

THE SOCIAL COURTS SYSTEM OF THE GERMAN DEMOCRATIC REPUBLIC

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Abstract

The social courts of the German Democratic Republic consisted of disputes commissions (based at the workplace) and arbitration commissions (based in the community and in certain co-operatives).

They had their origins partly in Soviet models of lay justice and partly in the old German institution of the *Schiedsmann* (arbitrator).

They had advisory and conciliatory functions, but also heard a wide range of employment and disciplinary matters, minor civil disputes and petty crime.

Hearings took place in public before elected lay judges ("members"), usually outside working hours. Proceedings were relatively informal and were conducted on inquisitorial rather than adversarial principles and without representation by lawyers. Orders could be made imposing "educational measures" which aimed to educate deviant individuals to socialist standards of behaviour. In addition, recommendations could be made for the elimination of the causes of conflict in society. Decisions (which could be enforced) were subject to appeal to the state courts at the instance of the parties or the procuracy.

The social courts were an important manifestation of the communist organizational principle of "democratic centralism" whereby centrally planned aims were realized locally through elected agencies. Although described as "social" they were an integral part of the state system of administration of justice. They aimed to build socialism by educating people to socialist principles, by attacking the root causes of lawlessness in society and by involving the people in dispensing justice as well as safeguarding individual rights. They disciplined rather than punished.

They were abolished after unification with the Federal Republic of Germany in 1990 but were replaced by arbitration committees, a limited, if unsuccessful, continuation of the tradition that occurred only because of the lack of judges and legally qualified personnel in the East.

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Introduction

This thesis examines the history and operation of the social courts system of the German Democratic Republic, an institution that is of interest not only because of the important role it played in the East German legal system and in East German society, but also because it is of intrinsic interest as a developed system of lay justice.

This dissertation begins (in chapters I & II) by tracing the origins of lay justice in communist thinking and in institutions of the Soviet Union but demonstrates that the social courts were not just a replica of the USSR's comrades' courts or assessment and conflict commissions but were more complex in their origins, drawing on a variety of Soviet and German traditions. It demonstrates too that conflict commissions or dispute commissions (the first manifestation of the social courts) were operating a number of years before the passing of the first legislation in 1953, a fact overlooked or at least unacknowledged by previous writers on the subject.

In chapters III, IV and V I examine in detail the operation of the social courts (both the disputes commissions and the arbitration commissions) by reference to the legislation, leading commentaries, text books and articles, case reports and other materials, before going on in chapter VI to describe the training, management, direction and other support provided to sustain the system. A wide range of political and social institutions, in particular the trades unions and local authorities, were involved in running the courts.

I then go on to consider the position of the social courts in the legal system of the GDR (chapter VII) and demonstrate that they were (or at least became) an integral part of the state administration of justice. Whilst their relative informality and the fact of their being operated by lay judges (known as members) did enable them legitimately to be labelled as "social", rooted in society though they were, in fact in the GDR state and society came to be seen as one. In chapter

VIII I deal with the political and social role of the social courts. We see that they maintained discipline, endeavoured to increase productivity and sought to enhance the socialist (Marxist-Leninist) vision of society by forming the socialist personality and educating society to socialist standards of behaviour, to "socialist legality".

The social courts were very much part of the communist tradition, and for that reason I review, albeit briefly (in chapter IX), some of the other manifestations of lay justice in the communist countries, concentrating in particular on those systems that have not been described in detail by others. It emerges that the social courts clearly shared common features with similar institutions elsewhere but that, although Soviet theory formed the basis of the tradition, the GDR (like the other communist countries) used the models available in a creative fashion. All types of lay justice did in fact diverge to some extent from the systems used in the USSR: a common core was adapted to local cultural and political needs. The East German social courts, it is submitted, represented one of the most advanced and successful forms of lay justice available in the communist world. The juxtaposition of East and West Germany and the existence of a long German tradition of lay justice, in particular in employment law, lead me then (in chapter X) to examine West German *Betriebsjustiz*, if only because it has so often been compared (both in the GDR and in the Federal Republic of Germany) with the disputes commissions.

Finally, I examine the fate of the social courts against the background of the collapse of the GDR, paying particular attention to attempts to preserve them and the limited survival of lay justice in "the new federal states" in the form of arbitration committees.

My interest in the social courts was triggered by a chance encounter in East Berlin with a short book on the subject, Langer, Posorski and Winkler's Die Konfliktkommission hat eingeladen..., volume 49 in the popular Recht in unserer Zeit series, and was fostered by a study visit to the GDR in 1988 which enabled me to meet a number of people involved in administering the social courts system. At first, I thought (mistakenly) that the social courts might constitute some model

of alternative dispute resolution. In fact, they started off as part of an attempt to move towards a communist society in which the state would wither away, a process for the success of which lay involvement was an essential element. Unfortunately the converse happened, and instead of the social courts taking over from the state courts, they simply became absorbed into the apparatus of the state. Far from fulfilling their envisaged role as "courts of the future...intended to replace the regular courts once society attains full communism", they never really took off on their own and remained "an understudy for the regular courts"¹.

Although the social courts may be said to have failed in traditional communist terms, nevertheless they had positive aspects, not only in their involvement of lay people in the administration of justice, but also in going beyond individual cases to eliminate the root causes of wrong in society.

The lengthy bibliography attests to the great weight of literature devoted to the social courts, not only in the GDR but elsewhere. Notwithstanding that, this dissertation makes a limited claim to originality in that it constitutes the first comprehensive piece of research on the social courts in the English language and the first exhaustive review of the social courts system in the west (aspects of the social courts formed the topic for a number of East German theses) since Ingeborg Franke's 1965 dissertation and Werner Reiland's Die gesellschaftlichen Gerichte der DDR published in 1968. This dissertation not only covers the period from the end of the Second World War to the late 1960s but deals with the legislation passed in the 1980s and follows the social courts through the *Umbruch*. This thesis also enjoys the advantage of being able to look back on a chapter of legal history that is now closed and does so with the benefit of access to archives and documents, as well as interviews with individuals, that were not available to earlier commentators.

The use of the masculine gender is intended to be inclusive rather than exclusive of the feminine gender.

The law is stated as it is understood to be on 31 December 1991.

¹ M.A. Glendon/M.W. Gordon/C. Osakwe Comparative Legal Traditions (St. Paul. Minnesota, 1982) p. 309

Chapter I

The Origins of Lay Justice in the Soviet Union

Communist mistrust of traditional "bourgeois" legal institutions and their use as a tool of capitalism was very deep rooted. In 1837 Karl Marx (only 19 years old at the time) wrote a simple rhyme:

"If feuds were settled by a and b,
The courts would be swindled out of their fee".¹

Lawyers appear in both parts of Capital and elsewhere in Marx's writing as a group of people who enrich themselves at the expense of others, living on the product of other people's industry². "It is precisely because the bourgeoisie rules as a class that in the law it must give itself a general expression", he wrote in The German Ideology³. Communist ideology, therefore, had in its very beginnings, a highly developed antipathy towards traditional legal systems and the values inherent in them.

Parallel to this, communism in its origins manifested a similar mistrust of the state with which, for Marx and Engels, the law was intimately bound up. The state was seen as a manifestation of the need of one class to oppress another. It arises

"from the need to hold class antagonisms in check [and] is, as a rule, the state of the most powerful, economically dominant class, which, through the medium of the state becomes also the politically dominant class, and thus acquires new means of holding down and exploiting the oppressed class"⁴.

Communist ideology traditionally saw the state as "a product of society at a certain stage of

1 K. Marx Mathematical Wisdom in K. Marx and F. Engels Collected Works (London, 1975) Vol. I pp. 545-546

2 Cf K. Marx Theories of Surplus Value (London, 1969) Vol. I pp. 300-301 and Capital (London, 1974) Vol. II p. 133

3 K. Marx and F. Engels Collected Works (London, 1976) Vol. V pp. 92-93

4 F. Engels Origins of the Family, Private Property and the State in K. Marx and F. Engels Selected Works (Moscow, 1970) Vol. III p. 328

development⁵, but something fundamentally at odds with society, and something that would ultimately "wither away". Marx, in his Critique of the Gotha Programme, wrote of the transition from capitalist to communist society with a period of revolutionary transformation between the two, culminating in a future in which the state and bourgeois society would die⁶. Engels developed Marx's thinking further. When a point is reached at which the state truly represents the whole of society and there is no class to be subjected by another, nothing more remains to be oppressed. Law and State are no longer necessary:

"State interference in social relations becomes, in one domain after another, superfluous, and then dies out of itself; the government of persons is replaced by the administration of things, and by the conduct of processes of production. The state itself is not "abolished". *It dies out*⁷.

The tension between state and society is of some importance in examining the origins of social courts in communist countries and the ideas behind the way in which these institutions function (or functioned). For the term "social" used in relation to courts or justice in the old East bloc and communist countries was used to differentiate lay organs of justice from those belonging to the traditional state apparatus of the law; the term referred to organs of justice that functioned on the basis of common social relationships and interests rather than coercive measures. The very existence of lay or "social" justice was seen as an expression of the success of a communist approach to law and justice. Whilst tracing the origins of lay justice in the Soviet Union and the German Democratic Republic and providing a detailed description of the working of social court justice in East Germany this thesis will, as an integral part of that task, examine the extent to which the social courts were truly "social" and the extent to which they could be regarded as successful expressions of communist ideology.

5 F. Engels Origins of the Family, Private Property and the State in K. Marx and F. Engels Selected Works (Moscow, 1970) Vol. III p. 326

6 K. Marx and F. Engels Selected Works in one Volume (Moscow, London, 1968) p. 327

7 F. Engels Socialism: Utopian and Scientific in K. Marx and F. Engels Selected Works (Moscow 1970) Vol. III p. 147. For a detailed analysis of Marxist theory on the withering away of law and state see C. Synnwich The Concept of Socialist Law (Oxford, 1990) pp. 1-27 and H. Collins Marxism and Law (Oxford, 1982) pp. 100-111

The dichotomy of state and society also preoccupied Lenin, to whose writings modern legal theoreticians (especially in the GDR) appeared to turn more frequently than to Marx or Engels. Building on Marx and Engels, Lenin asserted that, under communism, government in any form would become superfluous and with it the whole coercive apparatus associated with it: the disappearance of the state would bring about the end of

"every organized and systematic violence, every use of violence against every man in general. We do not expect the advent of an order of society in which the principle of subordination of minority to majority will not be observed. But striving for Socialism, we are convinced that it will develop into Communism; that side by side with this there will vanish all need for force, for the subjection of one man to another, and of one part of the population to another, since people will grow accustomed to observing the elementary conditions of social existence without force and without subjection"⁸.

The way to achieve this, in Lenin's view, was to bring about large scale involvement of the people leading to a deconstruction of the state apparatus and the withering away of the state itself as Engels had foreseen⁹. The process of involvement was also seen as assisting in overcoming the estrangement that characterized capitalist society and lay at the root of the conflict within it.

The first communist manifestations of lay justice are to be found in the comrades' courts of the Soviet Union, where they appeared shortly after the October Revolution of 1917. The development of the Soviet comrades' courts has already been dealt with extensively by a number of eminent commentators¹⁰. However, some introduction to this institution is essential, as the comrades' courts and other Soviet institutions of lay justice formed the bases for the development of equivalent institutions in the German Democratic Republic some forty years later, and indeed for similar courts in all parts of the communist world.

8 V.I. Lenin The State and Revolution (New York, 1932) p. 68

9 Cf. Lenin Ausgewählte Werke Vol. 2 (Berlin, 1955) p. 382 and Lenin's address to the VIIth party congress on 8 March 1918, Lenin Werke Vol. 27 (Berlin, 1960) p. 122

10 Notably H.J. Berman & J.W. Spindler Soviet Comrades Courts *Washington Law Review* Vol. 38 4/1963 pp. 842-910; W.E. Butler Comradely Justice in Eastern Europe *Current Legal Problems* Vol. 25 1972 pp. 200-218 and Comradely Justice Revised *Review of Socialist Law* 3/1977 pp. 325-343; I. Fujita Jugatsu kakumei ni okeru jinmin-saibansho no keisei-katei *Shakaigaku Kenkyu* (Tokyo University) Vol. 20 5-6/1969 pp. 189-245; S. Kucherov The Organs of Soviet Administration of Justice: Their History and Operation (Leiden, 1970) pp. 3-20 and 154-197; A. Boiter Comradely Justice: How Durable Is It? *Problems of Communism*, 2/1965 pp. 82-92. Shorter accounts can be found in W.E. Butler Soviet Law (London, 1988) pp. 137-139 and R. Conquest Justice and the Legal System in the USSR (London, Sydney, Toronto, 1968) pp. 116-119

The Soviet comrades' courts grew not only out of communist theory but also out of a tradition of informal dispute settlement in the form of the *volost'* courts that had existed and functioned since at least the middle of the nineteenth century¹¹. Czarist justices' courts had also had a long tradition of disposing informally of petty cases¹², whilst in the realm of employment law, factory committees had for some time undertaken limited legal functions at the workplace¹³. Thus when the Bolsheviks assumed control after the October Revolution there were indigenous models to draw on as well as political theory (which, in fact, as we shall see later was also the case in the GDR).

On 7 December 1917 Decree No. 1 was passed by the Bolsheviks abolishing the Czarist courts¹⁴. Already by then workers' and peasants' courts had been formed¹⁵, but after the passing of Decree No. 1, local courts were established to deal with civil disputes, and revolutionary tribunals were formed to deal with counter-revolutionary behaviour. Comrades' courts were formed in the Red Army, but by 1919 civilian equivalents had been established for the purpose of improving labour discipline and raising productivity. The first decree on comrades' courts was passed on 14 November 1919¹⁶. The first comrades' courts appear to have had little impact, but they were kept alive by a further decree of 5 April 1921¹⁷ in which they were described as "industrial-educational institutions". The members were not elected but nominated by management and unions, and the right to put up candidates was restricted to institutions rather than individuals. Jurisdiction was restricted too to dealing with disciplinary breaches and moral faults connected with the workplace.

11 W.E. Butler Comradely Justice Revised *Review of Socialist Law* 3/1977 p. 325

12 S. Kucherov The Organs of Soviet Administration of Justice: Their History and Operation (Leiden, 1970) pp. 194-195

13 H-Th. Schmidt Die sowjetischen Gesellschaftsgerichte am Beispiel der RSFSR (Cologne, 1969) pp. 22-25

14 Sobranie ukazonenii i rasporiazhenii RSFSR 1917 Item 50; cf. also J. Bunyan & H.H. Fisher The Bolshevik Revolution 1917-1918 Documents and Materials (Stanford, 1934) pp. 291 ff.

15 V.I. Lenin Werke (Berlin, 1960) Vol. 27 pp. 256 ff. Cf. also I. Fujita Jugatsu kakumei ni okeru jinmin-saibansho no keisei-katei *Shakaigaku Kenkyu* (Tokyo University) Vol. 20 5-6/1969 pp. 192-193.

16 Sobranie ukazonenii i rasporiazhenii RSFSR 1919 Item 537

17 Sobranie ukazonenii i rasporiazhenii RSFSR 1921 Item 142

Penalties were severe and could include the imposition of enforced labour and imprisonment as well as reprimands or demotion. Their role was distinctly coercive, and to that extent the comrades' courts of that period could scarcely be described as "social". During the period of the New Economic Policy (NEP), the emphasis was on productivity and discipline¹⁸. The employment legislation of early 1923 effectively deprived them of any useful function¹⁹. It was as if the back-peddalling in economic policy that characterized the NEP was paralleled by similar retrogression in legal development. Labour discipline reverted to the jurisdiction of the state courts. However, by 1928 interest in the comrades' courts revived, probably because of the pressure on the state courts, and under a law of 17 August 1928²⁰ comrades' courts were again formed in some workplaces but with a very limited jurisdiction. Their power was extended by a Resolution of the Council of People's Commissars of 26 August 1929²¹ which widened their jurisdiction to cover petty crime, moral breaches, minor civil disputes and breaches of discipline. A resolution of the Council of People's Commissars on Comrades' Courts at Factory and Plant Enterprises of 30 December 1929²² provided a revised framework, divorcing the comrades' courts from the trades unions, orienting them more on the workplace and placing them in organizational terms under the control of the state courts. By Decree of 20 February 1931²³ the formation of what were re-named "industrial comrades' courts" became compulsory in all workplaces. Rural and residential social courts with similar powers and jurisdiction had also been introduced between 1929 and 1931.

These tentative moves towards the "socialization" of justice came to an abrupt stop with the

18 Exemplified by the Law on the Fight Against Shirking Work of 27 April 1920 (Sobranie ukazonenii i rasporiazhenii RSFSR 1920 Item 172) under which persistent absenteeism could be and was punished by sending offenders to labour camps

19 H-Th. Schmidt Die sowjetischen Gesellschaftsgerichte am Beispiel der RSFSR (Cologne, 1969) pp. 33-37

20 Sobranie ukazonenii i rasporiazhenii RSFSR 1928 Item 707

21 Sobranie ukazonenii i rasporiazhenii RSFSR 1929 Item 662

22 Sobranie ukazonenii i rasporiazhenii RSFSR 1930 Item 52

23 Sobranie ukazonenii i rasporiazhenii RSFSR 1931 Item 160

coming to power of Stalin²⁴. Stalin emphasized the state at the expense of society, claiming that the withering away of the state could best be achieved by strengthening it²⁵, thereby justifying the centralization of power effectively in his own hands. This view was sustained by the legal theories of Andrei Vyshinskii with their emphasis on law as an instrument of state and as primarily coercive in its function. Comradely justice disappeared: there was no ideological seedbed in which it could flourish; the tenor of the Stalin years was not conducive to the mutual trust essential for popular justice to operate. The Second World War put the final nail in the coffin. The courts' law (on the Judicial Structure of the USSR, the Union and the Autonomous Republics) of 16 August 1938²⁶ did not even mention the comrades' courts.

And so the comrades' courts remained dormant until 1951 when they were revived again by a new federal statute which, however, was not published until 1958²⁷. It is curious that steps should have been taken in the direction of lay justice even while Stalin was still alive, although no serious attention was really paid to the idea until the late 1950s.

At the XXth party congress of 1956 Khrushchev denounced not only Stalin's cult of personality but also the breaches of socialist legality that had characterized his period of office²⁸. Thereafter the fight for law and order was seen increasingly not just as a matter for the organs of the Soviet state but for the whole of Soviet society²⁹. Law was also seen again in terms of guaranteeing the rights of citizens and not just as an instrument of the state. Emphasis on legality turned away from coercion and instead to concepts of education and persuasion. This greater liberalization can be

24 Or at least by the time Stalin's power could be said to have been consolidated by the end of 1929: cf. G. Hosking A History of the Soviet Union (London, 1985) p. 183

25 Cf. Stalin's address to the Plenum of the Central Committee of the CPSU on 7 January 1933 (J. Stalin Questions of Leninism (Moscow, 1947) p. 477)

26 Vedomosti Verkhovnogo Soveta SSSR 1938 Item 11

27 Decree No. 2520 of the Council of Ministers of the USSR of 14 July 1951 Cf. H.J. Berman & J.W. Spindler Soviet Comrades' Courts *Washington Law Review* Vol. 38 4/1963 pp. 853-854

28 G. Hosking A History of the Soviet Union (London, 1985) p. 336; W.E. Butler Soviet Law (London, 1988) p.35

29 R.A. Rudenko Zadani dal'neishego ukrepleniya sotsialisticheskoi zakonnosti v svete reshenii XX s'ezda KPSS Sovetskoe Gosudarstvo i Pravo 3/1956 pp. 15-25

discerned in the discussions on reform of the criminal law and its administration in 1958 and in attempts to involve more people more directly in legal processes, for example by having hearings at the place where the accused lived and worked³⁰ or by introducing a sort of guarantee of good behaviour given on behalf of an accused by his collective³¹.

At the XXIst party congress in 1959 Khrushchev expressly demanded that greater attention be paid to the comrades' courts as preservers of social and moral order, fighters of crime and organs of education, as part of his policy of replacing state organs by social equivalents and emphasizing the educational and prophylactic role of the law³² a policy he had advocated at the XIIIth Komsomol congress in 1958³³. An appropriate resolution was passed:

"In matters of compliance with rules of socialist common life, the people's militia, comrades' courts and other similar organizations are called upon to play an increasingly important role in fulfilling the functions of public order and the preservation of citizens' rights, as well as in the prevention of actions detrimental to society, alongside state institutions"³⁴.

Khrushchev's ideological starting point at the XXIst congress was that socialism had triumphed and that the period of communism itself had now begun; a phase had been reached where the withering of the state would occur. Thus a number of functions would presently be taken over from the state by society, including health, sport and culture as well as law. A whole range of social organizations grew up (e.g. commissions for healthy living, social brigades for the protection of socialist property) without there really being any proper legal basis for their activity. Comrades' courts frequently acted beyond their proper jurisdiction. New reform and new legislation became necessary.

30 Provided for by order of the Council of Ministers of the USSR of 2 March 1959; cf. A. Hastrich Die freiwillige Volksmacht der UdSSR *Ost Europa-Recht* Vol. 15 2/1964 pp. 95 ff.

31 As Shelepin demanded (cf. *Pravda* 5.2 1959)

32 Vneocherednoi XXI S'ezd Kommunisticheskoi Partii Sovetskogo Soyuz Stenograficheskii otchet (Moscow, 1959) p. 104; H.J. Berman & J.W. Spindler Soviet Comrades' Courts *Washington Law Review* Vol. 38 4/1963 pp. 854-855

33 *Pravda* 19.4 1958

34 Rezoliutsiia XXI S'ezda Kommunisticheskoi Partii Sovetskogo Soyuz po dokladu N. S Khrushcheva kontrol'nykh tsifrah narodnogo khozvaistva SSSR (Moscow, 1959) p. 29

Three draft items of legislation were published in *Izvestiya* in 1959³⁵ including a draft statute on comrades' courts which provided for courts to be set up at work, in the countryside and in the community, giving them extensive jurisdiction over employment matters, minor and petty crime, and a range of anti-social behaviour. More people became entitled to invoke the jurisdiction of the new comrades' courts. The range of "persuasive measures" the courts could impose was also extended, including an increase in their capacity to impose fines and provision for them to impose an obligation on a wrongdoer to make public apology to his victim or his collective. After a period of public discussion, a new statute based on the drafts was made law on 3 July 1961³⁶. Amending legislation to extend the powers of the courts was passed on 23 October 1963³⁷ and 16 January 1965³⁸.

In all the relevant legislation at this time, the comrades' courts were referred to as "elective social agencies charged with actively contributing to the education of citizens in the spirit of a communist attitude towards employment and socialist property and the observance of the rules of a socialist community"³⁹. The new decree also extended jurisdiction to hooliganism and petty crime, taking over the provisions of a decree of 19 April 1961 which enabled petty hooliganism to be dealt with by the comrades' courts⁴⁰.

The 1963 legislation represented considerable progress. The comrades' courts enjoyed a fairly wide jurisdiction; a referral procedure existed whereby, for example, the police could send minor criminal cases to lay courts to be dealt with; the scope of those who could apply was wide; active

35 *Izvestiya* 23.10.1959

36 Vedomosti Verkhovnogo Soveta RSFSR 1961 Item 371

37 Vedomosti Verkhovnogo Soveta RSFSR 1963 Item 750

38 Vedomosti Verkhovnogo Soveta RSFSR 1965 Item 83

39 Cf. Article 1 of the 1961 statute. An English translation of the 1961 statute as amended up to 16 January 1965 can be found in H.J. Berman & J.B. Quigley (Eds.) Basic Laws on the Structure of the Soviet State (Cambridge Mass., 1969) pp. 264 ff.

40 Cf. A New Stage in the Functioning of the Comrades' Courts *Soviet Law and Government* Vol. 3 1/1964 pp. 35-41 (translated from E. Vol'dman Tovarishcheskii sud boretsya s narushitelyami trudovoi distsipliny Sovetskaya Yustitsiya 1963 No. 23 p.21)

participation of all attending was encouraged; and the measures imposed were educational as much as coercive. The members (lay judges) had the power to make recommendations.

This development in the Soviet Union was matched in other East European countries, in some cases the country concerned apparently following the Soviet example, in other cases taking the lead. Thus workers' courts appear to have begun functioning in Hungary from May 1956; in Poland conciliation commissions to deal with employment disputes and moral breaches were active by 1958; lay justice was introduced in Yugoslavia in 1959⁴¹. The new emphasis in the communist states was on morality and education, the persuasive rather than coercive aspects of the administration of justice. Khrushchev was able to assert that the withering away of the state had indeed begun⁴². Social institutions were seen as the germ of a future communist self-administration.

How successful the comrades' courts were, even in this fairly advanced form, is open to some doubt, and there are clear indications of widespread unease and dissatisfaction at their inadequate functioning both in relation to the quality of their work and (possibly as a consequence of that) the extent to which they were actually used. A letter from one S. Temerin which appeared in *Literaturnaya Gazeta* on 3 March 1971 reports on a comrades' court hearing in a highly critical fashion, openly questioning the integrity and impartiality of the members who heard a case in Moscow and complaining of the "painful and oppressive impression" attendance left on him as a member of the public⁴³. A decree of the Supreme Soviet Praesidium of 8 February 1977 aimed at "further improving the functioning of the comrades' courts", but whilst evaluating their work positively noted that in many enterprises and other institutions poor use was still being made of them and that the members elected frequently did not enjoy the necessary respect to enable the

41 W. Reiland Die gesellschaftlichen Gerichte der DDR (Tübingen & Basel, 1971) pp. 44-45

42 G. Hosking A History of the Soviet Union (London, 1985) pp. 348-349

43 An English translation of the letter (followed by editorial comment) appears in *Soviet Law and Government* 1971 pp.141-154 under the heading Judges or Comrades? The final paragraph calls for "a new and carefully developed statute on the comrades' courts".

courts to function properly⁴⁴.

Following that decree a new statute on comrades' courts was passed on 11 March 1977⁴⁵, although its effect was to tidy up rather than to transform the 1960s' legislation. The nature of the courts as "elective social agencies" remained unchanged. The 1977 statute remained in force with only minor amendments in 1982 and 1985⁴⁶.

The future of "comradely justice" appears bleak in the wake of the collapse of the USSR, although the publication as recently as 1988 of a popular work in the form of questions and answers on the work of the comrades' courts would appear to confirm that they were alive and functioning until shortly before the demise of the Soviet Union⁴⁷.

We have so far confined ourselves to examining the Soviet comrades' courts as manifestations of lay justice because they were the most important and most influential institution of their type and were regarded in the communist world as the prototype of all other institutions of a similar kind. However, they were never the only organs of "social" justice in the Soviet Union. Assessment and conflict commissions, village social courts, and, especially in the early days after the Revolution, a whole range of revolutionary tribunals, also dispensed justice at local level or acted as mediators, conciliators, judges or sources of discipline in employment or other disputes. One of the most important of these organs was the assessment and conflict commission (*rastsenochno-konfliktnaya kommissiya*), a type of lay court which came into being as a result of an Order of the People's Commissars of 12 December 1928 and which had special responsibilities for the mediation of employment disputes. The fact that the original 1928 legislation went through various reforms

44 Cf. N. Bashkatov The New Statute on Comrades' Courts *Soviet Law and Government* 1/1978 p. 44

45 Vedomosti Verkhovnogo Soveta RSFSR 1977 Item 12 Art 254. For an English translation see W.E. Butler Comradely Justice Revised *Review of Socialist Law* 3/1977 pp. 332-343

46 Vedomosti Verkhovnogo Soveta RSFSR 1982 No 49 Art 1822 and 1985 No 42 Art 1401

47 V.I. Kriger Orvechayem na voprosi o rabote tovarishcheskikh sudov (Moscow, 1988). Evidence of comrades' courts functioning in late 1987 and early 1988 can be found in R. Rand Comrade Lawyer. Inside Soviet Justice in an Era of Reform (Boulder, San Francisco, Oxford, 1991) pp. 21-22

would seem to indicate that, unlike the comrades' courts, these institutions remained alive even during the Second World War. This, coupled with the obvious similarity in name between the Soviet institution and the first East German institutions of lay justice in the field of employment law (*Konfliktkommissionen*) has led a number of commentators to believe that it was these commissions rather than the comrades' courts that inspired the first commissions in the Soviet occupation zone of Germany⁴⁸, for as we have seen, the 1951 comrades' courts legislation was not available, even in the Soviet Union itself, in the years after the Second World War, and the comrades' courts themselves had fallen into disuse. Furthermore, attempts were made in the early days of what was to become East Germany to set up what were described as comrades' courts on the Soviet model at a number of factories, notably at VEB Reifenwerk in Fürstenwalde, but the experiment met with strong resistance from the workforce and had to be abandoned⁴⁹. This failure makes it even more likely that it was the assessment and conflict commissions, with their emphasis on employment disputes and conciliation, that provided the German model immediately after the war rather than the comrades' courts, for as we shall see later, commissions were functioning in Soviet-occupied Germany as early as 1947.

The assessment and conflict commissions of the Soviet Union had jurisdiction in the 1950s that was closer to that of the German commissions than was the jurisdiction of the comrades' courts. They had wide powers over employment disputes and were compulsory tribunals of first instance for many minor employment cases. They were formed in factories and administrative offices where there was a trades union and were presided over by equal numbers of managers and workers. Applications had to be made for a hearing within strict time limits that varied from 14 days to three months. All applications had to be investigated within three days. Hearings were conducted with a minimum of formality. Decisions had to be unanimous, failing which the case would be referred to a state court. Appeals could be made to trades union committees.

48 E. Jacobi Die Konfliktkommissionen in der Deutschen Demokratischen Republik (Schriftenreihe Arbeitsrecht Heft 4) (Berlin, 1957) pp. 9-13; N.G. Alexandrow Lehrbuch des sowjetischen Arbeitsrechts (Berlin, 1952)

49 R. Walter Hüter der sozialistischen Moral *SBZ-Archiv* 3/1963 pp. 34 ff.

This short account of the operation of the assessment and conflict commissions is derived from three works on Soviet law that were available in Germany and were widely relied on after the Second World War: N.G. Alexandrow's Lehrbuch des sowjetischen Arbeitsrechts, A.I. Pascherstnik's Die Behandlung von Arbeitsstreitigkeiten and D.W. Schweizer's Entscheidung von Arbeitsstreitigkeiten in der UdSSR have all been explicitly linked by East German academics with the rise of the commissions⁵⁰. Of course, there were also differences in the operation of the Soviet and German commissions (for example in their relationship with the unions), but the underlying similarities were significant.

In reality, it is probable that the first East German disputes commissions drew on both Soviet models to form something new, since they cannot simply be equated with one or other of the obvious precursors we have looked at. Even as early as 1957, when the GDR was firmly under Soviet control, a leading legal writer, Dr. Erwin Jacobi, felt able to put some distance between the Soviet institutions and the new disputes commissions by saying that the German commissions were worthy of "independent consideration"⁵¹. We shall see in the following chapter that this remained the case at every stage of development of what was to become the social courts system of the GDR.

50 H. Senf Die Konfliktkommissionen in der DDR, ein Instrument zur Durchsetzung des sozialistischen Arbeitsrechts in den Händen der Werktätigen (Dissertation, Leipzig, 1957) p. 5; K. Mennicke Die Konfliktkommissionen als Organ der Höherentwicklung der sozialistischen Demokratie bei der Organisation der Arbeit (Dissertation, Berlin, 1960) p. 8

51 E. Jacobi Die Konfliktkommissionen in der Deutschen Demokratischen Republik (Schriftenreihe Arbeitsrecht Heft 4) (Berlin, 1957) p. 15

Chapter II

The Origins of the Social Courts in the German Democratic Republic

The Pre-War Origins and the Early Years (1945 — 1952)

The Third Reich came to an end in May 1945 with surrender ceremonies at General Eisenhower's headquarters at Reims on 7 May and at Marshal Zhukov's headquarters in Berlin-Karlshorst on 8 May. Already in 1944 the USA, Britain and the USSR had decided that a conquered Germany would be occupied in three zones with the capital, Berlin, divided into three sectors; and this duly occurred, France receiving a zone and sector following the Yalta Conference in February 1945. The German Democratic Republic grew out of the Soviet Occupation Zone (*Sowjetische Besatzungszone* or *SBZ*).

The Soviet occupiers lost no time in getting to work on the old National Socialist legal system. On 9 June 1945 they issued a command, Command No. 1 of the Commander in Chief of the Soviet Military Administration (SMAD) (*Befehl Nr. 1 des obersten Chefs der sowjetischen Militärverwaltung und Oberbefehlshaber der sowjetischen Besatzungstruppen in Deutschland*) ordering the formation of the Soviet Military Administration (*die sowjetische Militärverwaltung*) and providing:

"The Commander in Chief of the Soviet Military Administration shall exercise sovereign power of government in the Soviet Occupation Zone and shall pass binding regulations [*Anordnungen*] for the Soviet Occupation Zone in the administrative and legislative sphere in the form of commands [*Befehle*]"¹.

On 14 September 1945, pursuant to those powers, the Soviet Military Administration issued *Befehl Nr. 49 über die Neugestaltung der deutschen Gerichte in der SBZ* (On the Reorganization of the

1 Cf. *Neue Justiz* 2/1947 p. 44. The Soviet Military Administration in Germany (*Sowjetische Militäradministration in Deutschland* or *SMAD*), which effectively governed after the occupation, was created by *Anordnung vom Rat der Kommissare der UdSSR vom 6.6.1945*. Marshall Zhukov was the Chief of Staff (Cf. H. Benjamin *Zur Geschichte der Rechtspflege der DDR 1945-1949* (Berlin, 1976) p. 17)

German Courts in the Soviet Occupation Zone) which provided:

"that the courts are to be organized in accordance with the provisions applicable on 1 January 1933, and accordingly area courts [*Amtsgerichte*], state courts [*Landgerichte*] and higher state courts [*Oberlandesgerichte*] are to be established again in the states and provinces"².

Thus the initial reaction of the Soviet occupiers was not to impose straight away their own legal system but to look back to the indigenous German model. As early as 17 July 1945 they formed German Central Administrations (*deutsche Zentralverwaltungen*) to advise and assist the SMAD in its legislative tasks³, and although these had little power, it is significant that they came into existence at all at such an early stage.

It is a relatively straightforward task to track the development of most of the courts from there onwards, particularly the employment courts to which a great deal of time and thought appear to have been devoted at an early legislative stage⁴. Work on a new system of employment courts (*Arbeitsgerichte*) had begun in the second half of 1945⁵. It appears to have been recognized that employment law should be administered by special courts exercising expert jurisdiction on employment and no other matters⁶, a view which culminated in the passing of a law (*Gesetz Nr. 21* of 20 March 1946)⁷, creating a system of employment courts.

"The separation of employment courts from the rest of the administration of justice was partially for historical reasons but was also rooted in the social conditions in Germany after the liberation from Fascism⁸."

The historical factors Hilde Benjamin speaks of go back to the recognition of the need for separate employment courts to which employees could feel they had easy access, a need recognized

2 Cf. *Neue Justiz* 2/1947 p. 44 and H. Benjamin *Zur Geschichte der Rechtspflege der DDR 1945 - 1949* (Berlin, 1976) p. 64

3 Befehl Nr. 17 der SMAD. Cf. H. Benjamin *Zur Geschichte der Rechtspflege der DDR 1945 - 1949* (Berlin, 1976) p. 58

4 Befehl Nr. 23 vom 25.1.1946 provided for the setting up of special employment courts.

5 H. Benjamin *Zur Geschichte der Rechtspflege der DDR 1945 - 1949* (Berlin, 1976) p. 86

6 Cf. H. Benjamin *Zur Geschichte der Rechtspflege der DDR 1945 - 1949* (Berlin, 1976) p. 86

7 *Amtsblatt* 1946 p. 124 (cf. *Neue Justiz* 1/1947 p. 19)

8 H. Benjamin *Zur Geschichte der Rechtspflege der DDR 1945 - 1949* (Berlin, 1976) p. 84

as long ago as the Employment Courts Law (*Arbeitsgerichtsgesetz*) of 23 December 1926⁹; whether the social factors she refers to were the sheer need for employment regulation and employee discipline or more humane concerns is hard to say, but no doubt both factors played a part in this early and detailed attention to employment legislation.

The precise time when informal disputes commissions (*Konfliktkommissionen*) or employment disputes commissions (*Arbeitskonfliktkommissionen*) arose alongside more formal state employment courts is less easy to establish. Hilde Benjamin herself gives marginally contradictory accounts, on the one hand implying they had existed for some time at SAG-Wismut and other SAG (Soviet run) enterprises before 1952¹⁰, on the other referring merely to their formal foundation by legislation in 1953¹¹. Krause too traces them back to 1953, stating that the first commission was set up at the "7th October" railway repair shop at Zwickau¹². In fact according to an early article in *Arbeit und Sozialfürsorge* disputes commissions, based on Soviet models and the example of "the comrades at Wismut" ("die Kumpel der Wismut-AG"), had existed in Zwickau since 1952, whilst other early sources cite examples at VEB Reifenwerk, Fürstenwalde, the Wilhelm Florin iron and steel mill at Henningsdorf, the Karl-Marx-Werk in Magdeburg, the abattoir at Dresden, the Otto Grotewohl combine in Böhlen and the Ernst-Thälmann-Werk, again in Magdeburg¹³. It appears that the railway workers of Zwickau, anxious to improve productivity, decided to adopt "a rapid and unbureaucratic method of dealing with employment disputes" by means of public hearings before four "colleagues" (two employer and two employee representatives) who would deal with the case in informal proceedings, referring the matter to a formal employment court only in the absence of a unanimous decision. The proceedings are said to have been without prejudice to the

9 Reichsblatt 1926 I Nr. 68 p. 507

10 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1949 - 1961 (Berlin, 1980) p. 194

11 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1961 - 1971 (Berlin, 1986) p. 117

12 U. Krause 30 Years of Social Courts Law and Legislation in the GDR 1 - 2/1983 p. 34

13 Eisenbahner schaffen sich ihre erste Konfliktkommission *Arbeit und Sozialfürsorge* 22/1952 pp. 564 - 565; I. Schmidt So arbeitet eine Konfliktkommission *Arbeit und Sozialfürsorge* 1/1953 p. 25; R. Kranke Die Bildung von Konfliktkommissionen *Arbeit und Sozialfürsorge* 10/1953 p. 308; K. Stein/R. Roth Die Arbeit der Arbeitskonfliktkommissionen im Reifenwerk Fürstenwalde *Die Arbeit* 10/1953 p. 322; R. Schlegel Das neue Verfahren in Arbeitssachen *Neue Justiz* 11/1953 pp. 349-353

usual right of the parties to go to a formal court or to object to the composition of the commission. To counter the impression that the commission was merely an organ of worker control by management or the state, a case is cited (as example) of a woman worker whose claim for a Sunday bonus was upheld by the commission. The article concludes:

"The conciliatory nature, direct handling of such cases in enterprises at the point where they have arisen and the voluntary consent of the parties give the conciliation commissions a special and political significance".

Shortly before this report of events in Zwickau, *Arbeit und Sozialfürsorge* had printed a lengthier article entitled Kommissionen zur Beseitigung von Arbeitskonflikten ("Commissions for the Elimination of Employment Disputes"¹⁴) setting their development in the context of "the arbitration and conciliation proceedings which have developed since 1945 in our anti-Fascist, democratic employment law". It reports that disputes commissions already existed in a number of volkseigene Betriebe (popularly owned enterprises) and that the FDGB (*Freier Deutscher Gewerkschaftsbund* — Federation of Free German Trades Unions) had already assumed responsibility for their management. And as early as 1948 another article in *Arbeit und Sozialfürsorge*¹⁵ described how a number of enterprises had set up what are described as arbitration commissions (*Schiedskommissionen*) or arbitration courts (*Schiedsgerichte*) to deal informally with matters of labour discipline. The article emphasizes the fact that these tribunals did not aim to punish but educate ("They should have an educational effect and convince workers of the necessity to improve discipline at work"). The members (it was said) should be workers and employees and not representatives of management. They appear to have imposed fines which are referred to as "eine erzieherische Maßnahme" (an educational measure). The didactic tone of the article makes it clear that these courts were not functioning well and enjoyed little respect among workers, factors that the author was clearly hoping to remedy. Certainly there is evidence that the commissions in their early forms were not well received¹⁶.

14 R. Schlegel Kommissionen zur Beseitigung von Arbeitskonflikten *Arbeit und Sozialfürsorge* 22/1952 pp. 534 - 535

15 M. Herm Schiedsgerichte bei Betriebsvergehen *Arbeit und Sozialfürsorge* 9-10/1948 pp. 165-168

16 Cf. R. Walter Hüter der sozialistischen Moral *SBZ Archiv* 3/1963 p. 36

It is hardly surprising that there is some confusion as to exactly when disputes commissions first came into existence: in the confusion of the occupation a whole range of *ad hoc* quasi-legal and administrative institutions grew up or were created to cope with immediate problems, only to be abolished, fade away or be transformed in due course by legislation into more formal equivalents or successors. Thus, for example, social commissions (*Sozialkommissionen*) consisting of eight members (later up to 36) can be found functioning as early as 1947 dealing with welfare problems¹⁷, whilst workers' welfare commissions (*Arbeiterversorgungskommissionen*) had been formed at the latest by 1952 in enterprises of 200 or more employees, apparently dealing largely with problems of housing and accommodation¹⁸.

Thus, whilst the majority of commentators date the commencement of the disputes commissions at 1952 or even 1953¹⁹, it is clear that they were well established in embryonic form by that time and had probably been functioning in one guise or other at least four years before then and probably even earlier, assuming that the literature must have lagged behind reality.

Two traditions were being drawn on in these early years. The first was the legal tradition of the Soviet Union, a tradition that was to some extent imposed, to some extent already accepted by communists in the Soviet Occupation Zone. The head of the Department of Employment Law (*Leiter der Abteilung Arbeitsrecht*) in the Ministry of Labour, one G. Schaum, wrote an article given particular prominence in 1952 (the publishers starred the article as the beginning of a series that could be kept for study) proclaiming Soviet employment law as the model for the GDR to adopt

17 U. Besch So arbeitet die Sozialkommission der Stadt Greifswald *Arbeit und Sozialfürsorge* 5/1952 p. 118

18 Trümpelmann / Korn Die Zusammenarbeit mit den Arbeiterversorgungskommissionen *Arbeit und Sozialfürsorge* 9/19/52 pp. 202 - 203

19 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1949 - 1961 (Berlin, 1980) as stated refers variously to 1952 (p. 194) and to 1953 in relation to the first legislation, in Zur Geschichte der Rechtspflege der DDR 1961 - 1971 (Berlin, 1986) (p. 117) referring to earlier dates only by implication; W. Reiland in Die Gesellschaftlichen Gerichte der DDR (Tübingen & Basel, 1971) goes back to 1952 (p. 55); S. Mampel in Die Konfliktkommissionen in den Betrieben und in den Verwaltungen der SBZ, *Jahrbuch für Ostrecht* Vol. 3 1/1962 pp. 11 - 43, refers to intentions to introduce them in 1952; E. Körting in Grundtendenzen in der Entwicklung der gesellschaftlichen Gerichte der DDR, *Jahrbuch für Ostrecht* Vol. 22 1/1981 pp. 103 - 116, goes back to 1952 (p. 105); E. Brown-Weiss in the East German Social Courts: Development and Comparison with China, *American Journal of Comparative Law* Vol. 20 2/1972 pp. 266-289 begins her study in April 1953.

for its own legislation²⁰. Hilde Benjamin too made clear in her writings that in the construction of a new legal system the defeated Germany under Soviet occupation and subsequently the GDR owed much to Soviet law²¹. The second tradition was, however, indigenous and wholly German and was freely referred to in the contemporary legal literature of the GDR. This was the long standing tradition of arbitration in relation to both employment disputes and other contentious matters.

(a) Employment law disputes

Special courts regulating the activities of the guilds and the relationship between apprentices and journeymen and their employers can be traced back in Germany to the thirteenth century²². In Prussia as long ago as 1845 and 1849 legislation had been passed providing for arbitration proceedings between employer and employee in skilled trades²³. That was supplemented by further legislation in 1898 and 1901 and provision for similar arbitration between merchants and their employees and apprentices in 1904²⁴. The "courts" envisaged by such legislation were designed to mediate rather than decide issues, and submission to their jurisdiction was voluntary. A further law of 5 December 1916²⁵ consolidated the role of arbitration yet further by providing for the mediation of employment disputes in the emergency services. Whilst many of those

20 G. Schaum Das sowjetische sozialistische Arbeitsrecht - Vorbild des Arbeitsrechts in der Deutschen Demokratischen Republik *Arbeit und Sozialfürsorge* 21/1952 pp. 532 - 533

21 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1945 - 1949 (Berlin, 1976) pp. 19 - 21. The influence of Soviet law on employment law was especially great, a fact evidenced by the translation into German of a number of leading Soviet texts in the 1950s, including N.G. Alexandrow Lehrbuch des sowjetischen Arbeitsrechts (Berlin, 1952), D.W. Schweizer Entscheidungen von Arbeitsstreitigkeiten in der UdSSR (Berlin, 1950) and A.E. Pascherstnik Die Behandlung von Arbeitsstreitigkeiten (Unpublished translation, Babelsberg, 1955). For a general account of the influence of Soviet law in the GDR, especially in relation to civil law, see H. Roggemann Entwicklungstendenzen in der Zivilrechtspflege der "Deutschen Demokratischen Republik" und der Einfluß des sowjetischen Rechts, *Juristische Rundschau* 6/1966 pp. 201 - 206, 12/1966 pp. 444 - 448, 1/1967 pp. 9-14 and 7/1967 pp. 241-245

22 A. Hueck/C. Nipperdey Lehrbuch des Arbeitsrechts II (5th edition) (Mannheim, Berlin, Leipzig, 1932) p. 683

23 Preußische Allgemeine Gewerbeordnung vom 9.2.1845; Verordnung betreffend die Einrichtung von Gewerberäthen vom 9.2.1849 (Gesetz-Sammlung für die Königlichen Preußischen Staaten 1849 Nr. 6 pp. 93 - 110)

24 Gesetz betreffend Kaufmannsgerichte vom 6.7.1904 (Reichsgesetzblatt 1904 Nr. 30 p. 266)

25 Gesetz über den vaterländischen Hilfsdienst vom 5.12.1916 (Reichsgesetzblatt 1916 Nr. 276 p. 1333)

institutions or courts of arbitration were based on the place of employment or took guilds as their focus of attention, other institutions, notably trades courts (*Gewerbegerichte*) or trades councils of experts (*Räte der Gewerbeverständigen*), based on the French *conseils des prud'hommes*, grew up in the nineteenth century and acted as courts of arbitration, presided over by representatives of employers or by independent arbitrators²⁶.

Various other pieces of legislation followed culminating in the Order Concerning Conciliation (*Verordnung über das Schlichtungswesen*) of 30 October 1925²⁷, an enactment that remained in force until 1934. This provided for the formation of mediation committees (*Schlichtungsausschüsse*) consisting of an independent chairman and two other members representing respectively employer and employees. These committees were intended to deal with collective rather than individual disputes, and concerned themselves mainly with wages and working conditions. This tradition was revitalized in both the East and West of Germany after the Second World War. A Control Council law (*Kontrollratsgesetz Nr. 35*) of 20 August 1946²⁸, for example, took the legal position back not merely to 1933 but to the position under the trades council law (*Gewerbegerichtsgesetz*) of 1898 and 1901²⁹, although the emphasis remained on collective rather than individual disputes.

It is important to note not merely that this tradition existed, but that it was looked back to after the war and reported and discussed extensively and in positive terms in the contemporary literature³⁰.

