "the accused" and requiring him to sit in a place designated as "the dock," and permitting argument by "social prosecutors," "social defense counsel" and "social experts."²¹⁵ Also it is charged that some Comrades' Courts work behind closed doors without participation of the public.²¹⁶ In some instances they have imposed penalties not authorized by the 1961 Statute, such as dismissal from work, transfer to another job, or a short period (in one case, five days) of compulsory labor.²¹⁷ In addition, they have been criticized for taking cases of serious offenses which should be tried in the regular criminal courts.²¹⁸

Finally, the criticism is made that the Comrades' Courts are not fully exploited, and that they do not fully exploit their powers. Sometimes Comrades' Courts are elected but do not actually function.²¹⁹ Also factory directors often ignore them; at Mine No. 40 in Vorkuta, for example, it is reported that not one of 135 men punished in an administrative procedure over a period of time for violation of safety regulations was brought before a Comrades' Court.²²⁰ People's Judges, it is said, have not sufficiently taken advantage of the opportunity to transfer cases to Comrades' Courts under Article 5, Paragraph 10, of the 1961 Statute on Comrades' Courts and under the relevant provisions of the 1961 Criminal Code; a decree of the Plenum of the Supreme Court of the USSR, of May 14, 1962, urged the lower courts to take full advantage of that opportunity.²²¹ Such failure to use the Comrades' Courts suggests a lack of confidence in them on the part of managers and professional judges. In addition, the Comrades' Courts themselves are said to be too timid in using their powers under Article 8 of the Statute to institute cases on their own initiative, and also too slow in informing state agencies and officials, under Article 16, of improper conditions which cause antisocial conduct, as disclosed in the hearings.

The most vociferous complaint of Soviet writers on Comrades' Courts is that local unions and local soviet executive committees do

²¹⁵ *E.g., id.*, at 84, and Savitskii and Keizerov, *supra* note 20, at 43-44.

²¹⁶ *E.g.,* Savitskii and Keizerov, *supra* note 20, at 44.

²¹⁷ MANUAL, *supra* note 75, at 66-67.

²¹⁸ Savitskii, *supra* note 189, at 90, note 25.

²¹⁹ Compare *Bol'she vnimania deiatel'nosti tovarishcheskikh* (Greater Attention to the Activity of Comrade's Courts), Sov. Ius., No. 17, 1, at 2; MIKHAILOVSKAIA, *supra* note 64, at 9.

²²⁰ MIKHAILOVSKAIA, *supra* note 64, at 17-18; cf. Smirnov, *Iz opyta raboty tovarishch* of Leningrad), SOTS. ZAK., 1962, No. 9, 76, at 77.

²²¹ Gorkin, *Zadachi sotsialisticheskogo pravosuđiia v sovremennykh usloviakh* (The Tasks of Socialist Justice under Modern Conditions), SGP, 1962, No. 8, 3, at 7 (translated in Soviet Law and Government, Winter 1962-63, 3, at 7).

not give sufficient guidance to the tribunals under their supervision.²²² It is the lack of guidance from these superior agencies, many Soviet writers state, which is the basic cause of the abuses and weaknesses cited above. In this connection it is stressed that the unions and soviets should see to it that the chairmen and members of Comrades' Courts attend courses given at so-called "social universities" and "institutes of legal knowledge," and should establish seminars at which members of the Comrades' Courts could discuss legal and other problems concerning their activities.

At least two Soviet writers, however, have stated that adequate guidance by unions and soviets is impossible, and that the only remedy lies in self-education through the formation of councils of chairmen of Comrades' Courts in particular localities.²²³ Such councils are now in existence in many places and serve to "coordinate and organize the exchange of work experience."²²⁴ A recent article states that "many judicial and procuracy workers and lawyers are actively included in the work of councils of Comrades' Courts. As members of the councils they help to organize correctly the work of Comrades' Courts, to establish contacts with executive committees of local soviets of working people's deputies, with People's Judges, with the procuracy, and to conduct seminars with members of Comrades' Courts."²²⁵

No doubt the relatively poor quality of the literature that is poured out for the enlightenment of members of Comrades' Courts (and of the public generally) is another factor that contributes to the inadequacy of their performance.²²⁶

The criticisms levelled at the work of the Comrades' Courts by Soviet writers do not acknowledge the more general and graver dangers that were indicated in the Introduction to this article and which may be labelled (1) Party abuse, (2) degradation of law, (3) dulling of the sense of legality, and (4) invasion of privacy.