26 Cf. §§ 134-137 Preußische Allgemeine Gewerbeordnung vom 17.1.1845; Sächsisches Gesetz betreffend die Einrichtung von Gewerbegerichten vom 15.10.1861

27 Reichsgesetzblatt 1923 I Nr. 111 p. 1043

28 Amtsblatt 1946 p. 174

29 W. Holling Die Schlichtung von Arbeitsstreitigkeiten *Arbeit und Sozialfürsorge* 4/1949 p. 81

30 W. Holling Die Schlichtung von Arbeitsstreitigkeiten *Arbeit und Sozialfürsorge* 4/1949 pp. 79 - 84; G. Müller Das Ausgleichs- und Schiedsverfahren in Arbeitsstreitigkeiten *Neue Justiz* 4-5/1947 pp. 89 - 91

(b) Other disputes

Quite apart from arbitration in the field of employment, Germany had (and still maintains) a long tradition of mediation in relation to minor wrongs such as causing nuisance by making noise or otherwise interfering with quiet enjoyment of one's place of residence, or insults. Before bringing a private action (*Privatklage*) arising out of such a matter there had to be an attempt at conciliation before an arbitrator or umpire (*Schiedsmann* or *Friedensrichter*). The institution of the arbitrator continued after 1945 in the form of the *Schiedsmann*, generally an older citizen who enjoyed some respect in the local community and whose role was persuasive rather than coercive in settling disputes.

It is frequently said that what ultimately became the disputes commissions (*Konfliktkommissionen*) were a new creation based on the Soviet models we examined in chapter I whereas the arbitration commissions (*Schiedskommissionen*) grew out of the old German tradition of the *Schiedsmann*³¹. However, the early origins are in fact more complex and more confused, and the old German tradition of arbitration and conciliation can be seen to have contributed to both institutions. But if Soviet and German traditions were being drawn on in the creation of new legal institutions, one other factor should also be borne in mind, namely harsh necessity. A priority for the Soviet occupiers was the removal from the legal system as a matter of urgency of any judge or lawyer tainted by National Socialism. SMAD *Befehl Nr. 49*³² had banned from office all persons in the administration of justice who had been National Socialists or had been connected with National Socialism. Such persons were dismissed from office and replaced by ordinary lay people who by 1945 accounted for 22% of all judges and state lawyers in the Soviet Zone³³. Whilst practical considerations made lay judges essential, the idea of people's judges (*Volksrichter*) also had obviously positive political resonances in the context of the formation of what was to become a

31 Cf. H. Benjamin Zur Geschichte der Rechtspflege der DDR 1949 - 1961 (Berlin, 1980) p. 198; E. Körting Grundtendenzen in der Entwicklung der gesellschaftlichen Gerichte der DDR *Jahrbuch für Ostrecht* Vol. 22 1/1981 p. 107

32 Para. 3 of *Befehl Nr. 49* of vom 14.9.1945 *Neue Justiz* 2/1947 p. 44

33 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1945 - 1949 (Berlin, 1986) p. 90

new communist state, and provision was made to train them in a serious and organized way.

These *Volksrichter* seemed (whether by training or inclination cannot be said with any certainty) to approach their judicial tasks in a different way to that of the traditional judge: they were as much concerned to achieve conciliation as to decide a dispute. One *Volksrichter*, D. Schmiede, who became a judge in 1949, recounts in his memoirs how he travelled out into the countryside to teach the people the law. He emphasizes that his aim was not simply to decide a case: rather, "taking into account in the widest sense the state of emergency and the economic interests of the individual one had to try to bring about a compromise that was acceptable to both sides"³⁴.

The *Volksrichter* were not just a matter of necessity, though; they were part of a process of the democratization of law and justice that was characteristic of the early years under Soviet occupation. Hilde Benjamin described the *Volksrichter* as "pillars of democratic justice"³⁵ and saw their introduction as a step towards a transformation of the class structure of the legal system³⁶. It is beyond the scope of this thesis to provide a detailed history of the origins of the arbitrators, arbitration courts or people's judges. However, these traditions of justice which aimed at conciliation need to be noted: coupled with a shortage of trained judges and a move to alter the class structure of and to democratize the legal system, they were the seedbed from which the early manifestations of the social courts grew.

The First Legislation (1952 — 1953)

The move towards formalizing the position of the early institutions we have so far examined can be traced back to the second party conference of the Socialist Unity Party (*Sozialistische Einheitspartei Deutschlands* — SED) in July 1952, three years after the founding of the GDR and

34 D. Schmiede Ein Jahr Volksrichter *Neue Justiz* 10/1947 p. 216

35 H. Benjamin Aus Reden und Aufsätzen (Berlin, 1982) p. 46

36 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1945 - 1949 (Berlin, 1976) p. 92

the proclamation of its first constitution and six years after the coming into being of the SED. The second party conference boldly projected the transition to socialism, the consciousness of the working class and "the majority of workers" (in Ulbricht's words) having attained the required level³⁷ to make this possible, and resolved to undertake a reform of employment law in the light of Soviet law. In June 1951 the Soviet Union had revived the comrades' courts that had fallen into disuse³⁸ by passing Decree No. 2520 of the Council of Ministers of the USSR³⁹, but the influence of that step on developments in the GDR cannot have been great, since, as we have seen, the 1951 decree was only published in 1958 and was never referred to by any Soviet commentators of the time, so it is unlikely that it had any serious influence on thought in the GDR in the 1950s. Rather it seems that the model looked to was the Decree of 12 December 1928 on the assessment and conflict commissions. The aim was to establish a system for disposing of employment disputes quickly and informally.

The decision to formalize the previous *ad hoc* position was only actually taken, however, in 1953. On 30 April 1953 the government passed the Order concerning the Duties of the Employment Courts (*Verordnung über die Neugliederung und die Aufgaben der Arbeitsgerichte*)⁴⁰ which made a hearing by a disputes commission a prerequisite for bringing a claim before the employment court (*Arbeitsgericht*). The formation of the disputes commissions themselves was effected by the Order on the Formation of Commissions for the Elimination of Employment Disputes (Disputes Commissions) in Popularly Owned and Equivalent Enterprises and in the Administration (*Verordnung über die Bildung von Kommissionen zur Beseitigung von Arbeitsstreitfällen (Konfliktkommissionen) in den volkseigenen und ihnen gleichgestellten Betrieben und in den*

37 M. Benjamin/R. Kranke Aufgaben und Arbeitsweise der Konfliktkommissionen (Schriftreihe über Arbeitsrecht Heft 11) (Berlin, 1964) p. 4; Dokumente der SED Vol. IV p. 73; W. Ulbricht Zur Geschichte der deutschen Arbeiterbewegung Vol. 4 (Berlin, 1953-1971) p. 407

38 Beschluß der II. Parteikonferenz der Sozialistischen Einheitspartei Deutschlands zur gegenwärtigen Lage und zu den Aufgaben im Kampf für Frieden, Einheit, Demokratie und Sozialismus *Einheit* 8/1952 p. 710

39 W.E. Butler Comradely Justice in Eastern Europe *Current Legal Problems* Vol. 25 1972 pp. 202 - 203

40 GB1. 1953 Nr. 63 p. 693

Verwaltungen) of 30 April 1953⁴¹. This legislation (which came into force on 13 May 1953) not only gave a legal basis to the commissions that were already in existence but made their formation compulsory in enterprises with more than 200 employees (§ 1(1)). Commissions could also be formed in enterprises with less than 200 employees (§ 1(2)) by agreement with the trades union executive. Commissions were to be composed of two worker members and two representatives of management, who remained in office for a year at a time. They were nominated, not elected. § 5 of the Order gave them jurisdiction to deal with a wide range of employment and disciplinary matters, although there were exclusions (for example § 6 excluded jurisdiction to deal with work planning and policy, the allocation of living quarters and certain other matters which were thought of as matters of administrative rather than employment law). Unlike some of the early experimental tribunals, the emphasis in their work was on individual disputes which came before the commissions by application made by employer or employee. There were few procedural rules, and the hearings (called *Beratungen*) were public, as was discussion among the members deciding the case. Appeal lay to the area employment court (*Kreisarbeitsgericht*).

The 2/2 split in the membership of the commissions may have given rise to problems, particularly regarding conflicts of interest on the part of management, but there is no evidence in the literature that this was so, and the question appears to have been brushed aside on the basis of there no longer being any class conflict of interest as all members of society were working towards a common goal. As Hilde Benjamin puts it, both sides

"started from the point of view of the working class and had a common goal: to decide employment disputes in the enterprise justly, so far as possible to discover the causes of them and to overcome conflicts"⁴².

The assertion is too glib to be satisfactory, but there was protection from abuse in that decisions had to be unanimous (§§ 19 and 22 of the Order).

The nature of these first formal commissions and their position in the legal system is unclear.

41 GBl. 1953 Nr. 63 p. 695

42 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1949 - 1962 (Berlin, 1980) p.194

They were not employers' institutions, but nor were they organs of the workers (who had no direct say regarding the members) nor yet of the trades unions. They were not part of the state system of courts. The earliest substantial commentary was published in 1957 and is vague on the point. It merely describes them (following the words of the legislation) as "commissions for the elimination of employment disputes", and emphasizes their novelty and special status at the expense of any attempt at closer definition⁴³. An early dissertation saw them mainly as an "instrument ... for attracting the masses into [the task of] managing the state."⁴⁴ A 1960 commentary describes the disputes commissions as "by their legal nature institutions of the enterprise whose formation is provided for by law and whose members are drawn from the circle of the enterprise collective"⁴⁵, but that definition, coming as it does seven years after the legislation, is not very enlightening either. At a conference on employment law in the GDR in Berlin in October 1953 the question of the status of the commissions was discussed, and clarification of their legal nature was requested⁴⁶. They appear not to have been regarded as courts, yet even at this early stage certain fundamental court characteristics were present: jurisdiction invoked by application, the need to make out a case, public hearing, the taking of oral evidence, the keeping of records and the possibility of appeal. In addition, decisions could in certain circumstances be enforced by execution. The emphasis of the new commissions (particularly if one contrasts them with the pre-legislation *ad hoc* commissions described above) was clearly on deciding and adjudicating rather than merely on mediation or conciliation.

It should be noted that the 1953 Order still restricted the scope of where disputes commissions could be formed to popularly owned enterprises (*volkseigene Betriebe*), similar concerns and to institutions forming part of the administration. Commissions could not be formed in privately

43 E. Jacobi Die Konfliktkommissionen in der Deutschen Demokratischen Republik (Berlin, 1957) pp. 9 & 16

44 H. Senf Die Konfliktkommissionen als Instrument zur Durchsetzung des sozialistischen Arbeitsrechts in den Händen der Werktätigen (Dissertation, Leipzig, 1957) p. 58

45 W. Schulz Leitfaden des Arbeitsrechts (Berlin, 1960) p. 469

46 H. Tauscher Bericht über die Arbeitsrechtskonferenz am 21. und 22. Oktober 1953 in Berlin *Neue Justiz* 23/1953 p. 744: "Der Charakter der Konfliktkommissionen bedarf dringend der wissenschaftlichen Klärung"

owned enterprises, for the class struggle was still present in such businesses, and disputes between persons who were still regarded as employer and employee were necessarily contentious and better heard by the state employment courts⁴⁷.

The Extension of Lay Justice (1953 — 1959)

After an uneasy start⁴⁸ and an initial tendency for the first disputes commissions to act as the "long arm of the employer or of the state"⁴⁹ the new commissions settled down and soon proved to be a valuable relief for the state court system. By 1954 there were already 5,682 disputes commissions in existence⁵⁰ which handled 8,384 disputes; 84% of cases coming before them were decided by them finally, that is without being subject to appeal to the area court; 16% of cases were the subject of appeals but only in 7.1% of those cases was the original decision varied in any way⁵¹. Thus in nine out of every ten cases it may be said that the decision of the new commissions was either correct or at worst not unacceptable to the parties. Between 1953 and 1954 some 45,000 people became involved in the administration of justice as commission members⁵². However, their growth and apparent success was met by mixed reactions. There were signs that the SED was alarmed at the success of this new institution, as some western commentators have suggested⁵³, and feared they would become uncontrollable; perhaps they were concerned precisely because they soon showed signs of becoming truly independent of the legislators who had brought them into being and the state saw or feared a potential erosion of the

47 Cf. K. Görner Die Entwicklung der Arbeitskonfliktkommissionen *Neue Justiz* 4/1953 p. 98

48 Cf. W. Schulz Leitfaden des Arbeitsrechts (Berlin, 1960) p. 469

49 E. Krebs. Interview 28.6.1989.

50 See Appendix D table 1

51 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1949 - 1961 (Berlin, 1980) p. 196

52 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1949 - 1961 (Berlin, 1980) p. 196

53 H-Th. Schmidt Wesen und Entwicklung der Konflikt- und Schiedskommissionen in der DDR (1952 - 1969) *Jahrbuch für Ostrecht* Vol. 10 2/1969 p. 61

fiction of the total identity of interest of employer and employee in a workers' and peasants' state⁵⁴; or perhaps the teutonic mind was still exercised about the exact nature of the beast it had created. As one writer said in 1957:

"If ... the questions concerning the legal nature of the disputes commissions or concerning their position and that of their members in our employment law system are not in accord with one another, it would indeed appear that some variation in the basic conception of the Disputes Commission Order would not be without justification"⁵⁵.

In spite of these concerns, in May 1957 so-called "Theses on the Reform of the Order on the Formation of Disputes Commissions" (*Thesen zur Neuregelung der Verordnung über die Bildung von Konfliktkommissionen*) were proposed for discussion, suggesting reforms that envisaged an extension of the powers of the disputes commissions which, while perceived as a success, were still not relieving sufficiently the burden of the state courts⁵⁶. If the SED had been tempted to tone down the role of the commissions or even abolish them, that idea was abandoned following the end of a secret conference of trade unionists in Moscow in late 1957 which recommended the Soviet comrades' courts as a model for other communist states to imitate⁵⁷, so they remained untouched, at least for the next few years. Certainly at this stage in the development of the GDR, Walter Ulbricht and his government would have been unlikely to fly in the face of a strong Soviet recommendation, since although the GDR was by then an independent state, it was firmly under Soviet control and committed to resisting the economic and political pressure aimed at it from the West⁵⁸. "The founding of the GDR [had] created between the USSR and the GDR relations between friendly socialist states"⁵⁹, a factor recognized by a treaty on relations between the two

54 R. Walter Hüter der sozialistischen Moral *SBZ-Archiv* 3/1963 p. 36

55 L. Langner Bemerkungen zur beabsichtigten Neuregelung der Konfliktkommissionsverordnung *Neue Justiz* 23/1957 p. 772

56 L. Langner Bemerkungen zur beabsichtigten Neuregelung der Konfliktkommissionsverordnung *Neue Justiz* 23/1957 pp. 769-772

57 R. Walter Hüter der sozialistischen Moral *SBZ-Archiv* 3/1963 p. 36

58 Cf. D. Childs The GDR: Moscow's German Ally (London, 1983) pp. 53-55

59 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1949 - 1961 (Berlin, 1980) p. 52

countries signed on 20 September 1955⁶⁰.

At the fourth assembly of the central committee of the SED (15 – 18 January 1959) Walter Ulbricht expressed strong support for the disputes commissions:

"Is it not time to transfer greater responsibility and greater powers to these commissions? Why should we not turn these commissions into organs which would have quite a considerable influence on the education of the working class to a socialist mode of behaviour by dealing with all disputes connected with socialist working morale and the socialist way of life?"⁶¹.

It is interesting that this view was expressed in the GDR only a matter of days before Khrushchev's address to the XXIst party congress in the Soviet Union on 27 January 1959, although the extent to which Ulbricht was directly aware of Khrushchev's plans and the question whether he was simply following the Moscow line must remain matters of speculation. Khrushchev used the XXIst party congress to build on the idea of greater involvement of the people in the institutions of state and society that had characterized the more liberal mood of the XXth congress. Basing the thrust of his argument on the idea of the withering away of the state, he advocated the revival of social bodies such as the comrades' courts and the people's militia. Hilde Benjamin, by then the minister of justice in the GDR, supported this tendency and demanded "to transfer certain state functions more and more to social organizations"⁶².

At the Vth FDGB congress in 1959 Herbert Warnke suggested that in future commission members should be elected, as was the case with the soviet comrades' courts⁶³. However, at no stage does there seem to have been any suggestion of simply adopting the soviet example as a whole. As one commentator recorded only a few years later:

"Soviet material and experience in this field ... provide a wealth of valuable stimuli for a framework and method of organized social education and self-education in the German Democratic Republic. However, they should not be adopted schematically

60 GBl. I 1955 Nr. 107 p. 918

61 W. Ulbricht Zur Geschichte der deutschen Arbeiterbewegung (Berlin, 1953-1971) Vol. 8 p. 61

62 H. Benjamin Zum 4. Plenum des Zentralkomitees der SED *Neue Justiz* 4/1959 p. 111

63 Cf. J. Schlegel Einige Erfahrungen bei der Organisation der gesellschaftlichen Erziehung und bei der Neubildung der Konfliktkommissionen *Neue Justiz* 22/1959 p. 770

but should be assimilated creatively⁶⁴.

As at the earlier stages, the soviet model was borne in mind but never slavishly followed.

In the meantime what were to become the arbitration commissions were developing quite apart from any model the Soviet Union had to offer. "If the disputes commissions had a Soviet model, the arbitration commissions had their roots in Germany"⁶⁵. As we have seen, in certain cases there had to be an attempt at mediation before certain types of disputes between individuals went to court. Such arbitration had been largely unaffected by the war, and arbitrators (*Schiedsmänner*) and mediation committees (*Sühnstellen*) remained alive as institutions after the coming into being of the GDR. Their existence was taken into account in specific GDR legislation with the passing of the Order on the Establishment of Mediation Committees in the GDR (*Anordnung über die Errichtung von Sühnstellen in der DDR*) of 24 April 1953⁶⁶. This provided for mediation committees to be set up in all towns, areas and communities, presided over by an arbitrator, a person over the age of 23 nominated by the director of the local area court in consultation with the local councils.

The mediation committees inevitably developed in very different ways⁶⁷ but, although based on what was felt to be a fundamentally bourgeois institution, were clearly considered to be successful, a fact which led to the passing of more legislation in the form of a further order (the *Anordnung über die Errichtung von Sühnstellen*) of 20 May 1954⁶⁸. This provided, as before, for attempted conciliation before a private action (*Privatklage*) could go to court. The role of the arbitrator was simple: "to educate citizens in respect for the dignity of their fellow citizens and in responsible

64 R. Schüsseler Die Entwicklung von Organen der gesellschaftlichen Erziehung und Selbsterziehung in der Deutschen Demokratischen Republik und ihre Rolle im Kampf um die allseitige Durchsetzung sozialistischer Lebensformen *Wissenschaftliche Zeitschrift der Martin-Luther Universität* (Halle-Wittenberg, 1962) p. 896

65 E. Körting Grundtendenzen in der Entwicklung der gesellschaftlichen Gerichte der DDR *Jahrbuch für Ostrecht* Vol. 22 1/1981 p. 107

66 GBl. 1953 Nr. 59 p. 647

67 Cf. H. Benjamin Zur Geschichte der Rechtspflege der DDR 1949 - 1961 (Berlin, 1980) pp. 198 - 199

68 GBl. 1954 Nr. 54 p. 555

behaviour in social life". The 1954 Order made him subject to election; he was to hold office for three years at a time. Only people who "fulfilled the necessary requirements politically and as to character and enjoyed the trust of the people"⁶⁹ were eligible for office. To what extent they were politically vetted cannot be established. We are told that by 1955 almost all the "vacancies" had been filled and that almost two thirds of cases referred did settle⁷⁰.

The mediation committees appear to have been a success. Thus, when the legislation was subjected to further review and another order, the *Verordnung über die Sühnstellen* of 22 September 1958⁷¹, came to be passed the powers of the arbitrator were extended to include not just mediation as a prerequisite before trial but to allow voluntary mediation in civil disputes up to a value of 100 Marks on application by the parties. The 1958 order imposed on the arbitrator an obligation to report to the local authority. The continued success of the institution appears from the figures for the year 1960 in which the mediation committees dealt with 53,000 disputes of which 7,500 were civil. Only 7,000 cases destined for a *Privatklage* actually got beyond the mediation stage, and of the 7,500 civil disputes, 5,200 were settled⁷².

Although the mediation committees were subject to statutory regulation, the letter of the law was not always followed. Thus some arbitrators began to involve other citizens in the mediation process — lay assessors (*Schöffen*), members of residents' associations, National Front committee members, and so on. In due course simple mediation involving two parties developed into something more akin to a hearing — a privately orientated institution became collective in nature, a factor that the Ministry of Justice began to take into account in 1959/1960 when it began to encourage this method of working⁷³. In the words of one arbitrator of that time:

69 § 4(2) Anordnung über die Errichtung von Sühnstellen vom 20.5.1954.

70 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1949 - 1961 (Berlin, 1980) p. 199

71 GBl. I 1958 Nr. 61 p. 690

72 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1949 - 1961 (Berlin, 1980) p. 256

73 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1949 - 1961 (Berlin, 1980) p. 256

"We have been working as a collective for over two years; if a matter comes before an arbitrator, he will involve lay assessors or other suitable citizens. During the whole of that time we haven't had a single adverse reaction to the collective way of working. The people have great trust in us"⁷⁴.

As appears to have been quite common in the early development of GDR legislation, the institution was developing faster than the law governing it was responding to social change, a fact recognized by the East German establishment⁷⁵. The involvement of the people in social institutions was genuine and corresponded well to the political direction communist thought was taking at the time.

Thus by the late 1950s and early 1960s there were two advanced models of social organs of administration of justice, the disputes commissions, described by Ulbricht as organs of education and self-education, and the office of the arbitrator, both working to educate and conciliate. The two institutions had different origins, developing separately but in parallel in the context of the politics of social involvement, "die Einbeziehung der Gesellschaft"⁷⁶. As Hilde Benjamin put it, though writing in the late 1970s with the benefit of hindsight,

"the development of the work of arbitrators showed that the time was ripe to set up something similar to the disputes commissions in communities and residential areas"⁷⁷.

The developments of the late 1950s laid the foundations for the future arbitration commissions which in the 1960s would become explicitly linked to the disputes commissions.

The Period of Legal Reform (1960 — 1963)

The impulse to extend the powers of the disputes commissions and to clarify their position further gave rise to the formulation by the FDGB of a Guideline for the Operation of the New Disputes

74 The Schiedsmann of Harzgerode quoted in K-H. Beyer Über die Tätigkeit der Schiedsmänner *Neue Justiz* 17/1961 p. 598

75 Cf. O. Grotewohl's statement in Unser neues Recht entwickelt sich mit dem sozialistischen Aufbau Neues Deutschland 20.5.1956 p. 3 that "democratic legality consists not only in observance of existing written law but also of whatever constitutes our socialist law (unser sozialistisches Recht), and is increasingly expressed in our statutes, and is already being given effect to now".

76 W. Reiland Die Gesellschaftlichen Gerichte der DDR (Tübingen & Basel, 1971) p. 70

77 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1949 - 1961 (Berlin, 1980) p. 256

Commissions (*Richtlinie für die Arbeit der neuen Konfliktkommissionen*) of 4 April 1960 which became law in the form of an order (the *Verordnung über die neuen Konfliktkommissionen*) on 28 April 1960⁷⁸. In fact the new legislation did little to clarify the legal nature of the disputes commissions which were now described in the Guideline as "a form in which the working class actively participates in the process of social education and self-education of working people". Michael Benjamin, attempting to tie them in with Khrushchev's ideas of society and the withering away of the state (expressed at the XXIst communist party congress), referred to them as "organs of disciplinary power in society" ("Organe der gesellschaftlichen Disziplinargewalt")⁷⁹. Another leading GDR commentator, Schüsseler, expressed the view that their new powers made them into "pillars of social influence" ("Träger der erzieherischen Einflußnahme")⁸⁰. It is true to say, therefore, that the 1960 Order did nothing to assist the legal theoretician in placing the commissions in a recognizable category, although they appear at this stage still to have derived their authority from a communist preoccupation with society taking over from the state.

As to the extension of jurisdiction, following Ulbricht's suggestion, the area over which the disputes commissions now had jurisdiction went beyond the workplace and entered into other areas of life. They were now to be set up in all "socialist enterprises" (*sozialistische Betriebe*) which had their own union organization. Where there was shift working there could be commissions for each shift. Commissions could even be formed in semi-nationalized enterprises in certain circumstances with the agreement of the trades unions⁸¹.

There were other important changes too. The Guideline introduced the idea of elected members (instead of the previous position whereby they were nominated by employer and employees) and

78 GBl. I 1960 Nr. 33 p. 347

79 M. Benjamin Die Rolle der Konfliktkommissionen bei der Bekämpfung geringfügiger Verletzungen der Strafgesetze *Neue Justiz* 10/1961 p. 337

80 R. Schüsseler Die Entwicklung von Organen der gesellschaftlichen Erziehung und Selbsterziehung in der Deutschen Demokratischen Republik und ihre Rolle im Kampf um die allseitige Durchsetzung sozialistischer Lebensformen *Wissenschaftliche Zeitschrift der Martin-Luther-Universität* (Halle-Wittenberg, 1962) p. 893

81 § II 1 & 2

increased the number of members from four to anything from five to eleven. All employees in the enterprise, or its relevant section or shift, were entitled to vote.

The types of cases the commissions could deal with were also extended. Whereas under the 1953 legislation the emphasis had been on the contract of employment and matters directly connected with it, the emphasis now shifted to breaches of the principles of socialist morality and breaches of work discipline (idleness, excessive consumption of alcohol, fights, breaches of safety etc.). The disputes commissions were also to function as a tribunal of appeal against educational measures imposed by management in disciplinary hearings and to determine disputes between the Mutual Assistance Fund⁸² and its members and certain social security disputes. Jurisdiction was also extended to criminal offences committed by employees "which, to the extent that, by reason of their negligible degree of danger to society, are not heard by the criminal courts"; petty theft, fraud, damage to property, assaults and insults were specifically mentioned. Although this represented an extension of jurisdiction beyond matters of strict employment law, the connexion with the workplace remained but the nature of the work of the disputes commissions was now determined more widely in the light of one overall aim: the "building up of a socialist work morality"⁸³.

On 12 April 1961 the Employment Code (*Gesetzbuch der Arbeit*)⁸⁴ came into force. This amended the existing legislation on disputes commissions, chapter 13 dealing with the new legal basis on which they were to operate, although the Guideline of 1960 also remained in force. § 143 of the Employment Code described the disputes commissions as "social organs", the first statutory or official description of them as social institutions. § 144 outlined their jurisdiction by reference to five areas:

82 The *Kasse der gegenseitigen Hilfe* was an FDGB savings body that gave loans (usually free of interest) to assist in the purchase of furniture and other necessities or in cases of death or illness

83 Cf. H. Kamin/K.-H. Beyer Die Zusammenarbeit mit der neuen Konfliktkommissionen *Neue Justiz* 14/1960 p. 741

84 GBl. I 1961 Nr. 5 p. 27

- a) Breaches of the "commandments of socialist morality"⁸⁵ and in particular of socialist work morality;
- b) Appeals against measures imposed in disciplinary proceedings;
- c) Disputes between enterprise and employees regarding rights and duties concerned with their employment relationship;
- d) Disputes regarding social security;
- e) Minor breaches of criminal provisions by employees not dealt with by the courts.

The involvement of the commissions in criminal matters and in the maintenance of socialist morality was reinforced by a further Guideline (the *Richtlinie des Bundesvorstandes des FDGB für die Wahl und die Arbeitsweise der Konfliktkommissionen*) of 26 May 1961 which became law in the form of an Order of 1 June 1961⁸⁶. This brought nothing really new, although § I.4 now explicitly made being a supporter of communism a prerequisite for nomination:

"Workers, employees and members of the intelligentsia who, by their exemplary behaviour in socialist society, their good work, their faithfulness to the Workers' and Peasants' State and their activity in the community, enjoy the confidence of their colleagues, are elected to the disputes commissions".

85 The ten commandments of socialist morality, mirroring the ten commandments of the Old Testament, were pronounced by Walter Ulbricht at the fifth party congress of the SED on 10 July 1958. They were:

1. Thou shalt strive for the international solidarity of the working class and all workers and for the eternal alliance of all socialist countries.
2. Thou shalt love thy fatherland and be ever ready to devote all thy strength and capacity to defending the power of the workers and peasants.
3. Thou shalt help to abolish the exploitation of man by man.
4. Thou shalt accomplish good deeds for socialism, for socialism leads to a better life for all workers.
5. Thou shalt in the building of socialism act in the spirit of mutual help and comradesly co-operation, respect thy collective and heed any criticism it makes.
6. Thou shalt protect and increase the people's prosperity.
7. Thou shalt steadfastly strive to improve thy achievements, to be frugal and to strengthen socialist work discipline.
8. Thou shalt form thy children in the spirit of peace and of socialism to be wide in knowledge, firm in character and strong in body.
9. Thou shalt live a clean and wholesome life and respect thy family.
10. Thou shalt show solidarity with all peoples fighting for national freedom or defending their national independence.

86 GBl. II 1961 Nr.34 p. 203

Hilde Benjamin reports that by this time the disputes commissions were disposing conclusively of nine out of ten employment disputes⁸⁷. She also makes clear that the role of the commissions was well established now as being not simply to decide disputes but to uncover the causes of conflicts and lawlessness in society. Finally, in commenting on the stage of development at this time and in particular on the wide involvement of the people, she refers to the disputes commissions specifically as "social courts ... with the aid of which the formation of a developed socialist society would become a reality"⁸⁸.

Even before the passing of the Order of 1 June 1961 the GDR government had started to consider what role might be played by the social organs of justice in the fight against crime. On 30 January 1961⁸⁹ the Council of State resolved that the disputes commissions should play a greater role in criminal law. Ulbricht asserted:

"The large majority of breaches of the law in our country have their basis not in any hostility towards our social order, since the overwhelming majority of our citizens affirm the power of the workers and peasants".

Thus the pursuit of criminal justice was to be directed towards

"exercising true justice, so that people who have not yet come to recognize their responsibility towards society to its full extent have to be patiently persuaded and educated".

Ulbricht felt strongly, it seems, that such people need not occupy the time of the state courts but could be dealt with by the "social powers"⁹⁰. Up to then (and even for some while after then) the possibility of using the disputes commissions as a forum for the criminal law had been little explored⁹¹.

87 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1949 - 1961 (Berlin, 1980) p. 255

88 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1949 - 1961 (Berlin, 1980) p. 255

89 Cf. Über die weitere Entwicklung der sozialistischen Rechtspflege in der DDR. Beschluß des Staatrates der Deutschen Demokratischen Republik vom 30. Januar 1961 *Neue Justiz* 3/1961 pp. 73-74

90 W. Ulbricht Zum Beschluß des Staatrates über die weitere Entwicklung der Rechtspflege *Neue Justiz* 4/1961 p. 114ff.

91 Cf. H. Kern Die Rechtspflege weiter vervollkommen *Neue Justiz* 12/1962 pp. 361 - 364

The Soviet communist party's programme following the XXIIInd party congress in October 1961 had urged the further extension of social self-administration and kept the so-called social organs in the forefront of political debate. At the XXth session of the Council of State on 24 May 1962 Walter Ulbricht bemoaned the inadequacies, as he perceived them, of socialist justice and its administration which he attributed to the failure of those concerned in the machinery of justice to pay sufficient attention to progress in society as a whole and the enhanced level of consciousness among working people⁹². This, in any event, was a cause to which he attributed the continuing failure to refer minor criminal offences to the disputes commissions instead of to the state criminal courts. His address on the subject to the XXth session marked a turning point in the development of GDR criminal thought — it began the formalization of the division of criminal matters into those of a severe nature that needed to be combatted with all the force of the state apparatus of detection and prosecution, and those that required education rather than punishment.

"The great majority of offences committed in the GDR are rooted not in a hostile attitude towards the Workers' and Peasants' State. The use of new methods of punishment (conditional sentences, public rebuke) and the handling of petty offences by the disputes commissions are acquiring even greater importance"⁹³.

To give impetus to the requisite change in approach to criminal justice a law commission was set up under the direction of Prof. Karl Polak⁹⁴. Its task was to be to report to the Council of State by September 1962 with recommendations for "further measures to improve the administration of socialist justice"⁹⁵. By December 1962 a draft Decree on the Basic Tasks and Methods of Operation of the Organs of the Administration of Justice (*Erlaß über die grundsätzlichen Aufgaben und die Arbeitsweise der Organe der Rechtspflege*) was prepared and put before the Council of State

92 Cf. G. Jahn Die Richtlinie Nr. 12 - ein wichtiger Schritt zur Entwicklung der Rechtspflege *Neue Justiz* 10/1962 p. 330

93 Cf. G. Jahn Die Richtlinie Nr. 12 - ein wichtiger Schritt zur Entwicklung der Rechtspflege *Neue Justiz* 10/1962 p. 329

94 G. Jahn Die Richtlinie Nr. 12 - ein wichtiger Schritt zur Entwicklung der Rechtspflege *Neue Justiz* 10/1962 p. 329

95 Cf. G. Jahn Die Richtlinie Nr. 12 - ein wichtiger Schritt zur Entwicklung der Rechtspflege *Neue Justiz* 10/1962 p. 330



for discussion at its XXVth assembly. The disputes commissions had new life breathed into them, and Josef Streit⁹⁶ was able to report a substantial increase in the number of criminal matters referred to the disputes commissions. *Neue Justiz*, reporting on the conclusions of the XXVth session, stated that the draft Decree would be opened up for public discussion and quoted Walter Ulbricht's demand for "greater participation by the population in the administration of justice"⁹⁷.

Hilde Benjamin, too, wrote an influential article in *Neue Justiz* bemoaning previous failures to make adequate use of the commissions and making clear to all concerned that they were henceforth to be considered as a serious component of the system of justice:

"The development of these social organs goes beyond the framework of the legal system. It is directing the development of our legal system towards a newer, higher plane; it is an expression of the essence of our law as the law of the people".

In her view, in the context of this debate on legal reform, the commissions "rightly stand in the centre of discussion"⁹⁸.

From the Rechtspflegeerlaß to the New Constitution (1963 – 1968)

On 4 April 1963 the Council of State, at its XVIIth sitting, passed the Decree on the Fundamental Tasks and Method of Operation of Organs of the Administration of Justice (*Erlaß über die grundsätzlichen Aufgaben und die Arbeitsweise der Organe der Rechtspflege*, generally called simply the "*Rechtspflegeerlaß*")⁹⁹. This raised the commissions formally in status to organs of the administration of justice ("Organe der Rechtspflege"). This followed the mood of the VIIth party congress at which the SED had propounded a programme for "the comprehensive building of socialism in the GDR", an integral part of which was to be the gradual transfer of state functions to social organs. The socialist administration of justice was to become, in the words of the title of Hilde Benjamin's keynote article, "a matter for all the people" ("Sache des ganzen Volkes"),

96 Procurator general at the time

97 25. Sitzung des Staatrates der DDR über die grundsätzlichen Aufgaben und die Arbeitsweise der Organe der Rechtspflege *Neue Justiz* 24/1961 p. 753

98 H. Benjamin Die sozialistische Rechtspflege - Sache des ganzen Volkes *Neue Justiz* 3/1963 p. 65

99 GBl. I 1963 Nr. 3 p. 21

with social organs of justice as vehicles for "justice being administered by the people themselves"¹⁰⁰.

The status of the *Rechtspflegeerlaß* was curious. Although it was a piece of legislation it also had the character of a plan or programme:

"The Decree on the Administration of Justice was, taken as a whole, a comprehensively formulated conception, a complex plan intended to orient the administration of justice towards the demands of the comprehensive building up of socialism,"

said Hilde Benjamin, adopting the formula used at the VIIth congress¹⁰¹. It was divided into four main parts. The first dealt with the theoretical basis of the change in direction envisaged for the legal system as foreseen at the VIIth party congress. The second set out ideas for a projected new law on the courts (*Gerichtsverfassungsgesetz*), a new set of tasks for the disputes and arbitration commissions and changes in the procuracy, Ministry of Justice and notariat. The third part projected future cooperation between local authorities, social organs and the organs of justice, and the fourth provided for the coming into force of the provisions of the Decree itself. It also took account for the first time of the importance of the arbitration committees, until then the cinderella of "social" justice, by providing for the first time for the setting up of formal arbitration commissions (in place of the *Sühnstellen*) in certain areas on an experimental basis. The whole thrust of the Decree was to involve society as a whole in the administration of justice:

"The closeness of the organs of administration of justice to the life of working people, to the problems of managing the economy and a thorough knowledge of the laws of social development form the basis for the social effectiveness of their work [i.e. the work of the organs of administration of justice]. This is directed not only at deciding correctly on individual cases but at uncovering the causes of breaches of the law, the social and political causes, and at mobilizing the forces of society to eliminate them"¹⁰².

The commissions were still not envisaged as being courts: the word "court" (*Gericht*) was not used

100 H. Benjamin Die sozialistische Rechtspflege - Sache des ganzen Volkes *Neue Justiz* 3/1963 p. 67

101 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1961 - 1971 (Berlin, 1986) p. 49

102 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1961 - 1971 (Berlin, 1986) p. 49

in connexion with them; the Courts Law (*Gerichtsverfassungsgesetz*) of 17 April 1963¹⁰³ did not refer to the disputes commissions as courts but still designated them as "social organs of the administration of justice" (§ 10). The division between administration of justice by the state and administration of justice by society remained, even if the connexions between the two were becoming closer and more formal. Ideologically, the commissions were still being regarded in 1963 as an embryo of communist society. The role of state courts in relation to the commissions was described as "support" (*Unterstützung*), and management or guidance (*Anleitung*) came under the auspices of the FDGB so that any explicit link between the social courts and the state was avoided.

In fact, apart from the ideological thrust towards an emphasis on society rather than state and the move towards activating the arbitration commissions, little was changed by the *Rechtspflegeerlaß*. The disputes commissions were still to be found only in enterprises with state owned elements, workers elsewhere still, apparently, not enjoying the requisite level of socialist consciousness to make them capable of making use of self-administered justice; and the arbitration commissions were still only experimental. The nomination of members remained in the hands of the unions, which were also responsible for management and administration. Thus although the disputes commissions were supposed to be social organs, one commentator, writing a little later in 1967, actually went so far as to describe them as "an institution of the trades unions"¹⁰⁴.

There was one other small development brought about by the *Rechtspflegeerlaß*. For the first time the disputes commissions obtained a limited civil jurisdiction, although they were not entitled to decide civil claims, but merely (like the *Schiedsmann*) to attempt conciliation between parties with claims of up to the value of about 500 Marks¹⁰⁵. If this failed, as previously, the case fell under

103 GBl. I 1963 Nr. 4 p. 45

104 M. Werner Mehr Autorität für die gesellschaftlichen Organe der Rechtspflege *Der Schöffe* 6/1967 p. 220

105 *Rechtspflegeerlaß* Zweiter Abschnitt I 1 & 14

the jurisdiction of the area court¹⁰⁶.

In the meantime a new Guideline (the *Richtlinie des Bundesvorstandes des FDGB für die Wahl und die Arbeitsweise der Konfliktkommissionen*) of 26 May 1961 had become law by reason of an order of the Council of Ministers of 1 June 1961¹⁰⁷. This had restricted the scope of the disputes commissions in relation to crime to dealing with "minor breaches of the criminal law by workers which are not dealt with by the courts [i.e. the state courts]" (II, 1(7)). It had been followed by yet another Guideline (*Richtlinie des Plenums des obersten Gerichts der Deutschen Demokratischen Republik über die Anwendung der §§ 8 und 9 StEG und die Übergabe von geringfügigen Strafsachen an die Konfliktkommissionen*) of 14 April 1962¹⁰⁸. The latter, in the context of "building up socialism", emphasized again that criminal offences could be sifted on the basis of the level of danger the offence posed to society ("Gesellschaftsgefährlichkeit"):

"The correct application of § 8 of the Criminal Amendment Law guarantees that, in accordance with the principles of socialist legality, only actions that are a danger to society will be condemned as criminal".

If there was no social danger the matter could be dealt with by a commission. A case could also be referred to a commission (under § 9 of the Criminal Extension Law) "if punishment [could] be refrained from". The examples given, however, are difficult to follow. The theft of 112 Marks is described as dangerous to society rendering the case unsuitable for a commission. On the other hand, a theft of wood was not regarded as a danger to society simply because it only came to light after three years!

However, the *Rechtspflegeerlaß* did provide more comprehensive guidance on the referral of criminal matters to the commissions. Only matters where the facts were clear were to be referred. The extent of culpability was to be detailed in the referral, and the referring body was even to give

106 *Rechtspflegeerlaß* Zweiter Abschnitt I 15

107 GBl. II 1961 Nr. 34 p. 203

108 *Entscheidungen des Obersten Gerichts in Strafsachen* Vol. 5 pp. 32 - 45

"recommendations for the education of the offender"¹⁰⁹. The commission was not to be concerned with the gathering of evidence, the presumption being that a case would only be referred (by the police, the courts or the procurator) if it was "open and shut". Thus the commissions had little initiative:

"They were only called upon to discuss the case, which had for all practical purposes been decided already, and then to impose one of the measures provided for"¹¹⁰.

This aspect of the operation of the commissions aroused a great deal of opprobrium among western commentators. Writing in 1965, one West German writer condemned hearings based on referrals of criminal matters as being "a sort of interlocutory hearing of guilt ... but still leaving room for investigation of the social causes of the offence"¹¹¹. This remained a problem for the commissions right until the end when there was still an underlying presumption of guilt in a referral to a social court that was somehow repugnant to the "bourgeois" lawyer. GDR commentators, on the other hand, sought to argue that referral did not carry with it the presumption of guilt, saying that the commissions were free to make their own determination¹¹², but it is hard to see how they could, in many cases, differ from the view of the referring body without having an independent capacity to inquire. Reported decisions of the Supreme Court do not include a single case reviewing the use of referral. Whether this means that as a matter of fact the authorities tended to get it right or that even innocent victims of referrals took their sentences lying down has been impossible to verify. (In spite of this problem, Michael Benjamin was arguing in the 1960s that the decisions of the disputes commissions were like the judgements of conventional courts¹¹³, later adding weight to that viewpoint by using the *ne bis in idem* argument

109 Cf. W. Funk Für eine stärkere Wirksamkeit der Strafe ohne Freiheitsentzug! *Neue Justiz* 23/1964 p. 706

110 H-T. Schmidt Wesen und Entwicklung der Konflikt- und Schiedskommissionen in der DDR *Jahrbuch für Ostrecht* Vol. 10 2/1969 p. 70

111 H. Schrader Die Gesellschaftsgerichtsbarkeit in Mitteldeutschland insbesondere in Strafsachen *Zeitschrift für die gesamte Strafrechtswissenschaft* Vol. 77 3-4/1965 p. 524

112 Cf. W. Krutzsch/K. Görner/R. Winkler Leitfaden zur Richtlinie über die Bildung und Tätigkeit von Schiedskommissionen (Berlin, 1966) p. 63

113 M. Benjamin Die Verantwortlichkeit der gesellschaftlichen Rechtspflegeorgane für Strafrechtsverletzungen *Neue Justiz* 4/1967 p. 116

that a case once dealt with by a commission could not be the subject of proceedings before another court¹¹⁴.)

Extended scope given to the commissions entailed amendments to the Employment Code of 12 April 1961¹¹⁵. This was undertaken by amending legislation (the *Gesetz zur Änderung strafrechtlicher und verfahrensrechtlicher Bestimmungen*) of 17 April 1963¹¹⁶ (§§ 3-5). On the same day (17 April 1963) a new union Guideline (*Richtlinie über die Wahl und die Arbeitsweise der Konfliktkommissionen*) was made law in the form of an order¹¹⁷. Still, however, there was no move to describe the disputes commissions as courts, although in all respects but name they were virtually functioning as such. A Supreme Court Guideline (*Richtlinie des Plenums des Obersten Gerichts der DDR*) of 15 September 1965 provided that hearings before the disputes commissions (still described as "social organs of administration of justice in the enterprises") were "legally regulated proceedings" and that "an order not appealed by the parties has the force of law"¹¹⁸.

Against this background, by the late 1960s commentators like Michael Benjamin had to concede that it was time to afford the disputes commissions the status of courts. The fictive opposition of state and society that had previously characterized communist thinking was overcome by a fiction which held that all the courts of the GDR were "social courts" and as such embryo forms of a future communist society based on self-administration.¹¹⁹

"State as well as social organs are forms of organization, transmissions, by means of which the Party is leading society on the way towards the elimination of all remaining vestiges of capitalist relations and ways of thinking and living, and is organizing the building of a socialist and communist society"¹²⁰.

114 M. Benjamin Konfliktkommissionen, Strafrecht, Demokratie (Berlin, 1968) pp. 160 - 161

115 GBl. I 1961 Nr. 5 p. 27

116 GBl. I 1963 Nr. 4 p. 65

117 Verordnung über die Konfliktkommissionen GBl. II 1963 Nr. 36 p. 237

118 Entscheidungen des Obersten Gerichts der DDR in Arbeitsrechtsachen Vol. 5 pp. 7 - 19

119 M. Benjamin Konfliktkommissionen, Strafrecht, Demokratie (Berlin, 1968) pp. 40 - 41

120 M. Benjamin Konfliktkommissionen, Strafrecht Demokratie (Berlin, 1968) pp. 40 - 41

Through the party, state and society became one.

The law commission headed by Karl Polak had proposed a change that was of great consequence to the subsequent development of the social courts. A new category of criminal act had been proposed to cover minor breaches. These breaches of regulation (*Ordnungswidrigkeiten*) were to be taken out of the Criminal Code and dealt with in separate legislation. They were still criminal offences, but by reason of their minor nature did not constitute full criminal behaviour requiring them to be dealt with by the state courts. The disputes commissions were the obvious forum to hear them but only covered the workplace. In 1960 a working group on arbitration commissions had been formed in the Ministry of Justice and reported:

"The handling of certain offences by social organs cannot be restricted to the context of the socialist enterprises. It is appropriate to see whether, when and how a social organ corresponding to the disputes commissions can be created in residential areas"¹²¹.

As we have seen, arbitration commissions were set up on a trial basis only much later after the *Rechtspflegeerlaß*. Nineteen came into existence in four different areas with different social structures, Bitterfeld (an industrial city), Pirna (mixed industrial/agricultural), Demmin (agricultural) and Friedrichshain in Berlin (the capital). These were functioning by summer 1963¹²². How much real monitoring of their activities went on is hard to say. A working party was set up in the Ministry of Justice, but already on 10 February 1964 Hilde Benjamin felt able not only to report on progress but to lay before the Council of State draft legislation for the arbitration commissions in the form of the *Richtlinie des Staates der Deutschen Demokratischen Republik über die Bildung und die Tätigkeit von Schiedskommissionen* which was made law on 21 August 1964¹²³. It provided for the creation of arbitration commissions throughout the country, a process that was to be completed by the end of 1966. The commissions were to replace the old

121 H. Kamin/K.-H. Beyer/H. Schmidt Fragen der Weiterentwicklung der Konfliktkommissionen und der Schaffung anderer Organe der gesellschaftlichen Erziehung *Neue Justiz* 3/1960 p. 80

122 K. Görner Erste Erfahrungen aus der Tätigkeit der Schiedskommissionen *Neue Justiz* 22/1963 pp. 712 - 717

123 GBl. I 1964 Nr. 9 p. 115 ("Schiedskommissionsordnung")

arbitrators as they came into existence¹²⁴. Thus from the very start arbitration commissions were based on territorial jurisdiction, rooted as they were in the community where the *Schiedsmann* once held office.

The 1964 legislation made clear that, although there were differences, the new arbitration commissions were to be on much the same footing as the disputes commissions. (The question of socialist consciousness that restricted the formation of commissions in the early years¹²⁵ seems to have been forgotten or at least no longer regarded as an issue.) The arbitration commissions were described as "elected social organs of the administration of justice"¹²⁶, and the *Rechtspflegeerlaß* had stated:

"The arbitration commissions have the same rights and duties as the disputes commissions in dealing with minor criminal offences and minor civil disputes"¹²⁷.

The actual business of forming the new arbitration commissions was the responsibility of the local authorities; candidates were nominated by National Front committees (or in cooperatives by the board and in private enterprises by the union), and members were elected indirectly by local municipal representative bodies. Thus the role of the community was, like that of the worker, at one remove from the selection process.

But in spite of the clear parallels there remained some important differences. The arbitration commissions had no power to deal with employment disputes at cooperatives or private enterprises, nor to entertain appeals from disciplinary proceedings. These remained matters for the area court. The preamble to the Guideline on the Formation and Operation of Arbitration Commissions (*Richtlinie über die Bildung und die Tätigkeit von Schiedskommissionen*) emphasized this in proclaiming the purpose of the commissions to be "the education of citizens in upholding

124 W. Krutzsch/K. Görner/R. Winkler Leitfaden zur Richtlinie über die Bildung und Tätigkeit von Schiedskommissionen (Berlin, 1966) p. 24 and S. Jänchen/R. Winkler Zur Richtlinie über die Bildung und Tätigkeit von Schiedskommissionen *Neue Justiz* 17/1964 pp. 515 - 519

125 See pp. 36 and 38 above

126 Preamble to Schiedskommissionsordnung (GBl. I 1964 Nr. 9 p. 115)

127 Rechtspflegeerlaß Zweiter Abschnitt II 1

socialist law, socialist morality and socialist relations in community life¹²⁸, contrast this with the equivalent for the disputes commissions which aimed at "education in strict discipline and morality at work"¹²⁹. Nonetheless, they were court-like in character. They could impose the same penalties or measures as the disputes commissions, they generally sat in public (albeit not as an absolute requirement) and their decisions were capable of execution.

By the VIIth SED party congress in April 1967 Walter Ulbricht felt able to assert that a "developed social system of socialism" had been attained¹³⁰. If the *Rechtspflegeerlaß* had drawn together the systems of state and society in legal practice, this was now fully sanctioned at the political level. Emphasis was placed on "social democracy", achieved and enhanced by increased involvement of the people in all aspects of life from public office to parents' associations at schools¹³¹. The party congress demanded:

"the further development of the administration of justice, especially in the work of the enhancement by the courts of its educational effectiveness, an improvement in the work of lay assessors and in the work of the disputes and arbitration commissions"¹³².

Improvements were also demanded in the fight against crime, and the procurator general was to concentrate efforts on this with the assistance of the Supreme Court¹³³. At a plenary session of the latter held on 20 December 1967 it was decided that the commissions should play a leading role in the soon to be reformed criminal law of the GDR¹³⁴.

That reform came as extensive recodification in the form of the Criminal Code (*Strafgesetzbuch*)

128 Preamble to Schiedskommissionsordnung (GBl. I 1964 Nr. 9 p. 115)

129 Rechtspflegeerlaß Zweiter Abschnitt I 1

130 W. Ulbricht Die gesellschaftliche Entwicklung in der DDR bis zur Vollendung des Sozialismus. Protokoll des VII. Parteitages der SED Vol. I (Berlin, 1967)

131 W. Ulbricht Die gesellschaftliche Entwicklung in der DDR bis zur Vollendung des Sozialismus. Protokoll des VII. Parteitages der SED Vol. I (Berlin, 1967) pp. 95 ff.

132 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1961 - 1971 (Berlin, 1986) p. 130

133 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1961 - 1971 (Berlin, 1986) pp. 130 & 140

134 H. Reinwarth Rechtsprobleme in der Tätigkeit der Schiedskommissionen *Neue Justiz* 2/1968 p. 4 ff

of 12 January 1968, the new Criminal Procedure Order (*Strafprozeßordnung*), an Introductory Law (*Einführungsgesetz*) to both of these and the Law on Breaches of Regulation (*Gesetz über die Ordnungswidrigkeiten*)¹³⁵. Although the reforms represented by those laws had their roots in the VIth SED congress in 1963¹³⁶, the extension they brought about in the range of powers available to the commissions was directly due to the call for involvement made at the VIIth congress. The new criminal law divided crimes into three categories, breaches of regulation (*Ordnungswidrigkeiten*), misdemeanours (*Verfehlungen*) and criminal offences (*Straftaten*), the latter category itself being subdivided into minor offences (*Vergehen*) and full offences (*Verbrechen*). § 28 of the Criminal Code permitted minor offences and misdemeanours to be referred to the commissions, due regard being had to the personality of the wrongdoer and the danger to society of the crime. §§ 31 and 32 of the Law on Breaches of Regulation provided a uniform set of criteria for referral to the commissions of such breaches. At the same time the commissions received powers to impose fines of up to 50 Marks or 150 Marks in the case of offences involving property.

Although legal authority still continued to maintain that the commissions were social in character, this tighter involvement with the criminal law was clearly another factor that brought them into the mainstream of the legal system. The assertion made by a contemporary commentator:

"that the disputes commissions and arbitration commissions as social organs of justice are developing in character more and more into social courts"¹³⁷

was wholly justified.

Formal recognition of this status came when the new constitution of 6 April 1968¹³⁸ came into effect on 9 April 1968. The new constitution had been worked on by a commission formed in December 1967 and which had entered into wide-ranging discussions in the new spirit of popular involvement: every family was said to have received a copy of the draft, and millions were said to

135 GBl. I 1968 Nr. 1 p. 1, GBl. I 1968 Nr. 2 p. 49, GBl. I 1968 Nr. 3 p. 97 and GBl. I 1968 Nr. 3 p. 101

136 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1961 - 1971 (Berlin, 1986) p. 215

137 R. Walther Humanistisches Strafrecht in der deutschen Geschichte *Neue Jusuz* 1/1968 p. 3

138 GBl. I 1968 Nr. 8 p. 199

have participated in discussions¹³⁹.

"Many citizens welcomed the fact that the disputes commissions and arbitration commissions, in the light of their importance as social courts, were to be incorporated directly into the socialist system of the administration of justice"¹⁴⁰.

Article 92 provided:

"Justice is dispensed in the German Democratic Republic by the Supreme Court, the district courts, the area courts and the social courts within the framework of the duties given to them by the law".

The existence of a unified court system was thereby established and the theoretical distinction between state and social organs of justice effectively disappeared. The courts system was firmly established on the basis of democratic centralism¹⁴¹.

However, the mere fact that Article 92 put the commissions on the footing of fully fledged courts and integrated them into the state system did not detract from the fact that they maintained clearly "social" characteristics. Hilde Benjamin continued to describe them in part in traditional social terms:

"The social courts as organs of education and self-education of working people contribute successfully towards the strengthening of socialist legality and towards resolving conflicts between citizens in everyday life"¹⁴²,

while Heinrich Toeplitz expressed the view that whilst members of the commissions exercised judicial functions their status was not that of a judge but had merely substantially approached it¹⁴³.

The Legislation of June 1968

The change in status of the commissions brought about by the constitution demanded new legislation to bring them into line with that new position. This took the form of the Law on the

139 H. Benjamin Zur Geschichte der Rechtspflege in der DDR 1961 - 1971 (Berlin, 1986) p. 131

140 H. Benjamin Zur Geschichte der Rechtspflege in der DDR 1961 - 1971 (Berlin, 1986) p. 131

141 Cf. Chapter VII and D. Müller-Römer Die neue Verfassung der DDR (Cologne, 1978)

142 H. Benjamin Geschichte der Rechtspflege in der DDR 1961 - 1971 (Berlin, 1986) p. 136

143 H. Toeplitz Fragen der Gesetzlichkeit und der Rechtspflege in der neuen sozialistischen Verfassung der DDR *Neue Justiz* 22/1968 p. 328

Social Courts of the German Democratic Republic (*Gesetz über die gesellschaftlichen Gerichte der Deutschen Demokratischen Republik* – "GGG" -) of 11 June 1968¹⁴⁴. For the first time the two separate commissions were subject to the same legislation unifying the basis on which they functioned and their place in the legal system. § 1 GGG 1968 described the social courts (as they were now officially called) as "elected organs of education and self-education of the citizens" (i.e. they were social) but they were also an "integral part of the unified system of socialist administration of justice and of socialist democracy" (i.e. they were part of the state apparatus too). § 2, giving effect to Article 92 of the constitution, stated:

"In their capacity as social courts the disputes commissions and arbitration commissions dispense justice within the framework of the duties given to them by the law".

§ 20 amended § 1(1) of the Courts Law (*Gerichtsverfassungsgesetz*) of 1963¹⁴⁵ accordingly, and § 10 (which had previously dealt with the "social organs of justice") was repealed.

The jurisdiction of the new social courts was set out in § 8 GGG. They were to cover employment disputes (largely dealt with by the disputes commissions), minor offences (*Vergehen*) by referral, misdemeanours (*Verfehlungen*), breaches of regulation (*Ordnungswidrigkeiten*) by referral, breaches of educational duties (e.g. truancy), work-shy behaviour (arbitration commissions only) and simple civil disputes, thereby taking into account the criteria established by the Employment Code of 12 April 1961 (as amended)¹⁴⁶, the new Criminal Code¹⁴⁷ and the Law on Breaches of Regulation¹⁴⁸.

As part of the integration of the courts into the state system of justice, the unions lost their dominant role in the affairs of the disputes commissions, being in future responsible only for

144 GBl. I 1968 Nr. 11 p. 229

145 GBl. I 1963 Nr. 4 p. 45

146 GBl. I 1961 Nr. 5 p. 27

147 GBl. I 1968 Nr. 1 p. 1

148 GBl. I 1968 Nr. 3 p. 101

organizing elections to the disputes commissions (§ 4), the qualification, training and management functions being exercised in future by the Ministry of Justice through the area courts (§ 15). All appeals now lay to the area courts.

Procedure before the two types of commissions was dealt with in complementary legislation, the Decree of the Council of State of the GDR on the Election and Activities of the Disputes Commissions (*Erlaß des Staatsrates der Deutschen Demokratischen Republik über die Wahl und Tätigkeit der Konfliktkommissionen (Konfliktkommissionsordnung "KKO")*) and the Decree of the Council of State of the GDR on the Election and Activities of the Arbitration Commissions (*Erlaß des Staatsrates der Deutschen Demokratischen Republik über die Wahl und Tätigkeit der Schiedskommissionen (Schiedskommissionsordnung "SchKO")*), both of 4 October 1968¹⁴⁹. These decrees were wide ranging compared with their predecessors (the KKO had 71 sections and the SchKO 68) but remained fairly broad in scope, providing a working basis for the practice of the commissions rather than an exhaustive set of procedural rules. However, the very fact that the legislature thought it necessary to consider procedure in greater detail than before and the fact that the commissions were given procedurally oriented powers (such as to punish for contempt and unwarranted failure to appear) emphasizes the coercive and judicial rather than social aspect of the commissions as they were now being perceived. In fact, by this time the "social" aspect can really be said to find expression only in the fact that the judges (still called "members") remained lay people rather than being employed by the state as in the other courts. In all other respects they were firmly part of the state, not only "an integral part of the unified system of the socialist administration of justice", as the constitution put it, but in the words of a contemporary commentator, "an integral part of the power of the socialist state"¹⁵⁰. At a legal conference in 1968, Dr. Heinrich Toeplitz, president of the Supreme Court, said in terms:

"The position of members of social courts has, to a large extent, become in essence closer to that of professional judges"¹⁵¹.

149 GBl. I 1968 Nr. 16 p. 287 & p. 299 respectively.

150 G. Lehmann Theoretische Grundfragen der sozialistischen Rechtspflege *Neue Justiz* 19/1969 p. 606

151 H. Toeplitz Höhere Autorität und neue Qualität in der Arbeit *Die Konfliktkommission Tribüne-Beilage* 47/1968

This position of the social courts in the state and in the legal system was underlined by the emphasis, from 1968 onwards, on the management and direction of the social courts. The increase in the number of courts and members obviously made this desirable in the interests of legal uniformity, though as we shall see in chapter VII the need for firm state control (analogous to the central planning governing the economy) was deemed important in itself in line with the principles of democratic centralism. As early as 6 November 1968 a conference was held in Berlin, attended by chairmen and chairwomen of social courts and representatives of the FDGB, the Berlin courts and the procurator general of Greater Berlin, to discuss future cooperation and to ensure the "uniform management of the social courts"; that conference was merely one of a number that took place throughout the country¹⁵². At a legal conference of the federal executive of the FDGB held on 21 November 1968 "the close cooperation between the social courts and the state courts" was discussed, and the view emerged that although the scope of responsibilities and tasks differed as between the state and social courts, their work had common goals, including "the strengthening and consolidation of our socialist state"¹⁵³. The author of the report of these meetings was at the time a member of the praesidium and secretary to the federal executive of the FDGB. His writing here (and elsewhere at the same time) makes clear that this integration and control was to be achieved to no small extent through the supervision (at least of the disputes commissions) of the trades unions¹⁵⁴. The process of integration of the social courts into the state system (described, euphemistically, as "the interwovenness of state and social reactions" ("das Ineinander-verflochten-sein staatlicher und unmittelbar gesellschaftlicher Reaktionen")) was seen as placing a burden on the state administration of justice, other state organs, academics and the trades unions¹⁵⁵. "The working in common of state and social courts"¹⁵⁶ was portrayed as part of

152 H. Toeplitz Die grundlegenden Aufgaben der Gerichte bei der Verwirklichung der sozialistischen Verfassung *Neue Justiz* 2/1969 p. 36. A more detailed report can be found in *Der Schöffe* 1968 pp. 377 ff

153 H. Heintze Gewerkschaften und sozialistisches Recht *Neue Justiz* 7/1969 pp. 197-198

154 H. Heintze Unser Recht - Bestandteil der Leistungstätigkeit *Die Konfliktkommission Tribüne - Beilage* 4/1968 p. 1 ff H. Heintze Gewerkschaften, Konfliktkommissionen und die weitere Gestaltung des sozialistischen Rechts *Arbeit und Arbeitsrecht* 2/1969 p. 49 ff.

155 F. Posorski Die verfassungsmäßige Stellung der gesellschaftlichen Gerichte *Neue Justiz* 8/1969 p. 230

156 F. Posorski Die verfassungsmäßige Stellung der gesellschaftlichen Gerichte *Neue Justiz* 8/1969 p. 230

Walter Ulbricht's developed social system of socialism ("entwickeltes gesellschaftliches System des Sozialismus") and the inevitable product of a process of involvement (*Einbeziehung*), the democratization and unification of state and people that had been going on for some time.

"The new law on the social courts represents a synthesis of what has been achieved so far and new tasks to be achieved"¹⁵⁷.

The triumph of the dirigiste approach to lay justice is most clearly brought home in an extended article by Felix Posorski in *Neue Justiz* in 1969 on the constitutional position of the social courts in the light of the 1968 legislation¹⁵⁸. In it Posorski discusses the antithesis of state and society, and describes the East German experience as one of the uniform and parallel development of state and social organs. This did not, in his view, mean that the social courts came below the area courts in the legal pecking order¹⁵⁹; indeed the social courts needed to be integrated, but at the same time to maintain their independent character suited to their special tasks, namely the political, ideological and propogandistic conversion of society as a whole to law and order, an extension of the tasks of the state organs of justice. The social courts were, in fact, part of a whole, for the developed social system of socialism that had been attained knew no dichotomies. An article in *Neues Deutschland* (20 Jahre Deutsche Demokratische Republik) neatly summarized the position that had allegedly been reached by 1969:

"The essential element in the developed social system of socialism is that all sides of the social process are understood and grasped in their dependence, their being interwoven and at one with each another ... The developed social system is a grand harmonic whole"¹⁶⁰.

Thus the emphasis on increased support and direction for the social courts that followed the 1968 legislation and which manifested itself in events such as the signing of cooperation agreements in Cottbus and Gera between the FDGB, the procurator's office, the local state courts and the

157 F. Posorski Die verfassungsmäßige Stellung der gesellschaftlichen Gerichte *Neue Justiz* 8/1969 p. 231

158 F. Posorski Die verfassungsmäßige Stellung der gesellschaftlichen Gerichte *Neue Justiz* 8/1969 pp. 229-233 and pp. 295-298

159 F. Posorski Die verfassungsmäßige Stellung der gesellschaftlichen Gerichte *Neue Justiz* 8/1969 p. 298

160 *Neues Deutschland* (Ausgabe B) 16.1.1969 p. 5 col. 1

commissions and a conference between state and social courts in Erfurt in July 1969¹⁶¹ is ambiguous. It highlights on the one hand a proper desire to see that the social courts should receive the administrative and jurisprudential support necessary for them to function in their new role as part of the legal system proper, but on the other hand a need to tame and control. The need for this cooperation was felt to be sufficient to warrant the passing of subsidiary legislation in the form of guidelines or directions from the Supreme Court, such as the *Richtlinie des Plenums des Obersten Gerichts zum Zusammenwirken der Gerichte mit den Schiedskommissionen*¹⁶² and *Beschluß des 22. Plenums des Obersten Gerichts zur Neufassung des Beschlusses des 18. Plenums des Obersten Gerichts vom 27 März 1968 zur Zusammenarbeit der Gerichte mit den Konfliktkommissionen auf dem Gebiet des Arbeitsrecht*¹⁶³. A similar resolution in relation to the disputes commissions had been passed by the Supreme Court in March 1968 following a plenary session of the court¹⁶⁴, but the emphasis had been on the field of employment disputes. The president of the Supreme Court, Heinrich Toeplitz, addressing the plenum on 19 March, emphasized

"that it is not just a matter of bringing the resolutions of the 17th and 18th plenary sessions of the Supreme Court into line with the laws passed since, but of a new quality of responsibility on the part of the Supreme Court and of the area and district courts towards the social courts [now that they are] integrated into the legal system"¹⁶⁵.

A large proportion of both the Guideline and the resolution deal with purely procedural points, guiding the commissions on the exercise of their powers, and resemble the familiar Practice Directions of the English courts rather than having the appearance of seeking to achieve an intrusive level of state control.

161 H. Toeplitz Grundsätzliche Aufgaben der Gerichte beim weiteren Ausbau der wissenschaftlichen Leitung der Rechtsprechung *Neue Justiz* 19/1969 p. 589

162 Richtlinie Nr. 26 vom 19. März 1969 *Neue Justiz* 8/1969 pp. 242-249 and GBl. II 1969 Nr. 28 p. 179

163 Beschluß vom 19 März 1969 *Neue Justiz* 8/1968 pp. 249-254

164 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1961-1971 (Berlin, 1980) pp. 146-147

165 Neue Leitungsdokumente des Obersten Gerichts für das Zusammenwirken mit den gesellschaftlichen Gerichten *Neue Justiz* 8/1969 p. 241

The 21st plenum had met on 15 December 1968 and formulated a fresh version of *Richtlinie Nr. 19* of 15 September 1969 (on § 44 AGO and the levying of execution on decisions of disputes commissions)¹⁶⁶. Since these documents all dealt with procedural matters in a procedural way, it was decided on 7 May 1969 (as a result of discussions between the Supreme Court and the FDGB) to formulate one guideline dealing with all aspects of the work of the disputes commissions, a task committed to the 26th plenary session of the Supreme Court of 25 March 1970¹⁶⁷ and which resulted in the passing of Guideline No. 28 (*zum Zusammenwirken der Gerichte mit den Konfliktkommissionen*) of 25 March 1970¹⁶⁸. On the same day Guideline No. 29 (*des Plenums des Obersten Gerichts zur Anwendung der §§ 112 ff. GBA*)¹⁶⁹ was passed giving detailed guidance, again on certain employment law provisions.

This process of integration between state and social institutions was a manifestation of the idea of "system-thinking" (*System-Denken*) propounded by the SED at the XIIth meeting of the Central Committee. The central theme of *System-Denken* appears to have been the need to see problems and functions as part of a whole rather than in isolation¹⁷⁰, a theme taken up by Honecker and Stoph at the XIVth plenary session of the Central Committee in 1970.

"In all our efforts it is necessary to make supervision an integral part of the process of leadership. It should be intimately bound up with the concrete management and help of state and economic organs, combines and enterprises with a view to their carrying out their tasks of developing socialist patterns of behaviour"¹⁷¹.

If the tendency of these moves was towards integration, however, the traffic was not to be one way. The deputy procurator general, Wendland, made clear to the 26th plenary session of the Supreme Court that the state courts had to be open to the influence of the social courts ("[he]

166 GBl. II 1969 Nr. 8 p. 75

167 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1961-1971 (Berlin, 1980) p. 147

168 GBl. II 1970 Nr. 36 p. 251

169 GBl. II 1970 Nr. 3 p. 267

170 Cf. W. Ulbricht Grundlegende Aufgaben im Jahre 1970 (Berlin, 1969) p. 9

171 W. Stoph Zum Entwurf des Volkswirtschaftsplanes 1971 (Berlin, 1970) p. 43

underlined the necessity of recognizing the knowledge and experience of the disputes commissions in all areas of their activity..."¹⁷². The social courts may have become by the late 1960s and early 1970s part and parcel of East Germany's system of justice, but by their very growth (and apparent success) they had also gained widespread respect.

The 1970s

As we have seen, by the late 1960s the social courts were an "integral part of the uniform system of the administration of justice"¹⁷³. The emphasis in their use, however, had changed so that they were seen not so much as a part of the courts system, but as a sort of social agency acting as much in a pre-emptive as a judicial way. The emphasis in the 1970s appears to have been on two aspects of law and life in the GDR in relation to the future role of the social courts: first, the continuing role of the state and second, the imposition of order, discipline and safety (*Ordnung, Disziplin, Sicherheit* — occasionally supplemented by cleanliness — *Sauberkeit*). A number of factories and enterprises began in the early 1970s to institute internal campaigns¹⁷⁴, apparently in an attempt to improve productivity, for 1971 saw the start of another Five Year Plan arising directly out of the VIIIth party congress¹⁷⁵. Reports of the VIIIth party congress (14 — 15 June 1971) bristle with references to the leading role of the state and the importance of maintaining "the unified system of state organs"¹⁷⁶. Honecker, at the VIIIth party congress, underlined how necessary it was to increase productivity:

"I should like to emphasize once again that the effectiveness of the socialist economic system is measured by how it contributes towards leading millions of working people in accordance with the democratic principles of our social order to

172 Bericht über die 26. Plenartagung des Obersten Gerichts *Neue Justiz* 9/1970 p. 264; cf. too *Neue Justiz* 21/1971 pp. 631-638 on the 32nd meeting of the Supreme Court

173 K. Wünsche Zur Wahl der Richter und Schöffen der Kreisgerichte sowie der Mitglieder der Schiedskommissionen *Neue Justiz* 2/1970 p. 35

174 One such at VEB Chemische Werke Buna is described by its general director, O. Bärwinkel in Vorbildliche Ordnung und Sicherheit - Voraussetzung für eine kontinuierliche Planerfüllung *Neue Justiz* 5/1976 p. 131

175 J. Streit Der VIII. Parteitag der SED - ein bedeutender Markstein beim sozialistischen Aufbau der DDR *Neue Justiz* 14/1971 p. 409

176 F. Müller/K. Schulze Gedanken zur Wirksamkeit der sozialistischen Rechtspflege *Neue Justiz* 1/1972 pp. 1-5

high levels of productivity at work ... ¹⁷⁷.

Winning over the working masses was essential if the required economic standards were to be achieved, and the social courts, it was reaffirmed, would have a vital role to play in this respect¹⁷⁸.

At the same time the progress of the social courts under the unified 1968 legislation was considered at the 32nd plenum of the Supreme Court in September 1971. The view expressed was positive, not only it seems in political terms, but also in the eyes of the state courts. A report of proceedings at the 32nd plenum states:

"The [state] courts are recognizing more and more that the social courts have a significant part to play in giving effect to citizens' rights, preserving the law and thereby improving and furthering legal consciousness"¹⁷⁹

- a remark that is significant in that it implicitly conceded the existence of some tension between the state and social courts that had been (or by September 1971 was being) largely overcome. A report of the plenum from an actual member of a disputes commission (KK-Vorsitzende Stubbe of VEB Kombinat NARVA, Berlin) confirmed the view that had justified the passing of the 1968 legislation:

"the social courts, by reason of their trained work, enjoy the respect and trust of the population and are making a great contribution to the education of the people into conscious citizens"¹⁸⁰.

Positive evaluation of the work of the commissions was a constant theme in the literature of the 1970s. It is unlikely (and it would be unfair to assume) that this was mere propaganda to boost a deficient legal system, the main strength of which lay in enabling state control to permeate society. The assessments seem genuine and were frequently coupled with positive criticism. If the

177 Bericht des Zentralkomitees an dem VIII. Parteitag der SED (Berlin, 1971) p. 56

178 R. Schindler/H. Pompos Recht und Rechtsordnung in der Deutschen Demokratischen Republik *Neue Justiz* 12/1971 pp. 345-348

179 Zu Fragen der Leitung der Tätigkeit der gesellschaftlichen Gerichte durch die Kreis- und Bezirksgerichte *Neue Justiz* 21/1971 p. 632

180 Bericht über die 32. Plenartagung des Obersten Gerichts *Neue Justiz* 21/1971 p. 644

general functioning of the disputes commissions in employment cases was held to be satisfactory, for example, it did not necessarily imply that a "higher level of effectiveness" was not necessary¹⁸¹. However, the positive attitude of the authorities towards the work of the disputes commissions must have been genuine, as it was endorsed by a further extension of their jurisdiction to take in certain disputes under the innovators' legislation, in particular under the Innovators' Order (*Neuererverordnung*) of 22 December 1971¹⁸².

The growing authority of the arbitration commissions was also recognized. The reaction of local authorities to recommendations made by arbitration commissions was seen as a sign, "that the arbitration commissions are enjoying authority as social courts"¹⁸³. A resolution of the praesidium of the Supreme Court on the Limitation Period for Fines and Penalties imposed by Social Courts (*Beschluß des Präsidiums des Obersten Gerichts über die Verjährung der von gesellschaftlichen Gerichten ausgesprochenen Geldbuße oder Ordnungstrafe*) passed on 6 June 1972¹⁸⁴ served not only to clarify confusion over when a fine or penalty imposed by a social court became time barred, but by fixing the limitation period as two years, added further to the authority of the social courts.

These positive assessments did not, however, mean that the social courts were free from criticism. The 1970s also saw a growing need for a proper evaluation of their work and of the need for them to be properly managed or directed and integrated into the fabric of state and society through the other organs of power. The role of the advisory councils (*Beiräte*) for the arbitration commissions

181 Zur Erhöhung der Wirksamkeit der Rechtsprechung auf dem Gebiet des Gesundheits- und Arbeitsschutzes *Neue Justiz* 12/1972 p. 351 ff

182 GBl. II 1972 Nr. 1 p. 1

183 W. Brunner Zur Einbeziehung der Erfahrungen der Schiedskommissionen in die Leitungstätigkeit der örtlichen Organe im Bezirk Potsdam *Neue Justiz* 16/1972 p. 483

184 Beschluß des Präsidiums des Obersten Gerichts über die Verjährung der von gesellschaftlichen Gerichten ausgesprochenen Geldbuße oder Ordnungstrafe *Neue Justiz* 12/1972 p. 377

(established in 1968) came to greater prominence¹⁸⁵; the need for cooperation between popular representative bodies, the organs of the administration of justice and the police was widely discussed¹⁸⁶. The 7th plenary session of the Supreme Court (on 20 June 1973) devoted time to discussing the role of the disputes commissions, considered that greater use should be made of recommendations, and emphasized again the role of justice in the economy: Vice President Siegert reminded those gathered that much had been achieved where (state) managers and society worked together, and reminded his listeners, "The task is now one of using the law in an even more concerted way than before to meet economic targets"¹⁸⁷. No doubt a great deal of this co-operation and control was both positive and necessary to legal uniformity, but much of this emphasis following the increased role of the social courts and their growing numbers after 1968 must also be attributed to the need to assert state control over society as part of an attempt to grasp the problems of an ailing economy. As Dr. Josef Streit (in his capacity as procurator general) wrote in 1973, recalling the policy of Stalin, "In a developed socialist society the role of the power of the socialist state grows"¹⁸⁸. State and social courts were firmly on the same course¹⁸⁹. An academic *imprimatur* was given to the idea of state supremacy at an important conference held under the auspices of the Institut für Theorie des Staates und des Rechts at the Akademie der Wissenschaften der DDR and the Akademie für Staats- und Rechtswissenschaft der

185 See, for example, R. Winkler/I. Tauchnitz/U. Gebert Einheitliche Ordnung für die Schiedskommissionsbeiräte *Neue Justiz* 16/1973 p. 469 ff. Note also that on 7 May 1973 the Erste Durchführungsbestimmung zur Schiedskommissionsordnung über die Stellung, die Aufgaben und die Arbeitsweise der Beiräte für Schiedskommissionen bei den Direktoren der Kreisgerichte und bei den Präsidien der Bezirksgerichte (GBl. I 1973 Nr.29 p. 288) came into force to remedy what was felt to be a defect - the failure of the arbitration commissions adequately to cooperate with the area and district courts

186 See, for example, J. Streit Zusammenarbeit der Staatsanwaltschaft mit den örtlichen Volksvertretungen und ihren Organen bei der Festigung der sozialistischen Gesetzlichkeit *Neue Justiz* 16/1973 p. 465 ff

187 Bericht über die 7. Plenartagung des Obersten Gerichts *Neue Justiz* 15/1973 p. 449. See also the comprehensive report of the Supreme Court's views on the disputes commissions in Probleme der Wirksamkeit der Rechtsprechung der Konfliktkommissionen *Neue Justiz* 15/1973 p. 442 ff. The article criticizes certain aspects of the commissions' work but generally gives a positive evaluation and again emphasizes that managers and state courts can learn from them (see p. 443). This point was also brought home in 1974 with the Beschluß über die Verbesserung der Rechtsarbeit in der Volkswirtschaft vom 13.6.1974 (GBl. I 1974 Nr. 32 p. 313). Cooperation was to be directed "vorrangig auf Maßnahmen, die der planmäßigen Produktion dienen" W. Haring Zusammenarbeit der Gerichte und Betriebe zur Festigung der Gesetzlichkeit *Neue Justiz* 5/1978 p. 193

188 J. Streit Zusammenarbeit der Staatsanwaltschaft mit den örtlichen Volksvertretungen und ihren Organen bei der Festigung der sozialistischen Gesetzlichkeit *Neue Justiz* 16/1973 p. 465

189 Staatliche Gerichte und Konfliktkommissionen steuern gleichen Kurs *Arbeit und Arbeitsrecht* 7/1973 pp. 187-189

DDR between 24-25 June 1974. The theme of the conference was "State, Law and Democracy in the Shaping of a Developed Socialist Society" (Staat, Recht und Demokratie bei der Gestaltung der entwickelten sozialistischen Gesellschaft), and drawing on the XXIVth party congress of the USSR communist party and the VIIIth party congress of the SED it affirmed "the growing importance of the whole political system of socialism ..., including the growing role of the socialist state and its law"¹⁹⁰.

If the early 1970s were years spent largely in consolidating the position of social courts — in emphasizing their role in maintaining discipline, in spreading respect for the law and in ensuring that state control was maintained through democratic institutions — from about 1976 onwards, the social courts were seen as having lived up to the demands placed on them under the 1968 legislation, and attention turned to entrusting them with further tasks. The IXth party congress of the SED held in May 1976, whilst continuing to emphasize the role of the state ("the socialist state is the main instrument of political organization of the working class and is connected in the most intimate sense with the other elements of political organization"¹⁹¹) also appears to have raised for the first time since the late 1960s the possibility of extending the scope of lay justice¹⁹². There is in the literature of the time a slight softening of the emphasis on the state. Thus, Harri Harrland writing in *Neue Justiz* in 1977 described the commissions as "elected organs of education and self-education of the working people"¹⁹³, recalling earlier formulations and emphasizing their social rather than "court-like" qualities, and in 1976 in his book Staat, Recht und Demokratie nach dem IX. Parteitag der SED Dr. Klaus Sorgenicht was able to state, "The political organization of socialist society comprises more than the state ... "¹⁹⁴.

190 W. Weichert Die ständige Vertiefung der sozialistischen Demokratie - grundlegende Gesetzmäßigkeit sozialistischer Staats- und Rechtsentwicklung *Neue Justiz* 16/1974 p. 477

191 E. Buchholz Die Bedeutung des IX. Parteitages der SED und des XXV. Parteitages der KPdSU für die Staats- und Rechtswissenschaft der DDR *Neue Justiz* 15/1976 p. 443

192 E.Körting Grundtendenzen in der Entwicklung der gesellschaftlichen Gerichte der DDR *Jahrbuch für Ostrecht* Vol. 22 1/1981 p. 113; H. Harrland Die Unterstützung der Konfliktkommissionen durch die Staatsanwaltschaft *Neue Justiz* 18/1977 p. 629

193 H. Harrland Die Unterstützung der Konfliktkommissionen durch die Staatsanwaltschaft *Neue Justiz* 18/1977 p. 628

194 K. Sorgenicht Staat Recht und Demokratie nach dem IX. Parteitag der SED (Berlin, 1976) p. 42

Moves to restore the status of the Soviet comrades' courts were also afoot in the USSR. On 8 February 1977 the praesidium of the Supreme Soviet met to consider further improving the functioning of the comrades' courts¹⁹⁵, and a new statute on the comrades' courts was passed on 11 March 1977¹⁹⁶. Not only were these moves reported in the GDR¹⁹⁷, but it is clear that GDR legal thinking at the time was still greatly influenced by that in the USSR¹⁹⁸.

By a resolution of the Council of State of the GDR of 1 June 1978¹⁹⁹ the period of office for arbitration commission members was extended, and considerable trouble was taken publicly to celebrate 15 years of the work of the arbitration commissions. On 27 June 1978 the Ministry of Justice held a solemn ceremony at which a number of members were honoured²⁰⁰. Members of disputes commissions had been similarly honoured at an FDGB ceremony on 13 April 1978²⁰¹. Both occasions were sufficiently important to receive not merely textual but also photographic coverage in the reports in *Neue Justiz*, a rarity, as readers of the publication will be only too well aware.

In October 1978 meetings took place between working parties of the constitutional and legal committee of the People's Chamber and a number of experts and members to consider the working of the arbitration commissions in Wolgast and Greifswald and arbitration commissions at VEB Edelstahlwerk "8 Mai 1945" in Freital to consider whether the powers and jurisdiction of

195 N. Bashkatov The New Statute on Comrades' Courts *Soviet Law and Government* 1/1978 p. 44

196 *Sotsialisticheskaya zakonnost'* 6/1977 pp. 20-23

197 See, for example, O. Iwanow/K. Schematowa Beratung von Vermögensstreitigkeiten durch Kameradschaftsgerichte *Neue Justiz* 9/1978 pp. 391-392

198 Buchholz's article (note 191 above) explicitly links the IXth party congress of the SED and the XXVth of the communist party, and in October 1976 a friendship, cooperation and mutual support treaty had been signed between the GDR and the USSR (GBI. 1975 II p. 237)

199 GBl. I 1978 Nr. 16 p. 185

200 A. Seliger 15 Jahre Arbeit der Schiedskommissionen *Neue Justiz* 8/1978 p. 332

201 H. Heintze 25 Jahre erfolgreiche Arbeit der Konfliktkommissionen *Neue Justiz* 5/1978 p. 190

social courts should be increased²⁰². Various suggestions were made on how to improve the effectiveness of the arbitration commissions, including an extension of jurisdiction to simple civil and money claims, the evening out of guidelines for the imposition of educational measures, the extension of conciliatory or mediatory powers, and increased powers to monitor the carrying into effect of commission decisions. These suggestions were expressed as having come from the commissions themselves²⁰³. Similar research was undertaken in February 1980 when four working parties appointed by the same committee met in Demmin, Wittenberg, Karl-Marx-Stadt (as it then was) and Prenzlau to consider the views and experiences of social court members with a view "to enhancing further the effectiveness of the social courts"²⁰⁴. The working parties reported to the committee on 18 April 1980 and began formal discussions with the National Front, the FDGB and the Ministry of Justice with a view to preparing new legislation. The general body of legal opinion had established by the late 1970s that the social courts were not only effective²⁰⁵ but at least in one field (employment law) were "indispensable helpers" ("unentbehrliche Helfer")²⁰⁶. At the IXth SED party congress a clear intention was expressed to widen the powers of the social courts²⁰⁷.

The 1982 Legislation

On 17 October 1980 a further conference was held, this time in Dresden, to consider increasing the powers of the arbitration commissions. A measure of its importance can be gained from the fact that, apart from being attended by 365 commission chairmen, also present were Dr. H. Kern

202 G. Steffens Erfahrungen zur Wirksamkeit der Schiedskommissionen *Neue Justiz* 1/1979 pp. 25-26; M. Strehmel Wirksamkeit der gesellschaftlichen Gerichte weiter im Blickfeld (Aus der Tätigkeit der Volkskammer-Abgeordneten) *Arbeit und Arbeitsrecht* 3/1979 pp. 138-139

203 G. Steffens Erfahrungen zur Wirksamkeit der Schiedskommissionen *Neue Justiz* 1/1979 pp. 25-26

204 K. Dukes Wirksamkeit der gesellschaftlichen Gerichte und künftige Erweiterung ihrer Rechte *Neue Justiz* 6/1980 p. 260

205 See, for example, H. Grieger / F. Posorski Entwicklung und Wirksamkeit der gesellschaftlichen Gerichte *Neue Justiz* 5/1979 p. 204 and G. Kirschner Konfliktkommissionen verwirklichen Gesetzlichkeit im Arbeitsrecht *Neue Justiz* 6/1979 pp. 252-253

206 S. Sahr Wahl der Konfliktkommissionen - ein Höhepunkt gewerkschaftlicher Rechtsarbeit *Neue Justiz* 1/1980 p. 12

207 H. Grieger/F. Posorski Entwicklung und Wirksamkeit der gesellschaftlichen Gerichte *Neue Justiz* 5/1979 p. 206

(secretary of state at the Ministry of Justice) and G. Opitz (a member of the praesidium and of the secretariat of the National Front) as well as a number of court directors²⁰⁸. Whilst the arbitration commissions were still apparently not regarded as "indispensable", Dr. Kern praised their "high standing in society"²⁰⁹. The conference was held (so *Neue Justiz* reports) specifically for the run up to the Xth party congress with a view to considering how the arbitration commissions could play an even greater part in society. It was followed by a conference on the state and legal theory in November 1980 in Kleinmachnow, again held to prepare the ground for the coming party congress²¹⁰. The report of that conference makes clear that state and society were to continue to be inextricably linked; greater emphasis on democracy was not to detract from the doctrine of democratic centralism, and the role of the law in the economy continued to be stressed. That any increase in power to social institutions was not to mean any relaxation of the power of the state was made plain by Erich Honecker at the third session of the central committee of the SED in 1981:

"For our party the all round strengthening of the socialist state is and remains the principal question of the revolution. The citizens of our Republic know: without a strong and well functioning socialist state there is no socialism. Only such a state can guarantee the realization of the basic interests of the working class and of all working people, and ensure socialist democracy, freedom and humanity"²¹¹.

At the Xth party congress itself (11-16 April 1981) a great deal of time was given to the need to improve the quality of justice generally²¹², and in spite of the need to maintain state control (or perhaps because of it), increased democratization was to be achieved partly through greater emphasis on the work of the social courts²¹³. The numerical development in the social courts

208 K. Dukes Schiedskommissionskonferenz in Dresden *Neue Justiz* 12/1980 pp. 566-568

209 K. Dukes Schiedskommissionskonferenz in Dresden *Neue Justiz* 12/1980 p. 567

210 G. Schüssler Die Rolle des Staates und seines Rechts bei der weiteren Gestaltung der entwickelten sozialistischen Gesellschaft *Neue Justiz* 2/1981 pp. 50-53 (cf. too D. Seidel/H. Gold Wissenschaftliche Konferenz über die Rolle der sozialistischen Staates und Rechts *Neue Justiz* 2/1981 pp. 75-79)

211 E. Honecker Aus dem Bericht des Politbüros an die 3. Tagung des Zentralkomitees der SED (Berlin, 1981) p. 49 and *Beilage zu Neue Justiz* 1982 pp. I-VI

212 H. Kern/G. Sarge Die Aufgaben der Gerichte nach dem X. Parteitag der SED *Neue Justiz* 7/1981 pp. 290-292

213 H. Kern/G. Sarge Die Aufgaben der Gerichte nach dem X. Parteitag der SED *Neue Justiz* 7/1981 p. 292 & H. Grieger/F. Müller Sozialistische Demokratie und gesellschaftliche Gerichte *Neue Justiz* 4/1981 pp. 160-162

system made them an obvious tool to assist the state in combatting crime and anti-social behaviour and instilling respect for the law²¹⁴: by 1981 there were 26,282 disputes commissions in the GDR with 233,365 members and some 5,000 arbitration commissions dealing with over 84,000 hearings each year²¹⁵.

Following the decision at the Xth party congress to increase the part played by the social courts in the legal system, at the 10th Congress of the FDGB a new guideline was formulated (on 14 August 1981) dealing not only with the future regarding elections to the disputes commissions but establishing the way in which the trades unions could better assist the disputes commissions²¹⁶. It is difficult to see the need for this step, given that elections had been taking place for some time and the role of the trades unions in relation to the commissions had already been well established and that at the fourth session of the central committee of the SED the decision had already been taken to submit new legislation for consideration. Fresh legislation was indeed drafted and the issues raised by it opened up for general discussion. We are told, in fact, that the new draft laws were discussed with "thousands of trade union workers and disputes commission members"²¹⁷ before becoming law in the form of the Social Courts Law of 25 March 1982²¹⁸ and the Disputes Commissions Order and Arbitration Commissions Order both of 12 March 1982²¹⁹. The Law itself only came into force on 1 January 1983²²⁰ allowing all concerned some 9 months to gear up for the wider powers and responsibilities afforded²²¹. The authority of the

214 J. Streit Dem XI. Parteitag der SED entgegen: Auf festen Grundlagen in die achtziger Jahre *Neue Justiz* 1/1981 pp. 2-4

215 H. Harland Unterstützung der gesellschaftlichen Gerichte durch die Staatsanwaltschaft *Neue Justiz* 1/1983 p. 11

216 Informationsheft des FDGB 4/1983

217 Referat von H. Heintze in Rechtskonferenz des FDGB-Bundesvorstandes zur Rechtsarbeit der Gewerkschaften *Neue Justiz* 1/1983 p. 4

218 GBl. I 1982 Nr. 13 p. 269

219 GBl. I 1982 Nr. 13 p. 274 & p. 283

220 § 36 GGG

221 An example of such preparations undertaken in Kreis Nersberg is reported on in *Neue Justiz* 9/1982 pp. 416-417 - lectures and training

social courts in the legal systems had been given a further stamp of state and popular approval by the passing of the new legislation. Although less weight should be attached to the reporting of cases than in a common law system, it is significant that in 1982 the first reported decision of a disputes commission appeared in *Neue Justiz*²²².

After 1982 the social courts enjoyed a period of stability but not of growth²²³, the only legislation directly affecting them being two amendments to the Disputes Commissions Order and Arbitration Commissions Order passed on 3 March 1989²²⁴ which increased jurisdiction by reference to the value of claims relating to crime against property from 50 Marks to 100 Marks and increased the limit of fines from 150 Marks to 300 Marks in certain cases. It seemed, by the late 1980s, that the social courts were to be a permanent feature of a country that also looked as if it were there to stay.

222 Beschluß der KK des VEB R. vom 6. August 1981 *Neue Justiz* 9/1982 pp. 423-424. The case itself concerned four workers who got drunk and failed to turn up twice in time for a 10 pm shift; the commission ordered them to pay damages of 6,807 Marks. It is hard to see whether any real new principle of material responsibility was established by the decision, and it seems likely therefore that printing details of the decision (accompanied by an editorial commentary) was attributable to a desire to bolster the prestige of the commissions in the run-up to the new legislation coming into force.

223 Cf. Appendix D tables 1 & 2

224 Beschluß des Staatrates der Deutschen Demokratischen Republik zur Änderung des Beschlusses des Staatrates der Deutschen Demokratischen Republik über die Tätigkeit der Konfliktkommissionen - Konfliktkommissionsordnung - vom 3. März 1989 (GBl. I Nr. 8 p. 117) and Beschluß des Staatrates der Deutschen Demokratischen Republik zur Änderung des Beschlusses des Staatrates der Deutschen Demokratischen Republik über die Tätigkeit der Schiedskommissionen - Schiedskommissionsordnung - vom 3. März 1989 (GBl. I Nr. 8 p. 118)

Chapter III

The Formation and Constitution of the Social Courts

Types of Social Courts

As we have seen, the social courts grew up in two forms, disputes commissions and arbitration commissions. The term "social courts" was a designation for the two types of commission and only came into use when the two types of commission were brought together under the umbrella of one piece of legislation after which they shared this common description¹. Both types of social court were governed by the same Social Courts Law of 1982 (*Gesellschaftliches Gerichtsgesetz* generally abbreviated to "GGG")² and by similar subsidiary legislation in the form of the Disputes Commissions Order (*Konfliktkommissionsordnung*, "KKO")³ and the Arbitration Commissions Order (*Schiedskommissionsordnung* "SchKO")⁴. The two Orders contained broadly similar regulations on jurisdiction, procedure and other operational points, but the principal difference between the two commissions concerned the area in which they operated, the workplace in the case of the disputes commissions and the community in the case of the arbitration commissions.

Areas of Operation

At the root of the ideas that governed the setting up of the social courts was the aim to dispense justice at or close to the place where injustice arose or wrong was done and in doing so to dispense justice swiftly. The existence of tribunals at the workplace and in the very areas where people lived their daily lives was intended to give the administration of justice an immediate impact. Thus the Law made it an obligation to establish disputes commissions at factories,

1 § 1(1) Gesetz über die gesellschaftlichen Gerichte

2 See translation Appendix A pp. 230-243

3 See translation Appendix A pp. 244-268

4 See translation Appendix A pp. 269-294

enterprises and similar institutions and concerns and to establish arbitration commissions in the towns and communities and in producers' cooperatives⁵. Disputes commissions had, at least in theory, to be set up in places of work where there were more than 50 staff⁶, with one commission covering no more than 300 employees. Commissions could also be formed in concerns with less than 50 staff provided there was a trades union organization there⁷. They could also be formed in agricultural and horticultural producers' cooperatives "in accordance with social requirements", but again subject to the presence of a trades union⁸. No guidance was provided by the legislation as to what was meant by "social requirements", but since the only restriction imposed was the need for a trades union presence (which was important for a number of reasons dealt with later), it may safely be assumed that the desire to form a commission would have sufficed. The requirement that each commission was to cover no more than 300 employees appears to have been broadly adhered to and regarded as a matter of some importance since too large an area of operation constituted not only a breach of the legislation but detracted from the effectiveness of the commissions, not so much in relation to any hearings but in relation to their educational and propaganda role in the work collectives⁹.

It would seem that in general the aim of having one disputes commission for no more than 300 workers was in fact realized. By the end of 1989 the GDR had a total work-force of 8,547,300¹⁰ and 29,290 disputes commissions¹¹, an average of one commission for every 292 workers. However, some commissions were small, and especially in rural areas a single commission would have had to cover many workplaces and well over 300 persons. Thus, for example, one commission

5 §§ 4(1) and 5(1) GGG

6 § 4(1) GGG

7 § 4(3) GGG

8 § 4(2) GGG

9 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p.10

10 Staatliche Zentralverwaltung für Statistik Statistisches Jahrbuch der DDR 1990 (Berlin, 1990)

11 I. Matheus, Ministry of Justice of GDR. Interview, 28.8.1990

in Aue, in the Erzgebirge, was responsible for 2,800 staff in a range of locations¹².