²²² *E.g.*, Savitskii and Keizerov, *supra* note 20, at 46; and for more recent criticism (To Raise the Level of the Direction of Comrades' Courts), *Sov. Ius.*, 1963, No. 12, (Greater Attention to the Activity of Comrades' Courts), *Sov. Ius.*, 1963, No. 17, at

²²³ Istomin, *Sovet predsedatelei tovarishcheskikh sudov* (The Council of Chairmen of Comrades' Courts), *Sov. Ius.*, 1962, No. 4, at 25; Kamalov, *Obshchestvennyi organ, Coordinating the Work of Comrades' Courts Is Necessary*, *Sov. Ius.*, 1962, No. 14, at 28; *Sov. Ius.*, 1963, No. 17, at 2.

²²⁴ Istomin, *supra* note 223, at 25.

²²⁵ *Bol'she rumania deiatel'nosti tovarishcheskikh sudov* (Greater Attention to the Activity of Comrades' Courts), *Sov. Ius.*, No. 17, 1, at 3.

²²⁶ Soviet reviewers have criticized the basic manual for being out of date, too complicated and technical, and also for containing numerous errors. Gershanov and Pokrovskii, *O novykh knigakh: 'Prakticheskoe posobie dlia tovarishcheskikh sudov* (On New Books: Practical Manual for Comrades' Courts), *Sov. Ius.*, 1961, No. 16, at 24-25.

(1) The danger of abuse of the Comrades' Courts by the Communist Party has two aspects, which may be thought of as procedural and substantive. Procedurally, the Party might abuse the Comrades' Courts by dictating the composition of their membership and by ordering them to take (or not to take) particular cases and to decide them in particular ways. Substantively, the Party might abuse them by making them instruments of Party policies directed at thoughts and deeds not prohibited by law, such as criticizing Party policies or Party leaders, associating with foreigners, or taking children to church. For convenience and clarity, we shall consider separately, in terms of invasion of privacy, the second ("substantive") type of possible abuse, since such abuse may exist with or without express Party dictation.

In the absence of any indication in Soviet literature that there exists even the possibility of Party dictation of the composition or conduct of the Comrades' Courts, one can only infer the presence or absence of such dictation from what one knows generally about the Soviet system and about the operations of the Comrades' Courts. On the one hand, the Soviet Constitution itself provides that the Communist Party is "the central core of all organizations, both social and state" (Art. 126). In fact, every enterprise or institution, every collective farm, every housing office, and every secondary or higher educational institution, has its own Party unit, which seeks to fulfill Party policies through the particular organization of which it is part. The Party unit of a particular factory could, certainly, propose to the trade union leaders (who themselves would normally be members of the Party unit) the names of persons to be proposed to the general meeting as candidates for membership in the Comrades' Court. Even without such Party influence upon choice of members, they would undoubtedly tend to be responsive to the views of the Party unit, or of individual leaders of the Party unit, concerning what cases to take, and how to dispose of them, since the Party unit wields great influence over the lives of all the members of the particular collective in which it is situated; indeed, it is its "leading core." Moreover, higher Party agencies control lower ones, and it would be easy enough for such dictation to come from above.

On the other hand, it is Party policy at the highest level that the Comrades' Courts should command the respect of the people generally, and especially of the people in the organizations of which they

are part. Indeed, the Party leadership's principal purpose in establishing Comrades' Courts is to enlist voluntary popular support in the struggle against petty crime and antisocial conduct. The 1961 Statute stresses the role of the general meeting in electing the membership of the Comrades' Court, in asking questions and making comments during the consideration of cases, and in periodically reviewing the tribunal's work (Arts. 2, 3, 4). If these provisions were to become a mere facade for Party dictation, the chief benefits of Comrades' Courts would be sacrificed. Having chosen as a means the application of social pressure through voluntary expressions of popular opinion in given social organizations, the Party must necessarily accept the limitations inherent in those means or else it will destroy them.