If an enterprise had less than 50 employees, a disputes commission could be formed by a resolution of the trades union branch¹³. The close link with the unions is also apparent from the recommendation that, so far as possible, the units on which commissions were based should correspond to trades union groups or branches¹⁴.

Arbitration commissions were permitted to cover a wider base, with one commission covering no more than 8,000 residents¹⁵. The level of penetration of the arbitration commissions was never as great as that of the disputes commissions, perhaps because they had a later start, or perhaps because the dominance of the workplace over the residence prevailed in political and legal thinking, but by 1989 there were 5,787¹⁶ arbitration commissions for a total population of 16,434,000¹⁷, about one for every 2,840 inhabitants, on average well within the declared objectives of the legislation.

The legislation placed greater emphasis on the formation of commissions by reference to numbers of people rather than by reference to territory. However, in practice the disputes commissions were formed to cover an area or areas within an enterprise or institution by a process of consultation between management and unions, regard being had to the existence of teams, groups, collectives or other convenient divisions. In larger enterprises commissions were formed even by reference to different shifts¹⁸.

12 E. Krebs, disputes commission chairman, Aue. Interview 28.6.1989

13 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p.10

14 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p.10

15 § 5(2) GGG

16 I. Matheus, Ministry of Justice of GDR. Interview 28.8.1990

17 Staatliche Zentralverwaltung für Statistik Statistisches Jahrbuch der DDR 1990 (Berlin, 1990)

18 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) pp.10-11

The position was slightly clearer in relation to the arbitration commissions. The area, municipal and borough councils had power to determine the areas in which commissions would operate by reference not only to the number of inhabitants but also by taking into account ease of access and transport facilities¹⁹. They determined the areas in cooperation with the National Front of the GDR²⁰. It was generally felt desirable that the area covered by an arbitration commission should correspond to an electoral ward²¹, although in sparsely populated areas it was accepted that one commission might have to serve more than one community. Accessibility was always the predominant criterion:

"Citizens should be able to enforce their rights before the arbitration commissions without difficulties or it taking a great deal of time... The chairman and the members need to have close contact with the citizens to be effective in their preventative functions. Their work in resolving legal problems and in preparing for hearings should be capable of being done without too much expense (e.g. because of long journeys)"²².

The legislation therefore made provision for new commissions to be created where there was an increase in the population in a particular area²³.

The Selection and Election of Members

Article 95 of the constitution of the GDR²⁴ stated:

"All judges, assessors, and members of the social courts shall be elected by the local authorities or directly by the citizens. They shall report on their work to their electors. They may be removed from office by their electors if they act in breach of the constitution or the law or are otherwise in breach of their duties".

This provision was reflected in the Law on the Social Courts²⁵. However, it was not any citizen who could be elected to serve as a member: there were statutory restrictions on membership and

19 § 5(2) GGG

20 § 5(3) GGG

21 G. Chaluppecky and others Leitfaden für Schiedskommissionen (Berlin, 1987) p.13

22 G. Chaluppecky and others Leitfaden für Schiedskommissionen (Berlin, 1987) p.13

23 § 5(3) GGG

24 Verfassung der Deutschen Demokratischen Republik vom 6. April 1968 in der Fassung des Gesetzes vom 7. Oktober 1974 zur Ergänzung und Änderung der Verfassung der Deutschen Demokratischen Republik (GBl. I 1974 Nr. 47 p. 432)

25 Cf. §§ 6(1), (2) & (6) GGG

other restrictions that operated indirectly.

First, the Law provided that a prospective member had to be 18 years old by or on the date of the election²⁶, an objective criterion. In addition, he or she had to be of exemplary character both generally and at work and had to enjoy the respect and trust of his or her fellow citizens²⁷. These subjective criteria were in practice used to filter membership, in particular of the more important disputes commissions where in fact membership of a trades union was a prerequisite of nomination, a restriction not provided directly in the legislation but based on § 6(1). In the words of one commentator:

"The trades unions are of the view that part of the social requirement for an exemplary character, which is necessary to be a member of a disputes commission, is membership of...the Federation of Free German Trades Unions"²⁸.

Thus, almost invariably the members of the disputes commissions were union members or at least had strong union connexions.

By contrast, the members of the arbitration commissions were drawn from a wider base, reflecting the composition of the community:

"Citizens [being proposed as members] living and working in the area of the arbitration commission should come from all classes and strata of the population having regard to the social and economic structure of the territory"²⁹.

The literature on the subject of membership of the social courts placed a great deal of emphasis on strong connexions with the community or the workplace:

"The members of the social courts...come directly from the working or residential sphere of the citizens on whose behalf they are there and generally know from their own experience the social and personal circumstances surrounding the disputes they have to decide"³⁰.

26 § 6(1) GGG

27 § 6(1) GGG

28 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p.13, although Otte recognized that in theory at least any worker could be elected to be a member.

29 G. Chaluppecky and others Leitfaden für Schiedskommissionen (Berlin, 1987) p.15

30 H. Grieger/F. Posorski Entwicklung und Wirksamkeit der gesellschaftlichen Gerichte *Neue Justiz* 5/1979 p.205

It also underlined the need for members to have "high political-ideological and technical knowledge and expertise"³¹, another subjective criterion permitting filtering at the nomination stage.

Finally, although the legislation did not bar managers or senior staff from acting as members, the principal commentary on the disputes commissions suggested that this would not have been appropriate since conflicts of interest could have arisen, a view that was also expressed in relation to union officers³².

The Conduct of Elections

Responsibility for the running of elections to the disputes commissions lay with the trades unions³³, an expression of their rights under chapter 3 of the constitution³⁴. Elections followed the timing of the election of union officials and generally took place every two years. They also followed broadly the same procedural principles as those which applied to the union elections³⁵. The Federation of Free German Trades Unions would publish guidelines on the procedure to be adopted at the elections³⁶, and the trades unions at the relevant workplaces were responsible for putting them into effect. Any costs incurred or facilities required had to be met or provided by the management of the enterprise³⁷.

The last disputes commission elections were held between 10 May and 23 June 1989 and were conducted in accordance with the Guideline for the Election of Members of the Disputes

31 K. Probst/R. Winkler Die Leitung der gesellschaftlichen Gerichte *Neue Justiz* 8/1969 p.234

32 S. Otte and others Die Konfliktkommission Ein Leitfad (Berlin, 1989) p.13

33 § 7(1) GGG

34 Articles 44 & 45 Verfassung der DDR

35 S. Otte and others Die Konfliktkommission Ein Leitfad (Berlin, 1989) p.15

36 Pursuant to the obligations imposed by § 7(1) GGG

37 § 7(2) GGG

Commissions passed by Order of the praesidium of the FDGB on 11 November 1988³⁸. Guidelines of this type were published roughly every two to two and a half years³⁹.

The enterprise trades union began the election process by establishing the number of disputes commissions necessary in the enterprise and thereby the number of members required in the light of the criteria we have examined, the need to elect eight to fifteen members per commission and to see that the number per commission did not fall below six⁴⁰. This was followed by a consultative process involving the FDGB, the unions at the enterprise, management and the FDJ (*Freie Deutsche Jugend* – Free German Youth), a process intended to ensure "that the elections are prepared with a high degree of political awareness"⁴¹. A detailed election plan was drawn up as a result of the consultations⁴² with the help of the law commission⁴³. The plan would attribute various tasks to different bodies and individuals (e.g. the use of in-house media to publicize the elections, the provision of rooms, paper and so on).

Candidates were nominated by the trades union groups⁴⁴, not by direct nomination from individuals, each union group nominating one or more candidates⁴⁵. The candidates were then presented to meetings which the whole of the workforce was entitled to attend⁴⁶. The importance

38 Richtlinie für die Wahl der Mitglieder der Konfliktkommissionen. Beschluß des Präsidiums des Bundesvorstandes des FDGB vom 11.11.1988 *Informationsblatt des FDGB* 8/1988 pp.1-3

39 S. Otte and others Die Konfliktkommission Ein Leitfadens (Berlin, 1989) p.11

40 § 8(2) GGG; cf. Richtlinie für die Wahl der Mitglieder der Konfliktkommissionen vom 11.11.1988 I 3 p.2

41 Richtlinie für die Wahl der Mitglieder der Konfliktkommissionen vom 11.11.1988 II 1 p.2

42 A deadline of the end of January 1989 was provided for by the Richtlinie für die Wahl der Mitglieder der Konfliktkommissionen vom 11.11.1988 II 2 p.2

43 An honorary trades union organ responsible for monitoring the maintenance of socialist law, especially employment law, and for advising the trades union organizations in the enterprise on legal matters (Cf. F. Kunz Arbeitsrecht von A bis Z (Berlin, 1983) p.292)

44 The group was the smallest organizational unit of the trades unions in the GDR, a rough equivalent to a branch (Cf. F. Kunz Arbeitsrecht von A bis Z (Berlin, 1983) p.174)

45 § 7(3) GGG and Richtlinie für die Wahl der Mitglieder der Konfliktkommissionen vom 11.11.1988 II 8 (Cf. the rights of the trades unions to nominate lay assessors to the employment chambers of the area courts under § 299 Arbeitsgesetzbuch (AGB), the GDR Employment Code (GBl. I 1977 Nr. 18 p.185))

46 S.7(3) GGG and Richtlinie für die Wahl der Mitglieder der Konfliktkommissionen vom 11.11.1988 II 9

of the role of the unions in selecting candidates and in the overall conduct of the elections cannot be overemphasized.

The list of candidates would generally be widely circulated, either by posting on notice boards or even on the works' radio station or newspaper⁴⁷.

The actual elections were by secret ballot on the principle of one person one vote for each of the number of members required for their own commission⁴⁸. The election date was fixed again by the union and publicized by notices⁴⁹. The elections themselves were subject to the supervision of an election commission made up of members chosen at the public meeting at which the candidates were presented⁵⁰. The commission had the tasks of ensuring that the names of the candidates and the date of the election were properly posted and that rooms were made available with voting booths, and ballot boxes and voting slips were provided. The members also counted the votes⁵¹. The actual provision of facilities was the duty of managers and senior staff⁵².

The results of the elections were announced by the election commission. Candidates were elected up to the required number to fill the available places⁵³. There was no obligation to cast a vote, but polls were traditionally high⁵⁴. A poll of less than 51% was not sufficient and any figure below that meant holding the election again⁵⁵.

47 Richtlinie für die Wahl der Mitglieder der Konfliktkommissionen vom 11.11.1988 II 13

48 Richtlinie für die Wahl der Mitglieder der Konfliktkommissionen vom 11.11.1988 III 1 and S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p.15

49 Richtlinie für die Wahl der Mitglieder der Konfliktkommissionen vom 11.11.1988 III 1

50 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p.16

51 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p.16

52 § 63 KKO

53 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p.16

54 E. Krebs reported an 87% poll at the elections to his disputes commission in Aue in 1989. The majority of candidates were elected with 100% of votes cast (E. Krebs Interview London 28.6.1989)

55 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p.16

Although the election results were announced by the election commission, events following the elections again emphasized the dominant role of the unions, for it was the unions which "swore in" the new members⁵⁶ and handed them their members cards, evidence of their office and also of their attendance for training⁵⁷.

The elections to the arbitration commissions followed a broadly similar pattern with the role of the FDGB taken by the Minister of Justice⁵⁸ and that of the unions by the local authorities (except in the case of producers' cooperatives where the boards of the cooperatives were responsible)⁵⁹. The nomination of candidates was still subject to some filtering process since nomination to the arbitration commissions was in the hands of "the democratic parties and mass organizations" in the towns and communities and in the hands of the boards of the cooperatives⁶⁰. The democratic parties were the ruling Socialist Unity Party of Germany (SED), the Democratic Peasants' Party of Germany (DBD), the Christian Democratic Union (CDU), the Liberal Democratic Party of Germany (LDPD) and the National Democratic Party of Germany (NDPD); the other bodies entitled to nominate were the FDGB, the Democratic Women's League of Germany (DFD), the Free German Youth (FDJ) and the League of Culture (Kulturbund). It was estimated that over 95% of all GDR citizens belonged to one or more of these parties or organizations⁶¹.

The names of the arbitration commission candidates who had been nominated were passed to the National Front which presented the candidates to their prospective electors at public meetings⁶².

56 § 6(3) GGG and Richtlinie für die Wahl der Mitglieder der Konfliktkommissionen vom 11.11.1988 III 3

57 See the example and translation in Appendix C

58 § 10(1) GGG

59 § 10(2) GGG

60 § 10(3) GGG

61 E. Buchholz Gesellschaftliche Gerichte in der DDR - Organe der Strafrechtspflege *Zeitschrift für die gesamte Strafrechtswissenschaft* Vol. 98 4/1989 p.957

62 § 10(4) GGG and G. Chaluppecky and others Leitfaden für Schiedskommissionen (Berlin, 1987) p.15

Candidates were elected, again, not directly by the citizens but by the local authorities; only in the producers' cooperatives did the members of the cooperatives have a direct vote⁶³.

Again members were sworn in and received a card evidencing their appointment. Since the timing of the elections followed that of the local authorities' elections the period of office was five years⁶⁴.

By-elections could be held for both types of commission⁶⁵, but the idea of electing commissions of eight to fifteen members was to avoid the necessity for by-elections. Thus, the death or incapacity of one or two members would not occasion a by-election unless the commission concerned was unable to function properly as a result.

Provision was made for objection to be raised to candidates nominated to the arbitration commissions⁶⁶, but there was no corresponding measure relating to candidates to the disputes commissions, perhaps a sign that government had greater faith in the capacity of the unions to exclude undesirable candidates than it did in the parties and bodies with nomination rights to the arbitration commissions.

Once elected, members enjoyed certain statutory protections (which we shall consider below), but they could be removed from office for reasons of health or other good reasons (presumably, for example, committing a criminal offence), although in practice this seems to have occurred only rarely⁶⁷.

63 § 11(1) GGG

64 G. Chaluppecky and others Ein Leitfaden für Schiedskommissionen (Berlin, 1987) p.15; and cf. Gesetz über die örtlichen Volksvertretungen in der Deutschen Demokratischen Republik vom 4.7.1985 (GBl. I 1985 Nr. 18 p.213)

65 § 9 & § 12 GGG

66 § 10(5) GGG

67 § 2(2) & § 6(6) GGG (and cf. Article 95 Verfassung der DDR). E. Buchholz Gesellschaftliche Gerichte in der DDR — Organe der Strafrechtspflege *Zeitschrift für die gesamte Strafrechtswissenschaft* Vol. 98 4/1986 p.957

It is convenient at this point to consider some aspects of the operation of the social courts as they are intimately bound up with the election process. The first is the constitutional duty of all judges to report to their electors on the manner in which they had discharged their duties during their period of office⁶⁸. Reports were invariably given by social court members at the same public meetings at which candidates were put forward, a factor that no doubt contributed to some extent to the tendency to re-elect the same members for successive periods of office.

The reports appear to have been taken seriously and to have formed an integral part of the electoral process which, as well as its primary function to elect members, also served a legal propaganda purpose⁶⁹. A typical report informed those attending the public meeting in general terms of the role of the social courts and any developments affecting them and then dealt with individual cases and concerns affecting the enterprise⁷⁰. The reporting on the fulfilment of duties at a public meeting had a double function: on the one hand it compelled those elected to give an account of themselves to the people who would generally be re-electing them; on the other hand it also gave the commissions a valuable opportunity to educate those present in the importance of observing the law.

Second, the solemn ceremony of "swearing in" new members would also be used to honour the efforts and achievements of social courts and individual members in accordance with the powers to do so given by the Law⁷¹. Honours could take the form of commendations or decorations⁷² or could be material, taking the form of a bonus or other reward (although in principle membership had only honorary status).

68 Article 95 Verfassung der DDR; § 6(5) GGG

69 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p.15 and G. Chaluppecky and others Leitfaden für Schiedskommissionen (Berlin, 1987) p.15

70 The report delivered by the disputes commission of the publishing house, Tribüne, in Berlin on 18 May 1989 has been translated as part of Appendix C

71 § 33 GGG

72 A typical example appears in Appendix C

The Status of Members

Although the social courts were part of the "unified courts' system of the GDR"⁷³, one of the main differences between them and the state courts lay in the nature of the judges (members) who were always lay persons. The social courts were honorary organs of the administration of justice⁷⁴; the members were unpaid⁷⁵. Nevertheless, the members were supposed to possess the same personal qualities as "real" judges, and since the social courts became part and parcel of one system of justice in 1968 the status of members became almost identical to that of state court judges⁷⁶. On the other hand the members were not supposed to be lofty figures, apart from the people. The point of their local connexions was that they should think and feel in the same way as those they served⁷⁷. They were to be rooted in their place of work or place of residence and to represent "the social structure of their area"⁷⁸.

Members were generally GDR citizens, and most commentators were of the view that GDR citizenship was necessary to be a member, the term "citizen" used in § 6(1) of the Law and elsewhere being construed narrowly and in the light of Article 94 of the Constitution under which judges had to be "true to the people and their socialist state", a loyalty which only citizenship could satisfactorily underpin. However, one leading writer on the courts expressed the view that foreigners and stateless persons could become members if they resided in the GDR since such persons were on a par with GDR citizens by reason of § 4 of the Foreigners' Law⁷⁹.

73 Cf. the preamble to the Richtlinie für die Wahl der Mitglieder der Konfliktkommissionen vom 11.11.1988 p.1

74 Rechtslexikon (Berlin, 1988) p.149

75 Except for any bonuses they received, and these were rare

76 A factor emphasized by Heinrich Toeplitz, the president of the Supreme Court, at a conference in 1968 reported in H. Toeplitz Höhere Autorität und neue Qualität in der Arbeit *Die Konfliktkommission Tribune-Beilage* 47/1968 p.3

77 E. Buchholz Gesellschaftliche Gerichte in der DDR - Organe der Strafrechtspflege *Zeitschrift für die gesamte Strafrechtswissenschaft* Vol. 98 4/1986 p.959

78 F. Posorski Die verfassungsmäßige Stellung der gesellschaftlichen Gerichte *Neue Justiz* 8/1969 p.230

79 Ausländergesetz vom 28.6.1977 (GBl. I 1977 Nr. 17 p.149)

The members of the social courts were said to be independent, bound only by the law and the constitution⁸⁰. To that end members of disputes commissions enjoyed protection from dismissal in line with that accorded to trades union officials⁸¹. A member of a disputes commission could only be dismissed with the consent of the union at a fairly high level (the "section" level, above the level of the enterprise union, or even the FDGB district committee)⁸². Furthermore, in exercising their functions and duties as members, members of social courts were not subject to the control or direction of their superiors at work and could not be disciplined⁸³.

In those respects the concept of independence is relatively familiar. However, in other respects the notion of judicial independence in the GDR was quite different from traditional "western" or "bourgeois" concepts. In the GDR all political power was based on the sovereignty of the working people⁸⁴. Judicial power could only derive legitimacy from the same source⁸⁵, hence the importance attached to the principle of the election of the judiciary as opposed to appointment for life or for fixed terms. Furthermore, the role of the system of justice was to safeguard the principles of socialist legality and to protect the state and social order of the GDR⁸⁶. The protection of socialist legality (a concept we shall consider in more detail at a later stage) was the primary function of all the courts and had been since the passing of legislation on the constitution of the courts in 1963⁸⁷.

80 Article 96 Verfassung der DDR and § 2(3) GGG

81 § 26(2) AGB

82 W.Hantsche/H.-J. Wolf Grundsätze des sozialistischen Arbeitsrechts und ihre Verwirklichung im Betrieb (*Schriftenreihe zum Arbeitsgesetzbuch der DDR Héft 1*) (Berlin, 1989) p.52

83 The point was made in a reported decision of the district court of Karl-Marx-Stadt of 7 June 1971 (7 BA 39/71) reported in *Neue Justiz* 2/1971 pp.660-661. A disputes commission member had been disciplined for disobeying an instruction not to convene a preparatory meeting of the commission during working hours. The member appealed to the area court which allowed the appeal. The enterprise appealed to the district court, but the decision of the area court was upheld.

84 Article 2(1) Verfassung der DDR

85 E. Buchholz Gesellschaftliche Gerichte in der DDR - Organe der Strafrechtspflege *Zeitschrift für die gesamte Strafrechtswissenschaft* Vol. 98 4/1986 p. 957

86 Article 90(1) Verfassung der DDR

87 Gesetz über die Verfassung der Gerichte der DDR vom 25.4.1963 (GBl. I 1963 Nr. 4 p.45). See, in particular, the preamble

The role of judges or social court members in the administration of justice was to interpret and administer the law in accordance with the interests of the party (the SED) and the state⁸⁸. Whilst they were indeed independent (in that they had no personal interest in the outcome of any given case and were precluded from hearing cases involving close relatives⁸⁹), they were not impartial. On the contrary they were bound to be partial in the sense that part of their function was to give effect to socialism as expressed by party policy (the so-called principle of "*Parteilichkeit*" whereby one was required to take the part of the working class)⁹⁰. Members of social courts were therefore to some extent political functionaries, instruments of the prevailing ideology; it was no part of their duties to protect the individual against the state, but rather to integrate the individual into the state.

This did not mean that the social courts were mere executors of the will of the party, and the fact that they were subordinated to a prevailing ideology did not mean that they were necessarily in some unacceptable way biased in relation to all cases they heard. To a greater or lesser extent all courts reflect the dominant values of the societies in which they function. However, the rejection of the bourgeois idea of eternal values of justice⁹¹ led the social courts along with the remainder of the legal system to a special relationship with production and the economy that almost inevitably detracted to some extent from their total acceptance by those with whom they dealt.

In spite of the restrictions on access to membership and of the need to be committed to the prevailing party policy, membership of the social courts was wide. By 1989 35,077 social courts operated throughout the GDR with 315,085 members, just under 2% of the population⁹². 47% of members of disputes commissions and 52% of members of arbitration commissions were

88 S. Mampel Das Recht in Mitteldeutschland (Cologne, Berlin, Bonn, Munich, 1966) p.78; E. Böckenförde Die Rechtsauffassung im kommunistischen Staat (Munich, 1967) p.68

89 § 6 KKO & § 6 SchKO

90 Kleines Politisches Wörterbuch (Berlin, 1989) pp.738-739

91 Cf. H. Benjamin Der sozialistische Richter *Neue Justiz* 9/1979 p.387

92 See statistics in Appendix C, and in particular tables 1-9

women and there was a reasonable spread of social types and of party allegiance. The majority of members appear to have been between the ages of 30 and 60, with the average age of arbitration commission members slightly higher than that of disputes commission members. Consistent efforts were made to encourage more young people to stand for membership, especially those in the 18 to 24 and 25 to 40 age groups⁹³. Members genuinely enjoyed high regard⁹⁴, and the majority were re-elected to office⁹⁵.

Although it was possible to be a member of both an arbitration commission and a disputes commission (and indeed to be a lay assessor at the same time⁹⁶), no figures are available on the overlap. However, the relatively large number of people involved in the administration of justice through the social courts was a key factor in involving the people in the legal system and in seeking to maintain law and order through the educational effect of social court members.

93 Richtlinie für die Wahl der Mitglieder der Konfliktkommissionen vom 11.11.1988 p. 2; cf. also S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p. 13

94 In all the interviews I had with those concerned with the social courts (both before and after the downfall of the GDR) the general opinion of the courts and their members was high.

95 See Appendix D table 9

96 M. Lasch/U. Zupp/H. Rösler Schöffenkollektive und Schiedskommissionen im Prozeß der Verwirklichung des sozialistischen Rechts *Neue Justiz* 10/1971 p.300

Chapter IV

The Operation of the Social Courts

Jurisdiction

In chapter III we examined the jurisdiction of the social courts by reference to the areas in which they operated. We now turn to consider jurisdiction in terms of the types of cases they had power to deal with, their jurisdiction *ratione materiae*.

The jurisdiction of the disputes commissions was defined by § 13 GGG which gave them jurisdiction to hear and decide employment disputes, disputes arising out of the innovators' legislation¹, minor offences (*Vergehen*)², misdemeanours (*Verfehlungen*)³, breaches of regulation (*Ordnungswidrigkeiten*)⁴, breaches of educational obligations⁵ and minor civil disputes between

1 The innovators' legislation (*Neuererrecht*) took the form of the Verordnung vom 22.12.1971 über die Förderung der Tätigkeit der Neuerer und Rationalisatoren in der Neuererbewegung - Neuererverordnung - (GBl. II 1972 Nr. 1 p. 1) and consequential regulations (for the full details of which see Amt für Erfindungs- und Patentwesen der DDR *Neuererrecht - Textausgabe* (Berlin 1988)). The legislation provided a code for rewarding workers who made suggestions or provided ideas or inventions that increased productivity or contributed to the resolution of scientific or technical problems.

2 The translation of the German *Vergehen* as minor offences throughout this dissertation is purely conventional, and the term has been adopted from the translation appearing in *Law and Legislation in the GDR* (see Appendix A). East German criminal law recognized two types of criminal act (*Straftat*), crime (*Verbrechen*), defined under § 1(3) of the Criminal Code (*Strafgesetzbuch*) as attacks on the sovereignty of the state, peace, humanity, human rights and human life and which were dangerous to society (*gesellschaftsfährlich*), and minor offences (*Vergehen*), defined under § 1(2) of the Criminal Code as acts against the rights and interests of citizens which damaged socialist property, the state or social order or other social rights or interests and which were anti-social (*gesellschaftswidrig*) in nature.

3 Again the translation of *Verfehlung* by misdemeanour is conventional and adopted from *Law and Legislation in the GDR*. *Verfehlungen* were defined under § 4 of the Criminal Code as breaches of any legally protected rights of society or the individual citizen, but the consequences of which were not significant.

4 Again the translation of *Ordnungswidrigkeit* by breach of regulation is adopted from *Law and Legislation in the GDR*. The breach of regulation was defined as a manifestation of indiscipline and presumed behaviour contrary to public order and safety or the contravention of some regulation e.g. on health and safety at work. Breaches of regulation came under separate legislation to the Criminal Code and were an area of law in themselves regulated by the Gesetz zur Bekämpfung von Ordnungswidrigkeiten vom 12.1.1968 (GBl. I 1968 Nr. 3 p. 101) (as amended) ("OWG") and the Verordnung zur Bekämpfung von Ordnungswidrigkeiten vom 22.3.1984 (GBl. 1984 Nr. 14 p. 173).

5 Educational obligations (*Schulpflicht*) did not just mean attending school, but included obligations to attend for vocational or further education, the duty of parents to see to such attendance and compliance with school rules (cf. Gesetz über das einheitliche sozialistische Bildungssystem vom 25.2.1965 (GBl. I 1965 Nr. 6 p. 83), the Schulpflichtbestimmungen vom 14.7.1965 (GBl. II 1965 Nr. 83 p. 625) as amended by the OWG).

employees and their enterprise or between the employees themselves.

The jurisdiction of the arbitration commissions was defined by § 14 GGG which gave them jurisdiction to hear and decide simple civil disputes, disputes arising out of the innovators' legislation between producers' cooperatives and their members, minor offences, misdemeanours, breaches of regulation and breaches of educational obligations.

§ 15 GGG provided for jurisdiction to be given to the social courts to deal with other legal disputes and breaches as provided for by other legislation.

Jurisdiction to hear minor offences and breaches of regulation could only be founded if the case was referred to the relevant commission by the police, the procuracy or other appropriate state organs⁶.

It is important to note that the disputes commissions were the compulsory tribunal of first instance for virtually all employment disputes⁷, making them an approximate equivalent in relation to employment law in the GDR to the British industrial tribunal. However, the disputes commissions could be required to refer employment cases to the area court (*Kreisgericht*) on the application of the procurator or the area executive of the FDGB⁸, and the director of the area court could call a case up from a disputes commission if he felt it necessary⁹. Furthermore, other legislation could deprive the disputes commissions of jurisdiction and give it to the area court¹⁰. Where there was any doubt, the presumption was always that the commission should be the first

6 § 13(1) and § 14 GGG

7 § 13(3) GGG and Erste Durchführungsbestimmung zur ZPO vom 25.10.1977 - Zuständigkeit des Kreisgerichts in Arbeitsrechtssachen (GBI. I 1977 Nr. 32 p. 349)

8 The Federation of Free German Trades Unions (Freier Deutscher Gewerkschaftsbund)

9 § 13(2) GGG

10 § 13(3) GGG

tribunal and not the area court¹¹. In practice, cases were only referred to the area court if they were of exceptional complexity or of general public importance, and the overwhelming majority of employment cases were in fact heard by the social courts, generally the disputes commissions¹².

We now turn to the type of cases heard by the social courts in order to consider them in greater detail.

Employment Disputes

Employment disputes made up by far the majority of cases with which the social courts had to deal, and that was in particular the case for the disputes commissions¹³. The range of the commissions' employment jurisdiction was very wide, and because of the important part played by employment law in the work of the disputes commissions and its importance in GDR law generally, it is appropriate to deal with the nature of the disputes likely to be heard in some detail.

§ 18 KKO began by defining broadly the scope of the jurisdiction of the disputes commissions in employment cases, making clear that that jurisdiction was wide¹⁴; it then went on to specify particular types of employment disputes to be heard by the disputes commissions¹⁵:

(i) Disputes relating to making, varying and terminating contracts of employment

The social courts' legislation did not lay down the relevant law: this was to be found in §§ 38-70 of the Employment Code (AGB)¹⁶, regarded as one of the GDR's most important

11 W. Rudelt Wann liegt in Arbeitsstreitfällen eine Entscheidung der Konfliktkommissionen vor? *Neue Justiz* 9/1968 p. 277

12 Cf. Appendix D table 12

13 S. Otte and others Die Konfliktkommissionen Ein Leitfaden (Berlin, 1989) p. 35

14 § 18(1) KKO

15 § 18(2) KKO

16 Arbeitsgesetzbuch der Deutschen Demokratischen Republik vom 16.6.1977 (GBl. I 1977 Nr. 18 p. 185)

pieces of legislation, being, as it was, the expression in law of the constitutional principle that "Every citizen of the German Democratic Republic has the right to work"¹⁷.

(ii) References and assessments

Apparently "tagged on" to the above provision was also a provision giving the disputes commissions jurisdiction to hear disputes arising out of appraisals (references) and assessments of performance at work. It seems that disputes of this kind (the substantive law was to be found in §§ 67-69 AGB) were particularly common¹⁸.

(iii) Wages disputes

These included disputes concerning the wages of individual employees within the relevant tariff classifications and their placing within wage tariff groups and differentials based on performance (by reference to quality and quantity of work) and supplementary payments (cf. §§ 95-128 AGB). The commissions appear to have had almost unlimited jurisdiction over wage claims and claims for payment by individual employees¹⁹, although it seems that they did not have power to deal with or interfere in the overall wage structure determination, this being a matter for the trades unions and the enterprises²⁰. The commissions were there to deal with individual rather than collective claims.

Such claims did not necessarily have to be made by employees; they could also be made by the enterprise. Thus, for example, § 126 AGB enabled an enterprise to claim back wages that had been overpaid. Other cases likely to have been heard by the disputes commissions were those concerning special supplements and bonuses (such as year end bonuses). GDR

17 Article 24 Verfassung der DDR

18 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin 1989) p. 47; for an example of an actual case see the order of the Aue Commission in Appendix C. See also Aus der Arbeit der Konfliktkommissionen in Arbeit und Arbeitsrecht 22/1967 p. 527

19 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p. 50

20 W. Kulitzscher Arbeitsorganisation und sozialistische Arbeitsdisziplin (Berlin, 1989) pp. 17 & 38

law provided a wide range of bonus incentive payments relating to productivity, either directly (for example payable on fulfilling production or export targets) or indirectly (for example by recognizing steps taken to save materials or energy or otherwise preserve resources). One of the earliest reports of a disputes commission hearing deals with such a case²¹.

Wages and bonus claims made up one of the most important of the categories of cases heard by the disputes commissions, a fact which underlines not only the role of the commissions as a regulatory factor in the economy but also their ability to act educatively in deciding such claims.

(iv) Disputes relating to apprenticeship and training

The disputes commissions heard all disputes relating to apprenticeships, including those concerning the interpretation of apprenticeship contracts²². Such disputes generally meant dealing with minors, to whom special procedural provisions applied.

(v) Disputes relating to working hours, holidays and time off

The average working hours in the GDR were 43.75 hours a week based on a statutory 5 day week²³. (The AGB contained a statutory commitment to reduce the number of hours to 40 a week²⁴.) However, within the scope of the Employment Code there was provision for subordinate legislation to be passed and for shorter hours for shift workers, women with children under 16 and so on. All such matters (including holiday and leave) fell to be heard by the commissions.

21 Appendix B case 1

22 The law of apprenticeship was governed in detail by the Anordnung über das Lehrverhältnis vom 15.12. 1977 (GBl. I 1978 Nr. 2 p. 42)

23 § 161 AGB

24 § 160(1) AGB

(vi) Disputes relating to working and living conditions and health and safety

"The combines and enterprises are responsible for the continual improvement of the working and living conditions of employees"²⁵. Enforcement of this statutory obligation also lay with the disputes commissions, as did enforcement of the GDR's extensive legislation on health and safety²⁶. The reference to living as well as working conditions was a reflection of the fact that many workers (especially young people) in the GDR lived in accommodation run by the enterprise.

Disputes under these headings would have come to the disputes commissions not just on the basis of applications made by individual employees but also by the trades unions and management and other supervisory bodies responsible for ensuring that employment law was adhered to²⁷. Such matters frequently overlapped with the jurisdiction to deal with minor offences, misdemeanours and especially breaches of regulation²⁸. It appears that the disputes commissions were often involved in health and safety matters, although not necessarily always in the context of a hearing²⁹; breaches would frequently be reported to commission members pursuant to the statutory obligations imposed by § 217(2) AGB to report accidents or breaches of health and safety provisions.

The disputes commissions also had power to hear claims for damages as a result of injury or accident at work (as defined by § 220 AGB), and claims connected with changes of job or workplace as a result of illness or incapacity (under § 209 AGB).

25 § 2(1) Verordnung über die volkseigene Kombinate, Kombinatbetriebe und volkseigene Betriebe vom 8.11.1979 (GBl. I 1979 Nr. 38 p. 355)

26 See, in particular, Chapters 10 and 15 of the AGB, the Arbeitsschutzverordnung vom 1.12.1977 (GBl. I 1977 Nr. 36 p. 405) and the Verordnung über das Betriebsgesundheitswesen und die Arbeitshygieneinspektion vom 11.1.78 (GBl. I 1978 Nr. 4 p. 61)

27 Cf. §§ 291-294 AGB

28 Cf. §§ 25 and 40 KKO and § 32 Arbeitsschutzverordnung vom 1.12.1977

29 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p. 95

(vii) Disputes relating to the position of women, minors and others

GDR law presumed sexual equality, but had legislation to promote the position of women at work (in particular § 148(1) and §§ 240-250 AGB). Special priority was also given to the recruitment and training of young persons (§ 148 (2) AGB), and there were also legal measures to protect other groups (in particular ex-servicemen). Women and minors also enjoyed special employment protection measures designed to prevent exploitation³⁰. All such disputes were heard by the disputes commissions.

(viii) Educational Proceedings

Where an employee was accused of some indiscipline or breach relating to his employment, his superior responsible for discipline could apply to the disputes commission for so-called educational proceedings to be instituted³¹. Such proceedings appear to have been regarded as an important part of the work of the disputes commissions³², and the fact that they fell under the jurisdiction of the disputes commissions emphasizes the latter's educational and disciplinary roles within the GDR's legal system. Educational proceedings could take one of two forms: they could be conducted by the manager responsible for discipline (under § 255 (1) and (2) AGB) or before the commission. The two courses of action were mutually exclusive³³. The application to the commission had to take a particular form, and the commission could reject it if the subject matter of the alleged disciplinary breach was not felt to be suitable for hearing by the commission³⁴.

The aim of the proceedings was to lead the worker concerned to awareness of the

30 For example, Arbeitsschutzordnung Nr. 5 - Arbeitsschutz für Frauen und Jugendliche vom 9.8.73 (GBl. 1973 Nr. 44 p. 465)

31 § 18(2) KKO and § 255(3) AGB

32 S. Otte and others Die Konfliktkommission Ein Leitfadens (Berlin, 1989) p. 98

33 S. Otte and others Die Konfliktkommission Ein Leitfadens (Berlin, 1989) p. 99

34 § 22(2) KKO Cf. also G. Kirmse Die Durchführung eines erzieherischen Verfahrens vor der Konfliktkommission *Neue Justiz* 19/1970 pp. 575-576, although this article dealt with the more limited position of the disputes commissions under the 1968 legislation and under the GBA, the predecessor of the Employment Code (AGB).

irresponsibility of his behaviour and his failure in his duty towards his collective³⁵.

(ix) Appeals from disciplinary hearings

The only "second instance" function of the disputes commissions was to hear appeals from employees against disciplinary measures imposed by management under the Employment Code or other disciplinary regulations (such as works rules and regulations). A worker who had disciplinary measures imposed on him could appeal to the disputes commission within two weeks of being notified of or served with a decision to discipline him, but could also (subject to the same time limit) choose the area court as the forum for his appeal³⁶.

(x) Cases of material responsibility

Cases of so-called material responsibility (i.e. cases brought by an enterprise against one or more of its employees claiming damages for negligence) appear to have formed an important part of the work load of the disputes commissions. The Employment Code provided not only that workers should pay damages if they acted wrongfully in breach of their obligations but went so far as to impose on enterprises a duty to bring such claims³⁷. Many reported cases related to material responsibility³⁸. The whole notion of material responsibility and the jurisdiction of the disputes commissions over claims of this type was an essential part of the economic discipline imposed on the people by the state, an aspect of the activity of the commissions which we shall consider later in chapters VII and VIII. The fact that many cases brought before the commissions related to material responsibility (effectively negligence) claims against employees undoubtedly derived from state pressure on managers to impose discipline on the East German workforce in relation to scarce resources. A report to the 7th plenary session of the praesidium of the Supreme Court on

35 S. Otte and others Die Konfliktkommission Ein Leitfadens (Berlin, 1989) p. 98

36 § 257(3) AGB

37 §§ 252-253 & §§ 260-266 AGB

38 An example appears in Appendix B (case 2); cf. also *Arbeit und Arbeitsrecht* 23/1967 p. 551

20 June 1973 referred to something like one half of all employment cases heard by disputes commissions relating to material responsibility and emphasized the duty of management to bring proceedings³⁹. The problem still persisted in the 1980s: in a letter of 14 April 1987 from a Herr Jablonowski of the Berlin procuracy to a Dr. Wille of VEB Versorgungsnetzbahn of Grünberger Strasse 26, Berlin 1034, the former criticized the latter for failing to claim full damages from a negligent employee in proceedings brought before the enterprise's disputes commission and demanded a full explanation as to why Dr. Wille had failed in his obligations under the Employment Code and related legislation⁴⁰ and had failed to appeal the commission's decision not to enforce the full claim. The procurator's criticism elicited an apology, acceptance of the criticism and a promise to be more vigorous in relation to future claims⁴¹.

(xi) Employees' claims for damages

The disputes commissions also had jurisdiction to hear claims brought by employees for damages arising out of injury at work, occupational diseases or even death⁴², an extraordinarily wide and complex jurisdiction for a lay tribunal.

(xii) Disputes arising out of the innovators' legislation

The GDR's innovators' legislation provided a legal framework whereby workers (whether individually or collectively) could be compensated by bonuses for suggestions that led to improvements or rationalization in industry, commerce, building and other spheres of work which contributed to increased productivity. Great importance was attached to the innovators' movement, and the whole concept of innovation was governed by some 17 items

39 Probleme der Wirksamkeit der Rechtsprechung der Konfliktkommissionen *Neue Justiz* 15/1973 p. 443

40 § 31(1) Verordnung über die volkseigenen Kombinate, Kombinatbetriebe und volkseigene Betriebe vom 8.11. 1979 (GBl. I 1979 Nr. 38 p. 355) and § 2(3) Anordnung über die Erhöhung von Ordnung und Disziplin zur Verhütung materieller und finanzieller Verluste vom 14.9.1977 (GBl. I 1977 Nr. 29 p. 335)

41 Both letters were on the files of the Tribüne archives in Berlin to which I had access in August 1990

42 § 18(2) KKO and §§ 267-271 AGB

of legislation or regulation⁴³. Claims arising out of the legislation, once heard by *Schlichtungsstellen*⁴⁴, were dealt with almost exclusively by the social courts⁴⁵. Typical cases would concern the amount of any award or bonus or any disputes as to whether any suggestion did actually constitute an innovation within the meaning of the legislation.

(xiii) Disputes relating to the Mutual Assistance Fund

The Mutual Assistance Fund (*Kasse der gegenseitigen Hilfe*) was a union-operated fund that provided financial assistance to needy members by way of loans⁴⁶. Claims (generally relating to failure to repay loans made) would be made to the disputes commission⁴⁷ or area court.

(xiv) Disputes relating to enterprise accommodation

Many GDR workers occupied accommodation provided by their enterprise. Any disputes arising in connexion with such property (rent, repairs etc.) would have been heard by the relevant disputes commission⁴⁸.

It can be seen from the above that employment disputes formed a large part of the case load of the disputes commissions, and indeed the available statistical information confirms that employment cases accounted for the overwhelming bulk of cases heard by them⁴⁹.

By contrast the arbitration commissions had little jurisdiction to hear employment related

43 For a complete list see Amt für Erfindungs- und Patentwesen Neuerrecht Textausgabe (Berlin, 1988) pp. 3-4

44 Cf. *Die Konfliktkommission Tribüne-Beilage* 12/1966 p. 3

45 § 18(2) KKO and § 32(1) NVO However, claims for direct remuneration (*Vergütungsstreitfälle*) had to be heard by a state court (cf. Richtlinie Nr. 30 des Plenums des Obersten Gerichts and Entscheidung vom 20.10.1988 des Obersten Gerichts – OAK 19/88 reported in *Die Konfliktkommission Tribüne-Beilage* 22/1988 p.31

46 Rechtslexikon (Berlin, 1988) p. 189

47 § 18(3) KKO

48 § 18(3) KKO and Verordnung über die Lenkung des Wohnraums vom 16.10.1985 (GBl. I Nr. 27 p. 308)

49 Cf. Appendix D table 11

disputes, their role being restricted to dealing with innovators' disputes and breaches of discipline at work on the part of members of producers' cooperatives⁵⁰. Although these types of cases came under the heading of civil and other disputes in the Arbitration Commissions Order, the 1,000 Mark upper claim limit applicable to civil disputes did not apply to innovators' cases⁵¹.

Criminal and Quasi-Criminal Cases

Both types of social courts had jurisdiction to hear three basic categories of petty criminal and quasi-criminal offences: minor offences (*Vergehen*), misdemeanours (*Verfehlungen*) and breaches of regulation (*Ordnungswidrigkeiten*)⁵². Minor offences were essentially reckless acts of a criminal nature which in some way damaged socialist property or interfered with the right of citizens, the state or social order or other social rights or interests but were anti-social in nature (*gesellschaftswidrig*) and thus not as serious as true criminal offences (*Verbrechen*) which constituted an actual danger to society (*gesellschaftsgefährlich*)⁵³. Full criminal offences were never susceptible of hearing by a social court. The deciding factor in all cases was, however, the extent of the anti-social nature of the act, not necessarily, for example, the extent of any actual material harm done: criminal acts entailing substantial damage could be dealt with by the commissions provided the "level of guilt of the offender" was not significant⁵⁴. In practice that generally meant offences entailing damage to property⁵⁵.

Misdemeanours were an even less serious category of wrong, and in fact were not considered truly criminal at all. Rather they were wrongful acts that came just below the threshold of what constituted real criminal behaviour and were born as a category out of the need or desire in the

50 § 14 GGG; § 17(1) SchKO

51 Fragen und Antworten *Neue Justiz* 7/1983 p. 289

52 §§ 13(1) & 14 GGG and §§ 25, 31 & 40 KKO; §§ 23, 29 38 SchKO

53 §§ 1 StGB

54 § 28(1) StGB

55 E. Buchholz Gesellschaftliche Gerichte in der DDR - Organe der Strafrechtspflege *Zeitschrift für die gesamte Strafwissenschaft* Vol. 98 4/1986 p. 969

GDR to "decriminalize" certain categories of behaviour in the 1968 criminal law reforms⁵⁶. Misdemeanours were something more than simple moral wrongs but less than criminal. They were defined by statute⁵⁷, and as far as the social courts were concerned were generally property offences where the damage amounted to less than 100 Marks⁵⁸, breaches of the peace in a residential environment⁵⁹, insult and defamation⁶⁰, theft of socialist property or deception causing loss or diminution of socialist property⁶¹ or theft of personal property or deception relating to personal property⁶².

Breaches of regulation were non-criminal breaches of the law constituting affronts to public order or discipline, or particular rules and regulations (in particular relating to health or safety or the economy). They could be loosely divided into breaches of a quasi-criminal nature and others of a more technical nature (such as contravention of customs or currency regulations)⁶³. Again the concept of breaches of regulation came about in the course of the 1968 reforms. The substantive law was governed by a wide range of legislation⁶⁴. Breaches of regulation were not exclusively dealt with by the commissions; only those where the facts were clear, and the character of the wrongdoer and nature of the breach made the case suitable for hearing by a commission⁶⁵. Typical breaches that would have been heard by a social court were noise or anti-social behaviour,

56 Cf. H. Benjamin Zur Geschichte der Rechtspflege der DDR 1961-1971 (Berlin, 1986) pp. 218-228

57 § 4 StGB

58 § 31(2) KKO; § 29(2) SchKO

59 § 134 StGB

60 §§ 137-139 StGB

61 §§ 158-160 StGB

62 §§ 177-179 StGB

63 Ministerium der Justiz Ordnungswidrigkeitsrecht der DDR Kommentar zum Ordnungswidrigkeitsrecht und zur Ordnungswidrigkeitsverordnung (Berlin, 1989) pp. 25-26

64 See Akademie für Staats- und Rechtswissenschaft der DDR Ordnungswidrigkeitsrecht: Textausgabe (Berlin, 1988) p. 3 and Ministerium der Justiz Ordnungswidrigkeitsrecht der DDR Kommentar zum Ordnungswidrigkeitengesetz und zur Ordnungswidrigkeitsverordnung (Berlin, 1989) pp. 14-19 for lists of the relevant legislation.

65 §§ 31-32 OWG

dropping litter or the unauthorised dumping of rubbish, petty vandalism, cruelty to animals, breaches of hygiene, damage to trees or plants or breaches of safety in the workplace⁶⁶. Some very minor breaches of regulation were regarded as too insignificant even for hearing by a social court⁶⁷.

Breaches of Educational Obligations

The social courts had jurisdiction to hear breaches of educational obligations⁶⁸. GDR educational legislation⁶⁹ provided extensive duties to attend schools, vocational training institutions and to undergo apprenticeship and training. Parents or guardians had statutory duties to ensure attendance. The legislation also provided that school or institutional rules had to be obeyed. The disputes commissions dealt largely with apprenticeship disputes, but the arbitration commissions would have been more likely to deal with school-related problems.

Simple Civil and other Disputes

Finally, the social courts had jurisdiction to hear simple civil disputes⁷⁰, generally between an employee and his enterprise or between employees, debt claims up to a value of 100 Marks, basic residential disputes and minor disputes concerning loans, the sale of goods, guarantees or damages. The 100 Mark sum mentioned in the legislation was not an absolute limit, but rather an approximate guideline.

The legislation also provided for jurisdiction to be given to the social courts to hear other types of dispute where provided for by law⁷¹, but no particular legislation appears to have been passed

66 Ministerium der Justiz Ordnungswidrigkeitsrecht der DDR Kommentar zum Ordnungswidrigkeitengesetz und zur Ordnungswidrigkeitsverordnung (Berlin, 1989) p. 76

67 § 31(4) OWG

68 § 13(1) and § 14 GGG § 45 KKO § 43 SchKO

69 Schulpflichtbestimmungen vom 14.7.1965 (GBl. II 1965 Nr. 83 p. 625): Gesetz über das einheitliche sozialistische Bildungssystem vom 25.2.1965 (GBl. I 1965 Nr. 6 p. 83)

70 § 13 & § 14 GGG; § 50 KKO & § 17 SchKO

71 § 15 GGG

since 1982 to give effect to this section.

Activities of the Social Courts

Giving Legal Advice

The social courts had a number of duties prescribed by the law. The first was that of providing free legal advice⁷². This was a function of every person and body concerned in the administration of justice in the GDR: apart from the social courts, the state courts⁷³ and lawyers⁷⁴ provided free advice, as did the *Justitiare*, the in-house lawyers responsible for the legal aspects of the running of the GDR's enterprises⁷⁵. This function reflected the role of the social courts as an integral part of the system of justice as much as it did their social role.

Conciliation

The second function was that of mediation or conciliation, achieved by means of discussions (*Aussprachen*) between parties in conflict with a view to avoiding full blown legal disputes or at least resolving them on an informal basis⁷⁶.

Giving legal advice or undertaking conciliation could be done by individual social court members or by the social court acting collectively, and both activities could take place informally in the sense that no application had to be made.

Conciliation as a real legal process was first recognized in the 1982 legislation, thus formalizing a task which the social courts had been carrying out in practice for some time. In formalizing this function the 1982 legislation gave greater emphasis than before to the commissions' task of

72 § 17(1) GGG

73 § 28(1) Gerichtsverfassungsgesetz vom 27.9.74 (GBl. I 1974 Nr. 48 p. 457)

74 § 2(4) Rechtsanwaltsgebührenverordnung vom 1.2.1982 (GBl. I 1982 Nr. 9 p. 183)

75 § 5(2) Justitiar-Verordnung vom 23.3.1976 (GBl. I 1976 Nr. 14 p. 204)

76 § 17(2) GGG; § 1(3) KKO & 1(3) SchKO

preempting and resolving conflicts without the need to do so in a full hearing. "Conciliation aims to resolve legal disputes, in particular with a view to avoiding breaches of socialist legality"⁷⁷.

Conciliation and mediation could take place at any stage, but would generally be carried out in the course of preparation for a hearing. However, not any discussion constituted mediation, and whilst the emphasis was on informal resolution, the process was governed by certain, albeit loose, procedural requirements in that the commencement of the process depended at least on some approach having been made to the commission concerned by a citizen seeking advice, even if no formal application had been made⁷⁸, could end in a person assuming obligations⁷⁹ and could entail recommendations being made by the commission⁸⁰. As we shall see later, both had legal consequences. The conciliation process remained, however, essentially informal in nature, and neither the Social Courts Law nor the Orders provided any detailed rules or guidelines as to how it was to be conducted or as to how any obligations undertaken were to be enforced.

Conciliation was particularly suited to the resolution of simple civil disputes and cases of defamation, insult or residential nuisance where solutions frequently had to be found in other than strict legal terms. It was applied less frequently to employment disputes or criminal or quasi-criminal cases, all of which generally necessitated a formal hearing⁸¹.

Hearings

The third, and most formal, function of the social courts was the hearing (*Beratung*). Although the *Beratung* was a hearing in the sense that evidence and representations were heard and a decision was made at the end which had legal effects, the German word (generally translated in

77 G. Chaluppecky and others Leitfaden für Schiedskommissionen (Berlin, 1987) p. 20

78 § 1(1) KKO & § 1(1) SchKO

79 § 1(4) KKO & § 1(5) SchKO

80 § 1(5) KKO & § 1(6) SchKO

81 § 1(6) KKO & § 1(7) SchKO

connexion with the Social Courts as "hearing") implied a procedure of deliberation, consultation and advice rather than something confrontational or adversarial⁸². However, although the legislation laid down little as to the manner in which the social courts were to give advice or conciliate, it provided a relatively detailed framework within which hearings had to be conducted.

The Hearing

A hearing before one of the social courts did not come about informally as advice or conciliation could. A hearing had to be initiated as a result of the making of an application (*Antrag*) or the passing of a referral decision (*Übergabeentscheidung*)⁸³. A hearing relating to an employment dispute or a breach of educational obligations could only be initiated by an application, a hearing relating to a minor offence or breach of regulation only by referral, and a hearing relating to a misdemeanour by either⁸⁴; civil disputes, it seems, were only heard as a result of an application⁸⁵.

Application

An application could be made to a disputes or arbitration commission collectively or to individual members; it could be made orally or in writing⁸⁶. Generally, oral applications were not accepted from enterprises, only from individuals. If an oral application was made, one of the members was obliged to record it in written form.

The application had to be recorded in the commission's register (*Eingangsbuch*)⁸⁷. A typical register would record details of the applicant (and other parties), the date of the hearing, an

82 Cf. the entry for "Beratung" in Harrap's Standard German and English Dictionary Vol. 1 A - E (London, 1963) p. 44

83 § 18(1) GGG

84 §§ 19, 26(1), 32(1), 41 & 46 KKO; §§ 24(1), 30(1), 39(2) & 44 SchKO

85 § 50(2) KKO and § 17(2) & (3) SchKO

86 § 1(2) KKO & § 1(2) SchKO

87 § 1(7) KKO & § 1(8) SchKO

attendance record (recording the numbers present, but not names), details of the outcome of the hearing, dates by when action was to be taken, the member responsible for supervising performance and other general remarks⁸⁸.

There was no prescribed form for an application, but it was generally supposed to contain the names and addresses of the parties, their age and occupation, the nature of the claim and the basic facts on which it rested⁸⁹. The duty of members to provide legal advice and assistance extended to assisting an applicant in formulating his application.

Referral

Referral was the process whereby the police or some other authority decided to send a case for hearing before a social court rather than a state court. It generally applied to the criminal and quasi-criminal jurisdiction of the commissions. Generally, minor offences would be referred to a social court by the police or the procuracy (although a state court could also refer a case to a social court), a misdemeanour by the police or by a manager responsible for discipline at work, and a breach of regulation by any of the many bodies responsible for the enforcement of the GDR's large body of rules and regulations. The referral decision (*Übergabeentscheidung*) was recorded in a special form containing much the same information as an application (but in greater detail and accompanied by supporting documentation)⁹⁰.

In fact the scope of referral to the social courts was fairly limited. Minor offences would only be referred to a social court if the facts of a case were completely clear and the wrongdoer had admitted guilt⁹¹. Breaches of regulations would only be referred if the facts were similarly

88 An example of what was then called the *Tagebuch* (diary) can be found in *Die Konfliktkommission Tribüne-Beilage* 38/1965

89 G. Chaluppecky and others *Leitfaden für Schiedskommissionen* (Berlin, 1987) p. 22

90 §§ 26(2) & (3), 33(2), 42(1) KKO; §§ 24(2) & (3), 31(2), 40(1) SchKO

91 § 58 StPO, § 25(2) KKO & § 23(2) SchKO

clear⁹², and in all cases the character of the citizen, the circumstances of the wrongful act and the level of seriousness had to be such as to give rise to the expectation that a hearing would have an "educational effect". Generally, referral would only have been appropriate where the offence or wrong was very minor, the level of guilt negligible, the damage done small and the offence a first offence⁹³.

Commissions to which a case concerning minor offences, misdemeanours or breaches of regulations had been referred could object to the referral if the prerequisites for a referral had not been complied with or the case was, in fact, unsuitable for hearing by a commission. Objection could be made at any time up to the conclusion of the hearing itself⁹⁴. The referring body was then under a duty to re-examine its referral decision, but, if it decided to abide by its decision to refer, that decision was binding (in the case of a misdemeanour or minor offence), and the commission was bound to deal with the case⁹⁵, although in the case of a breach of regulation, the referring body then became obliged to deal with the matter⁹⁶. A relatively large proportion of criminal and quasi-criminal cases were referred to the social courts⁹⁷, and although objections to a referral appear to have been rare, instances were described in the literature⁹⁸.

A case before a commission as a result of an application could be withdrawn at any stage up to

92 § 31 OWG § 41(2) KKO & § 39(2) SchKO

93 M. Benjamin/H. Creuzberg Die Übergabe von Strafsachen an die Konflikt- und Schiedskommissionen (Berlin, 1966) pp. 29-52

94 §§ 27(1), 35(1), 42(2) KKO; §§ 25(1), 33(1), 40(2) SchKO

95 §§ 60 StPO, §§ 27(2) & 35(2) KKO; §§ 25(2) & 33(2) SchKO

96 § 32(2) OWG, § 42(2) KKO and § 40(2) SchKO

97 See Appendix D table 12. GDR commentators always took pains to emphasize, however, that this did not mean that such matters were excluded from the crime figures (cf. E. Bucholz Gesellschaftliche Gerichte in der DDR - Organe der Strafrechtspflege Zeitschrift für die gesamte Strafrechtswissenschaft Vol. 98 4/1969 p. 966; interview with Udo Wolf, general secretary of the Verband der Juristen der DDR, Berlin, 18.7.1988)

98 R. Kudernatsch Einspruchsrecht der Konfliktkommissionen gegen die Übergabe von Vergehen Die Konfliktkommission Tribüne-Beilage 15/1988 p. 7; J. Streit Rückfalltäter gehören nicht vor die Konfliktkommission Arbeit und Arbeitsrecht 12/1964 pp. 283-284

the conclusion of the hearing⁹⁹; it seems, however, that there was no power for a referring body to withdraw a referral once it had been made.

Preparation

Once an application had been made or a case referred, the burden of undertaking the necessary work leading up to the hearing fell on the commission, not on the parties to the case or the referring body, although in the case of a referral it was fundamentally the duty of the referring body to make available to the commission all the documents and information necessary for a hearing¹⁰⁰. Initially the commission would check the application or referral to ensure that it had jurisdiction. If it did not, it would make an order (*Beschluß*) to that effect and direct the application elsewhere, generally to the area court, or decline to hear the case¹⁰¹. If it did, it would then proceed to investigate the facts of the case, for once the proceedings were started, their conduct rested not with the parties but with the court itself. This was one of the principal factors which distinguished the social courts from small claims courts of the type found in England and Wales or the USA. The social courts were not intended simply to resolve minor disputes or even to protect the rights of groups or individuals: certainly this was part of their function, but principally they were organs of justice aiming to affect society as a whole by getting to the root causes of conflicts. We shall examine this function in greater detail in chapter VIII, but it is important to note that whilst applications could be withdrawn once made, the resolution of conflict was not seen as something to be pursued or disposed of simply at the whim of the individuals immediately involved but as a matter of concern to the whole collective affected by the conflict.

In the light of this, it is not surprising that it was for the court to investigate a case and not merely to hear it in terms of evidence presented by the parties. It had a statutory duty to establish

99 § 24(1) KKO & § 21(2) SchKO

100 G. Chalupecky and others Leitfaden für Schiedskommissionen (Berlin, 1987) p. 23

101 §§ 28 20 KKO, (although the latter appears to have applied only to employment disputes); § 52(1) KKO; §§ 28 19(2) SchKO

the relevant facts¹⁰², and this was done under the direction of the chairman who would decide with his fellow members who would be responsible for obtaining documents and doing what might be necessary to prepare for the hearing¹⁰³. This could mean interviewing witnesses, conducting visits to flats or houses and interviewing the parties themselves. The purpose of these steps was not to pre-empt or pre-judge the hearing itself, but to establish the evidence that would be needed for a full hearing to take place and to relieve the parties of the burden of having to do so. The preparatory work would generally be carried out by individual members (except for interviewing witnesses, when the principal commentaries recommend that two members should be present) whereas the hearing itself was collective. If necessary, in some cases the police could be asked to assist by carrying out further investigations¹⁰⁴. By all accounts, members appear to have taken this preparatory work seriously and to have undertaken their investigations with care and vigour¹⁰⁵.

This preparatory work was generally undertaken with some speed, since (in all but exceptional cases) the hearing had to take place within four weeks of the application or referral, and if for any reason this time limit was not met, the reasons for the delay had to be recorded¹⁰⁶. Stefan Otte indicates that whilst illness might have been a sufficient reason for delay, administrative considerations or convenience did not constitute adequate grounds¹⁰⁷.

Once investigations had been completed, a time and place had to be fixed for the hearing. The chairman of the commission was obliged to see that at least one week's notice was given to the

102 § 18(4) GGG

103 § 2(1) & (2) KKO; § 2(1) & (2) SchKO

104 § 34(2) KKO & § 32(2) SchKO

105 All commission members interviewed in connexion with this project emphasized this point, which is also mentioned in the 1989 report of the disputes commission of Tribüne (cf. Appendix C)

106 § 2(3) KKO, § 2(3) SchKO. The time limit under the 1968 Order (§ 7(3)) was 3 weeks. This was probably extended in 1982 because the 3 week limit was so frequently not adhered to (cf. G. Kirschner Konfliktkommissionen verwirklichen Gesetzlichkeit im Arbeitsrecht *Neue Justiz* 6/1979 p. 253)

107 S. Otte and others Die Konfliktkommission Ein Leitfadens (Berlin, 1989) p. 23

parties, witnesses and others directly concerned in the case¹⁰⁸; in addition, public notice of the hearing had to be given, again at least one week before the hearing date¹⁰⁹. Such notice, giving time and place and information about the subject matter of the case, would generally be given by noticeboard or by posting at the entrance of the enterprise (in the case of disputes commissions) and by equivalent notice at the local authority office (in the case of arbitration commissions). A formal decision as to who should be summoned needed to be taken in some cases, since apart from the parties and the obvious witnesses, the court may well have needed to hear from other persons representing state or other bodies whose assistance might be required. That assistance could take the form of evidence on the character of the parties or evidence from the relevant collective or residents' association to enable the commission "to extend the effect of its work beyond a hearing of the individual case" so as to "assist generally in maintaining order, discipline and safety in the town or community"¹¹⁰, for, as we shall see later, getting to the root of social problems in general, acting on the collective as well as on the individual, was central to the role of the social courts.

For this reason too, great stress was laid on the need for members of the enterprise or community to attend and participate actively in hearings. The fact that a hearing was to take place was not publicized simply to comply with the constitutional requirement for justice to be administered publicly¹¹¹, but because a wide presence was necessary to achieve the educational and social effect for which the commissions were designed and which was seen as an integral part of socialist justice¹¹², to such an extent that at certain stages, criminal trials were held before organized audiences ("Verhandlungen vor erweiterter Öffentlichkeit") and even at the offender's workplace

108 § 3(2) KKO; § 3(2) SchKO

109 § 3(1) KKO; § 3(1) SchKO

110 G. Chaluppecky and others Leitfaden für Schiedskommissionen (Berlin, 1987) p. 25

111 Cf. Articles 90(3) and 102(1) *Verfassung der DDR* which GDR commentators relied on in support of this contention (for example, H. Grieger in Das Wesen der gesellschaftlichen Gerichte in der DDR *Staat und Recht* 4/1982 p. 314)

112 Cf. Art. 6 StGB and § 4 StPO

for greater social effectiveness¹¹³. So important was the need for the hearing to take place in the presence of all concerned that the Supreme Court itself emphasized that the disputes commissions should invite to a hearing all connected with the employee concerned, including management¹¹⁴.

Where the hearing concerned allegations against or relating to a minor, the parents or guardians also had to be summoned, as did representatives of any relevant school or youth organization if their presence was deemed necessary¹¹⁵.

The commission members who were to hear the case would generally confer together before the hearing to determine the overall conduct of the hearing; they could even fix an agenda if this was felt desirable to enable the hearing to proceed smoothly.

In the course of pre-hearing discussions it was possible for certain cases to be disposed of by conciliation, which could be conducted by an individual commission member or the commission as a whole. If conciliation was successful then no hearing needed to take place, although any obligations undertaken would be recorded in writing by the commission¹¹⁶. If conciliation was not possible, the case would normally proceed to a full hearing.

The Conduct of the Hearing

Although any hearing before a social court inevitably involved the affairs of individuals, it was always fundamentally collective in character. One of the leading commentaries described a hearing before a disputes commission as:

"the forum for achieving a resolution of a conflict by means of comradely and critical discussion jointly with the work collective, for safeguarding the legally guaranteed

113 J. Schlegel Die Hauptverhandlung vor erweiterter Öffentlichkeit *Neue Justiz* 61 1968 pp. 172-175 and R. Kositzki Verhandlungen vor erweiterter Öffentlichkeit in Betrieben *Neue Justiz* 1/1978 pp. 30-31

114 Probleme der Wirksamkeit der Rechtsprechung der Konfliktkommissionen. Bericht des Präsidiums des Obersten Gerichts an die 7. Plenartagung am 20. Juni 1973 *Neue Justiz* 15/1973 p. 442

115 § 4(1)KKO & § 4(1) SchKO

116 §§ 1(3) & (4) KKO and §§ 1(3) & (4) SchKO

rights of working people and having an educational influence on them¹¹⁷.

Another used similar words of a hearing before an arbitration commission:

"At the hearing the arbitration commission, in conjunction with the other citizens present, works out the basis of its decision."¹¹⁸.

The commissions heard cases collectively, sitting as committees of at least four members¹¹⁹.

Whilst unanimous decisions were generally felt to be desirable, majority decisions were possible¹²⁰. As we have already seen, all hearings were public¹²¹. The social courts had no power to sit *in camera* not even where cases concerned minors, although the arbitration commissions (not disputes commissions) did have the power to exclude individuals from hearings, albeit only in exceptional circumstances¹²². Hearings generally took place outside working hours¹²³, a provision that probably owed as much to the need not to interfere with the process of production as to the avowed aim of ensuring wide participation.

Because the social courts were lay courts and had an investigatory function the parties were compelled to appear before them in person¹²⁴. Although legal representation was not expressly excluded by the law, it was precluded by implication. § 18(6) GGG provided that the parties could be advised by trades unions officials, the area court or even a lawyer, but before the hearing. This coupled with the express obligation to appear personally amounted to an obligation to appear in person, i.e. without a lawyer. The only exception was if a party was absent or ill for a prolonged period, in which case another individual (but presumably not a lawyer) could represent him, but

117 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p. 25; § 18(2) GGG

118 G. Chalupecky and others Leitfaden für Schiedskommissionen (Berlin, 1987) p. 26; § 18(2) GGG

119 § 5(1) KKO; § 5(1) SchKO

120 See, for example, the report of the Tribüne commission, Appendix C

121 § 18(3) GGG; § 7(1) KKO; § 7(1) SchKO

122 § 7(2) SchKO

123 § 7(1) KKO; § 7(1) SchKO

124 § 18(6) GGG; cf. also § 7(1) KKO & § 7(1) SchKO

even this was restricted to certain categories of employment and civil disputes¹²⁵.

The Law and the two Orders on the social courts provided only a loose procedural framework for the conduct of the hearings, although the legislation was clear on a number of points.

First, it emphasized the active and inquisitorial role of the courts. The commissions were not to be empty vessels, waiting to receive what the parties poured into them; rather they had an obligation to establish for themselves the facts and matters necessary for them to decide the case¹²⁶. This duty applied even in referred cases where (as we have seen) the facts would generally have been clear right from the start.

A typical pattern for a hearing was outlined in one of the commentaries as follows¹²⁷:

1. The chairman and members introduced themselves.
2. The chairman set out the nature and contents of the application or referral.
3. The chairman or members would refer the parties to the relevant law and explain it if appropriate.
4. The chairman would invite all present to assist in resolving the dispute, for the presence of the public was not passive as in the case of traditional "bourgeois" proceedings where their role was that of observer, there to see justice done; everyone participating in the hearing had a right to be heard, to ask questions and to contribute to the resolution of the dispute, and the hearing had to be conducted to take full account of that right¹²⁸.
5. The parties would address the court directly (no order was prescribed for their doing so).
6. The members and other "participants" would express their views on the dispute.

125 § 21(1) KKO; § 18(1) SchKO

126 § 18(4) GGG

127 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) pp. 26-27; for an example of a recommended pattern for a hearing in the early years see Zentralvorstand der Industriegewerkschaft Energie im FDGB Praktische Anleitung für die Arbeit in der Konfliktkommission (Berlin, 1954) pp. 3-7

128 § 18(5) GGG

7. The courts would seek any information which could be relevant on the character of the parties and the circumstances surrounding the dispute.

8. Where the hearing was taking place before a disputes commission, the views of the shop steward, the union and collectives had to be elicited and heard¹²⁹. (This provision reflected the duty of the unions in relation to the disputes commissions set out in the Resolution of the Praesidium of the Federal Executive of the FDGB of 26 March 1982¹³⁰.)

Any witnesses called did not take an oath, but the chairman of the commission, who was generally responsible for the conduct of the hearing¹³¹, would usually address a witness before he gave evidence and remind him of his duty to be truthful. Those giving evidence before a social court could not be charged with giving false evidence¹³² in the same way as a witness before a state court. However, any evidence given was not privileged, and false or malicious evidence could lay a witness open to action for insult or defamation¹³³.

Because the function of a social court hearing was not simply to dispose of a dispute but to educate, the presence of the parties was regarded as essential. There was no means whereby one party could steal a march on another because of a failure to appear; in most (but not all cases) no default judgement could be given. If one of the parties failed to appear at the hearing the case could not be disposed of in his absence. A second hearing date would generally be fixed, and the commission, enlisting the assistance of various social agencies if appropriate (e.g. the union, the school etc.), would try to persuade the defaulting party to attend on the fresh hearing date. A new summons would be issued, alerting the defaulter to the potential consequences of a second failure

129 § 8(4) KKO

130 Aufgaben der Gewerkschaften bei der Anleitung und Schulung der Konfliktkommissionen. (Beschluß des Präsidiums des Bundesvorstandes des FDGB vom 26 März 1982 I/1.4) (Beschlüsse und Hinweise des Bundesvorstandes des FDGB) *FDGB Informationsblatt* 2/1982

131 § 5(2) KKO; § 5(2) SchKO

132 A criminal offence under § 230 StGB

133 §§ 137 & 138 StGB

to attend¹³⁴. The direct consequences were not, in fact, very far reaching. An arbitration commission had power to impose a fine of up to 50 Marks¹³⁵ and an employment dispute could be decided by a disputes commission in the absence of the respondent¹³⁶; in other cases the sanction would be the fact that the case would be returned to the source from which it was referred¹³⁷, generally with the consequence that the case would be dealt with by a state court, with the possibility of tougher penalties.

Generally a hearing would focus on one issue. However, this was not laid down in the legislation, and presumably more than one application could have been heard at the same time. A disputes commission hearing dealing primarily with a minor offence or misdemeanour could also deal with a simple civil dispute (generally damage to property) if there was some connexion between the two and the facts were fairly straightforward¹³⁸, and the arbitration commissions also had some power to hear certain matters together ("*komplexe Beratung*")¹³⁹.

We have already seen that great importance was attached to a wide attendance at hearings. However, those attending were not expected to be mere passive observers, there to see justice being done; they were expected to participate actively in the hearing by expressing views on the facts of the case, venturing opinions on why the dispute had occurred and on how the dispute might be resolved¹⁴⁰, thereby extending the collective beyond the commission members to all present. Here a fine balance had to be achieved, for the aim of the process was, as we have seen, not so much to punish as to reform and educate. It was thus essential for the court to protect the

134 § 10(1) KKO; § 10(1) SchKO

135 § 10(3) SchKO

136 § 24(3) KKO

137 See, for example, § 30(1), § 36(3), § 44 and § 49(1) KKO; § 21 (4), § 28(1), § 34(3), § 42 and § 47(1) SchKO

138 § 9 KKO

139 § 22 SchKO (which had no direct parallel in the KKO)

140 § 8(3) KKO & § 8(3) SchKO. The union, the collective and the shop steward were particularly mentioned (§ 8(4) KKO)

wrongdoer from being publicly humiliated:

"The wrongdoer should account for himself publicly, explain how he came to act illegally and proclaim the personal conclusions he has drawn from his misbehaviour; but he should not be pilloried or be boycotted in society or ostracized. On the contrary, he should, after purging his acts by means of self-rehabilitation and making restitution, resume an even firmer place in his collective, unburdened of guilt" ¹⁴¹.

The tone at the hearing was supposed to be comradely but objective, a reflexion of the "spirit of justice, equality, fraternity and humanity" that was to pervade socialist society¹⁴².

Note too the emphasis in § 8 KKO and SchKO on resolving the dispute, again demonstrating the primary concern to conciliate, to get the parties to recognize and remedy wrongs so as to avoid the necessity of imposing terms on them.

The Decision of the Court

After the hearing the commissions were obliged to decide the case and make an order (*Beschluß*)¹⁴³. The legislation was silent on the way in which a decision was to be reached, but it seems to have been the practice for the commission members not to withdraw to consider and deliberate, but to do so in public:

"The entire hearing should be conducted in public. It is thus a breach of the Disputes Commissions Order for the disputes commissions to withdraw in order to exchange views before making an order"¹⁴⁴.

The commissions were always expected to aim for unanimity in reaching their decision; a majority decision was supposed to be the exception rather than the rule¹⁴⁵, since a collective decision was supposed to have a greater educational impact than one in which differences of opinion could be discerned.

141 E. Bucholz Gesellschaftliche Gerichte der DDR - Organe der Strafrechtspflege *Zeitschrift für die gesamte Strafrechtswissenschaft* Vol. 98 4/1986 p. 965. (The religious resonances with the sacrament of confession need hardly be emphasized.)

142 Cf. H. Toeplitz Fragen der Gesetzlichkeit und Rechtspflege in der neuen sozialistischen Verfassung der DDR *Neue Justiz* 11/1968 p. 326 and Article 86 Verfassung der DDR

143 § 19(1) GGG, § 11(1) KKO, § 11(1) SchKO

144 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p. 26

145 § 12(2) KKO & § 12(2) SchKO; cf. also S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p. 29

The order encapsulating the decision could take a number of forms: it could be a finding that the claim was unfounded or that there had been no breach of the law; it could take the form of a confirmation of agreed terms between the parties (a sort of East German Tomlin order), or it could find that the case had been proved. The order itself was generally made on pre-printed forms, thus ensuring that there was a fairly full record of the case and the decisions on which the order itself was based¹⁴⁶. The order had to contain certain prescribed information: the date and place of the hearing, the names of the commission members who had heard the case, the name, age, occupation and addresses of the parties, details of the application, a short summary of the findings of fact on which the decision was based, the decision itself and a note drawing attention to the right of appeal and to enforceability of the decision¹⁴⁷. The giving of a reasoned decision was seen as important, again for educational reasons¹⁴⁸.

The order had to be signed by the chairman and sent to the parties by recorded delivery within two weeks, and a further copy had to be sent (again within two weeks) to the procurator and to the body (if any) which had referred the case. If the order imposed a fine or unpaid community service a further copy had to be sent to the local authority which would be responsible for collecting the fine or supervising the work¹⁴⁹.

Orders of the social courts made no provision for costs since the commissions had no power to order payment of costs, although they could order reimbursement of expenses¹⁵⁰. The fact that no costs were awarded was important because it meant that disputes could be taken before the commissions without fear of any penalty in costs.

146 For early examples see *Die Konfliktkommission Tribüne-Beilage* 20/1963 20.12.1963 p. 3 and 19/1965 11.5.1965 p. 3

147 § 13(1) KKO & § 13(1) SchKO

148 S. Otte and others *Die Konfliktkommission Ein Leitfaden* (Berlin, 1989) p. 30

149 §§ 13(2) & 13(3) KKO & §§ 13(2) & 13(3) SchKO

150 § 14 KKO & § 14 SchKO; costs were awarded in employment cases under § 305(2) AGB, for minor offences, misdemeanours and breaches of regulation or of educational obligations under §§ 363(1) and 364(1) StPO, for civil disputes under 21 174(1) & (2) and § 175(1) & (2) ZPO.

Although the social courts were an integral part of the GDR legal system, their decisions did not have the full force of the decision of a state court. Certainly they were enforceable and had legal effect, but a "conviction" for a minor offence, misdemeanour or breach of regulation did not operate as a real conviction in that the citizen concerned remained of good character; nor was a decision ever recorded on an employee's personnel file¹⁵¹.

The decisions of social courts were, as we shall see, publicized but were not generally reported. Early case reports on the social courts were invariably of appeal decisions to the higher courts. However, in 1982 a conscious decision appears to have been taken to upgrade the status of the commissions by reporting cases. The first reported case of a disputes commission was published in 1982¹⁵² and was followed by a mild rash of reported cases in 1983¹⁵³.

Educational Measures

The order made would record the penalty imposed by the court. These penalties were not described as such, but were called "educational measures" (*Erziehungsmaßnahmen*), again underlining that the social courts were there primarily to educate and not to punish. The whole thrust and direction of the hearing was aimed at reform and rehabilitation:

"The aim and content of every hearing consist above all in the education and self-education of the wrongdoer to socially acceptable behaviour and in the prevention of crimes and other breaches of the law by means of strengthening consciousness of the law in all citizens concerned"¹⁵⁴.

The commissions had to decide precisely which educational measures to impose having regard to the nature and severity of the case before them and the character of the individuals involved in the case.

151 § 13(4) KKO

152 Beschluß der Konfliktkommission der VEB R. vom 6. August 1981 *Neue Justiz* 9/1982 pp. 423-424

153 In 1982 and 1983 *Neue Justiz* reported several decisions of disputes commissions on employment law and one arbitration commission decision - cf. F. Müller & K. Wünsche Zum Charakter und zur Rolle der Leitungsentscheidungen des Obersten Gerichts *Staat und Recht* 5/1984 p. 412

154 S. Otte and others Die Konfliktkommission Ein Leitfadens (Berlin, 1989) p. 140

The best educational effect was held to be achieved if obligations were voluntarily assumed by the wrongdoer, as that demonstrated that he had recognized the wrong of his behaviour and shown an intention to reform himself. Thus, educational measures would be imposed in general only where no obligations were undertaken voluntarily or where those offered to be undertaken seemed inadequate.

Educational measures could be imposed singly or in combination as follows¹⁵⁵:-

1. A citizen could be required to make a formal apology to the person he had wronged or to his collective. No particular form of apology was prescribed, but a bare apology was probably not sufficient, since the person offering the apology

"should publicly proclaim not only the event that led to his wrongful action but should also demonstrate his insight into the reprehensible nature of his conduct"¹⁵⁶.

The commission could determine the time when, place where and persons to whom the apology was to be given.

2. Compensation could be ordered. This did not have to be financial: restitution could also be made by undertaking work, a flexibility important in a society where the shortage of consumer goods often meant that financial compensation was inadequate since it was often impossible to purchase a replacement for something that had been damaged, whereas repairs could be effected.

Compensation had to be made in accordance with general legal principles ("nach den Rechtsvorschriften"), so that social court members needed fairly detailed knowledge of the law of damages. Thus, where the court decided that an offence had been committed intentionally it would order compensation to cover the full extent of the damages caused, but where it was more a

155 § 20 GGG provided the overall framework; §§ 23(2), 28(1), 37(3), 43(1), 47(2) KKO and §§ 20(2), 26(1), 35(3), 41(1) and 45(2) SchKO prescribed the individual remedies available in relation to the different types of cases before the commissions.

156 G. Chaluppecky and others Leitfaden für Schiedskommissionen (Berlin, 1987) p.68

matter of carelessness, different criteria could apply¹⁵⁷.

If in the course of assessing damages it seemed likely that the damages would exceed 1,000 Marks, the commission was generally supposed to refer the case to the area court¹⁵⁸.

The person who had actually suffered loss was always to be summoned to the hearing to give evidence of the loss. Again, that person had to appear without legal representation.

The social courts were urged to ensure that any compensation awarded was paid quickly, swift justice being educationally more efficacious than that dispensed over a prolonged period, so although instalment payments were permitted, they were generally subject to a tight payment schedule¹⁵⁹.

3. Unpaid community service of up to 20 hours could be ordered, but only, it seems, if offered by the wrongdoer. The social courts appear not to have had power to impose it.

4. The wrongdoer could be reprimanded. The reprimand (*Rüge*) was a public sign of disapproval comparable to but less severe than the public admonishment (*öffentlicher Tadel*) pronounced by other courts in more serious cases¹⁶⁰.

5. A fine could be imposed. This was regarded as the most severe penalty which a social court could impose. The actual amount that could be imposed by order varied according to the degree of severity of the wrong to be punished, but varied from 10-500 Marks. Fines were not generally

157 Cf. § 261 ff. AGB, §§ 336-337 ZGB

158 Cf. § 50(1) KKO & § 17(1) SchKO

159 G. Chaluppecky and others Leitfaden für Schiedskommissionen (Berlin, 1987) p. 70 and S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p. 148

160 § 37 StGB

imposed if other measures were thought sufficient to achieve the desired educational effect¹⁶¹. The amount of the fine was in the discretion of the court which would always have regard to the financial circumstances of the person concerned. Collection of the fine would be undertaken by the relevant local authority¹⁶².

6. Finally, any other obligations volunteered by the recalcitrant citizen could be confirmed by a social court and made the subject of an order provided they were conducive to developing or encouraging behaviour consistent with socialist law. Thus, the wrongdoer had unlimited scope to make amends by offering, for example, to undergo counselling for alcoholism, undertaking to be punctual at work or undertaking some duty in the community. Such voluntary undertakings were regarded positively given that the very fact that they were offered voluntarily testified to the social efficacy of the hearing.

The social courts had power to involve persons other than the parties in such obligations. The works collective, residents' association, other collective and even individuals could undertake obligations directed towards the education of the wrongdoer¹⁶³. Again this was regarded as highly desirable, since the works collective was seen as playing "a decisive role in the forming of socialist personality", and the integration of the individual in his collective meant that legal education was being "accomplished...in the daily process of working, living and managing"¹⁶⁴.

In exceptional cases the social courts could refrain from imposing any educational measures. It is curious that the legislation specifically alluded to circumstances where they could do so when

161 S Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p. 150

162 § 57(2) KKO; § 53(2) SchKO

163 § 20(2) GGG

164 G. Lehmann/H-J. Schulz Zur Rolle der Arbeitskollektive bei der weiteren Festigung von Gesetzlichkeit, Ordnung, Sicherheit und Disziplin *Staat und Recht* 2/1976 pp. 155 and 157; cf. also H. Jetzschmann/R. Winter Arbeitskollektive in unserer Gesellschaft *Einheit* 6/1975 pp. 584-589; D. Chitralla/R. Dau/R. Mittag Das Arbeitskollektiv als Bestandteil der politischen Organisation der sozialistischen Gesellschaft *Staat und Recht* 10/1980 pp. 894-904; I. Fiedler/O. Unger/H. Ziener Die wachsende Rolle der Arbeitskollektive in der sozialistischen Demokratie *Staat und Recht* 11/1980 pp. 977-986; P. Kroh Sicherung einer hohen sozialistischen Arbeitsdisziplin durch erzieherische Potenzen des Arbeitskollektivs und durch rechtliche Mittel *Staat und Recht* 2/1982 pp. 141-148

clearly there was always a discretion¹⁶⁵. The explanation is most likely that in criminal and quasi-criminal cases guilt, as we have seen, had almost invariably been established before referral, making some penalty almost inevitable. The social courts were urged to exercise this discretion sparingly and only when it was clear that the erring citizen showed the requisite signs of "newness of life" and where his past character and behaviour made it appropriate.

Any decision to refrain from imposing educational measures had to be recorded in the order, presumably so that the decision would be brought specifically to the notice of the procurator.

The social courts had power to make their decision public for up to one week¹⁶⁶ (e.g. by posting on a suitable notice board), although it could also be publicized in the works magazine or by some other suitable measures¹⁶⁷.

Recommendations

The social courts had power to make recommendations (*Empfehlungen*) either after a hearing or in conjunction with conciliation¹⁶⁸. The making of recommendations appears to have grown up as an informal practice in the early days of the social courts but to have been formally incorporated into the 1968 legislation whereafter they assumed increasing importance as a means of eliminating the causes of dissension and illegality¹⁶⁹ and thus became an essential tool in the armoury of the social courts. They were not an "added extra" but were an integral part of the legal system designed to affect all aspects of life and economy:

"The right of the disputes commissions to make recommendations is an important means of influencing improvements in management, of ensuring consistent compliance with socialist law — and in particular employment law — and of creating

165 §§ 37(1) & 43(4) KKO and §§ 26(4) & 41(4) SchKO

166 § 15(2) KKO & § 15(2) SchKO

167 H. Wostry Zur Veröffentlichung von Konfliktkommissionsbeschlüssen *Arbeit und Arbeitsrecht* 14/1963 p. 326

168 § 21(1) GGG

169 Cf. Leitung der Arbeitsrechtssprechung und Durchsetzung des sozialistischen Arbeitsrechts *Neue Justiz* 11/1969 p. 327

an atmosphere of intolerance towards all factors interfering with socialist development¹⁷⁰.

Their importance was emphasized by the procurator general of the GDR¹⁷¹ and by Erich Honecker himself, for, even more than educational measures, recommendations were supposed to have an effect "above and beyond the individual case", showing the way to better organization, work, order and discipline¹⁷².

The scope for making recommendations was wide. For example, one disputes commission that had heard a theft case established in the course of the hearing that food delivered to the works canteen was never checked on delivery so that there was no way of knowing whether goods had gone missing before or after delivery, and recommended better controls. In another case it emerged that the personnel department of an enterprise had failed to implement § 49 of the Employment Code. Recommendations were made accordingly¹⁷³.

Any recommendations made had to be recorded in the order¹⁷⁴ and had to receive a reply within two weeks¹⁷⁵. Whilst in the early years they were not always taken seriously, they had acquired some level of importance by the 1970s when evidence appears of the procurator intervening where managers were failing to react to the recommendations of a disputes commission¹⁷⁶.

170 W. Macho Empfehlungspraxis der Konfliktkommissionen und Gesetzlichkeitsaufsicht des Staatsanwalts *Neue Justiz* 15/1972 p. 450

171 H. Jablonowski Erfahrungen der Staatsanwaltschaft aus der Zusammenarbeit mit den gesellschaftlichen Gerichten *Neue Justiz* 3/1972 pp. 65-70

172 E. Honecker Bericht des Zentralkomitees an den VIII. Parteitag der SED (Berlin, 1971) p. 67

173 Both examples cited in G. Müller Wirksamkeit der gesellschaftlichen Gerichte *Neue Justiz* 4/1982 p. 155

174 See the example in Appendix C

175 § 21(2) GGG

176 Reported case: Protest des Staatsanwalts des Bezirks Cottbus vom 24. Januar 1975 - PSF 317/IV - 113 (*Neue Justiz* 12/1975 pp. 377-378). The case was clearly reported "pour encourager les autres" as part of a campaign evidenced by other contemporary articles (cf. M. Riethig Gesetzlichkeitsaufsicht des Staatsanwalts bei Nichtbeachtung von Empfehlungen der Konfliktkommissionen *Neue Justiz* 14/1975 pp. 422-423)

Research undertaken by the Supreme Court of the GDR indicated that recommendations were being made in about 25% of cases by disputes commissions, but in a smaller proportion of cases heard by arbitration commissions, probably because arbitration commission cases were generally concerned more with individual disputes rather than ones of a collective nature (such as employment disputes)¹⁷⁷.

The social courts had the right to see that their recommendations were at least reacted to if not acted on¹⁷⁸. However, they had only limited specific powers to enforce their recommendations, and ultimately the power to enforce was reserved to the procuracy¹⁷⁹.

Miscellaneous Matters

The social courts were courts of record. As we have already seen, a record of incoming cases was kept and the outcome of the case was recorded in the form of an order. A record of the hearing and in particular of the result was always kept by a clerk, who was not one of the members¹⁸⁰. All records had to be kept for two years, whereafter they would be passed to the local area court¹⁸¹.

The administrative back-up and funds to enable the commissions to operate came from the enterprise or local authority in the ambit of which the commission operated. This would include making available a suitable room for hearings. That meant a room suited to the dignity of legal proceedings, but not having the character of a courtroom, and perhaps where smoking could even

177 Cf. Appendix D and Bericht des Präsidiums des Obersten Gerichts an die 7. Plenartagung am 20. Januar 1973 *Neue Justiz* 15/1973 pp. 448-449 and G. Müller Wirksamkeit der gesellschaftlichen Gerichte *Neue Justiz* 4/1982 p. 154

178 § 21(3) GGG

179 § 17(2) KKO & § 16 SchKO are indicative of the limit of powers to enforce

180 § 5(3) KKO; § 5(3) SchKO

181 § 66 KKO; § 62 SchKO

be allowed during hearings¹⁸².

After the Hearing

The educational role of the commissions did not end after the hearing with the making of orders or even recommendations. The commissions were required to see that the educational process begun in the hearing was continued in the community at large¹⁸³, in particular by ensuring that their orders and recommendations were put into effect¹⁸⁴. The social courts were, thus, close to the community not just in the sense that they were accessible to the citizen ("bürgerlich"), but also in the sense that at the same time they were always keeping a watchful eye on him.

182 *Die Konfliktkommission Tribüne-Beilage* 18/1964 p. 23

183 § 15(1) KKO; § 15(1) SchKO

184 § 15(3), § 17(1) & (2) KKO; § 15(3) & 16(3) SchKO

Chapter V

Appeals and Safeguards

As we have seen, the social courts became an integral part of the state legal system of the GDR in 1968 and as a matter of fact and operation were a part of that system for some time before that. This is reflected in the fact that provision was made in the legislation for appeal to a higher court (the area court), much as one would expect to find in almost any legal system. More unusual, and a sign of the fact that the authorities always regarded social court justice with some misgivings, was the possibility of the institution of an appeal at the instigation not of the parties but of the state procurator.

In the early years, the uncertain position of the commissions was reflected in some peculiarities regarding appeals from their decisions. Thus, when the early commissions were concerned in part with moral breaches, appeal against those decisions lay not to the courts but to the union committees of the relevant enterprise. Such appeals (whether or not made to the state courts) had to be made within 14 days¹. The commissions' decisions could be overturned and if necessary the case could be referred back to the commission for re-hearing. Appeals almost always went to the area court. This seems to have been the case from the earliest years, as can be seen from the fact that as early as 1954 and 1955 appeals were so established that many cases dealt with by the commissions did not stop at the area court but went all the way to the Supreme Court. Some of these decisions concerned jurisdiction and emphasized the need to invoke the disputes commissions as a compulsory court of first instance in employment matters²; other decisions were concerned to see due process, such as the preservation of the principle *audi alteram partem*³.

1 § 30 KKVO 13.4.1953; § 13 GGG 11.6.1968; §§ 58-59 KKO 4.10.1968; §§ 54-57 SchKO 4.10.1968

2 Urteil vom 8.November 1954 Entscheidungen des Obersten Gerichtes in Arbeitsrechtssachen Band 1 pp. 111 - 112; Urteil vom 5.Dezember 1955 Entscheidungen des Obersten Gerichtes in Zivilsachen Band 4 pp. 308 - 309

3 For example Urteil vom 29.Juli 1955 Entscheidungen des Obersten Gerichtes in Zivilsachen Band 4 pp. 277 - 278

The right of appeal under the last legislation was contained in § 19(2) GGG which provided for appeal to the area court and nowhere else. To emphasize first the fact that social court decisions were a serious matter and binding as much as those of any other court, and second that they could not therefore be interfered with other than by due judicial process, § 19(3) GGG went on to provide that decisions could only be varied or set aside subject to the law and by the means provided for by the law. A decision made by a disputes commission on an employment matter could not be interfered with by unions or management or, for that matter, by any state body.

All decisions of a disputes commission could be appealed by the applicant and respondent (in employment and civil disputes), the applicant (in cases of insult, defamation or breach of residential peace), the accused (in cases of minor offences, misdemeanours or breaches of order or of educational obligations) or the person to whom compensation was due in the case of an award of damages or money⁴. Similar rights of appeal existed against decisions of the arbitration commissions⁵, but in their case provision was made also for appeal against the imposition of an administrative fine or penalty. These appeals had to be made within two weeks of receipt of the decision by the relevant person. In addition an appeal could be instigated by the procurator who had three months in which to appeal⁶. (It will be recalled that the courts had a duty to send copies of all their decisions to the procurator for examination.)

Generally all decisions of the social courts were subject to appeal. There were, however, some exceptions. There appears, for example, to have been no appeal against a decision of a disputes commission rejecting an application — on the grounds of unsuitability — made by management for educational proceedings before a commission; nor does there seem to have been any mechanism for appealing a decision made by a commission on whether a member could conduct proceedings in the face of an application to exclude him for reason of partiality.

4 § 53(1) KKO

5 § 48(1) SchKO

6 § 26 GGG; § 53(3) KKO; § 48(3) SchKO

Recommendations, by their very nature, were not susceptible of appeal.

There were only two further restrictions on the scope of appeals. The first was in the case of appeals against compromises reached in civil disputes which had been confirmed by a decision of one of the commissions where the only grounds for appeal were either that there had in fact been no agreement or that the agreement itself was void for illegality because it contravened the principles of socialist law⁷. The second applied to appeals brought by the procurator which were restricted to cases where the decision or obligations undertaken were unlawful. Thus it would appear that the procurator could not appeal in cases where there had been a finding of fact or an exercise of discretion unless there was manifest perversity or a clear misapplication of the law. However, apart from these restrictions, there was no limit to the scope of appeal which could be directed as to whether there was a claim at all or whether there had been a breach of law, or could be against findings of law and fact, or against the type or manner of imposition of educational measures. The appeal was made to the area court in whose area the relevant commission was situated⁸.

The manner of making the appeal was fairly informal. The appeal had to state when the decision was made and identify the commission that made it; it had to set out what was being appealed against and give grounds. It had to be accompanied by any relevant documents, details of witnesses, and details of any other evidence to be relied on. It had to be in written form. So far as the appeal was concerned there was no longer any bar on legal representation, so the slight increase in formal requirements was probably not a problem to an appellant. If the appeal seemed inadequate or did not contain sufficient information, the area court could call for further particulars. It could also call on the commission to provide a report or opinion on the proceedings it had heard, and could even call on the chairman or members to attend the appeal to assist⁹. The

7 § 53(2) KKO; § 48(2) SchKO

8 § 53(4) KKO; § 48(4) SchKO

9 § 54(1) KKO; § 49(1) SchKO

appeal itself was heard by the appropriate chamber of the area court; the employment chamber for employment disputes, the civil chamber for civil disputes, and the criminal chamber for minor offences and so on.

The hearing of the appeal itself was not restricted in its scope. It could consist of a full oral hearing tantamount to a re-hearing of the original case. The safeguard of the appeal was therefore substantial and not merely formal. This is underlined by the wide range of remedies available on appeal which consisted of a variation or overturning of the original decision or referral back to the commission for re-hearing (with appropriate directions) or dismissal of the appeal¹⁰.

An appeal could be withdrawn voluntarily in certain circumstances¹¹.

The Supreme Court decided that as an additional safeguard, where appeals came before the area court, the opportunity ought to be used to check the overall way in which the hearing had been dealt with by the commission, not just those aspects of the hearing that were the subject matter of the appeal. Thus the court had to examine the questions of jurisdiction, the facts, the legal findings and the procedure adopted¹².

The ability of the procurator to appeal was an interesting, indeed almost unique, aspect of the appeals system. It provided a potentially useful back-up to the right of the parties themselves, since, subject to the limitation on the power mentioned above, if a party missed the time for making his own appeal, he could still contact the procurator and endeavour to persuade him to appeal.