In addition, it must be kept in mind that each case which comes before the Comrades' Court is in itself trivial; if it were not, it would be in the regular courts, where serious punishment can be meted out, or in the anti-parasite tribunals, which can order resettlement for five years. It is therefore very unlikely that Party organizations will take a great interest in a particular Comrades' Court case. At the same time, the totality of such cases reflects a very serious *general* problem that can only be met if in reality the Comrades' Courts, as the Statute says, "are invested with the trust of the collective, express its will and are responsible to it." (Art. 1).

These general considerations are reinforced by the practical necessities of the work of Comrades' Courts. Membership in them requires a considerable amount of time; preparation through study of the 1961 Statute and of the prevailing legislation and through attendance at special courses, as well as preparation of each case in advance and follow-up of the offender after the hearing, must all be done in spare hours. It is no wonder that there are many complaints about the difficulty of attracting able people to this task, and it would only add to the difficulty if in fact the persons selected were to be treated as Party "stooges." In addition, as has been indicated, Soviet writers continually bemoan the absence of sufficient supervision and guidance of the work of the Comrades' Courts. The problem seems to be not one of dictation but of absence of dictation.

(2) The development of informal agencies of social control as a substitute for law enforcement through courts and the procuracy, especially when taken together with the theory that under communism

law will eventually die out, suggests the danger that law, and with it legality, will be degraded in the eyes of the Soviet people. Despite all the praises heaped upon socialist legality, it is sometimes viewed theoretically as a negative phenomenon, a necessary evil destined to disappear, and this negative side of law has been emphasized particularly in connection with the positive virtues of informal, spontaneous correction of errant citizens by the collective itself. If, indeed, a happy day will come when there will be no courts, only "non-courts" (as Leon Lipson terms them), why should able young men and women undertake law studies, and why should the population respect the legal system as a reflection of morality?

Despite theory, practice has moved in the opposite direction, as "social" adjudication has come increasingly under the influence of legal standards. Indeed, not only the Comrades' Courts but also the administrative sessions for sentencing persons charged with parasitism have been more and more subjected to legal procedures and legal restraints.²²⁷ If it was justified to call the Comrades' Courts "non-courts" when they were first re-instituted, it seems more appropriate today to call them auxiliary courts, lay courts, or sub-courts. Through supervision by higher agencies, participation of lawyers, criticism by jurists, and legal education of the members of the Comrades' Courts, a tradition or practice has developed by which they have come to be more or less bound. This tradition or practice has tended to assimilate itself to legal procedures and standards. Such a tendency is inevitable as the tasks assigned to the Comrades' Courts have become increasingly complex. The 1963 amendments to the Statute, which expressly give the Comrades' Courts jurisdiction over a host of offenses defined in the Criminal Code, are a further step in the direction of "legalizing" them, that is, of emphasizing the legal character of their functions.

In this connection it should be stressed that the most serious sanctions available to the Comrades' Courts, namely, recommendation of dismissal of certain types of workers, recommendation of transfer or demotion, and recommendation of eviction, as well as imposition of a ten-ruble fine, are all subject to judicial review.

²²⁷ The Supreme Court of the U.S.S.R. has recently imposed a whole series of restrictions upon administrative sessions of courts in anti-parasite cases, designed principally to protect the rights of the person charged. Included is the right to counsel. Decree No. 3 of the Plenum of the U.S.S.R. Supreme Court, March 18, 1963, *BIULLETEN' VERKHOVNOGO SUDA SSSR* (Bulletin of the USSR Supreme Court), 1963, No. 3, 10, at 13. See also BERMAN, *JUSTICE IN THE U.S.S.R.* (2nd ed. 1963), at 294

In addition, the fact that the powers of the Comrades' Courts are extremely limited in comparison with those of the regular courts, and the offenses which they consider are not serious enough to be tried criminally, helps to preserve the distinction between "social pressure" and "law." The Comrades' Courts are given the function of warning people against acts which, if repeated or extended, could be punished as crimes or administrative offenses. Thus in a case witnessed in Moscow in 1961 by one of the authors, the chairman of the Comrades' Court, after administering a reprimand to the offender, said, "Comrade, we have given you a reprimand, but you should realize that if you continue insulting and defaming your neighbors you may find yourself charged with criminal defamation in the People's Court."