Cynics would characterize this process as a sign of state interference with the legal system, a

10 § 55 KKO; § 51 SchKO

11 § 56(1) KKO; § 52(1) SchKO

12 G. Chaluppecky and others Leitfaden für Schiedskommissionen (Berlin, 1987) p. 112

manifestation of fear on the part of a fundamentally undemocratic government of the potential effects of giving the people the reins of justice. The figures on appeals, however, would seem to indicate that this was not the case. Furthermore, an examination not of the decisions of the area courts, but of decisions of the Supreme Court, shows that the procurator tended to intervene for reasons that by any standard would be regarded as appropriate and proper. Examples show the procurator intervening in relation to quantum¹³, cases of material responsibility (but on the side of the employee/accused)¹⁴ and so on. The role of the procurator was as part of "the unified socialist power of the state"¹⁵, not in the sense of protecting the state *qua* state but rather in the sense of fulfilling the constitutional duty of preserving the basis of the law¹⁶.

There were three other checks on the activities of the social courts apart from the possibility of appeal. The first was that before any judgement could be executed it had to be put before the area court, which would declare whether or not execution could proceed; the second was the saving function of the Supreme Court; the third was the duty of the social courts to report on their activities.

So far as the first is concerned, whilst a decision made by a social court was legally binding¹⁷ and ought to have been given effect to voluntarily, before it could be executed a declaration to that effect was needed from the area court¹⁸. This was not a mere formality; before making a declaration the court was bound to check that the decision of the relevant social court was good in law, and if there was doubt, again the parties could be summoned for oral hearing¹⁹. If the

13 Urteil vom 25.April 1957 Entscheidungen des Obersten Gerichtes in Arbeitsrechtssachen Band 2 pp. 96 - 100

14 Urteil von 20.Juni 1957 Entscheidungen des Obersten Gerichtes in Arbeitsrechtssachen Band 2 pp. 122 - 128

15 Rechtslexikon (Berlin, 1988) p. 338

16 Article 97 Verfassung der DDR

17 Article 92 Verfassung der DDR

18 §§ 58-59 KKO; §§ 53-55 SchKO

19 § 89(1) ZPO; S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1989) p. 207; G. Chaluppecky and others Leitfaden für Schiedskommissionen p. 115

decision was not sufficiently clear the party wishing to enforce would effectively have to bring the whole claim afresh before the area court.

Lack of clarity in commission decisions appears to have been a problem from an early stage, and there are a number of reported cases where the Supreme Court affirmed the principle that there could be no execution on a decision that was not totally clear and in accordance, in the form in which it was sent to the area court, with the decision actually reached at the hearing²⁰. Furthermore, a decision that did not accord with the court records could also be declared incapable of execution²¹.

The problem of deciding on the question of execution gave rise to considerable concern, hence in 1965 the issue of a guideline (the *Richtlinie des Plenums des Obersten Gerichts der Deutschen Demokratischen Republik zur Anwendung des § 44 AGO – Verfahren über die Vollstreckbarkeitserklärung von Beschlüssen der Konfliktkommissionen*) of 15 September 1965²² which made clear that the area court had a duty to look at the decision comprehensively before permitting execution. The Supreme Court was explicit about the fact that this guideline was part of a monitoring process:

"The procedure on declaration of enforceability by execution fulfils a certain protective function. It should ensure that execution is only allowed on a decision that has been properly reached as a result of proceedings conducted by a disputes commission within the proper legal provisions and is free from any legal defects that might stand in the way of its enforcement";

it should not, however, amount to a retrial ("a fresh, complete examination and decision")²³. Of course, this guideline was passed at a stage before the commissions became full courts (the

20 Cf. Urteil vom 25. April 1957 Entscheidungen des Obersten Gerichtes in Arbeitsrechtssachen Band 2 pp. 96 - 100. In this case the decision presented to the area court differed from that made originally by the commission in that it recited quantum in a different amount to that actually awarded at the hearing. On the intervention of the procurator it was held: "The copy presented to the area court must correspond word for word with the actual order of the disputes commission". Thus an earlier judgement of 28 February 1957 was affirmed where the same point arose, again as the result of an appeal by the procurator.

21 Urteil vom 31. März 1959 Entscheidungen des Obersten Gerichtes in Arbeitssachen Band 3 pp. 97 - 107

22 GBl. II 1965 Nr. 100 p. 703

23 Richtlinie vom 15.9.1965 II 1

preamble to the guideline reminds us they were still at that time "social organs of the administration of justice"), but to the last the legislation preserved the same principle of checking and monitoring before execution could be levied.

A decision did not have to stand or fall as a whole — a decision could be overturned in part on appeal or could be rejected for purposes of execution in part, but leaving the remainder intact:

"A decision of a disputes commission can also be impugned in part. The part that is not impugned becomes legally effective and may be declared capable of execution"²⁴.

Furthermore, there was a check in the form of the dominant role in the GDR legal system of the Supreme Court, described in Article 93 of the constitution as "the highest organ of adjudication" and given a leading role in pronouncing justice and the law and maintaining the "uniform application of the law by all the courts". The Supreme Court could intervene in two ways. It could, and as we have seen frequently did, issue guidelines on procedure (*Richtlinien*), broadly comparable to the practice directions of our own courts. It also had the power of cassation (*Kassation*), i.e. to overturn decisions of lower courts other than on appeal by the parties, where it believed a lower court decision was wrong. This power was applicable to all the courts, including the social courts²⁵.

Finally, there was the check on the activities of the social courts in the form of the obligation of members to report to those who elected them²⁶. As we have seen in dealing with the election of members, these reports were generally given at the same time as the public meetings at which nominees were presented. It was not, of course, a direct check on the courts, but the obligation on the members to account publicly for their activities and behaviour (and answer questions) was, no doubt, a valuable curb on the way members conducted the proceedings that came before them.

24 Urteil vom 2.Dezember 1958 Entscheidungen des Obersten Gerichtes in Arbeitsrechtssachen Band 3 pp. 64 - 75

25 "The senates of the Supreme Court have the power to quash decisions of all lower courts by cassation..." Rechtslexikon (Berlin, 1988) p. 188

26 § 2(2) GGG

Such statistical information as is available indicates that only a small proportion of the decisions of the social courts were in fact appealed. The pattern appears to have been fairly constant from the early years up to the end. We are told, for example, that in 1954 the disputes commissions heard 8,384 disputes on employment law and decided the matter finally in 84% of cases. 16% of cases were appealed to the area court. In 8.9% of appeals the original decision was upheld. In only 7.1% of cases was the decision of the commission interfered with²⁷. Hilde Benjamin interpreted this as meaning that in 9 cases out of 10 the commissions decided the cases before them correctly²⁸. Writing in 1971 (but basing his figures on GDR sources) Reiland reported that less than 1% of commission decisions were appealed²⁹. In an English language article published in 1983, a GDR legal writer confirmed that the disputes commissions disposed finally of 90% of all employment disputes brought before them³⁰, a figure that probably reflects statistics provided in *Neue Justiz* a year earlier³¹ which indicated that only 2% of decisions were overturned on appeal.

Whatever the exact figures may have been overall (and precise official statistics on some aspects of the social courts were hard to obtain), it is clear that the level of appeals was low. It is, however, not easy to draw any significant conclusions from this. Dr. Benjamin's equation of the absence of an appeal or successful appeal with correctness of decision is patently unsatisfactory; so, however, is the bland dismissal of the social courts as mere stooges of the state in the manner of some western commentators³².

In her comprehensive review of the East German courts system, Pursuing One's Rights under

27 Geschäftsbericht des Bundesvorstandes des FDGB zum 4. FDGB-Kongreß (Berlin, 1954) p. 66

28 H. Benjamin Zur Geschichte der Rechtspflege der DDR 1949 - 1961 (Berlin, 1980) pp. 196 - 197

29 W. Reiland Die gesellschaftlichen Gerichte der DDR (Munich, 1971) p. 163

30 G-A. Lübchen Social Courts in the German Democratic Republic *Law and Legislation in the GDR* 1-2/1983 p. 24

31 Neues Gesetz über die gesellschaftlichen Gerichte *Neue Justiz* 4/1982 p. 147

32 Cf., for example, E. Lieser-Triebigg Ein neues Gesetz über die gesellschaftlichen Gerichte *Deutschland Archiv* 15/1982 pp. 570 - 573 (in particular the final paragraph on p. 573)

Socialism³³, Inga Markovits points out that the majority of employment disputes dealt with by the disputes commissions (over 2/3) were instigated by the employer and that some 69% of the commissions' workload effectively involved discipline at work. On the basis of these (and other) statistics she characterizes the disputes commissions as authoritarian. If that was in fact the case, and if commission members were either directly or indirectly selected because they were establishment figures, then clearly few appeals would be expected. The same analysis is easily applicable to the arbitration commissions if one accepts that they too were fundamentally authoritarian. (Markovits asserts this too based in part on an assessment that some 70% of their caseload related to petty crime in one form or another.) If the state was the largest instigator and decisions largely went its way, clearly there would be few appeals.

There are two other possible explanations. The first is that in fact a majority of the parties (for appeal generally was open to both sides no matter who had actually instigated the original action) were content to accept the decision of the commission that heard the case. It goes without saying that this does not mean the decision was right or wrong: it is no indication either way. It simply means the parties were prepared to let matters rest. In all legal systems there are dissatisfied litigants, but they do not by any means always appeal. Whether or not this first explanation is correct is not in any way susceptible to testing. The second is that the nature of the disputes that came before the commissions and the real effect of most of the measures they had power to impose as penalties was so insignificant that the ultimate verdict was of no true consequence and thus not felt to be worth the trouble of an appeal. The penalties were not, after all, draconian, and if, as is urged, they were imposed in a spirit of education rather than punishment, it is perhaps unlikely that the recipient would have felt inclined to take the matter further. It should also be borne in mind that there were probably many cases where a defendant, or even an accused in a criminal or quasi-criminal matter, would have been more inclined to submit to the jurisdiction of a social court than a state court. "Conviction" by a social court left the "convicted person" with an unblemished character; civil disputes were dealt with so as to encourage settlement rather than

33 *Stanford Law Review* Vol. 38 1986 pp. 689-761

judgement. There were advantages to the parties in acquiescing in the social courts system. Again this explanation of the low level of appeals is not readily susceptible of verification. The motives of litigants can never really be established adequately. In those circumstances it would seem unwise to do other than note the low level of appeals and the factors that may have contributed to that. The writer would merely conclude by referring to personal experience in interviewing members of commissions, lawyers and ordinary citizens from all of which it seemed that the social courts did enjoy a large measure of respect.

Chapter VI

Training, Management and Support

Training

One of the most positive aspects of the social courts, and one that undoubtedly contributed to the relatively high level of respect they enjoyed, was the elaborate training provided to members. Overall responsibility for training lay with the Supreme Court as part of its responsibility for ensuring the uniform application of the law¹. Under the Supreme Court the area courts and district courts exercised the same controlling function². Particular emphasis was given in the legislation to the role of the area courts in ensuring that members of the arbitration commissions were properly qualified³ and to the supervision thereof by the Ministry of Justice⁴; the same function was exercised in relation to the disputes commissions by the FDGB, acting through its federal executive⁵.

Practically, the immediate task of training members of disputes commissions rested with the trades unions committees of the enterprises which were obliged to organize training⁶. That training was not specifically regulated but generally consisted of monthly training sessions with a recommended attendance of 30 members, so as to ensure a wide range of discussion and the maximum exchange of views and information⁷; these sessions were supplemented by weekend schools and lectures on

1 Article 93 Verfassung der DDR; § 22(1) GGG

2 §§ 23(1) & 24 GGG

3 § 23(2) GGG

4 § 22(3) GGG

5 § 22(2) GGG

6 § 28(1) GGG

7 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1990) p. 213 Cf. too Fragen und Antworten Neue Justiz 10/1982 p. 461

specific topics to back up personal study⁸.

The regular supplements (*Beilagen*) to *Tribüne*, Die Konfliktkommission: Materialien für die gesellschaftlichen Gerichte⁹ were virtually required reading. A typical supplement was eight pages long: a longer article of some 2 pages generally described a typical case and how it had been disposed of by a commission (I had originally presumed from the number and variety that the cases were fictitious and designed purely to illustrate a point, but this was not in fact the case — procurators all over the GDR sent details of cases to *Tribüne* whose legal editor (Bettina Herzog) "fictionalized" the cases for publication); other articles included reports of leading cases (usually on employment law), articles of general legal interest, reviews, and questions and answers. The style was accessible and the presentation relatively good, without detracting from a high level of content. The propaganda and political element was negligible, and the emphasis was unequivocally on imparting real legal knowledge in a readily comprehensible form. The supplement appeared about once a fortnight. Further recommended reading was the monthly magazine *Der Schöffe* which described itself as a "periodical for lay justices and members of arbitration commissions". The content was similar to that of the *Tribüne* supplements but perhaps somewhat heavier and more general in scope, with less emphasis on employment law.

The FDGB area committees too were responsible for the training of members of disputes commissions both by ensuring that the trades unions committees were undertaking their obligations and by themselves organizing conferences and training sessions¹⁰. The National Front and the advisory councils of the arbitration commissions to some extent fulfilled the same role vis-à-vis the arbitration commissions which lacked trades union support¹¹.

8 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1990) p. 213 Cf. too Fragen und Antworten *Neue Justiz* 10/1982 p. 461

9 *Tribüne* was a daily paper; it described itself as the "Paper of the Trades Unions"

10 § 30(1) GGG

11 §§ 31 & 25(3) GGG

There can be little doubt but that the FDGB and the unions took their training and educational role seriously. A resolution of the praesidium of the federal executive of the FDGB of 26 March 1982 on the duties of the unions towards the disputes commissions¹² committed the unions and the FDGB to organizing monthly training sessions outside working hours, selecting suitable trainers and holding weekend schools, lectures and conferences and to ensuring the attendance of members on a regular basis¹³. Attendance at training sessions was recorded in the card handed to members on their election¹⁴. In addition, the FDGB produced training documentation for trainers of disputes commission members, *Zur Schulung der Konfliktkommissionen — Hinweise für Schulungsleiter*, which appeared every 2 — 4 months, each monthly section focusing on a particular issue and designed to be used at the prescribed monthly training sessions.

Although the National Front fulfilled some of the same functions in relation to the arbitration commissions as the trades unions and the FDGB did in relation to the disputes commissions (e.g. in relation to elections and management support), it did not have a specifically educational role to play. A resolution of the secretariat of the National Front of 1 April 1982¹⁵ made limited provision for the exchange of information and for cooperation in holding conferences, but did not give any detailed responsibility for education or training.

The genuineness of the attempts of the various bodies to come to terms with the problems of training social court members is clear from the descriptions in the periodicals of examples of educational programmes undertaken in various parts of the country and from the willingness to acknowledge shortcomings¹⁶. Positive examples abounded and were reported to encourage others.

12 Beschlüsse und Hinweise des Bundesvorstandes des FDGB Informationsblatt 2/1982

13 Beschlüsse und Hinweise des Bundesvorstandes des FDGB Informationsblatt 2/1982 paragraphs 2.1 - 2.4

14 S. Otte and others Die Konfliktkommission Ein Leitfaden (Berlin, 1990) p. 16

15 The text appears in Ministerium der Justiz Gesellschaftliche Gerichte, Konflikt- und Schiedskommissionen Textausgabe mit Sachregister (Berlin, 1989) pp. 68-70

16 See for example the report Plenartagung des Obersten Gerichts über die Tätigkeit der Schiedskommissionen Neue Justiz 2/1968 pp. 44-46 where it is admitted that the courts had been variable in the exercise of their educational duties towards members of arbitration commissions, and the description of difficulties in training dispute commission members in *Arbeit und Arbeitsrecht 1/1967* p. 139

A 1971 report on the practice in Stralsund describes how the advisory council for arbitration commissions organized a meeting for commission chairmen (of both types of commissions in the area) with lay justices, the police, the local authority, union organizations and others on 17 June 1971 attended by 252 people with a view to assessing the educational needs of members and planning a training programme¹⁷. Consultations were reported to take place regularly between judges at some courts and commission members with a view to ensuring that members had up-to-date legal knowledge¹⁸. An interview conducted by Dr. Gerhard Steffens of *Neue Justiz* with the director of the Dresden court provides another example of close educational cooperation between courts and commissions in that area¹⁹. Whilst close links between the courts and commissions were felt desirable for education and training, no attempt appears to have been made to impose any fixed pattern. Thus it was reported in 1980 that in Meissen the practice was for consultations between judges and members to take place on an *ad hoc* basis, whilst in Görlitz a judge was deputed to be general caretaker of the commissions²⁰.

The chairman of a disputes commission in Aue, in response to a question about training and materials, gave the following brief description of his experiences:

"The chairman of the area law commission is responsible for the training of the disputes commissions. Training is given either in writing or orally on a monthly basis by the commission. In the area there is a readers' collective composed of experienced jurists (judges, procurators, in-house lawyers). I myself undertake training of my commission. We receive information on employment law, decided cases and trades union views. We have found working through sample cases with solutions to be a good idea. They also make the training interesting. In my area all conflicts are discussed in training sessions"²¹.

The emphasis on the role of the law commission was based on an FDGB decision of 24 November

17 J. Dietrich Planmäßige Anleitung der gesellschaftlichen Gerichte im Stadtkreis Stralsund *Neue Justiz* 16/1971 pp. 488-489

18 Probleme der Wirksamkeit der Rechtsprechung der Konfliktkommissionen *Neue Justiz* 15/1973 p. 443

19 Beiräte für Schiedskommissionen fördern die Wirksamkeit der gesellschaftlichen Gerichte *Neue Justiz* 2/1980 p. 67

20 K. Dukas Schiedskommissionskonferenz in Dresden *Neue Justiz* 12/1980 p. 567

21 Questionnaire and answers directed to and received from Edgar Krebs in September 1989

1982²² published in the 1989 collection of social courts legislation (but omitted from that of 1982) which gave the law commissions the task of forming working parties with the FDGB (para 6). Interviews conducted with lawyers, academics and members of the disputes commissions at VEB Kabelwerk Oberspree in Berlin²³ served to confirm that the training of members was something which indeed lawyers, academics, procurators, in-house lawyers, judges and the members themselves were involved in, and that the task of supervising that training was sufficiently widely spread to ensure that members had the requisite knowledge to enable them to make informed decisions. The high quality of training was undoubtedly a factor that contributed to the respect commission decisions appear to have commanded and the relatively low level of appeals.

Management and Support

Again, it followed from Articles 92 and 93 of the constitution that overall responsibility for management of the social courts lay with the Supreme Court. Article 93 (2) specifically provided that the Supreme Court should manage the administration of justice and ensure uniformity of the application of the law by all the courts. This provision was repeated in § 22(1) of the Social Courts Law. Management was effectively exercised by the Supreme Court in its appeal function, its function in enforcing the decisions of social courts itself and through the other courts (implicit in the Law and in the structure of the legal system as a whole and explicit to the extent that the duties of lower courts in the legal system were set out in §§ 23 and 24). The Supreme Court exercised its managerial function mainly by the promulgation of guidelines (*Richtlinien*), practice directions that had the force of law and were published as such in the Law Gazette (*Gesetzblatt der DDR*) and the passing of resolutions by the praesidium, which although not published as laws

22 Aufgaben der Rechtskommissionen der Gewerkschaften - Beschluß des Sekretariats des Bundesvorstandes des FDGB vom 24. November 1982 (Beschlüsse und Hinweise des Bundesvorstandes des FDGB) FDGB Informationsblau 1/1983; the text appears in Ministerium der Justiz Gesellschaftliche Gerichte, Konfliktkommissionen, Schiedskommissionen Textausgabe mit Sachregister (Berlin, 1989) pp. 64-67

23 Interviews with Udo Wolf 18.7.1988, Erich Buchholz 19.7.1988, members of the Kabelwerk Oberspree commission 21.7.1988

still bound the courts²⁴. Authority to issue such guidelines and resolutions derived from the constitution.

The FDGB was entrusted under the Supreme Court, but outside the courts system, with the day to day management of the disputes commissions, and the Ministry of Justice with the same tasks in relation to the arbitration commissions²⁵. The Law referred specifically to management, analysis and the propagation of the best experiences (of the commissions). The FDGB and Ministry of Justice were under a legal obligation to co-ordinate their efforts and to cooperate with the procuracy, the Ministry of the Interior, the Chief of Police, and the National Front in those tasks²⁶. The federal executive of the FDGB, the Ministry of Justice, the president of the Supreme Court and the procurator general had a statutory right to apply to the Supreme Court for guidelines and resolutions to be passed²⁷.

The area courts, the lowest courts in the state system, had the immediate task of ensuring efficient and proper management of the arbitration commissions at a local level²⁸. They carried out that function in conjunction with the police, the procuracy, the local authorities, the FDGB and the National Front²⁹. Their role in relation to the disputes commissions was primarily supportive of the trades unions³⁰ which had primary responsibility in this respect³¹. The area courts were

24 A Richtlinie was passed by a plenum of the Supreme Court consisting of a judge of the Supreme Court itself together with the director of the district court and the leaders of the military Supreme Court. The praesidium was nominated by the Council of State and had power to pass Beschlüsse (resolutions) (G. Sarge and others Das Oberste Gericht der DDR - Rechtsprechung im Dienste des Volkes (Berlin, 1989) pp. 35-37)

25 § 22(2) & (3) GGG

26 § 22(4) GGG

27 § 22(5) GGG

28 § 23 GGG

29 § 23(3) GGG

30 § 23(4) GGG

31 § 28(1) GGG

supervised in this by the district courts³².

The arbitration commissions, again presumably to compensate for the equivalent role which the trades unions played for the disputes commissions, were supported by advisory councils (*Beiräte*) made up of representatives of the procuracy, police, local authority, National Front and FDGB as well as commission chairmen. These advisory councils were presided over by the directors of the district and area courts³³ but had the functions of safeguarding the quality of the work of the arbitration commissions and ensuring that they were working properly in conjunction with other social organs in the interests of "order, discipline and safety"³⁴. The precise duties of the advisory councils were further defined in § 58(2) of the Arbitration Commissions Order which gave them the tasks of evaluating the work of the arbitration commissions and the referral process, furthering respect for and knowledge of the law, enhancing cooperation between the commissions and other bodies and related tasks. That the advisory councils were supposed to act as a catalyst between the commissions and the local community is clear from an example from the town of Stralsund where in 1971 the local advisory council is reported to have undertaken steps to assess the level of training of members, the approach of the commissions to truancy cases, the effectiveness of the referral process, the exchange of experiences and information and to have arranged a conference for members of both types of commissions, lay justices, the police and a range of other bodies concerned with law and discipline in the community³⁵.

Advisory councils were first established under the 1968 legislation³⁶ but their quality of assistance

32 § 24 GGG

33 § 25 GGG

34 § 25(3) GGG

35 J. Dietrich Planmäßige Anleitung der gesellschaftlichen Gerichte im Stadtkreis Stralsund *Neue Justiz* 16/1971 pp. 488-489

36 §§ 63(3), 64(2) & 67 SchKO 4.11.1968; Erste Durchführungsbestimmung zur Schiedskommissionsordnung - Ordnung über die Stellung, die Aufgaben und die Arbeitsweise der Beiräte für Schiedskommissionen bei den Direktoren der Kreisgerichte und bei den Präsidien der Bezirksgerichte (Beiratsordnung) - vom 7.Mai 1973 (GBl. I 1973 Nr. 29 p. 288)

was variable in spite of Stralsund's fine example³⁷. A much more positive impression, however, emerged in the 1980s, exemplified by an interview between Dr. Gerhard Steffens of *Neue Justiz* and Dr. Gerhard Körner, director of the Dresden district court, from which the role of the advisory council appears to have been very much in line with the earlier Stralsund example³⁸.

The procuracy had an advanced and wide-ranging role in relation to the commissions. We have already seen (chapter V) that the local procurator supervised the commissions by examining each decision they reached and that he had a right of appeal independent of that of the parties, and we have also seen that he played a major part in the training of members. In addition, however, he had the more general task of supporting "the trades unions and the courts in the management of the social courts ... by providing regular information..."³⁹. To some extent this statutory provision did no more than reinforce existing obligations imposed on the procuracy by other legislation. Thus any specific function in relation to the social courts could be said to be subsumed in Article 97 of the constitution (which gave the procuracy a general role in supervising the maintenance of law and order and protecting citizens under the law) and § 2 of the Procuracy Law of 7 April 1988⁴⁰.

"Supervision of the observance of the law is a form of state power given specifically to the procuracy and includes the tasks of detecting, clearing up, eliminating and punishing breaches of the law"⁴¹.

The literature abounds with examples of the local procuracy taking steps to fulfil those obligations. Dieter Keller, procurator in the Aschersleben area, describes how in 1978, in addition to checking decisions made by the commissions, cases were discussed in training sessions, annual

37 See, for example, R. Winkler/I. Tauschnitz Einheitliche Ordnung für Schiedskommissionsbeiräte *Neue Justiz* 16/1973 p. 469 and Zu Fragen der Leitung der Tätigkeit der gesellschaftlichen Gerichte durch die Kreis- und Bezirksgerichte *Neue Justiz* 21/1971 pp. 631-638

38 Beiräte für Schiedskommissionen fördern die Wirksamkeit der gesellschaftlichen Gerichte *Neue Justiz* 2/1980 pp. 67-68

39 § 26 GGG

40 GBl. I 1977 Nr. 10 p. 93

41 Article on Staatsanwaltschaft in Rechtslexikon (Berlin, 1988) p. 338

meetings took place to evaluate the year's work, major points of concern were discussed, and so on. The results were sent to the local FDGB secretariat, and there was further discussion and evaluation with the unions and law commissions⁴². The deputy procurator general of the GDR, writing in 1983, emphasized the need for even greater involvement on the part of the procuracy in the work of the social courts under the 1982 legislation and in particular the implementation of recommendations⁴³. § 24 (1) of the Procuracy Law of 7 April 1977 also imposed a duty on the procuracy to see that others fulfilled their obligations to the social courts.

Local authorities also had duties towards the social courts to cooperate in the general task of combating crime and breaches of law and order⁴⁴. They were under an obligation to keep the social courts informed of developments in local life and conditions. The local authorities were also responsible for enforcing the payment of fines and for ensuring the performance of other obligations imposed by the commissions⁴⁵. These duties applied to both types of commissions. In addition there was a specific duty to provide the material facilities necessary for the arbitration commissions to function⁴⁶. These were defined in § 59 of the Arbitration Commissions Order as making available copies of the relevant laws and legal literature; a suitable room or rooms for hearings and consultations; storage facilities; a mechanism for honouring the work of the arbitration commissions. This list was not comprehensive and did not detract from the general duty of support. The Law on Local Authorities in the GDR⁴⁷ also made local authorities responsible for the election and dismissal of members of arbitration commissions⁴⁸, and for the

42 D. Keller Unterstützung der Tätigkeit der Konfliktkommissionen durch den Staatsanwalt *Neue Justiz* 1/1978 p. 28

43 H. Harland Unterstützung der gesellschaftlichen Gerichte durch die Staatsanwaltschaft *Neue Justiz* 1/1983 pp. 11-13

44 § 27 GGG

45 § 27(3) GGG

46 § 27(3) part 1

47 Gesetz über die örtlichen Volksvertretungen in der DDR vom 4.7.1985 ("GöV") (GBl. I 1985 Nr. 18 p. 213)

48 § 7(1)(g) GöV

evaluation of the work of the social courts⁴⁹.

The union leadership in the enterprises "cooperate[d] closely with the disputes commissions"⁵⁰. Apart from their training functions, they received reports from the disputes commissions and analyzed their effectiveness and evaluated experiences. These tasks were carried out in co-operation with management and key workers in the general interests of smooth management and production⁵¹. Detailed provisions on the tasks of the unions (for example, on the exchange of information, preparation for hearings, attendance at hearings, publicizing the work of the commissions etc.) were set out in a document, *Aufgaben der Gewerkschaften bei der Anleitung und Schulung der Konfliktkommissionen* (Duties of the Unions in relation to the Management and Support of the Disputes Commissions)⁵².

Management, too, was obliged to support the disputes commissions by keeping them informed of developments in the enterprise, by evaluating experiences gathered by the commissions, and making available facilities to enable the disputes commissions to function⁵³; these facilities were the same as for the arbitration commissions⁵⁴.

Local FDGB directorates also had management tasks to perform in organizing legal conferences, the exchange of information and experience and seeing that the unions in the enterprises were fulfilling their obligations. In doing so, they were entitled to look to the procuracy and courts for support⁵⁵. Regional FDGB directorates were responsible for ensuring that local committees were

49 § 56(3) GöV

50 § 28(1) GGG

51 § 28(2) GGG

52 Beschluß des Präsidiums des Bundesvorstandes des FDGB vom 26.März 1982 *FDGB Informationsblatt 2/1982*; the text also appears in Ministerium der Justiz Gesellschaftliche Gerichte Konfliktkommissionen Schiedskommissionen Textausgabe mit Sachregister (Berlin, 1989) pp. 59-63

53 § 29 GGG

54 § 63 KKO

55 § 30(1) & (2) GGG

performing these tasks⁵⁶. Again these duties were further particularized in *Aufgaben der Gewerkschaften bei der Anleitung und Schulung der Konfliktkommissionen*⁵⁷ which stressed the co-operative manner in which these tasks were to be carried out (Parts II and III). The role of honouring members (undertaken by local authorities for the arbitration commissions) fell to be performed by the FDGB, based on individual union recommendations⁵⁸.

National Front committees had a wide-ranging management role in relation to the arbitration commissions only⁵⁹. Their tasks were set out in *Die Aufgaben der Ausschüsse der Nationalen Front bei der Zusammenarbeit mit den Schiedskommissionen sowie bei der Wahl ihrer Mitglieder* (Duties of Committees of the National Front in relation to Cooperation with Arbitration Commissions and the Election of Members)⁶⁰. Again the emphasis was on the exchange of information and experience and the fight against crime, lawlessness and disorder.

Where social courts existed in producers' cooperatives, the boards of those cooperatives had the obligation of supporting the commissions and providing facilities for them to function as well as of evaluating their experiences⁶¹.

A special protection was given to the arbitration commissions in § 61 of the Arbitration Commissions Order which allowed arbitration commissions to make a direct complaint to the superior organ of any person or body failing in its duties towards them.

56 § 30(3) GGG

57 Beschluß des Präsidiums des Bundesvorstandes des FDGB vom 26.März 1982 *FDGB Informationsblatt* 2/1982; the text also appears in Ministerium der Justiz Gesellschaftliche Gerichte Konfliktkommissionen Schiedskommissionen Textausgabe mit Sachregister (Berlin, 1989) pp. 59-63

58 Beschluß des Präsidiums des Bundesvorstandes des FDGB vom 26.März 1982 *FDGB Informationsblatt* 2/1982 I 1.12

59 § 31 GGG

60 Beschluß des Sekretariats des Nationalrates der Nationalen Front der DDR vom 1.April 1982 The text appears in Ministerium der Justiz Gesellschaftliche Gerichte Konfliktkommissionen Schiedskommissionen Textausgabe mit Sachregister (Berlin, 1989) pp. 68-70

61 § 32 GGG

The plethora of institutions involved in the administration of the social courts was a reflection of the blurring of the boundaries between state and society, or the absorption by the state of social institutions which we have already touched on and will examine again later. It was also a reflection of the general constitutional and legal principle that every individual was responsible for the whole⁶² and that the maintenance of law and order was the task and duty of all:

"Fighting and preventing crime and other breaches of the law are the common concern of socialist society, its state and all its citizens"⁶³.

62 Cf., for example, Beschluß des Sekretariats des Nationalrates der Nationalen Front der DDR vom 1. April 1982 first sentence

63 Article 90(2) *Verfassung der DDR*

Chapter VII

The Social Courts, the Legal System, State and Society

The aim of this chapter is to examine the role of the social courts by investigating their position in the legal system of the GDR and considering their relationship with other state and social institutions before going on (in the next chapter) to consider the part they played in East German society and the East German state. Before doing that it is necessary to consider in broad terms the foundations of the GDR legal system and the political ideology that informed the workings of the GDR's legal institutions.

The Nature of the Legal System in the GDR

The GDR constitution described the GDR as

"a socialist state of workers and peasants. It is the political organization of working people in town and countryside under the leadership of the working class and its Marxist-Leninist party"¹.

The GDR was thus (a) socialist, (b) led by the working class and its political party, and (c) run in accordance with the principles of Marxism-Leninism. It was socialist to the extent that socialism was seen as a phase, a period of development on the road to the ultimate goal of communism² (socialism not being an end in itself). It was a state in which primacy was given to the working people and their interests, the working class being the driving force in effecting the transition from socialism to communism, its historical mission being the destruction of capitalism and exploitation³. Finally, it was a state constitutionally subject to the leadership of the working class's Marxist-Leninist party. The SED was not named as that party in the constitution, but it was so

1 Article 1 Verfassung der DDR

2 Cf. Preamble to the constitution as amended in 1974 and the first definition of socialism in Kleines Politisches Wörterbuch (Berlin, 1989) p. 873.

3 See the article on Arbeiterklasse in Kleines Politisches Wörterbuch (Berlin, 1989) p. 62.

nonetheless. The definition of "Marxist-Leninist party" in the East German Kleines Politisches Wörterbuch refers to the SED only as *a Marxist-Leninist party of struggle ("eine marxistisch-leninistische Kampfpartei")*⁴ but identifies no other party by name. The key to the status of the SED is to be found elsewhere. The SED party programme referred to the SED as "the conscious, organized vanguard of the German working class and of working people in the socialist German Democratic Republic"⁵, repeating words that were also to be found in the Party Statute from 1963 onwards⁶ and implying the primacy of that party. The implication becomes explicit further on in the Statute in the words:

"The Socialist Unity Party of Germany ... is the leading force of all working class organizations of the working people and of the state and social organizations"⁷.

The monopoly of power of the SED (enjoyed until 1989) only becomes clear when the constitution is read in conjunction with party documents. That that monopoly was in fact exercised is trite knowledge.

It is beyond the scope of this dissertation to consider in detail the workings of the GDR's legal system as a whole or the exact scope of the leading role of the SED. However, to understand the workings of any organ of the legal system of the GDR it is essential to grasp the primacy of politics over law. In the words of one early East German legal theoretician, "law is [a category] subordinate to politics"⁸. Law was a tool of the working class, a means to achieve that class's legitimate aspirations as they were expressed in Marxist-Leninist thought:

"Socialist law is a means for realizing the politics of the Marxist-Leninist party [the SED], it does not rank alongside politics, much less ahead of it"⁹.

Socialist thinking in the GDR posited law as the servant of the working population, the latter

4 Kleines Politisches Wörterbuch (Berlin, 1989) p. 607

5 Program der Sozialistischen Einheitspartei Deutschlands (Berlin, 1976) p. 5.

6 Statut der Sozialistischen Einheitspartei Deutschlands (Berlin, 1989) p. 5

7 Statut der Sozialistischen Einheitspartei Deutschlands (Berlin, 1989) p. 6

8 H. Klenner Der Marxismus-Leninismus über das Wesen des Rechts (Berlin, 1954) p. 66.

9 W. Gramman/R. Zachäus Die Erhöhung der ökonomischen Rolle des sozialistischen Staates und seines Rechts bei der Verwirklichung der Aufgaben der SED *Staat und Recht* 6/1973 p. 886.

expressing its will through the party with its guaranteed leading function.

The primacy of the party also came to the fore in definitions of "socialist legality", the legal principle governing standards of behaviour in socialist society and applicable to state organs and social organizations as well as to individuals.

"Socialist legality is a principle of the politics of the working class and its party, a principle of action and organization of the dictatorship of the proletariat. State compliance with it is nothing more than the struggle to give effect to the politics of the working class and its party as expressed in the law. It serves to enforce the laws [of history] as they are analyzed and depicted in concrete form in party resolutions. Understood in this way, breaches of socialist legality are always breaches of party resolutions"¹⁰.

Socialist legality was the principle that protected the achievements of socialism, provided the creative environment in which socialism could progress, was democratic in character, but was ultimately there to secure the state and social order¹¹. Party resolutions were, in a sense, therefore the law: legislation passed in a political context in which the party was supreme had force *qua* law, but that law had status only as the instrument giving direct effect to party policy without the intervening checks built in to traditional western or bourgeois democratic systems. It was the resolutions rather than the laws that expressed the will of the people:

"It is in the resolutions of the party that the interests and will of the [working] class are realized and ... social development is accomplished"¹².

The state, too, was seen as an instrument of working class will. Neither Marx nor Engels saw the state as playing much of a role in the development of communism: the state would wither away. It was Lenin who believed that there would have to be a period before the establishment of communism when the state would continue to play a role under the leadership of a revolutionary party which would educate society to the requisite level of socialist consciousness. The state was

10 G. Bley/U. Dähn Aktuelle Probleme der Verwirklichung der sozialistischen Gesetzlichkeit durch die örtlichen Organe der Staatsmacht *Staat und Recht* 5/1972 pp. 693-694

11 J. Streit Die sozialistische Gesetzlichkeit - eine wichtige Errungenschaft der Arbeiter-und-Bauern-Macht *Neue Justiz* 19/1974 pp. 569-570.

12 K. Polak Zur Dialektik der Staatslehre (Berlin, 1963) pp. 356-357.

a necessary instrument in that process. Its role became of greater rather than lesser importance in the history of the GDR, but nonetheless, even if at only a theoretical level, it was always recognized that the state was a temporary phenomenon which would ultimately become superfluous:

"The state as a product of history will not always exist. In a classless communist society, public power — as was first laid down in the communist manifesto — loses its political character"¹³.

Of course, to an extent law and laws are the servant of any political system, being as they are the expression of a dominant will in a political society. However, in the East German legal system there could never have been any question of political acts being subject to real legal scrutiny, any more than in any other Marxist-Leninist legal structure. East Germany under the SED unequivocally adopted historical materialist principles: the structure (basis) of society (its economic system, productive forces and classes) were seen as the primary reality overlaid by superstructures (the legal and institutional forms of the social system, the state and ideology). Since historical process was inevitable, however, law had no ultimate importance in itself, save to the extent that it could assist in that process. Thus, Karl Polak referred to law and the state as "Levers, instruments with which to give effect to the objective laws"¹⁴. Furthermore, material rather than moral considerations prevailed. Again, adopting the words of Karl Polak, socialist law had to be a shaping and mobilizing force in the planned development of the forces of production and the strengthening of socialist relations of production ("eine(r) gestaltenden und mobilisierenden Kraft bei der planmäßigen Entwicklung der Produktivkräfte und der Festigung der sozialistischen Produktionsverhältnisse")¹⁵.

The concept of law as a tool of the party, as a lever or instrument of the forces of production, precluded traditional notions of justice based on would-be eternal moral principles. Intellectual

13 Kleines Politisches Wörterbuch (Berlin, 1989) p. 929.

14 K. Polak Zur Dialektik der Staatslehre (Berlin, 1963) p. 423.

15 K. Polak Zur Dialektik der Staatslehre (Berlin, 1963) p. 423

justification for this approach lay in the very fact that socialist law and legality were together a lever (the word itself was taken from the vocabulary of production) ensuring speedier progress towards the end of the historical process leading ineluctably to communism¹⁶. Justice was not in any way moral in the sense of being connected in some way with goodness (much less religious principles) but was seen as,

"in its essence, nothing more than the correct shaping, realizing and judging of social interrelations according to the laws of society and social progress so as to evolve and develop human potential"¹⁷.

So, in theory at least, law would never have the capacity to bind the state, since it necessarily functioned as the latter's servant; nor was the protection of the rights of the individual a primary function of the law, for in socialist society, as we have seen already, state, society and the individual were at one. The claims of individual rights could only be seen as incidental and arbitrary measured against "the objective laws of socialist development"¹⁸.

"In relation to [our] conduct in the face of these laws, these necessities, there are no choices, no doing as we please, no subjective considerations"¹⁹.

The unusually close relationship between law and political ideology in the GDR resulted not only in a preoccupation with economics and production but had another quite separate consequence: since the law had to adapt constantly to changing social and economic conditions and respond almost directly to party policy, the legal system paid much less regard to matters of procedure than would be expected in western bourgeois legal systems. The purpose of law was not to maintain a *status quo* as such. Certainly it was there to preserve and educate to socialist values, but it could only do so by maintaining a high level of flexibility. To rely too heavily on procedure or technicality could only detract from that capacity to respond and was regarded as formalism or dogmatism. It would mean giving the law status beyond its station, a quality as product rather than tool in the productive or social process. This view of the law was especially evident in the

16 S. Mampel Das Recht in Mitteldeutschland (Cologne, Berlin, Bonn, Munich, 1966) p. 73.

17 R. Schüsseler Sozialistisches Recht und Gerechtigkeit *Staat und Recht* 1/1966 p. 1

18 S. Mampel Das Recht in Mitteldeutschland (Cologne, Berlin, Bonn, Munich, 1966) pp. 73-74.

19 K. Polak Zur Dialektik der Staatslehre (Berlin, 1963) pp. 377-378.

social courts legislation with its broad brush approach to procedure and evidence, its emphasis on the individual treatment of cases and on education over punishment. This should not be construed as meaning that law in the GDR was merely arbitrary, but it did make for a different concept of legal uniformity and certainty and resulted in a blurring of the line dividing law and socialist morality.

"The law is not considered as something fixed and immutable but rather as simply a framework open to the influx of changing ideological and political notions according to the state of social development at any one time"²⁰.

The framework provided by the law could thus be stretched and adapted (at least up to a point) without the necessity of repeal, reform or amendment, permitting socialist legality to develop within a broad rather than a rigid structure in line with social development²¹. Reinterpretation within the framework of course occurred to reflect party policy from time to time, especially as it was expressed at party conferences and through party resolutions.

In a society in which the legal system had no existence independent of party policy, party resolutions were tantamount to the law, and individual laws were the vehicles by which, the framework within which, policy found its way into society. The philosophical and jurisprudential justification for this approach was to be found in the proposition that the resolutions of the party gave expression to the will of the people ("The interests and will of the working class take effect in the resolutions of the party and the management of the whole of social development is accomplished through them"²²), the party alone "by reason of scientific analysis of the stage of development of society at any given time and its prognosis" being capable of formulating and executing the steps to give effect to the objective laws. All ultimately rested on an act of faith in

20 W. Gamer Recht und richterliche Gewalt in der DDR (Dissertation, Mainz, 1973) p. 25. (Thus, GDR legislation was often intentionally loose in its formulation; laws were often unworkable without reference to other regulations passed or simply operated by executive bodies. Legislation was often preceded by lengthy preambles emphasizing the broad aims of the following law - i.e. providing the political framework. Finally, laws that were regarded as obsolete were often left unrepealed on the statute books long after they had become obsolete.)

21 R. Harman/R. Schüsseler Inhalt und Bedeutung der Unabhängigkeit des Richters in der DDR *Neue Justiz* 5/1963 p.131

22 K. Polak Zur Dialektik in der Staatslehre (Berlin, 1963) pp. 356-357

the party's insight into the universal laws propounded by Marx and Lenin.

Whilst party membership was traditionally an almost vital prerequisite for holding of judicial office in a state court, it was not essential to membership of a social court. However, membership of a social court did require "high political-ideological as well as technical knowledge and ability"²³; members had to have the same qualities as full time judges²⁴ — indeed the necessary qualities were defined by law²⁵; and presumably, although they were not judges, like judges they were required to be faithful to the people and to their socialist state²⁶. It seems likely that about 40% of all members of social courts were in fact SED members, and the indirect system of nomination for election to membership (discussed in chapter III) was designed to exclude any political or social outsiders. These factors, seen in conjunction with the educational role of the social courts, make clear that the commissions were very much a part of the GDR political establishment in that they carried the party's and the state's political values into the heart of the community in which they operated.

The Position of the Social Courts in the Legal System

The legal system of the GDR dispensed justice through a system of courts similar to that found in most developed countries. There were some 250 area courts (*Kreisgerichte*), above them the district courts (*Bezirks- or Stadtgerichte*), and at the top the Supreme Court (*Oberstes Gericht*). The system was therefore a three tier or three instance system. These courts, which formed the mainstream of state justice (alongside them there were military courts and specialist courts such as the state contracts court and the arbitration court), were generally referred to collectively as the state courts. Ultimate responsibility for the operation of the courts system lay with the

23 K. Probst/R. Winkler Die Leitung der gesellschaftlichen Gerichte *Neue Justiz* 8/1969 p. 234

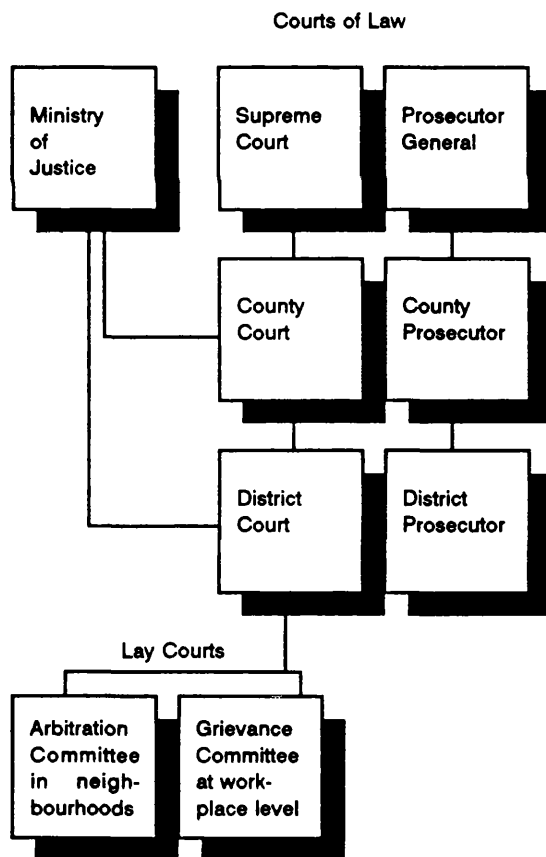
24 K. Wünsche Zur Wahl der Richter und Schöffen der Kreisgerichte sowie der Mitglieder der Schiedskommissionen *Neue Justiz* 2/1970 p. 35

25 § 6(1) GGG

26 Article 94(1) Verfassung der DDR

Supreme Court²⁷. The term "state courts" was used in the legal literature of the GDR to distinguish these courts from the social courts.

We have seen (chapter II) that the development and growth of the social courts system was a process of gradual integration into the state system of justice. Thus, the social courts, as we have seen, whilst retaining certain "social" characteristics, were an integral part of the administration of justice, complementing the state courts. They were truly courts and not mediation bodies or organs of alternative dispute resolution, although they had features associated with mediation and conciliation. Their position as an integral part of the system of justice is demonstrated, for example, by the diagram of the courts system of the GDR reproduced below from an official East German information publication²⁸.



27 Article 93 Verfassung der DDR

28 Law and Justice in a Socialist Society: The Legal System of the German Democratic Republic (Berlin, 1985) p. 55

The word "court" (*Gericht*) did not differentiate between the state and social courts: a court could be a "state or social organ of justice exercising state power by pronouncing the law"²⁹. (Note in this definition that both courts exercised *state* power.) The social courts were not "non courts"³⁰, at least not after 1968. They were constitutionally recognized as having the legal status of full courts and were mentioned in the same breath as the state courts in the constitution:

"The administration of justice in the German Democratic Republic is exercised by the Supreme Court, the district courts, the area courts and the social courts within the framework of the duties given to them by law"³¹.

Under the 1968 legislation they became and remained thereafter "an integral part of the uniform administration of socialist justice and socialist democracy"³² (words dropped from the 1982 legislation because of the specific mention of the social courts in the amended constitution, making these words in the earlier legislation redundant).

The Social Courts and Democratic Centralism

The passage from the constitution cited immediately above confirms that the social courts were not just part of the administration of justice but were also an integral part of socialist democracy. As we have seen they were also a vital way of involving the people in the life of the country, the administration of the state.