Thus the danger of degrading or demeaning law through the establishment of popular tribunals is mitigated by the fact that the popular tribunals are seen as a preliminary stage of legal proceedings, as well as by the fact that even in the exercise of their limited functions they derive much of their inspiration from the law itself.

(3) A more serious danger, in our opinion, is that the very legalization of the Comrades' Courts, that is, the quasi-judicial character of their proceedings, will have an adverse effect upon Soviet concepts of proper standards of adjudication. Entirely apart from the fact that the absence of adequate legal safeguards in the Comrades' Court may result in injustice in particular cases—a point that we shall discuss separately—there is a strong likelihood that the persons participating in Comrades' Courts' proceedings, whether as members of the tribunal, persons charged with offenses, complainants, or spectators, will think of the proceedings as embodying correct legal methods for reaching just decisions.

This danger is only aggravated by the fact that the 1961 Statute does provide a framework for the proceedings similar in many respects to that of Soviet judicial procedure. The tribunal checks the materials of the case in advance. It may demand information and documents from officials and others. The charges must be brought to the notice of the person charged. He has the right to produce documents and information and to call witnesses. He may challenge the tribunal. The trial is public. There is a right to be heard. The tribunal is bound by the 1961 Statute and by prevailing legislation.

Presumably these rules are designed to give the proceedings the appearance, at least, of correctness and objectivity. Yet a host of

traditional legal safeguards are absent, including right to counsel, presumption of innocence, precise formulation of issues, precise definitions of offenses, and evidentiary standards of relevance and materiality. In addition, the lack of professional qualifications of the members of the Comrades' Court makes likely the abuse of those limited safeguards that *are* provided. In particular the Comrades' Courts do not have the expertness to follow the precise wording of criminal statutes (such as those concerning petty theft, hooliganism, speculation, and the like). The limitations upon review of decisions are a further drawback.

The absence of judicial safeguards may, of course, adversely affect a particular person charged with an offense in a Comrades' Court. The possibility of such injustice is somewhat minimized by the fact that the offenses charged are generally ones of which the entire collective would have knowledge. Also the mild sanctions available to the Comrades' Court, coupled with the possibility of judicial review of cases where the sanctions are more severe, may render the informality of the proceedings less objectionable in particular cases.

Even if one makes all these allowances, however, it is impossible not to be concerned about the effect of such informal proceedings upon Soviet concepts of legality generally. In this connection, the following statement of Khrushchev, made in April 1962 with reference to persons who live on income not derived from socially useful work, appears particularly ominous:

Some people reason that even if a man has stolen something but has not been caught he cannot be called to account, although many people know him to be a thief. But this kind of morality is characteristic of bourgeois society, where people say, "A man isn't a thief until he has been caught." Our principles should be different. Soviet people are entitled to call to account those who do not work but live at the expense of society; to make a thief answerable not only when he is caught with his hand in your pocket, but when he prospers without working. For he is robbing socialist society, he is robbing you because he is living off your your labor. We should not wait until he is caught red-handed to indict and try him.²²⁸

Khrushchev was talking about persons subject to administrative trial as "parasites." His statement also has implications for the Comrades' Courts, where the fact that "many people know" the offender

²²⁸ PRAVDA, April 21, 1962, at 2 (translated in 14 CDSP, No. 16, at 14).

and what he has done is a sufficient basis for "calling him to account." Khrushchev was not, of course, talking about thieves in the technical sense, that is, persons charged in the regular courts with commission of crimes.²²⁹ Yet may not his language lead to a blurring of the distinction between "parasites" and criminals generally, and between proceedings in "social courts" and proceedings in the regular courts? Even apart from Khrushchev's statement, may not Soviet citizens begin to wonder why the regular courts should adhere to the "technicalities" of legal procedure when the Comrades' Courts seem to be able to achieve justice more simply and more directly?

Such a blurring of the distinction between popular justice and legal justice is inherent in the very system of Comrades' Courts, with its mixture of legal and non-legal standards. Another example from a case that one of the writers observed in Moscow in 1962 may serve to clarify this point. A woman was charged with insulting her neighbor. She replied that he had insulted her first. The chairman of the court asked her when he had insulted her. She replied, "About a year ago." The chairman then said that he would not hear evidence of the man's insult because too much time had elapsed. One could approve or disapprove of such a ruling, but one cannot help questioning the effect it must produce on the spectators' conceptions of legality. Although it lacks the authority of a professional interpretation of the law, it is nevertheless put forward as an objective requirement of the decision-making process. If the Soviet people are to get their legal education from Comrades' Courts they may come to view such hodgepodge standards as a normal phenomenon of adjudication generally.

There are, to be sure, some safeguards against such a danger. One such safeguard is the continued insistence upon procedural regularity in all criminal cases tried in the regular courts. Such insistence has recently been reaffirmed in the strongest terms by the Plenum of the Supreme Court of the U.S.S.R.²³⁰ Another safeguard would be the continual reminder of participants in Comrades' Court cases that the

²²⁹ FAINSOD, *op. cit. supra* note 7, at 452, omits the entire portion of Khrushchev's statement referring to "those who do not work but live at the expense of society," thus making the quotation even more ominous than it actually is.

²³⁰ Decree No. 2 of the Plenum of the U.S.S.R. Supreme Court, March 18, 1963, *BIULLETEN' VERKHOVNOGO SUDA SSSR* (Bulletin of the USSR Supreme Court), 1963, No. 3, at 3. The decree states: "No breaches whatsoever of legality can be justified by reliance on the notion that they are necessary in order to strengthen the struggle against crime. Every criminal case, regardless of the character and seriousness of the crime, or of the official or social position of the accused, must be decided in strict correspondence to the requirements of the norms of criminal and procedural law."

informality and "popularity" of the proceedings represent a sacrifice of legal protections normally available to persons charged with crimes, a sacrifice that is justified only where both the offense charged and the sanction available are trivial. Unfortunately, Soviet writers on Comrades' Courts do not emphasize this point.

(4) Perhaps the most serious danger inherent in the system of Comrades' Courts lies in the possibility that they will pry into the personal affairs of Soviet citizens and will be an instrument for imposing conformity of thought and behavior in all spheres of life. This danger is accentuated by the reiterated assertions of Soviet leaders that there is no essential conflict between the interests of the person and the interests of society²³¹—assertions which in themselves may be justified philosophically but which nevertheless reinforce society's interference in matters which (whether from a personal point of view or a social point of view or both) should be left to personal choice. The substitution of "personal" for "private" in Soviet terminology is not in itself a decisive indication that everything that a person thinks or does may be exposed to publicity. The absence, however, of any term to express the concept of "non-social" or "non-public" is more serious in this regard.

Matters of political opinion not amounting to anti-Soviet agitation or propaganda, matters of personal relations (such as intimate association with foreigners, or sexual promiscuity), matters of religious faith or worship, and many other matters of a "personal" nature, are not expressly placed within the jurisdiction of the Comrades' Courts, except under a broad (and in our opinion legally unwarranted) interpretation of the phrase "other anti-social acts not entailing criminal liability." Nevertheless, without a clear statement of the lower limits of their jurisdiction, there remains a serious potentiality of abuse of the Comrades' Courts in order to enforce Party policy concerning political, moral and "ideological" standards that are not compulsory under any Soviet statutes (including the Statute on Comrades' Courts). Such abuse might arise from Party dictation or simply from the overzealousness of the residential occupational or educational organizations themselves.

The point of criticism is not that morality or opinion is a private matter in which society has no interest. In every society, displaying a coarse attitude toward neighbors, shirking one's duties at work, or

²³¹ Compare Khrushchev, XXII S'EZD KPSS, STENOGRAFICHESKII OTCHET (22nd Congress of the CPSU, Stenographic Record; Moscow, 1962), Vol. I, at 97-98.

holding unorthodox views may be subject to informal social controls, exercised by family, school, church, neighborhood, union, business enterprise, or other social institutions. The danger of the Soviet Comrades' Courts lies primarily in the publicity that is given to the offender's acts, coupled with the quasi-judicial form of the proceedings, which lends a false objectivity to the determination that they are wrongful.