The legal system of the GDR (in common with all the state and social institutions of that country) was organised in accordance with the principles of democratic centralism, the structural principle conceived by Lenin and purporting to bring together and reconcile the power of the state on the one hand and popular democracy on the other:

29 Rechtslexikon (Berlin, 1988) p. 142

30 The expression "non court" is adopted from and used in the sense of the author (Prof. William E. Butler) in Comradely Justice in Eastern Europe *Current Legal Problems* Vol 25 1972 pp. 200-218

31 Article 92 Verfassung der DDR

32 § 1(1) GGG of 11.7.1968

"Democratic centralism means unity of central leadership and planning in matters of principle and creative activity on the part of working people, strict compliance with decisions made by higher organs and putting them into practice with the highest possible level of personal initiative and personal responsibility in one's own sphere"³³.

Based on Leninist political theory, it was designed to bridge the gap between the individual and the state.

"Democratic centralism enables the working class to give effect to its leading role in socialist society and in the socialist state and to safeguard the unity of all social forces with a view to putting into effect the objective laws of social development"³⁴.

A creative tension was postulated between the state and its working masses, and that tension was resolved by the reciprocity inherent in democratic centralist organization: "Leadership of the masses by the state, leadership of the state by the masses"³⁵.

The principle of democratic centralism was enshrined in the constitution where it was described as "the fundamental principle of structure of the state"³⁶. It ensured the imposition of state control on all aspects of administration and, taken in conjunction with the unity of powers (as opposed to separation of powers) necessary to give effect to the sovereignty of the people, brought about a system whereby state power was concentrated upwards in a sort of pyramid structure.

It applied to the administration of justice as much as to any other aspect of the administration of the GDR, as the legal literature always recognized:

"Democratic centralism can be seen here [i.e. in the administration of justice] in the accomplishment of uniformity of court pronouncements coupled with stronger and stronger participation on the part of citizens in the state legal system,"

in the words of Dr. Heinrich Toeplitz at the 21st plenary session of the Supreme Court held on 19

33 Rechtslexikon (Berlin, 1988) p. 74

34 Kleines Politisches Wörterbuch (Berlin, 1989) p. 179

35 W. Gamer Recht und richterliche Gewalt in der DDR (Dissertation, Mainz, 1973) p. 33

36 Article 47(2) Verfassung der DDR

December 1968³⁷. At the VIIIth party congress of the SED it was emphasized that uniformity in the law was to be achieved by a strengthening of the principle of democratic centralism, i.e. by a greater level of management and supervision of other courts by the Supreme Court³⁸.

The social courts were a significant manifestation of democratic centralism in the administration of justice in the GDR: that is explicit in much of the literature on the social courts and was discernible from their mode of operation. Like all courts in the GDR, they were, as we have seen, subject to direction by the Supreme Court³⁹, and, at local level, were subject to direction by the district courts and area courts. As we have seen in particular in chapter VI, the social courts did not stand alone; apart from their relationship with the state courts, they were at the centre of a complex web of relationships with both state and social organizations including local authorities, the management of enterprises and the boards of management of cooperatives, the trades unions, the advisory councils (in the case of the arbitration commissions), the procuracy, the police, the FDGB and the National Front, and, of course, the Ministry of Justice. About a third of the legislation on the social courts was devoted in one way or another to that set of relationships. The web that was spun linking individuals and institutions was said to be an example of the operation of democratic centralism in real life⁴⁰.

Whilst the work of the social courts involved the people in the administration of justice and gave effect to the constitutional right — indeed duty — to participate in law making⁴¹, at the

37 H. Toeplitz Die grundlegenden Aufgaben der Gerichte bei der Verwirklichung der sozialistischen Verfassung *Neue Justiz* 2/1969 p. 33

38 W. Ziegler Zwischenbilanz der Gerichte zur Auswertung der VIII. Parteitages der SED *Neue Justiz* 20/1971 p. 601

39 Article 92 Verfassung der DDR

40 H. Grieger/F. Müller Die Erweiterung der Rechte der gesellschaftlichen Gerichte (Potsdam-Babelsberg, 1982) p. 50

41 Article 90 Verfassung der DDR

same time it brought those involved in the social courts themselves under a measure of state control. Uniform administration of the law was, as we have seen, the responsibility primarily of the Supreme Court and the courts beneath it; both generally and in relation to the social courts we are told that "the leadership of the administration of justice by the courts is a specific form of state management of the court system"⁴² — it was an expression of the power of the state. The social courts were not separate from but a part of the whole: "in the GDR the organs of the administration of justice are limbs of the body of uniform socialist state power"⁴³; and after 1968 they were "a sub-system in the system of the administration of socialist justice"⁴⁴. The social courts also had a statutory duty to uphold the state and the social order⁴⁵.

The system of democratic centralism was also designed so as to preserve the leading role of the SED. The courts were the servants of the state, and the state was, like the law, a servant of the people's party. GDR legal writers generally had no reservations about this role: "The courts are subordinate in all that they do in administering justice to the direction through the party of the working class"⁴⁶. This did not mean that the social courts were mere stooges of the party, as some West German commentators have implied. Certainly they were an integral part of a system of administration of justice based to a large extent on values and concepts alien to those governing bourgeois democracy and had a clear role in relation to social discipline and the political and social education of the people. They necessarily upheld the values of the state within which they functioned. At the same time, however, they formed a bridge between state and society, between the people and the other state and social institutions through which party political power was

42 H. Grieger/F. Müller Die Erweiterung der Rechte der gesellschaftlichen Gerichte (Potsdam-Babelsberg, 1982) p. 41

43 K. Wünsche Vor der Wahl der Direktoren, Richter und Schöffen der Bezirksgerichte *Neue Justiz* 20/1971 p. 604

44 F. Posorski Die verfassungsmäßige Stellung der gesellschaftlichen Gerichte *Neue Justiz* 8/1969 p. 229; cf. also H. Homann Die gesellschaftlichen Gerichte im System unserer sozialistischen Rechtspflege *Sozialistische Demokratie* No. 42 18.10.1968 p. 5

45 § 3(1) GGG

46 Die Bedeutung der sozialistischen Gesetzlichkeit *Der Schöffe* 5/1956 pp. 137-145

exercised, and the state and the state courts were urged to have regard to the views of the social courts even though the latter were bound by their superiors in the legal system. The relationship was clearly intended to be two-way.

The Social Courts, State and Society

"The new law on the social courts [i.e. that of 1968] represents a fusion of what has been achieved so far and new tasks. In giving it effect we must always use this fusion as our starting point... It is the duty of the socialist state to push forward even further the integration of the social courts into the system of social democracy in order to reinforce the unity of state and society, of the people and the legal system and reach the next stage of development"⁴⁷.

If state and society were at one, to what extent did the social courts have characteristics that could be described as "social" and distinguished them from the state courts?

First, it is important to recognize that GDR political theory did acknowledge that there was a difference between state and society. The state was a political system whereby society was organized in the interests of the ruling class; it was the

"political organization and instrument of power of the owners of the principal means of production in class-based society. The state has as its first priority to secure and enhance the interests of the ruling economic class"⁴⁸,

it was the

"necessary form of organization of the class-based society; it is through the medium of the state that as a rule, the ruling class economically becomes the ruling class politically... It is through the medium of the state that this class exercises its power, its dictatorship"⁴⁹.

Society, on the other hand, was seen as a system of relationships, the

"totality of social relationships between people, their interrelationships and the organization of the social life arising therefrom"⁵⁰.

47 F. Posorski Die verfassungsmäßige Stellung der gesellschaftlichen Gerichte *Neue Justiz* 8/1969 p. 231

48 Rechtslexikon (Berlin 1988) p. 335

49 Kleines Politisches Wörterbuch (Berlin, 1989) p. 928

50 Kleines Politisches Wörterbuch (Berlin, 1989) p. 320

The state was a product of society, but the two worked on and affected one another⁵¹. In establishing those characteristics of the social courts which were social in character we are therefore looking at the activities of the social courts as part of a system of relationships, whereas features associated with the exercise of control or compulsion (especially in relation to the working of the economy) may be seen as more properly associated with the state.

In the sense of the East German notion of society outlined above the social courts appear to have had strong social elements. The principal factor that was of a social nature was the role of the commissions as instruments of education and persuasion rather than as instruments of compulsion:

"Their method of operation consists in having a socio-moral, educational influence, in persuading without recourse to compulsion by the state"⁵².

The social courts did not on the whole impose sentences but aimed at settlement or the voluntary assumption of obligations on the part of the wrongdoer; only in the absence of a willingness to accept responsibility voluntarily would the commissions impose an obligation in the form of one or more educational measures which were designed to teach and to effect restitution rather than punish. The fact that the measures imposed by the social courts were not intended as punishment is underlined by the fact that in relation to the criminal jurisdiction of the social courts, the measures imposed were not recorded in the register of criminal convictions⁵³. A person who had been "sentenced" by a social court remained of previous good character. This was not a cynical attempt to conceal the true extent of crime in the GDR, for as East German lawyers invariably pointed out, whereas the crimes dealt with by the social courts were not registered against a wrongdoer, the crime itself was still recorded in the crime statistics.

51 Rechtslexikon (Berlin, 1988) p. 335

52 E. Buchholz Gesellschaftliche Gerichte in der DDR — Organe der Strafrechtspflege *Zeitschrift für die gesamte Strafrechtswissenschaft* Vol. 98 4/1986 p. 962

53 E. Buchholz Gesellschaftliche Gerichte in der DDR — Organe der Strafrechtspflege *Zeitschrift für die gesamte Strafrechtswissenschaft* Vol. 98 4/1986 p. 962

The social courts could also be described as social in that they were not bound by strict procedural rules. The legislation set out a broad framework of operation, but emphasis was given to informality and to participation by all concerned in proceedings, not just by the parties or those immediately concerned in the case that was being heard. Public attendance (that is to say the involvement of society) was often regarded as one of the criteria by which the success of a hearing could be measured⁵⁴. Frequently (probably, in fact, in a majority of cases) the hearings were not really hearings at all in the sense that difficult facts had to be weighed and judged. Only simple matters generally came before the social courts, and criminal matters were only referred to them where the facts had been fully established (i.e. where guilt had been admitted or was absolutely established). It would appear that it was only in the field of employment law (where the disputes commissions were the obligatory court of first instance) that the members had to act as real judges in determining the facts of a case and then applying the law to them so as to reach a reasoned decision. The underlying presumption of simplicity of approach and consequential looseness of procedure thus also emphasized an attention to the relationships between the people involved in a hearing rather than a need to rely on hard and fast rules.

The membership structure of the social courts could also be said to be social. Members, as we have seen, were not legally qualified and undertook their work in an honorary capacity. Certainly they could be honoured and enjoyed a measure of status and respect, but they were not paid for their work (or during their training), much of which was necessarily carried on outside normal working hours.

Membership itself was established by reference to social principles. Members of the disputes commissions worked at the same place and alongside those whose cases they dealt with, and members of arbitration commissions resided among those over whose affairs they could be called on to pronounce. They advised and conciliated as well as hearing cases, and they monitored the

54 Cf. F. Müller/K. Schulze Gedanken zur Wirksamkeit der sozialistischen Rechtspflege *Neue Justiz* 1/1972 p. 4

effects and the execution of the measures they imposed at the workplace or in the community they served. The members were part of society and interacted with society. They were not like state court judges who passed sentence and then handed the problem of its execution over to other agencies. The social courts had a "social hinterland"; they were not, like state courts, set apart from the community they served, but instead decided cases in a social context, namely at the workplace or in the area where the parties were employed or lived.

The social courts had close ties with other social institutions: the trades unions, workers' collectives, the FDGB, the National Front, youth groups, residents' associations and so on. In the case of both types of commissions there was a network of social relationships and social mechanisms acting in cooperation with them, and indeed representatives of social institutions were bound to appear before them if summoned to assist.

The social courts were also social in that they involved a large number of people, a relatively large proportion of society, in the administration of justice. Individual citizens who became involved necessarily had their ties in the workplace or the community strengthened. They acquired an understanding of and respect for the law. They were compelled, in the exercise of their functions, to take responsibility for their fellows and to ensure that others (neighbours and collectives) did the same.

Finally, the purpose of proceedings before a social court was only partly to deal with the case immediately before it. The more general aim of getting to the bottom of the causes of conflict in society and ridding society of them was clearly social in conception.

At the same time, however, the very fact that the social courts were "an organizational constitutive part of the uniform state and social system of justice"⁵⁵ meant that they also necessarily had a

55 R. Winkler/K. Barwinsky Einige Erfahrungen bei der Anleitung der Schiedskommissionen durch die Kreis- und Bezirksgerichte *Neue Justiz* 11/1971 p. 322

number of features more usually associated with state courts.

First, although the educational measures available to the social courts clearly were to a great extent genuinely educational in their desired effect, they did at the same time to some extent punish or make restitution. Many measures were borderline in their effect: for example, it is hard to draw the line between a comradely reprimand (educational) and the humiliation of a public dressing down (punishment); being compelled to undertake work for the benefit of the community clearly had elements of both. On the other hand, fines by their nature primarily constitute punishment, and there is evidence that they were made use of with some frequency. If the social courts themselves could not enforce the measures they imposed, they did have the power, indeed the duty, to follow up their decisions and see that they were given effect to, and if necessary they (or the relevant party to the proceedings) could call on the state courts or other state organs for the purpose of enforcement or execution. Their decisions had legal effect and could become instruments of compulsion rather than persuasion, even if only by indirect means.

Proceedings before social courts, whilst informal, did nonetheless have many of the features of proceedings before state courts. Evidence was gathered, witnesses were heard and could be summoned, hearings took place in public, and decisions were reached after weighing the facts and by reference to the law. Records had to be kept and preserved.

There was a right of appeal. Disrespect towards a social court could be punished by fine. A criminal case heard by a social court could not later be prosecuted before a state court unless fresh facts or evidence came to light⁵⁶. (Incidentally this is one very probable reason why wrongdoers were so often content to submit to the jurisdiction of a social court — "punishment" was less severe, and as we have seen, previous good character was preserved.)

The social courts, as we have already seen, were true courts, not "non courts". They derived their

56 § 14(3) StPO

powers and their legitimacy from the constitution itself as well as from legislation⁵⁷. True the members were lay people, but they were bound to act judicially: they had to be independent (at least in the East German sense of that term), and were bound in the exercise of their powers (like judges) only by the constitution and the law⁵⁸; they heard cases in public and even deliberated their decisions in public⁵⁹; they were bound not to hear cases in which they had a personal interest⁶⁰.

Finally, as has already been emphasized in a number of contexts, the social courts were subject to the Supreme Court and to the supervision of the state courts in relation to their general conduct as well as to appeal to the state courts.

Thus, the social courts were social but at the same time were courts, a far cry from any organ of conciliation or alternative or voluntary dispute resolution. In many respects their jurisdiction was compulsory (e.g. as a first instance employment court), but whether submission to their authority and jurisdiction was voluntary or prompted by a greater fear of the jurisdiction of the state courts is a question that cannot adequately be resolved. The social courts cannot, however, be dismissed as mere agencies of state power, for under the East German political system such agencies could readily be imposed. Equally, on the other hand, to accept the social courts as some sort of spontaneous expression of popular participation in the administration of justice, a product of organic social growth that was taken up and embraced by a government and state open to self-generating social movements and anxious to foster democratic participation would be similarly naive. The reality is that in the social courts system, state and society came together in such a way that the two elements could no longer be separated out. The social courts system was the epitome of "the interwovenness of state and direct social reactions in the fight against breaches of the law

57 Article 92 Verfassung der DDR & § 1 GGG

58 Article 96 Verfassung der DDR & § 2(3) GGG

59 § 16(2) GGG & § 7 KKO & § 12 SchKO

60 § 6 KKO; § 6 SchKO

and for the elimination of legal disputes"⁶¹.

The integration of society and state did not pose any real problem for political and legal theoreticians and commentators steeped in the principles of Marxism-Leninism. Justification for the blurring of the distinction between the state and its people in society, indeed for the eradication of that distinction, was, according to thinking in the GDR, to be found in the works of Marx, in the Marxist view that the process of history was a dialectical development, progress coming about in the course of that process as a product of the clash of contradictory systems. Certainly it was recognized that there was a state/society dialectic, but state and society could not be opposites under socialism. The relationship between the two was not one of opposing poles, but rather "existing society (and the same applies to any future one) [is to be treated] as the basis of the existing state"⁶². The same writer, again drawing on Marx, puts forward the proposition that human emancipation could in fact only be achieved within state and society.

"To say man, is to say the world of Man, State, Society.' That is what Marx said to Feuerbach in December 1843 in opposing his notion of man as an abstract being outside real relationships, that is to say not in his social and political context"⁶³.

Marx's aim was to change conditions so as to render otiose the division between social and political power, "to eliminate the division between public and private life".⁶⁴ The divide between social and political power, between state and society, was, according to East German orthodoxy, bridged in 1949 with the passing in that year of the first constitution and the forming of the German Democratic Republic:

"The historical greatness of the GDR Constitution of 1949, established in accordance with the principle of the sovereignty of the people, consists above all in the fact that

61 F. Posorski Die verfassungsmäßige Stellung der gesellschaftlichen Gerichte *Neue Justiz* 8/1969 p. 230

62 K. Marx & F. Engels Randglossen zum Programm der deutschen Arbeiterpartei in Marx/Engels Werke Band 19 (Berlin, 1964) p. 28; quoted in G. Haney Die staats- und rechtstheoretische Bedeutung der Gothaer Programmkritik von Marx *Neue Justiz* 10/1975 p. 284

63 G. Haney Erkennen und Handeln - Zum 160. Geburtstag von Karl Marx *Neue Justiz* 4/1978 p. 143. The sentence quoted is from Karl Marx Zur Kritik der Hegelschen Rechtsphilosophie Marx/Engels Werke Band 1 (Berlin, 1964) p. 378

64 C. Synowich *The Concept of Socialist Law* (Oxford, 1990) p. 166

it has levelled the way to enable a socialist order to be constructed by the people under the leadership of the working class and its party, one 'in which man is the friend of man and communality is the basis of social behaviour' (W. Ulbricht). In this process the unity of socialist state and socialist society has been achieved⁶⁵.

65 K.-H. Schöneburg Verfassung und Gesellschaft: Die Verfassung der DDR von 1949, ihr Wesen und ihr Wirken *Staat und Recht* 2/1968 pp. 183-184

Chapter VIII

The Social and Political Role of the Social Courts

As we have already seen, the social courts aimed not just to deal with individual wrongs, not simply to punish or enforce claims; they aimed to educate, and their educational function was directed not just at the individual who was the defendant or respondent to any application or the accused who was the subject of a referral but at all who participated in the proceedings and even those with whom the respondent lived and worked. In this chapter we shall examine the effect that policy was supposed to have on society and place it in its political context.

Buchholz refers to "the radiating power and the individual as well as social effect of the social courts"¹. That radiating power meant not simply dealing with the individual case that was before the court, but uncovering and dealing with the fundamental causes of disorder, indiscipline or lawlessness in society:

"Often [but, note, *not* always] a social court hearing can contribute to bringing to light problems, nuisance factors and dissension and enhancing awareness of them; and a sound collective will use experiences like these as an opportunity to go back afterwards to, for example, the trades union branch or other suitable group"².

This aim was not peculiar to the social courts but lay at the heart of the whole of the East German legal system, and whilst all legal systems to some extent aim to have an effect on society as a whole, the East German system always gave particular emphasis to law in its general effects rather than simply as something designed to deal with individual behaviour. Walter Ulbricht emphasized this at the 12th sitting of the Central Committee of the SED in 1969 in the context of so-called "System-Denken" (System-thinking) when he made clear that the aim of the courts was to see

1 E. Buchholz Gesellschaftliche Gerichte in der DDR - Organe der Strafrechtspflege *Zeitschrift für die gesamte Strafrechtswissenschaft* Vol. 98 4/1986 p. 962

2 E. Buchholz Gesellschaftliche Gerichte in der DDR - Organe der Strafrechtspflege *Zeitschrift für die gesamte Strafrechtswissenschaft* Vol. 98 4/1986 p. 965

"that the causes and conditions giving rise to breaches of the law are not exposed and overcome in isolation; rather measures to overcome the causes and conditions giving rise to conflicts should be taken in conjunction with one another and approached from every angle"³.

In 1972 the same position was being propounded, but even more widely:

"The development of the personality of working people is at the centre of all pronouncements by the party of the working class on the effectiveness of the administration of socialist justice. Its effectiveness is always oriented towards the improvement and perfection of social conditions and relationships and thus the life of the working class and of other working people"⁴.

The resolution of conflicts and problems in society was not the task of the social courts alone, but the job of all courts and of the whole of the legal system.

The principal goal of legal structures in the GDR was not so much to impose restraint or to compel, but to bring about "education" (*Erziehung*) or to encourage "self-education" (*Selbsterziehung*). These terms were often used but rarely defined. An attempt at definition is to be found in a lengthy article by Dr. Gerhard Stiller of the Deutsche Akademie für Staats- und Rechtswissenschaft "Walter Ulbricht" published in 1981:

"Education through socialist law is a process of overcoming spontaneity and at the same time forming the socialist personality into a class-conscious, creative, aware member and shaper of socialist relationships in society. Education through socialist law is a process of leading people to conscious social behaviour that results in the integration of every member of society into a politically organized, socialist society, into the living organism of our state with its social communities and collectives and of working towards the realization of the objective laws of society. Education through socialist law comes about above all from a comprehensive evolution and strengthening of socialist legal consciousness that takes in every member of society and from the contribution that socialist law makes to the development and accomplishment of socialist morality"⁵.

Education (or self-education) was not an event but a process whereby an individual was integrated into socialist society and a socialist personality was formed. Individual desires and patterns of behaviour (Stiller's "spontaneity") were secondary to the needs of society as a whole.

3 P.-P. Siegert Weitere Vervollkommnungen des Zusammenwirkens der Gerichte mit den Konfliktkommissionen *Neue Justiz* 9/1970 p. 257; W. Ulbricht, Grundlegende Aufgaben im Jahre 1970 (Berlin 1969) p. 9

4 F. Müller/K. Schulze Gedanken zur Wirksamkeit der sozialistischen Rechtspflege *Neue Justiz* 1/1972 p. 2

5 G. Stiller Die Rolle des Rechts bei der Formung sozialistischer Persönlichkeiten *Neue Justiz* 9/1971 p. 255

This "Orwellian" subjection of the individual will to the higher demands and aspirations of society as a whole was justified by the notion that in a socialist society the aims of society and the individual were one and the same, and any phenomenon whereby the individual cut himself off from the social whole was almost necessarily deviant. Karl Polak, writing in 1968, defined socialist criminal law as aiming

"to remove the isolation in which the lawbreaker has placed himself by his act against society and to develop consciously social behaviour"⁶.

Education was therefore the concern of society at large; it was "education of the human being by socialist society itself, [the process of] integrating him into its state of organization and its discipline"⁷. Not only in the context of the law, but in all respects the citizen of the GDR was urged to put personal achievement to one side for the sake of the greater good. Concern with the self was seen as a trace element of capitalist thinking. Thus socialist law gave expression to the fact that

"the narrow walls of private interests, of egoism and of competitive strife, which capitalism has built up to divide people, have been broken down to make way for a new principle of cooperation, mutual comradesly help, communal working for a speedy improvement in the life of society as a whole and thus the welfare of each individual"⁸.

This principle was enshrined in the constitution. Whereas western "bourgeois" constitutions have always tended to set out the rights of individuals and limit the power of the state, balancing the rights of the individual and society against one another, the GDR constitution provided for the development of the citizen not as an individual but as a social being: the freedom of the individual was guaranteed such that he was able

"to develop his abilities to their full extent and to grow in strength unhindered by his own resolution and without impediment for the good of society and for his own

6 K. Polak Reden und Aufsätze - zur Entwicklung der Arbeiter-und-Bauern-Macht (Berlin, 1968) p. 41

7 K. Polak Reden und Aufsätze - zur Entwicklung der Arbeiter-und-Bauern-Macht (Berlin, 1968) p. 395

8 Programmatische Erklärung des Vorsitzenden des Staatsrates der DDR vor der Volkskammer am 4. Oktober 1960 (Berlin, 1960) p. 39

usefulness in the socialist community"⁹.

The operation of the social courts derived a large part of its legitimacy from the idea that the enforcement of law was a matter concerning society and not just the individual, and that the purpose of legal action was primarily to educate and integrate. This is clear from the fact that the sanctions available to the social courts were clearly designed not so much to punish as indeed to educate. The fact that they were referred to as "educational measures" is itself significant¹⁰. That designation emphasized to a wrongdoer that he was not the subject of punishment that stigmatized and isolated him from his fellows. Nor was that designation a cynical one, for examination of the measures available and of the manner in which they were intended to be applied underlines the fact that education was a real goal and not a mere cloak for punishment or retribution. Indeed, the aim of a hearing before a social court was to avoid even the necessity to impose any educational measure at all, for it was hoped that the wrongdoer would, in the course of a well conducted hearing, gain sufficient insight into his faults to enable him to repent and offer, himself, to remedy his breach. Thus § 19 GGG gave almost equal prominence to decisions of the the social courts that entailed confirming a voluntarily undertaken obligation as it did to those imposing obligations. Furthermore, obligations, whether assumed or imposed, were intended to be fulfilled voluntarily, and compulsion was used only as a last resort¹¹. GDR writers on the social courts state that obligations were generally fulfilled:

"The fulfilling of decisions of social courts does not as a rule create difficulties since they are the result of a social hearing with a wrongdoer with insight, ready for education."¹²

This may seem pious, even incredible, but there must have been a great deal of truth in this assertion, since, were it not the case that measures imposed or undertaken were fulfilled, the social courts would have been wholly ineffective, and it would have been an easy matter for the

9 Article 19 (3) Verfassung der DDR

10 § 20 GGG

11 § 57 (1) KKO; § 53 (1) SchKO

12 E. Buchholz Gesellschaftliche Gerichte in der DDR - Organe der Strafrechtspflege *Zeitschrift für die gesamte Strafrechtswissenschaft* Vol. 98 4/1986 p. 976

legislature to give them greater powers or replace them by courts having greater sanctions at their disposal.

Even where educational measures were imposed rather than undertaken voluntarily they were not severe, and as such again were clearly designed to cause the wrongdoer to reflect rather than smart. The apology and reprimand (§ 20 (1) 1 & 5) were mild; the obligation to make restitution for damages by payment or by work or to undertake unpaid work in the community (§ 20 (1), 2 & 3) had an obvious educational as well as manifestly just restitutional function. The wide scope allowed in the assumption of voluntary obligations (§ 20 (1) 4) with the aim of "developing, encouraging and ensuring conduct in keeping with socialist law" gave almost unlimited scope to impose measures, but again the voluntary element prevailed, and such measures could only be confirmed subject to the explicitly stated reforming purpose. The only obviously punitive sanctions were the fines provided for by §§ 20 (1) 6 and 20 (3).

Such statistics as are available tend to show a fairly even-handed application of measures as between those that were obviously educational and fines: in 1984, for example, the following measures were imposed for minor offences:-

Apology	10.6%
Reprimand	40.8%
Damages	35.6%
Fine	56.6%
Unpaid community service	9.0%

(The total is more than 100% because more than one measure could be imposed at a time.) 59% of the fines imposed were for less than 150 Marks¹³. Given that the possible range was from 10 to 500 Marks it is arguable that even these were imposed more as an educational measure than in any punitive sense.

Two particular powers that were available to the social courts emphasize further their social and educational function. The first was the ability of the social courts to confirm as an educational

13 Aufgaben der Rechtsprechung zur Unterstützung der Tätigkeit der gesellschaftlichen Gerichte. Aus dem Bericht des Präsidiums an die 11. Plenartagung des Obersten Gerichts vom 20. März 1985 *Neue Justiz* 5/1985 p. 190

measure obligations undertaken by a workers' collective or a residents' group for the education of a lawbreaker¹⁴. No concrete examples are available of the use of this provision, but it can be assumed that it was used rather like probation, and that a comradely eye was kept on the wrongdoer to ensure that further deviant behaviour (e.g. alcohol abuse, theft) was nipped in the bud. The second was the ability of the social courts to make recommendations¹⁵. These were given specifically with a view "to eliminating established causes and conditions of legal disputes and breaches of the law and to remedying defects and illegalities". The general social function intended is clear from the wording of the law. That recommendations were intended by the legislature to be taken seriously and acted upon was made clear by Erich Honecker at the VIIIth Party Congress in 1971 when he emphasized that those concerned in the administration of the state and of the economy were to regard compliance with the law as an integral part of their management function, and that included having regard to recommendations made by the social courts¹⁶.

Honecker's speech appears to have resulted in much greater attention being paid to recommendations after 1971, particularly by the procuracy. A member of the staff of the procurator general's office, writing in 1972, emphasized that "the recommendations of disputes commissions [have] a significance above and beyond the individual case" and had real implications for efficient management¹⁷. Research conducted by the Supreme Court in 1973 showed that recommendations were being made in just under 25% of all cases heard by the disputes commissions and were being acted upon in accordance with the spirit of the policy of the VIIIth Party Congress¹⁸. In 1975 the first reported case is mentioned of the procurator acting against

14 § 20 (2) GGG

15 § 21 GGG

16 E. Honecker Bericht des Zentralkomitees an den VIII. Parteitag der SED (Berlin, 1971) p. 67

17 H. Jablonowski Erfahrungen der Staatsanwaltschaft aus den Zusammenarbeit mit den gesellschaftlichen Gerichten *Neue Justiz* 3/1972 p. 69

18 Probleme der Wirksamkeit der Rechtsprechung der Konfliktkommissionen *Neue Justiz* 15/1973 pp. 442 & 443

managers for failure to react to a recommendation¹⁹, an important fact given that cases were often reported in the GDR to make a point as much as to establish any new principle of law. However, by 1981 the volume of recommendations appears to have declined, with disputes commissions relying on them in 15.5% of cases and arbitration commissions in only 6.8%. The variation in their use was significant, some commissions using them in only 1% of cases whilst others were relying on them in 40%²⁰. On the other hand, we are told that it was rare by then for recommendations not to be complied with voluntarily²¹. This involvement of society in general in the education of the wrongdoer and in the elimination of the causes or circumstances giving rise to wrongdoing further underlines the social role of the commissions.

No less important than the educational role of the social courts was the part they played in the process of involving society in the legal system, a reflexion of the socialist doctrine of involvement (*Einbeziehung*). The social courts had always been regarded as the epitome of success of this doctrine. The so-called *Einbeziehungsprinzip* would appear to have originated in the Ulbricht era as a by-product of the "Harmoniedenken" (harmony-thinking) prevalent in the 1960s and which proclaimed the identity of interest between state, society and the individual²², following in the wake of the same theory propounded at the XXIIInd Party Congress in the USSR in October 1961.

Far from finding expression in any withering away of state institutions or a move towards a system of self-administration, this concept of harmony, of a unity of interests, was used by Ulbricht to strengthen the state as an expression of a "sozialistische Menschengemeinschaft" (socialist community of the people)²³. Thus whilst the large number of citizens participating in the

19 Protest des Staatsanwalts des Bezirks Cottbus vom 24. Januar 1975 - PSF 317/IV-113 *Neue Justiz* 12/1975 pp. 377-378

20 G. Müller Wirksamkeit der gesellschaftlichen Gerichte *Neue Justiz* 4/1982 p. 154

21 G. Müller Wirksamkeit der gesellschaftlichen Gerichte *Neue Justiz* 4/1982 p. 155

22 An example of this in legal thought at the time is to be found in the "Einheit von werktätigem Volk und Rechtspflege" in the Rechtspflegeerlaß of 4 April 1963 (GBl. I 1963 Nr. 3 p. 21) Erster Teil III

23 R. Schwandt Demokratie und Zentralismus bei der Mitwirkung der DDR-Bevölkerung in der Strafrechtspflege (Meisenheim am Glan, 1979) p. 16

administration of justice through membership of the social courts was an expression of a constitutionally established democratic principle (the right to participate in "[the] management of social development"²⁴, and the right "to participate in every aspect of forming the political, economic, social and cultural life of the socialist community and of the socialist state"²⁵), the involvement of large numbers in the system of justice could equally be seen as a means of securing control over those very individuals who were so involved. We have seen above that the principle of education was the integration of the individual into the collective; this was the traditional aim of all GDR social organizations. Thus, the National Front (which as a "popular socialist movement" was clearly intended to be social in character²⁶) was seen as a vehicle for the realization of "the living together of all citizens in the socialist community in accordance with the principle that each bears responsibility for the whole"²⁷. In much the same way, social court members were intended to become guardians of law, order and discipline. They inevitably did so: they imposed those values on others, and by reason of the participatory nature of the proceedings they conducted, they affirmed those values in the collective of which they themselves were an integral part.

Participation, of which membership of a social court was merely an example, was seen in East German political theory as an expression of the operation of socialist democracy. Socialist democracy was not the democratic right to bring about change (characteristic of bourgeois democracy) but the

"exercise of political power by the working class and by the working masses led by their Marxist-Leninist party [the SED]... That requires that the working class should give effect to its leading role in society...."²⁸.

That concept of democracy, with its implicit identity of interest between people, state and society,

24 Article 19 (1) *Verfassung der DDR*

25 Article 21 (1) *Verfassung der DDR*

26 Cf. *Kleines Politisches Wörterbuch* (Berlin, 1989) p. 659

27 Cf. Article 3 (1) *Verfassung der DDR*

28 *Kleines Politisches Wörterbuch* (Berlin, 1989) p. 876

and the people expressing their democratic freedom through involvement and participation, necessarily brought with it a blurring of what was part of society and what was part of state. As Erich Honecker said at the Xth Party Congress:

"It [i.e. socialist democracy] guarantees the broadest involvement of working people in the direction of social processes, in particular in state leadership. Thus we are directing our efforts towards closer and closer cooperation between the organs of state and social organizations, work collectives and the various activities of working people in all spheres of life"²⁹.

As we have seen in chapter III, the whole development of the social courts was a reflection of the process in the GDR whereby social institutions became more and more absorbed into the apparatus of the state. In the end the social courts still had social effects, but they were also in part the expression of the political power of the state.

If the aim of the social courts was to educate wrongdoers and to involve people in legal processes, the aim of those processes in turn was to produce a new type of person, a person who had a high degree of socialist consciousness, i.e. a consciousness of the class position and class interests of the working people and of the need to help to bring about the victory of socialist conditions of production³⁰. The process of integration into society (*Vergesellschaftung* — socialization) was undertaken for the benefit of society itself, and society was best benefited and the interests of the working people best served by increased production. This principle of policy appears in the 1963 SED programme which assessed the benefit to society of any achievement in terms of economic usefulness³¹. Party policy aimed to bring about a "new relationship to work"³². The same theme pervaded the 1976 programme adopted at the IXth Party Congress and continued to dominate official thinking through the 1970s and 1980s. The specific role of the disputes commissions in fulfilling this aspect of SED policy was the theme of an article in *Neue Justiz* in 1983, which looked back over 30 years of disputes commissions, and made, by reference to the work of a

29 E. Honecker Bericht des Zentralkomitees der SED an den X. Parteitag der SED (Berlin, 1981) p. 166

30 Cf. the definition of "sozialistisches Bewußtsein" in Kleines Politisches Wörterbuch (Berlin, 1988) p. 331

31 Programm der sozialistischen Einheitspartei Deutschlands Zweiter Teil I, 3 Einheit 1/1963 p. 41

32 Programm der sozialistischen Einheitspartei Deutschlands Zweiter Teil I, 3 Einheit 1/1963 p. 56

particular commission, the clear connexion between socialist consciousness (actually socialist legal consciousness "sozialistisches Rechtsbewußtsein") and efficiency at work:-

"That, for example, is also the object of the work of the disputes commission at VEB Zellstoffwerk in Wittenberg of which colleague Fritz Zander has been a member since 1955 and chairman since 1959. During his period of office he has often experienced how the disputes commission can contribute effectively to the development of socialist legal consciousness and the preservation of socialist legality.

"The visible expression of this is order, discipline and safety, plans fulfilled and more than fulfilled without accidents, damage or fires. 'Exercising influence,' said Mr Zander 'means making a direct contribution through our social function to the tried and tested principles for the welfare of the people and for peace.'

"Our disputes commissions enjoy respect and trust among working people. It is partly due to them that staff are able to achieve high levels of production through socialist competition, to use working time to the full, and avoid, over an extended period, accidents and injury and unauthorized absences from work, which is the position, for example in the production of heat conductors at VEB Elektrokohle Berlin-Lichtenberg. Results like that also reflect the educational, supportive work of disputes commissions members. They set a good example and serve as role models for their colleagues. That gives them their authority and strengthens civic behaviour among all members of the relevant collective"³³.

At the XIth Party Congress in 1986 Erich Honecker proclaimed that social and economic policy were one: "Our principal battlefield is the unity of economic and social policy", he is reported as having said³⁴; economic growth (and, incidentally, in the late 1980s mastery of new technology) "needs a creative climate to prevail in the whole of social life in order to flourish"³⁵.

It is clear why, in the light of this, the work of the social courts concentrated so largely on employment law, damage caused at the workplace and petty crime. The employment commissions that grew up in the Soviet Occupation Zone after World War II almost certainly owed their existence (at least in part) to the need for labour discipline in the interests of production. The effects of criminal behaviour on the assets of society as a whole are too obvious to need emphasis.

33 H. Heintze 30 Jahre Konfliktkommissionen *Neue Justiz* 4/1983 p. 138

34 E. Honecker Bericht des Zentralkomitees der Sozialistischen Einheitspartei Deutschlands an den XI. Parteitag der SED (Berlin, 1986) p. 74

35 E. Honecker Bericht des Zentralkomitees der Sozialistischen Einheitspartei Deutschlands an den XI. Parteitag der SED (Berlin, 1986) p. 54. The same thought was expressed by Mikhail Gorbachev at the XXVIIth Communist Party Congress held in the same year

However, they enjoyed particular attention in the legal system of the GDR³⁶. The relatively high level of productivity in the GDR, at least compared to other CMEA countries³⁷, and the relatively low crime rate³⁸ would seem to indicate that SED policy (and presumably the social courts as one method of expression of that policy) was successful, at least in part in propagating the virtues of "discipline, awareness of duty, reliability and sense of community" to which Erich Honecker referred at the 1986 Party Congress³⁹.

36 Cf. Preamble to the Strafgesetzbuch der Deutsche Demokratischen Republik vom 12.1.1968 (GBl. I 1968 Nr 1 p. 1) to take just one random example

37 Cf. M. McCauley Marxism-Leninism in the German Democratic Republic - the Socialist Unity Party (London, 1979) p. ix and Department of Trade and Industry Hints to Exporters — German Democratic Republic 1990/1991 (London, 1990) p. 25

38 E. Buchholz Eine interessante Untersuchung über Länder mit geringer Kriminalitätsrate *Neue Justiz* 2/1986 p. 146

39 E. Honecker Bericht des Zentralkomitees der Sozialistischen Einheitspartei Deutschlands an den XI. Parteitag der SED (Berlin, 1986) p. 64

Chapter IX

The Social Courts in Comparative Perspective: The Communist World

As we have seen, the social courts of the German Democratic Republic had their origins in part in Soviet institutions and in part in native German institutions. Lay courts of one kind or another, however, were not found only in the USSR and the GDR: systems of what has been described as "comradely justice"¹ were, and in some places remain, a feature of many east European jurisdictions and of other legal systems with roots in communist ideology. The purpose of this chapter is to examine briefly some types of lay justice that have operated in the communist world to see the extent to which there are common features shared between them and the East German social courts and to see whether it can be said that there was a common core² in the operation of lay justice in the various communist legal systems of which the social courts of the GDR formed a part. No attempt will be made to give an exhaustive description of every aspect of the operation of lay justice in the various countries; rather the purpose is to concentrate on the principal features of the various systems of lay justice that operated from time to time. Although social or comrades' courts appear to have operated throughout most of eastern Europe since the 1960s³, in many countries they were swept away or simply fell into desuetude in the wake of the revolutions of 1989-1990. No attempt will be made in what follows to chart that decline.

The Soviet Union

The Soviet comrades' court system has been extensively described by a number of distinguished

1 W. E. Butler Comradely Justice in Eastern Europe *Current Legal Problems* Vol. 25 1972 pp. 200-218

2 W. E. Butler Comradely Justice in Eastern Europe *Current Legal Problems* Vol. 25 1972 p. 217

3 See, generally, on the history of social courts in Eastern Europe Obschestvennie sudy v evropeiskikh sotsialisticheskikh stranakh (Moscow, 1968) and W. Knüsli Die gesellschaftliche Gerichtsbarkeit in Osteuropa (Bern, Frankfurt-am-Main, 1978)

legal commentators. As we have already seen in chapter I they grew up shortly after the Russian Revolution and developed unevenly until the late 1950s and early 1960s when they enjoyed a revival under Khrushchev⁴. In 1963 the praesidium of the Supreme Soviet passed a decree strengthening the role of the comrades' courts in Soviet society, in particular in relation to discipline at work and in the countryside⁵. In 1977 it passed a further decree with a view to enhancing use of the comrades' courts even further⁶, and the courts operated on the basis of that decree until the late 1980s when they were still playing a substantial role in the legal system⁷.

The status of the comrades' courts was that of "elective social agencies" whose task was

"to promote the nurturing of citizens in the spirit of a communist attitude towards labour, an attitude of care towards socialist ownership, observance of the rules of socialist community life, the development of a feeling of collectivism and comradesly mutual assistance in them, and respect for the dignity and honour of the Soviet people"⁸.

They operated in enterprises, institutions, organizations, educational institutions, collective farms, various types of residential units and in rural communities⁹. They had jurisdiction over a wide range of anti-social behaviour, both civil and criminal, as well as matters of safety and truancy and disputes between individual citizens¹⁰. The procuracy and similar agencies could refer cases or cases could come before the courts as a result of an application or of the court's own motion¹¹.

The members were elected but usually nominated by the communist party, trades unions,

4 H. J. Berman/J. W. Spindler Soviet Comrades' Courts *Washington Law Review* Vol. 38 4/1963 p. 842

5 A New Stage in the Functioning of the Comrades' Courts *Soviet Law and Government* Vol. 3 1/1964 p. 35

6 N. Bashkatov The New Statute on Comrades' Courts *Soviet Law and Government* Vol. 17 1/1978 p. 44; W. E. Butler Comradely Justice Revised *Review of Socialist Law* 3/1977 pp. 325-343

7 Evidenced by the availability of a popular educational legal booklet, V. I. Kriger Otvechayem voprosy o rabote tovarisheskikh sudov (Moscow, 1988), in Soviet bookshops in 1989

8 Article 1 of the Statute on Comrades' Courts of 11 March (Trans. by W. E. Butler in Comradely Justice Revised *Review of Socialist Law* 3/1977 pp. 325-343)

9 Ibid. Article 2

10 Ibid. Article 7

11 Ibid. Articles 7 & 10

Komsomol or other social organizations, although they could also be proposed by individual citizens¹².

The procedure was informal, and the courts could deal with cases much as they chose provided they operated within the confines of Soviet law¹³. The approach was inquisitorial. Hearings took place before a committee of members, in public and outside working hours¹⁴. Emphasis was given to wide public involvement¹⁵. Comrades' courts were obliged to reach a formal decision¹⁶ and to keep records¹⁷.

The penalties were limited (apology, reprimand, fine, recommendation for job transfer or dismissal, payment of damages or confiscation) and were referred to as "measures of social pressure"¹⁸. They were intended to be educational, rehabilitative or restitutive in nature rather than punitive.

Bulgaria

Bulgaria followed the Soviet Union, initially forming comrades' courts on a trial basis¹⁹. Legislation was passed to give the courts a proper basis for operation, and by 1990 comrades' courts still formed an integral part of the Bulgarian legal system²⁰ operating under the Law on Comrades' Courts of 23 June 1961 (as amended in 1966, 1975 and 1979)²¹. An extensive

12 Ibid. Articles 4 & 5

13 Ibid. Articles 9-15

14 Ibid. Article 13

15 Ibid. Articles 12 & 13

16 Ibid. Article 15

17 Ibid. Article 13

18 Ibid. Articles 16-21

19 W. E. Butler Comradely Justice in Eastern Europe *Current Legal Problems* Vol. 25 1972 p. 207

20 Maria Kozareva. Interview 9.8.1990

21 Law No. 50 of 23.VI.1961, No. 101 of 27.XII.1966, No. 27 of 4.IV.1975 and No. 36 of 8.V.1979

The Bulgarian comrades' courts, along with the committees for employment disputes, were never courts in the way the East German social courts were; they were "para-judicial bodies, outside the ordinary judicial apparatus"²², "non-state, social organs"²³. However, they played a relatively advanced role in the administration of justice and in many respects operated like the East German social courts. They were organized on the territorial and workplace principle and functioned in enterprises, institutions, educational establishments and cooperatives as well as in towns and villages²⁴. The members were elected, each court generally having six members²⁵. The nomination process was largely controlled by the political and social organizations²⁶. They were obliged to report back to their electorate at least once a year on the way in which they discharged their functions²⁷.

The comrades' courts of Bulgaria had jurisdiction over a motley range of matters: many were employment related (breaches of discipline at work, lateness, absence without permission, shoddy work, breaches of health and safety regulations), but many went beyond the workplace to include all manner of anti-social behaviour (drunkenness, failure in relation to maintenance and upbringing of children, truancy, residential disputes, abuse of and damage to public property or facilities, insult and defamation, petty crime, and debts of up to 100 lev)²⁸.

22 M. Cappelletti Access to Justice (Alpen aan Rijn, Milan 1978-1979) Vol. I p. 237

23 Z. Stalev Besondere Rechtspflegeorgane in Bulgarien *Rabelszeitschrift* Vol. 35 4/1971 p. 702; Article 1 of the Law on Comrades' Courts. For this reason there is no mention of the comrades' courts in the Bulgarian Law on the Structure of Courts (No. 23 of 19 March 1976) or in Article 3 of the constitution which provides that the judicial system consists of "the supreme court, departmental and district courts and military courts".

24 Law on Comrades' Courts Article 3

25 Ibid. Article 4

26 Ibid. Article 4

27 Ibid. Article 5

28 Article 7 lists 11 main categories, but several of the categories are themselves wide in scope

but if that failed a hearing took place before a court consisting of a chairman and two members who heard the case in public (although there was power to hear cases in private for state or personal reasons) outside normal working hours²⁹. The members first conducted an investigation and established who should give evidence and which documents should be made available. Cases had to be disposed of within three weeks of an application being made. A range of "measures of social influence" could be imposed including reprimand, apology, warning, a fine of up to 20 lev, demotion or dismissal, and the making of restitution by means of unpaid work³⁰. Decisions were posted publicly³¹.

The management and administration of the comrades' courts were the responsibility of a number of social organizations: the Fatherland Front (roughly equivalent to the National Front of the GDR), the Bulgarian Professional Union, the Dimitroff Communist Youth League, the trades unions and other similar bodies as well as local councils³².

The Bulgarian comrades' courts were primarily organs of dispute resolution: they aimed to settle rather than decide cases, to educate and to develop collective comradeship rather than to enforce individual rights, to prevent and defuse disorder rather than to punish³³. This, together with the fact that the parties could not be represented by lawyers³⁴ emphasizes the social aspect of the courts, as does the fact that, unlike many other legal organs, they were not subject to the control of the Bulgarian supreme court³⁵. However, the state courts could make orders permitting

29 Procedure is set out in Articles 13-28

30 Law on Comrades' Courts Article 11

31 Ibid. Article 21

32 Ibid. Articles 29-31

33 Ibid. Articles 1,2 & 4

34 Ibid. Article 28

35 Z. Stalev Besondere Rechtspflegeorgane in Bulgarien *Rabelszeitschrift* Vol. 35 4/1971 p. 710

execution to be levied on decisions of comrades' courts³⁶, and cases that were not suited to hearing by a comrades' court could be referred by the comrades' court to a state court or to the procuracy³⁷.