Earlier we suggested that the very high degree of consciousness of social solidarity, or collective kinship, which pervades Soviet life, may support public criticism of one's neighbors or fellow-workers or fellow-students to an extent that would be intolerable in more individualistic societies. Open criticism of personal behavior is an accepted phenomenon in the Soviet Union; entirely apart from Comrades' Courts, such criticism is often conducted in a manner reminiscent of group behavior in college fraternities or army barracks in the United States. Thus at parents' meetings in Soviet schools, teachers will not hesitate to discuss improper conduct of a particular child in front of all the parents collectively, and indeed all may join in giving advice to the child's mother and father. Yet this tradition of group identity only aggravates the danger that the Comrades' Courts will contribute to an erosion of all non-conforming thought and behavior.

The principal safeguard against such a danger must be the self-restraint of the Comrades' Courts themselves, and of the social organizations of which they are part, in refusing to charge persons with acts which are not illegal in any sense but which are simply viewed as antisocial by the Communist Party or by local zealots. It is some evidence of self-restraint that no cases are reported in the Soviet press or other Soviet literature in which charges of such a nature have in fact been brought. This does not mean that there have been no such cases, but only that if there have been such cases it has not been thought wise to give publicity to them. It would be still more encouraging if those agencies that are responsible for the Comrades' Courts, including the Communist Party leadership as well as the jurists who write books and organize instruction for members of Comrades' Courts, would call attention to the danger of interfering in matters of purely personal concern and would solemnly advise the Comrades' Courts that their jurisdiction is limited to acts specifically denominated as offenses in Soviet law. So far such warnings have been conspicuous by their absence, although recently an article in

Izvestia criticized two members of a Comrades' Court for "influencing passions" and "prolonging litigation" by continually "digging into unnecessary details, rummaging into old laundry, savoring tidbits having nothing to do with the dispute."²³²

Against the dangers which we have discussed must be weighed not only the safeguards that limit them but also the positive advantages of the Comrades' Courts in deterring crime and in strengthening group morale. Do they in fact serve to discourage antisocial behavior at an early stage and to exert a healthy influence upon persons who have started on the path to serious misconduct? Do they at the same time strengthen the inner unity of the neighborhood, factory, university, or other social organization of which they are part?

Unfortunately, no sure answers can be given to these questions. Soviet accounts of individual cases of reformation of offenders and of their reintegration into the group lack sufficient detail to be truly illuminating. Also detailed information is not available from which one could determine the extent to which Comrades' Courts are actually held in esteem or in awe by Soviet people.

Even in the absence of sufficient empirical data, however, some speculations may be worth making. The fact that such a large investment of time and effort has been made in the work of the Comrades' Court and that their activities continue to be greatly encouraged, testifies to the confidence that is reposed in them by the Soviet leadership. There surely is no reason to doubt the sincerity of the Soviet leadership in seeking to bring about a reduction of crime and of an egoistic psychology leading to antisocial behavior. In turning to Comrades' Courts as an instrument for achieving these objectives, they are not trying a new experiment but are reviving an institution that has been the subject of repeated experimentation for almost five decades. Assuming that the Soviet leaders are not unintelligent, we may speculate that under Soviet conditions, at least, the Comrades' Courts can serve as a deterrent to criminal activity and as a reinforcement of group self-consciousness.

Secondly, apart from what the Soviet leadership may believe about the role of the Comrades' Courts, the nature of their activities itself testifies to their potential utility both in deterring crime and in strengthening group self-consciousness. The activities of the Com-

²³² *Spravedlivyi obshchestvennyi* (Just and Social), *IZVESTIA*, Nov. 20, 1963 at 1 (translated in 15 CDSP, No. 47, at 11).

rades' Courts cannot help but reinforce a Soviet citizen's knowledge of his membership in the collective—however much he may at times resent such membership. Workers who in their spare time are assembled in a factory to hear and discuss the absenteeism or lateness of one of their number (in which, incidentally, they have a material interest, for the success of a factory in meeting production goals may be reflected in bonuses for the individual workers), residents of a crowded apartment house who meet in the evening to consider the mistreatment of wife or children by one of their neighbors, students in an institute who are asked to express their views concerning the petty thefts or drunkenness of a fellow-student—all are *ipso facto* reminded in a dramatic way of their social obligations, and of the purpose of their leaders to improve the moral quality of Soviet life. If, indeed, Emile Durkheim was right in stating that *anomie*, that is, absence of social cohesiveness and of social purpose, is a major factor in producing emotional breakdown and crime,²³³ then it would seem that the very existence of Comrades' Courts must contribute both to social cohesiveness and to the reduction of crime.

On the other hand, such a conclusion depends on a certain degree of voluntary acceptance of the Comrades' Courts on the part of the workers, neighbors, students, and others, who are invited to participate in them. It is here that speculation goes in opposite directions. If Soviet testimony is to be believed, the activities of persons who participate in Comrades' Courts proceedings are entirely voluntary. Yet the fact that the system of Comrades' Courts has been introduced from above, and is not a spontaneous development on the part of the groups themselves, suggests a different conclusion. Although there is no evidence that the Comrades' Courts are resisted by the collectives, it is not unwarranted to suppose that they are received with something less than complete enthusiasm. Soviet writers report that in some places the Comrades' Courts exist only on paper. The fact that they died out after 1939 testifies to the lack of interest in them at that time. It does not seem unfair to suppose that they would suffer a similar fate if the Soviet leadership should once again withdraw its support.

There is, indeed, an inherent dilemma in the effort of the Soviet

²³³ DURKHEIM, *LE SUICIDE* (1930); PARSONS, *THE STRUCTURE OF SOCIAL ACTION*, 324-38 (1949); DE GRAZIA, *THE POLITICAL COMMUNITY: A STUDY OF ANOMIE* (1948); cf. Berman, *Law as an Instrument of Mental Health in the United States and Soviet Russia*, 109 U. PA. L. REV. (1961) 361, 362.

state to induce the Soviet people to raise their moral standards. In all societies it is primarily through the inner vitality of the family, the church, the neighborhood, the school, the factory, and other unofficial associations that standards of morality are maintained. In the Soviet Union, the inner vitality of these groups has been adversely affected by the very system of statism, and by the fact that in each group (except the family and the church) the Communist Party unit is the "central core." The regeneration of the neighborhood, enterprise, university, or collective farm should come, ideally, from within. The attempt artificially to impose regeneration from outside is bound to have only limited success.²³⁴

The situation calls to mind a Soviet psychological experiment in which children of a certain age, who refuse to respond to certain signals as commanded, are taught to give themselves the order; they will then respond to the signal at "their own" command.²³⁵ But Soviet citizens are not children, and while they may be induced to give themselves the command they will also be conscious that they are doing so as part of an experiment. The result is entirely different from that which is achieved when a group itself conceives the idea of creating procedures for settling some of its problems.

The difficulty of inducing moral regeneration by decree, so to speak, reflects the underlying weakness of the Soviet theory that ultimately the formal, traditional, institutional sanctions and procedures of law will be replaced by the informal, spontaneous action of social organizations. This theory of a secular utopia rests ultimately on a belief in the natural goodness of man. Yet there is a skepticism about man inherent in the means by which such a secular utopia is to be achieved. The leadership is unwilling to trust the smaller social units of Soviet society to develop their own forms of self-control, their own traditions, but insists instead upon a uniform, centrally controlled development. The leadership's skepticism about the means no doubt stimulates in others a skepticism about the ends.

The Comrades' Courts themselves manifest the ambiguity of the Soviet theory. On the one hand, they are part of the expansion of democratic activities which has been characteristic of Soviet development since Stalin's death. On the other hand, they are part of the effort to mobilize the Soviet people in the march forward to a pre-

²³⁴ Cf. Loeber, *Rechtsverfolgung durch das Kollektiv*, OST-PROBLEME (Bonn, 1959), 658, at 664.

²³⁵ Berman, *supra* note 233, at 369.

determined goal. It may not be too much to hope that they will be permitted sufficient autonomy to enable them effectively to perform the task of exposing and deterring petty offenses, and that supervision over them will be exercised not in order to stimulate an overzealous concern to remake Soviet man in the Party image but only in order to protect against excessive interference with personal rights and freedoms.