Like the GDR social courts, the Bulgarian comrades' courts represented one part of a highly developed and advanced system aiming at the resolution of conflicts and the participation of the people in the administration of the law. A Law on Suggestions, Warnings, Complaints and Requests³⁸ provided an elaborate complaints structure designed to ensure the "participation of workers and citizens" and the "observation of socialist legality"³⁹, whilst committees for employment disputes and a whole range of organs of conciliation and arbitration⁴⁰ were provided for under articles 125 III and 132 III of the constitution.

Czechoslovakia

Czechoslovakia instituted local people's courts in 1959 based at the workplace or in the community⁴¹. After 1960 members were elected. The courts were given jurisdiction over minor breaches of the criminal law (i.e. wrongful acts not giving rise to a high level of danger to society), minor civil cases and cases involving parents or guardians and their obligations in relation to the education and up-bringing of children.

Little information is available on the people's courts which, by contrast with similar courts in other east European countries, do not appear ever to have become properly assimilated into

36 Law on Comrades' Courts Article 26

37 Ibid. Article 24

38 No. 52 of 1980

39 Ibid. Preamble

40 Z. Stalev Besondere Rechtspflegeorgane in Bulgarien *Rabelszeitung* Vol. 35/4/1971 pp. 698-713

41 W. E. Butler Comradely Justice in Eastern Europe *Current Legal Problems* Vol. 25 1972 pp. 207-208; B. Vybiral and A. Kudlik The Local People's Courts in the Czechoslovak Socialist Republic *Bulletin of Czechoslovak Law* Vol. 19 1/1961 pp. 1-18 and pp. 85-99

society of the legal system and were actually abolished in 1989. However, attempts were made to revive the comradely justice ideal (albeit in a different form) in 1975 in the context of the second amendment to the Employment Code of 1 July 1975⁴³ which itself followed a failed experiment under the first amendment of 1 January 1970⁴⁴ whereby so called commissions for labour disputes were established⁴⁵.

Following the 1975 amendment, arbitration commissions were established which had much in common with their GDR counterparts. Under the new law, arbitration commissions had to be established in industrial units with 500 or more workers or agricultural units of 100 or more workers; commissions could also be established in units with fewer workers if the relevant trades union committee thought it appropriate and they could also be set up in educational institutions. They operated largely under the auspices of the trades unions. Members (who had to be over 18, "dedicated to the socialist system of government" and to have demonstrated "political maturity and...moral character and personality"⁴⁶) had to be union members and were elected by the "trade union local [committee]" on the basis of a list of candidates "drawn up by the works committee"⁴⁷.

Jurisdiction was confined to the settlement of employment disputes. Application could be made orally or in writing by individual employees or groups or by the enterprise and had to give details of the parties, the nature of the application being made and be accompanied by details of any supporting evidence⁴⁸. The commission to which an application was made had a duty to assist the applicant in the drawing up of the application or to record it on his behalf if it was made

42 W. E. Butler Comradely Justice in Eastern Europe *Current Legal Problems* Vol. 25 1972 p. 215

43 Law No. 20/1975

44 A. Zila Settlement of Labour Disputes in Enterprises *Bulletin of Czechoslovak Law* Vol. 22 2/1983 pp. 53-54

45 These were not mandatory tribunals of first instance, a factor to which their failure has been attributed - see A. Zila Settlement of Labour Disputes in Enterprises *Bulletin of Czechoslovak Law* Vol. 22 2/1983 p. 54

46 A. Zila Settlement of Labour Disputes in Enterprises *Bulletin of Czechoslovak Law* Vol. 22 2/1983 pp. 55-56

47 A. Zila Settlement of Labour Disputes in Enterprises *Bulletin of Czechoslovak Law* Vol. 22 2/1983 p. 56

48 A. Zila Settlement of Labour Disputes in Enterprises *Bulletin of Czechoslovak Law* Vol. 22 2/1983 pp. 56-57

orally. The case had to be disposed of within 30 days of the making of the application.

The hearing itself would generally take place outside working hours. The members were obliged, like their East German counterparts, to investigate the circumstances giving rise to the application by examining the evidence and obtaining any relevant documents and deciding on the witnesses who should appear to give oral evidence. The parties were allowed to be represented at the hearing by a friend, fellow worker, member of the works committee or even by a lawyer. If a party failed to appear, a new date would be fixed, but failure to appear on that occasion could lead to the case being heard and decided *in absentia*⁴⁹.

The commissions were obliged to sit with a minimum of three members who could decide by majority. The hearing itself was public, although in exceptional cases it could take place in private provided that the ultimate decision was made publicly known.

Although the hearing of a case could lead to a decision by a commission, "all its activity should be directed at... settlement by agreement between the parties"⁵⁰; indeed that duty applied even at the investigatory stage⁵¹. If settlement was in fact reached it would be recorded in the form of an order that could not be appealed save in exceptional circumstances (presumably, for example, illegality). If settlement was not reached the members would deliberate in private before delivering their decision in public. A written order would then be drawn up and served on the parties within 15 days of the hearing. Appeals (such as they were) took the form of "objections" which were lodged with the same commission that heard the case. The commission would pass the objection together with its case records to the district court. Cases could also be referred to the district court if no settlement was reached or no decision could be reached within the prescribed 30 day period. A commission could re-open a case of its own motion if fresh evidence emerged.

49 A. Zila Settlement of Labour Disputes in Enterprises *Bulletin of Czechoslovak Law* Vol. 22 2/1983 p. 59

50 A. Zila Settlement of Labour Disputes in Enterprises *Bulletin of Czechoslovak Law* Vol. 22 2/1983 p. 60

51 A. Zila Settlement of Labour Disputes in Enterprises *Bulletin of Czechoslovak Law* Vol. 22 2/1983 p. 60

Like the social courts of the GDR, the Czechoslovak arbitration commissions were compulsory tribunals of first instance for employment cases, and to that extent they functioned as courts; but they also had a political and economic function in "securing workers' participation in [the] management of production and promoting the growth of productive forces"⁵², a social rather than legal task.

Hungary

Like Bulgaria, Hungary initially formed comrades' courts on an experimental basis⁵³, but the first legislation was passed in the form of a decree of the Council of Ministers and the Central Trades Unions Council in 1956⁵⁴. That decree aimed to increase worker participation in the fight against indiscipline at work and damage to socialist property; it was educational in its thrust⁵⁵. It was followed by a more elaborate decree on comrades' courts in 1962⁵⁶.

Under the 1962 decree it became compulsory to form comrades' courts in all state enterprises and organizations with more than 100 employees. The courts were to be presided over by elected members who would be nominated by the trades unions committees or by workers themselves. As with all comrades' courts, there was a duty on the part of the members to report back to their electorate on the discharge of their obligations.

Jurisdiction was wide and included minor offences committed at the workplace, insult and defamation, minor debt and property disputes and breaches of discipline at work or cases of nuisance in the community; the comrades' courts also had power to deal with offences of drunkenness and had limited family jurisdiction (for example, over parents who failed to support

52 A. Zila Settlement of Labour Disputes in Enterprises *Bulletin of Czechoslovak Law* Vol. 22 2/1983 p. 53

53 W. E. Butler Comradely Justice in Eastern Europe *Current Legal Problems* Vol. 25 1972 p. 207

54 Decree No. 1041 of 1956 - V 30

55 See the preamble to the Decree

56 Decree No. 24 of 1962

their children or whose children failed to attend school). Negligence and breaches of health and safety regulations at work also fell under their jurisdiction. The criminal jurisdiction of the courts was based on referral of cases by the state courts or the procuracy; other cases came before them by application.

The Hungarian comrades' courts were made subject to the tightest time limit for hearing cases, which had to be disposed of within 15 days of the application being made. For the hearing itself, a chairman sat with two or four other members. The chairman was responsible for conducting the necessary inquiries and obtaining the required evidence before the hearing which took place outside working hours. The hearing itself was subject to minimal procedural provisions, and the parties were not represented by lawyers.

The courts sat in public, but the members retired to reach their decision which was recorded in writing and could be published on a notice board or in the works magazine.

The Hungarian comrades' courts had a wide range of sanctions and penalties available to them including recommendations for demotion or even dismissal, payment of damages (which could be deducted from earnings), deprivation of bonuses, fines, apology, an order to make good damage done or to attend for treatment for alcohol abuse. An order could also be made for part of a worker's earnings to be attached for payment to a member of his family for maintenance. As in the case of the social courts, emphasis was placed on the voluntary performance of obligations.

Complex cases could be referred by the comrades' courts to the procuracy or to the relevant state court.

Decisions were subject to appeal which could be made at the instance of the parties or the trades union committee, in which case there would be a re-hearing within eight days before another comrades' court. Thereafter appeal lay to the state courts.

Poland

Poland under communist rule had also developed an elaborate system of lay justice⁵⁷. One of the principal elements was the system of arbitration commissions⁵⁸ (found in state enterprises and administrative units) which had jurisdiction to resolve individual employment disputes. These consisted of lay members over the age of 24 with at least five years experience of working life who had to be of good character and have some knowledge of the law and of the relevant working conditions.

Procedure was quick and informal; the chairman was obliged to seek a settlement by conciliation before a case could proceed to a full hearing before a tribunal of five members. Appeal lay to the court of labour and social insurance⁵⁹, a state court which sat with a judge and two lay assessors.

Further, two types of social court were established in Poland in 1965: workers' courts (based in state enterprises) and social conciliatory committees⁶⁰. The workers' courts, although independent of the state courts, were supported and directed by the trades unions. They were empowered to pass their own rules of procedure, although in practice they generally adopted or adapted model regulations prepared by the Central Council of Trades Unions. They had jurisdiction over disputes between employees and over disciplinary offences and offences against socialist property, but not over employment disputes generally. They had power to initiate their own proceedings. They did not generally become involved in cases already the subject of proceedings before a civil or criminal court in the state system, although the procurator had power to refer cases to them.

Workers' courts imposed educational measures (apology, reprimand, warning, making good

57 A full account of lay justice in Poland can be found in M. Los Poland in Mauro Cappelletti Access to Justice (Alpen aan Rijn, Milan, 1978-1979) pp. 800 ff. Cf. also X. Podgorecki, Attitudes to the Workers' Court in Sociology of Law (Ed. J. V. Aubert) (Harmondsworth, 1969) and J. Jasinski Sady Spoleczne (Warsaw, 1966).

58 The arbitration commissions had their statutory basis in the Regulations of the Council of Ministers of 25 October 1974 (Dziennik Ustaw No. 41 Item 243)

59 Established under the Law on the Courts of Labour and Social Insurance 1974 (Dziennik Ustaw No. 39 Item 231)

60 Law on Social Courts of 30 March 1965 (Dziennik Ustaw No. 13 Item 92)

damage, making a donation for "social purposes"). They also had a duty to seek to eliminate the causes of disputes and illegalities and could make recommendations accordingly.

The social conciliatory committees fulfilled a similar role but in the community. Members were ordinary citizens whose task was to endeavour to resolve disputes between individual citizens by conciliation. They had no legal sanctions available to them if that failed.

Romania

Social courts administering justice outside the state court system can be traced back to 1943 in Romania when mediation councils (*sfaturi de împăciuire*) were established in country communities, followed by employment disputes commissions (*comisii pentru soluționarea litigiilor de muncă*) in 1950. The first comrades' courts were set up on a limited scale following legislation in the USSR in 1951⁶¹. They took the form of the so called *consilii de judecată tovărășească* (comrades' arbitration councils) regulated by Decree No. 255 of 19 August 1953⁶². They consisted of a chairman plus two deputies supported by between five and twenty-five members. Each council sat as a chairman with two members. The councils had jurisdiction over breaches of discipline, petty theft, insult and other minor matters. They had power to impose a number of sanctions — warnings, reprimands, fines, docking of wages, demotion and payment of damages, and even, in serious cases, to dismiss a worker from employment.

These councils were replaced in 1958 by arbitration councils (*consilii de judecată*)⁶³ which had the same functions but slightly wider powers, while in 1957 legislation permitted the formation of conciliation commissions, operated by local councillors and teachers in towns and villages⁶⁴.

61 The fullest account of social courts in Romania is to be found in P. Leonhardt Das Recht der gesellschaftlichen Gerichte *Jahrbuch für Ostrecht* Vol. 28 2/1987 pp. 453-484

62 Buletinul Oficial No. 27 29.8.1953

63 Decree No 320 of 17.7.1958 (Buletinul Oficial No. 27 21.7.1958)

64 Decree No 132 of 13.6.1960 (Buletinul Oficial No. 10 26.3.1957)

These in turn were replaced by a new law in 1968⁶⁵ which remained in force as amended from time to time, the last occasion being 18 May 1987⁶⁶. This provided for commissions to be established in state enterprises, other institutions and organizations and by the executive committees of local councils.

The commissions could have up to nine members each who were elected for a period of four years. They generally heard cases as a chairman sitting with two other members, although for employment cases it was common for five members to sit, one being an employee representative, another a representative of management. They had jurisdiction to hear disputes arising out of social life, including petty crime, employment and minor civil disputes, as well as cases of failure to maintain a spouse or children and had power to impose "measures of social influence" — reprimands, warnings, fines of up to 3,000 lei. Appeal lay to the county court.

The commissions appear to have ceased functioning following the fall of the Ceaucescu government⁶⁷.

Yugoslavia

Relatively little attention has been paid to the operation of lay justice in the former Yugoslavia, yet popular involvement in the administration of justice was an important factor in the country's system of "self-management", a socialist system of popular participation designed to counteract the post-industrial

"feeling of dissatisfaction and the resignation of people as to their...subordinate or de-personalized position, the absence of any real possibility of participating effectively in decision making and managing affairs directly concerning [people's] existence as workers and social beings"⁶⁸.

65 Law No 59 of 26.12.1968 (Buletinul Oficial No. 169 27.12.1968)

66 Buletinul Oficial I No. 22 18.5.1987

67 Interview with Dr. P. Leonhardt, Munich 27.5.1991

68 N. Pasic Self-management as an Integral Political System in M.J. Broekmeyer (Ed.) Yugoslav Workers' Self-management - Proceedings of a Symposium held in Amsterdam, 7-9 January 1970 (Dordrecht, 1970) p. 1

Yugoslavia recognized two categories of courts — the regular (i.e. state) courts and the self-management courts. Both were truly courts in that they performed a judicial function, the only difference being the sphere in which they operated:

"regular courts perform their judicial function predominantly in the sphere regulated by legislative bodies of socio-political communities while in adjudication of self-management courts self-management enactments prevail"⁶⁹.

Self-management courts had been provided for under Article 133 of the 1963 constitution. Their existence, and distinction from the state courts, was preserved under Articles 92 and 217 of the 1974 constitution. The self-management courts under the 1974 constitution were in no way inferior tribunals: they simply operated in a different way, in a different domain and by different methods to the state courts with which their relationship was supposed to be "cooperative"⁷⁰.

There were various types of self-management courts: courts of associated labour, arbitration tribunals, conciliation councils and select arbitration courts⁷¹, but that list is not exclusive, as the constitution left room for the creation of other courts to meet social needs⁷².

The most important of the self-management courts were the courts of associated labour which decided whether the necessary requirements had been fulfilled for the formation of basic organizations of associated labour and work communities⁷³. They also dealt with problems arising out of the distribution of socially owned resources, the conclusion and implementation of self-management agreements and other disputes arising out of self-management relationships.

69 M. Jovanovic The Judicial System in Yugoslavia *Yugoslav Law* 2/1976 p. 25

70 M. Perovic Les Tribunaux Autogestionnaires *Yugoslav Law* 2/1981 p. 28

71 B.T. Blagojevic (Ed.) Guide to the Yugoslav Legal System (Belgrade, 1977) p. 209

72 M. Jovanovic The Judicial System in Yugoslavia *Yugoslav Law* 2/1976 p. 32

73 A basic organization of associated labour was a work unit (e.g. an enterprise) in which workers came together to form an economic-technical entity, the result of whose work could be expressed in terms of value in the market or in terms of an exchange of labour; the working people themselves regulated themselves in the conduct of their unit, including the distribution of income among themselves. A work community was a similar entity performing the same function in trade, the professions and agriculture (B.T. Blagojevic (Ed. in chief) Guide to the Yugoslav Legal System (Belgrade, 1977) pp. 205 & 212; M. Jovanovic The Judicial System in Yugoslavia *Yugoslav Law* 2/1976 p. 33)

They were also responsible for employment disputes in that they sought to resolve the problems inherent in a situation where on the one hand a worker was a "free associated producer" and on the other hand "disposes of or manages the conditions and results of his labour"⁷⁴. The overall framework under which the courts operated was federal law⁷⁵, but the organization, operation and financing of the courts were matters for legislation at the level of the individual republics and provinces. Nonetheless, the general operation of the courts had common underlying features.

Applications were made by individual workers or groups of them and other individuals or bodies affected by the organization concerned. However, the case was not treated as a conflict between disputing parties but as a problem to be resolved between "participants"⁷⁶.

The procedure was informal, and participation was not restricted to the parties: the trades unions, members of the community and others could be heard. Especially important was the so-called social attorney of self-management who was entitled to appear as a sort of *amicus curiae* to ensure that the legal rights of the workers and social property were properly protected. The social attorney did not represent any of the parties but the "whole social community"⁷⁷.

In reaching a decision, a self-management court would not be concerned simply with the case before it but

"ought to venture beyond it and attempt to restore order ensuring the interests of society which entails the existence of a true self-management relation (*sic*)"⁷⁸.

The composition of courts of associated labour underlines their hybrid nature: whilst judges were generally lay persons, each court had one full-time qualified judge, although hearings could take

74 M. Jovanovic The Judicial System in Yugoslavia *Yugoslav Law* 2/1976 p. 34

75 Statute on the Courts of Associated Labour (Sluzbeni List SFRJ No. 24 of 10 May 1974)

76 M. Jovanovic The Judicial System in Yugoslavia *Yugoslav Law* 2/1976 p. 36

77 M. Jovanovic The Judicial System in Yugoslavia *Yugoslav Law* 2/1976 p. 36

78 M. Jovanovic The Judicial System in Yugoslavia *Yugoslav Law* 2/1976 p. 37

place before a court consisting entirely of worker judges⁷⁹.

Next in importance were the conciliation councils, courts set up in local communities or basic associations of associated labour and other self-management organizations which, like the courts of associated labour, derived their legitimacy from Article 225 of the constitution of 1974, although they were rooted in pre-Second World War local institutions of conciliation and mediation in the community, similar to the German *Schiedsmann*⁸⁰.

Before (and even after) the 1963 constitution (which widened their jurisdiction), conciliation councils were social organs, "non courts"; but under the 1974 constitution they became part of the judicial system as self-management courts and derived their powers from various pieces of legislation passed in the republics and provinces between 1975 (Bosnia and Herzegovina) and 1980 (Kosovo). Again the laws differed but had the main principal features in common.

The councils were made up of unpaid elected members (actually called judges in Kosovo) who held office for four years. They sat as one chairman with two other members.

The councils were given jurisdiction over minor criminal cases, residential disputes, defamation and other civil disputes, but generally on the basis of a referral from one of the state courts. They were not compulsory first instance tribunals, and a hearing before them was not a necessary prerequisite of a hearing by a state court⁸¹. If conciliation could not be effected in two to three months the case had to be returned to the referring court.

Procedure was informal, based on hearing oral representations from the parties and an inquisitorial approach. Hearings were public unless there were good reasons for a private hearing.

79 M. Jovanovic The Judicial System in Yugoslavia *Yugoslav Law* 2/1976 p. 38

80 V. Cok Conciliation Councils in Yugoslav Judicial System *Yugoslav Law* 3/1982 p. 29

81 Decision of the Constitutional Court of Yugoslavia U. No. 449-79 of 17 December 1980

Like the East German social courts they aimed to get at the root causes of disputes as well as to resolve the dispute actually before them. Records were kept, including a copy of any agreement reached between the parties which had to be signed by them.

Any decision reached by a council could be appealed within 15 days, failing which it could be enforced through the state courts.

Conciliation councils operated in organizations of associated labour, self-management organizations and in the community.

The other self-management courts most common in the Yugoslav legal system were the arbitration tribunals and select arbitration courts which functioned on an *ad hoc* basis to deal with trade disputes or other specific categories of dispute (e.g. property disputes)⁸².

China

With the exception of the Soviet comrades' courts, few forms of lay justice in the communist world have attracted the same level of attention as the mediation committees of the People's Republic of China⁸³ which appear to have their origins in the ancient Chinese institution of the intermediary, originally a ruler, but later a priest at the temple or some other local leader who would resolve disputes on a less formal basis than that provided for by the courts⁸⁴. In modern communist China the government provided for the settlement of all civil disputes and many

82 T. Blagojevic (Ed.) Guide to the Yugoslav Legal System (Belgrade, 1977)

83 See, for example, S. Lubman Mao and Mediation: Politics and Dispute Resolution in Communist China *Indiana Law Review* Vol. 55 1967 pp. 1289-1359 and On Understanding Chinese Law and Legal Institutions *American Bar Association Journal* 62/1976 pp.597-599; J. A. Cohen The Criminal Process in the People's Republic of China: An Introduction *Harvard Law Review* Vol. 79 1966 pp. 469-533 and Reflections on the Criminal Process in China *Journal of Criminal Law and Criminology* Vol. 68 1977 pp. 323- 355; D. J.Hoffheimer Law and Modernization in China: The Judicial Behaviour of the Chinese Communists *Georgia Journal of International and Comparative Law* 7/1977 pp. 515-550; E. Brown-Weiss The East German Social Courts: Development and Comparison with China *American Journal of Comparative Law* Vol. 20 2/1972 pp. 266-289; O. Davies Social Courts in China and the GDR *Polytechnic Law Review* 1980 (Autumn) pp. 43-45; B.S. Alper & L.T. Nichols Beyond the Courtroom (Lexington, Mass., 1981) pp. 220-223.

84 D.C. Clarke Dispute Resolution In China *Journal of Chinese Law* Vol. 5 2/1991 pp. 245-296; C. Pei The Intermediary System of Traditional China (unpublished paper, Oxford, 1989)

criminal cases by mediation in the Yen-an area as early as 1943⁸⁵. The system spread throughout China after the assumption of full communist control. Formal mediation committees became established in 1954⁸⁶.

The whole thrust of the mediation committees as they now (still) operate is directed at mediation and conciliation⁸⁷. The committees are made up of elected assessors who hold office for two years at a time. There is little or no formal procedure: the committees are charged with listening attentively to the parties, investigating, studying and clarifying the circumstances of the cases before them and attempting to reach a solution. They also have an educative function, aiming not only to settle individual disputes or punish offenders but to educate the people in patriotism and observance of the law as well as at increasing productivity.

Their jurisdiction appears to be voluntary and does not exclude that of the state courts.

Whilst rooted in Marxist ideology and its emphasis on popular involvement and the resolution of class based contradictions among the people, the idea of mediation also draws on Confucian traditions of cooperation with government as a general preserver of natural harmony among the people.

It is also important to bear in mind that the mediation committees are one institution among many. Residents' committees, street committees, adjustment committees and intermediary committees all provide community involvement and participation in the administration of justice through lay judges whose authority is derived from their standing in the community in which they live and work.

85 E. Brown-Weiss The East German Social Courts Development and Comparison with China *American Journal of Comparative Law* Vol. 20 2/1972 p. 269

86 Provisional General Rules for the Organization of People's Mediation Committees of 22 March 1954

87 Ibid. Article 8

Although comrades' courts on the Soviet model were established in northern China in 1953⁸⁸ to deal with employment discipline and health and safety at work, there is little evidence of their functioning and they do not appear to have taken root.

Cuba

Cuban popular tribunals are said to have their origins in a meeting between Fidel Castro and a group of law students in 1962⁸⁹ and to have commenced operation in about 1964⁹⁰. Their mode of operation does not appear to have been enshrined in any law⁹¹ but to be based on a work that in practice acquired the status of law, the Manual de los Tribunales Populares de Base⁹².

Each popular tribunal is designed to serve a particular residential area (they are not based at all at the work-place) and sits in a local hall or building (even a shop) designated for the purpose. The tribunals sit in public and hear a broad range of cases, both criminal and civil, that can generally be characterized as anti-social behaviour (*conductas antisociales*). No real distinction is made between the civil and criminal jurisdictions, but competence extends to claims in tort, misdemeanours, health and safety breaches, juvenile delinquency and matters such as neighbour disputes, minor assault, defamation and nuisance; there are also provisions to enable the tribunals to deal with breaches of rationing and other economic offences. Employment disputes do not come under their jurisdiction.

The judges (they are called judges) are laymen from the local community. No precise procedure is provided for their selection, but they are generally nominated by local party officials or the local Committee for the Defence of the Revolution. Those who have been nominated as candidates

88 Introducing the Comrades' Courts of the Soviet Union *Jen-min jih-pao* (Peking) 17 November 1963

89 B.S. Alper & L.T. Nichols Beyond the Courtroom (Lexington, Mass., 1981) p. 217

90 J. Berman The Cuban Popular Tribunals *Columbia Law Review* Vol. 69 8/1969 p. 1317

91 Berman mentions none.

92 Dirrección Nacional de los Tribunales Populares (Ministerio de Justicia, 1966) - an extensive manual in three volumes.

undergo a three week training course, and if they pass they are put up for election: the training provides a first filter by reference to aptitude before the elections filter for a second time. Each tribunal is assisted by a legally qualified *asesor*. The use of minimally trained lay justices backed by a legally qualified clerk is similar to the concept behind the English magistrates' courts.

Procedure is informal but can vary from something resembling a full blown trial to something more akin to a general discussion, but the proceedings are inquisitorial rather than adversarial (although any investigatory work needed is undertaken by the police⁹³).

Hearings are public, but the judges retire to consider their verdict. The tribunal, if it makes a finding of anti-social behaviour, may impose a public admonition, a course of educational improvement (meaning real attendance at a local school and not political education), deprivation of rights, banishment from a designated place or area, confinement, re-location or deprivation of liberty (which may mean real imprisonment or only community service); in addition it may confiscate goods or make an order to compensate in damages.

Cases are generally heard within about two weeks. The parties may be represented by a lawyer⁹⁴.

Appeal lies not to a higher court but, curiously, to the *asesor* who hears the appeal together with two judges, being judges who did not hear the original case.

The attendance of members of the public is common and encouraged. Judges often use the occasion of a trial to address the assembled public on topics of law and discipline. The aim of a hearing is not just to dispose of the case in question but to educate and rehabilitate. Involvement of all the people in the legal system is also an important underlying ideal, based on Castro's belief

93 Instrucción No. 15 12.6.1973 (in Ministerio de Justicia Instrucciones y Resoluciones del Ministerio de Justicia para los Tribunales Populares de Base (Havana, 1973))

94 Instrucción No. 4 10.5.1973 (in Ministerio de Justicia Instrucciones y Resoluciones del Ministerio de Justicia para los Tribundes Populares de Base (Havana, 1973))

in the natural sense of justice of the people⁹⁵.

Albania

As comradesly justice has collapsed along with communism in the majority of Eastern European states it is curious that in 1990 it made a brief, but apparently unsuccessful, appearance in Albania in the form of a Law on Social Courts of 8 May 1990⁹⁶. This provided for the setting up of social courts under the auspices of the local councils in towns and villages consisting of no less than five lay judges nominated by the mass organizations and holding office for three years. The aim of the courts was said to be primarily conciliation. They had jurisdiction over a range of petty criminal offences, but could also hear claims arising out of failure to maintain members of the family and claims relating to coerced marriages and civil claims of a value up to 1,500 lek. Cases had to be disposed of within 10 days of the making of an application. If the social courts failed to bring about conciliation, the case would be heard by a state court, the district court. The social courts had no power themselves actually to decide cases.

The Albanian legislation, consisting of only 11 paragraphs, was perhaps the most primitive of all and represented a rather half-hearted attempt at establishing a system of lay justice. It is thus hardly surprising that the social courts do not appear to have taken root and that there is no evidence of their actually having started to function⁹⁷.

Conclusion

No attempt has been made in the above to give an exhaustive history of lay justice in communist countries, much less a comprehensive account of its operation. However, the brief descriptions of lay justice in the various countries give a broad idea of the use and scope of lay justice which

95 Castro's view expressed in his autobiographical work, *La Historia me Absolverá*: "Por encima de las opiniones de los jurisconsultos y teóricos, el pueblo tiene de la justicia un profundo sentido" is quoted on the frontispiece of the *Manual*.

96 Law No. 7383 of 8.5.1990 (Gazeta Zytare 1990 No. 3 p. 79)

97 Interview with Fanos Trebeshina 26.9.1991; interview with Maksim Haxhia 10.4.1992.

in some cases (for example, China, and until recently Bulgaria) remains in use while in others (such as Czechoslovakia) it never really took root at all.

The common characteristics and points of similarity with the GDR system are obvious: the use of lay judges who were elected, but were generally politically or socially screened in some way, usually by the trades unions, political parties or other mass organizations at the nomination stage; an inquisitorial rather than adversarial approach, informality of procedure, giving a wide discretion as to the approach to be adopted to each hearing, but backed by the safeguard of appeal (in most cases) and the double-edged surveillance of the state procuracy coupled with a strong emphasis on speed of disposal; the mixture of criminal and civil jurisdiction, indeed a blurring of the two traditional spheres of the law in the overall interests of order and discipline in society and at work (even, in some cases, extending to family cases); an emphasis on conciliation over adjudication and on education over punishment, a desire to get at the root causes of ills rather than just their manifestations in the behaviour of the individual; involvement of the people in the legal process.

The differences relate more to the status of the courts: in some countries they were an integral part of the legal system (as we have seen was the case in the GDR); in other countries their status was uncertain, for example in Bulgaria where they were "para-judicial" but were often staffed by qualified lawyers. Nor were they always mandatory first instance tribunals (e.g. as was the case in Poland). The range of jurisdictions also varied from country to country, although in most the emphasis on employment law and petty crime is clear.

We have seen that the East German social courts grew out of Soviet occupation and a Soviet legal tradition that stemmed from that occupation but that they were also rooted in German tradition. If the GDR social courts (arguably the most advanced manifestation of lay justice in the communist countries) formed part of a "common core" of communist law in their characteristics, the history of their growth also appears to have something in common with the other jurisdictions we have briefly examined, in spite of the fact that in no case does there appear to be evidence of

the imposition of Soviet law on local systems but rather a creative adoption and adaptation of an underlying model or tradition to local needs. The survival of lay justice (at least until fairly recently and albeit in limited forms) in some of the former East bloc jurisdictions, where so much of the old order was so quickly rejected, must in part be attributable to that creative process.

Chapter X

The Social Courts in Comparative Perspective: a Note on the Disputes Commissions and West German Betriebsjustiz

The hiving off of employment law into special courts or institutions was, as we saw in chapter II, part of a long-standing German legal tradition, a tradition that was maintained in both Germanies after World War II. One manifestation of this in the Federal Republic was, and remains today, the system of so-called *Betriebsjustiz* (literally "enterprise justice", "company justice" or "workplace justice"), a system of dealing with employment and other minor disputes in the workplace that has often been compared to the East German disputes commissions¹, although it is one that was generally rejected by GDR legal scholars who dismissed company justice as the arbitrary enforcement of discipline on the workforce in the interests of monopoly capitalism².

Company justice in the Federal Republic is a system of informal procedures whereby disciplinary measures (generally fines) are imposed on workers and employees who breach company regulations or commit minor offences at work by lay courts called *Betriebsgerichte* (workplace courts or company courts). These courts are not governed by any legislation but have their legal basis in contract, deriving their legitimacy from collective agreements (*Betriebsvereinbarungen*) or collective wage agreements (*Tarifverträge*) reached between employers and employees or their trades unions. They are not, therefore, part of the formal administration of justice but are similar

1 Cf., for example, K. Pleyer/J. Lieser Zur Betriebsjustiz in beiden Teilen Deutschlands *Deutschland Archiv* 6/1968 pp. 574-588 and U. Lohmann Die Betriebsjustiz in der Bundesrepublik und die Ahndung von Verstößen gegen die sozialistische Arbeitsdisziplin durch gesellschaftliche Gerichte in der DDR *Jahrbuch für Ostrecht* Vol. 14 2/1973 pp. 97-109

2 Cf., for example, E. Leim Probleme der "Betriebsjustiz" *Neue Justiz* 2/1957 pp. 38-40; Aus dem Alltag des Rechtsstaats der Monopole - Unternehmer-Justiz *Neue Justiz* 1/1975 p. 13; H. Harland Unterstützung der Konfliktkommissionen durch die Staatsanwaltschaft *Neue Justiz* 18/1977 pp. 628-630; M. Benjamin "Betriebsgerichtsbarkeit" in Westdeutschland *Staat und Recht* 11/1966 pp. 1836-1849; L. Welzel Privatjustiz der Unternehmer in der BRD *Neue Justiz* 11/1978 pp. 495-498. On the GDR view of the distinction between disputes commissions and company justice see R. Kranke Die Konfliktkommission ist kein Betriebsgericht *Arbeit und Sozialfürsorge* 12/1954 pp. 648-649

to the former disputes commissions of the GDR in that they function at the workplace, are operated by lay people and have power to deal with legal and quasi-legal disputes arising at the workplace. Because they have no statutory basis but are formed in accordance with contractually agreed terms they cannot adequately be described in detail (any attempt at a detailed description would also be beyond the scope of this dissertation): composition, jurisdiction and operation all depend on the terms of the agreement by which they are governed (a factor which itself has given rise to doubts about their legitimacy). However, in spite of the variety of forms which company courts can take, common factors can be discerned.

The powers of company courts generally extend to employment disputes and petty crime causing disruption at work. Thus, petty thieving, damage to property and other minor acts of vandalism or dishonesty have traditionally predominated, although swearing and insulting behaviour between employees may also be dealt with by the company courts, as may breaches of company rules and regulations (e.g. on smoking or drinking at work). Although their clear disciplinary function provides a parallel with the work of the East German disputes commissions, the fact that their power to operate is based on contract rather than statute and the fact that they are invariably restricted to dealing with cases directly affecting the firm or company in which they operate (and not matters affecting the community or society at large) clearly sets them apart from the East German disputes commissions with their wider ranging concerns.

The constitution of company courts is similarly loose, again depending on the terms agreed for provisions relating to their size, membership and physical or geographical area of competence. In addition, whether company courts are formed at all is a matter of choice or discretion, not of legal compulsion, whereas disputes commissions were a feature of life in the GDR imposed by law on enterprise and employee alike.

Management was precluded from membership of the GDR's disputes commissions which were invariably operated by workers, generally trades unionists or other activists. This has never been

the case in West Germany where the company court has always been very much a tool of management, although the Federal Employment Court (*Bundesarbeitsgericht*) decided in 1967 that company courts had to have some employee representation³ so that the will of the employer should not prevail as a matter of course. Otherwise, however, there has never been any serious attempt to achieve a balance between management and workers. One vital similarity between the two institutions appears, however, to be the fact that in both cases the majority of proceedings coming before the courts have emanated from the employer and been directed against the employee, a factor which again underlines the disciplinary function common to both⁴.

Again, for reasons we have already seen, there are no common or fixed procedural rules governing a hearing before a company court, although any proceedings that are conducted have to comply with principles of natural justice. Thus, the person who finds himself the object of proceedings before a company court is potentially faced with, at worst, a large measure of uncertainty, at best, on the other hand, proceedings that allow great latitude to all concerned. Note, though, that the object of any case will almost invariably be an individual or a number of individuals: the company courts have no remit to look into the wider causes giving rise to trouble at the workplace, nor do they generally have a mediatory or conciliatory role. They have no independent function to inquire into or ascertain evidence either, but will rely on the facts submitted to them by those concerned.

Because of the lack of procedural regulations, the company courts, unlike the former social courts, have always been able to hold hearings behind closed doors, and whilst doubts have been expressed about the desirability of this practice, it appears to be widespread and commonly justified on the grounds of protecting the privacy of the worker or employee concerned in the case⁵.

3 Bundesarbeitsgericht Sammlung arbeitsrechtlicher Entscheidungen (Cologne, 1988) pp. 29 ff.

4 K. Pleyer/J. Lieser Zur Betriebsjustiz in beiden Teilen Deutschlands *Deutschland Archiv* 6/1968 p. 580; see also generally C. Amelungen Werkschutz und Betriebskriminalität (Hamburg, 1960)

5 K. Pleyer/J. Lieser Zur Betriebsjustiz in beiden Teilen Deutschlands *Deutschland Archiv* 6/1968 p. 582

The range of penalties which can be imposed by the company courts is relatively restricted, especially if compared to the measures that were available to the disputes commissions. The most common penalty is a fine, but sanctions available appear to range from warnings and reprimands at one end of the spectrum to demotion or the withdrawal of payment by the company of certain optional social security contributions at the other, and in extreme cases dismissal. Although all company court decisions can be reversed in the sense that the jurisdiction of the state courts cannot be excluded, it seems that the majority of decisions are accepted, "mostly because of fear of notification to the state authorities" (i.e. the police) in the event of refusal to submit⁶. Thus, a person dealing with a company court enjoys relatively little protection compared to that enjoyed by his East German counterpart facing a disputes commission.

It is hardly surprising that West German company courts were invariably contrasted unfavourably with the disputes commissions by GDR legal writers and were seen as essentially oppressive in character:

"From the point of view of the employer it is advantageous to put the employee under pressure by means of a company sanction — and in addition by means of the constant threat of handing him over to state justice — and thereby making him compliant. Furthermore, such proceedings provide good possibilities for social demagoguery masquerading as a humane, democratic and liberal style of management"⁷.

Indeed, apart from avoiding conviction (clearly desirable in itself) it is hard to see that company justice offers any real benefit to the employee. Even West German writers have recognized that it is all too easy to believe that what is good for the company must be good for all and that uniformity of treatment in such a system is impossible⁸. The only positive point would seem to be that the verdicts reached by the "judges" are based on a knowledge of the conditions and circumstances of the workplace.

If West German commentators have dismissed the disputes commissions as simply another

6 K. Pleyer/J. Lieser Zur Betriebsjustiz in beiden Teilen Deutschlands *Deutschland Archiv* 6/1968 p. 584

7 M. Benjamin Betriebsgerichtsbarkeit in Westdeutschland *Staat und Recht* 11/1966 p. 1839

8 K. Pleyer/J. Lieser Zur Betriebsjustiz in beiden Teilen Deutschlands *Deutschland Archiv* 6/1968 p. 586

example of the long arm of the state and the party and GDR commentators saw company justice as a tool of a capitalist ruling class, both systems nonetheless evince one common denominator in that they appear to favour the employer (whether state as in the former GDR or management as in the West) and have or had a common normative purpose, namely the protection and enhancement of the process of production by the imposition of discipline on the deviant individual. The looseness of the West German approach is perhaps a necessary concomitant of western liberal emphasis on the individual and a reflection of free market principles while the East German system, regulated and relatively well defined, reflected the needs of a centrally planned economy with its emphasis on social goals. It is perhaps a matter of regret that the unification of the two Germanies was brought about at such speed as to preclude any attempt at a fruitful synthesis of two apparent extremes with at least one common underlying purpose.

Chapter XI

The Collapse of the German Democratic Republic and the Demise of the Social Courts

In spite of the fact that relations between the German Federal Republic and the Democratic Republic had improved steadily since the *Ostpolitik* of the 1970s such that by September 1987 Erich Honecker felt able to accept an invitation from Helmut Kohl to visit the West¹, the disparities in the economic development of the two Germanies and the increasing discontent with the ageing leadership of the SED coupled with rising resentment at restrictions on travel brought more and more pressure to bear on East Germany's communist government which seemed to the world and to those it governed to be out of step with the wave of liberalization that was sweeping through the Soviet Union and the East bloc under the influence of President Gorbachev. In autumn 1989 Hungary opened its borders with the West, and some 30,000 East German citizens (who had relatively free access to Hungary) emigrated illegally to Austria by way of Hungary. At the same time political activists (especially in Leipzig) began to organize extensive demonstrations calling for democratic reform which gradually spread throughout the country. The celebrations held on 7 October 1989 to mark the fortieth anniversary of the foundation of the GDR were muted². On 18 October Erich Honecker was deposed, and Egon Krenz became General Secretary of the SED and the effective leader of the country³. On 1 November Gorbachev visited Krenz and put pressure on him to reform the GDR and made it clear that he could not look to the Soviet

1 Two previous planned visits had been cancelled, one in 1983 as a result of the death of three West Germans at a border check point, another in 1984 as a result of Soviet objections.

2 These celebrations marked Erich Honecker's last major public appearance. The trepidation and uncertainty prevalent in the East German establishment at the time was brought home to me when the GDR embassy in London (to which I had been the legal advisor for 5 years at the time) back pedalled on the holding of a major reception that was to have been held to celebrate the occasion on the basis that it seemed inappropriate in the light of the political climate.

3 The events described here were widely reported in the press. A useful summary of 1989's events can be found in D. Armour's East Germany after Honecker *The World Today*, December 1989 pp. 203-204 and of 1990's events in The Independent on Sunday 30 September 1990 p. 12 and The Independent 8 October 1990 pp. 17-19.

Union for support for the old style communist ways. Krenz took immediate steps to remove restrictions on travel, and on 9 November the official news agency announced that all border crossings could be used and were open. By 13 November extensive openings had been made in the Berlin wall.

Against this background, East German institutions were forced to look at themselves and consider voluntary reform if they were to survive at all. The organs of justice and the trades unions were no exception. In November 1989 the federal executive of the FDGB held its 11th congress: it decided that it had followed the SED too closely and should no longer be bound by party allegiance ("parteigebunden"); it demanded improvements in the administration of justice but declared its continued support for the disputes commissions⁴. It is significant that at a time when almost all aspects of life and society in the GDR were being subjected to critical (and generally negative) assessment, a strong measure of support was still to be found for the social courts.

However, in March 1990 one of the first reforming articles on the legal system and the courts appeared in *Neue Justiz*⁵. It foresaw the reorganization of the courts in accordance with the principle of the division of powers, and only a qualified and limited future for the social courts.

On the one hand it said:

"The changes in the political system bring into question the whole perspective of the social courts. As an element of citizen participation in the administration of justice they belong among the few honorary committees in which citizens actually could, up to now, make decisions. To maintain and enhance this social commitment and find new forms for it to operate in is an important aspiration in the development of democratic justice. There must also in the future still be forms to make pre-court mediation possible"⁶.

On the other hand, the authors clearly stated:

"The conditions under which the disputes commissions operated no longer exist. Conciliation committees [*Schlichtungsstellen*] for the resolution of employment disputes should be set up in enterprises. Where conciliation fails, provision should

4 *FDGB Rundschau Sonderdruck* 11 December 1989 pp. 3 & 5.

5 R. Brachmann & others Thesen zur Justizreform *Neue Justiz* 3/1990 pp. 86-92

6 R. Brachmann & others Thesen zur Justizreform *Neue Justiz* 3/1990 p. 87

be made for (direct) access to the courts for legal protection”⁷.

By the time this article came to be written it was clear that the two Germanies would reunite on some basis or other, and the East German Ministry of Justice had therefore begun work on proposals for the assimilation of the two countries’ legal systems. An internal Ministry of Justice paper was produced in April 1990 by the working group on the reform of law and justice⁸ which contained proposals for legal reform in the East. It accepted explicitly that any new legal order would be based on the West German model:

“The legal assimilation of the two German states and the envisaged creation of federal structures requires a new order for the administration of justice in the GDR. That will mean adopting extensively the organization of the legal system of the FRG [Federal Republic of Germany]”⁹.

No role was foreseen for the social courts in their existing form: “The social courts as organs of the administration of justice cannot continue in existence in the future”¹⁰. The paper recognized the role of the commissions in a democratic system, however, and recommended that they be transformed into pre-litigation organs of mediation. “There will still be a need for forms of pre-court and out-of-court conciliation”¹¹. The writers of the report thus recommended that the employment work of the arbitration commissions be continued by arbitrators (*Schiedsmänner*), thereby going back to the old German tradition¹², or by collective arbitration committees (*Schiedsstellen*). In both cases jurisdiction would no longer extend to criminal matters or educational breaches¹³. The widespread use of lay justices in the East was still felt to be a

7 R. Brachmann & others Thesen zur Justizreform *Neue Justiz* 3/1990 p. 87

8 Ministerium der Justiz der DDR (Arbeitsgruppe Rechts- und Justizreform) Position zur Durchführung einer auf die Rechtsangleichung beider deutscher Staaten gerichteten Rechts- und Justizreform (April, 1990)

9 Ministerium der Justiz der DDR (Arbeitsgruppe Rechts- und Justizreform) Position zur Durchführung einer auf die Rechtsangleichung beider deutscher Staaten gerichteten Rechts- und Justizreform (April, 1990) p. 12

10 Ministerium der Justiz der DDR (Arbeitsgruppe Rechts- und Justizreform) Position zur Durchführung einer auf die Rechtsangleichung beider deutscher Staaten gerichteten Rechts- und Justizreform (April, 1990) p. 18

11 Ministerium der Justiz der DDR (Arbeitsgruppe Rechts- und Justizreform) Position zur Durchführung einer auf die Rechtsangleichung beider deutscher Staaten gerichteten Rechts- und Justizreform (April, 1990) p. 18

12 Cf. chapter II

13 Ministerium der Justiz der DDR Position zur Durchführung einer auf die Rechtsangleichung beider deutscher Staaten gerichteten Rechts- und Justizreform (April, 1990) p. 19

positive aspect of the East German legal tradition and one respect in which it was felt (rightly, it is submitted) that the East could provide a model for the West¹⁴.

In fact the declared intention to abolish in particular the disputes commissions in their totality met with some disapproval. The chairman of one commission in Erfurt wrote at some length to *Arbeit und Arbeitsrecht* affirming the need for a continued role for the commissions while at the same time suggesting a number of reforms, not so much concerning the substance of the work of the disputes commissions as the role of the unions and the method of electing members¹⁵. His views were supported by the director of the Döbeln court in a further letter to *Arbeit und Arbeitsrecht* urging, "that the honorary lay courts should retain their firm place"¹⁶.

Theoretical considerations on the future of the social courts were accompanied by a practical one. Elections were due to be held in 1990 for the disputes commissions, and without new elections being held or some legislation to preserve the position, the disputes commissions would have died out as they would have had no members with any legal authority to function. It was felt desirable to keep them going, and thus on 26 April 1990 the *Volkskammer* extended the period of office of existing members (together with that applicable to lay assessors)¹⁷. In fact this probably came too late since by the beginning of 1990 (and possibly even by late 1989) the social courts, along with many other institutions in the GDR, had all but ceased to function at all¹⁸.

On 18 May 1990 legislation was passed to give effect to economic and social union between the

14 Ministerium der Justiz der DDR *Position zur Durchführung einer auf die Rechtsangleichung beider deutscher Staaten gerichteten Rechts- und Justizreform* (April, 1990) p.20

15 J. Hoffmann *Wie weiter mit der KK-Arbeit?* *Arbeit und Arbeitsrecht* 3/1990 p. 65

16 P. Freund *KK-Ersatz durch Schlichtungsstellen?* *Arbeit und Arbeitsrecht* 5/1990 p. 116

17 Beschluß der Volkskammer der DDR über die Verlängerung der Wahlperiode der Schöffen der Kreisgerichte und Mitglieder der Schiedskommissionen (GBl I 1990 Nr 25 p. 239)

18 In an interview in Karl-Marx-Stadt on 27 February 1990 Edgar Krebs, the chairman of a disputes commission in Aue in the Erzgebirge confirmed that there had been no attendance at training sessions since January; in an interview at the offices of *Tribüne* on 30 August 1990, Bettina Herzog, the newspaper's legal editor and the person responsible for the production of the supplement dealing with disputes commissions, expressed the view that that had been typical throughout the country.

two Germanies (generally referred to as the *Staatsvertrag*)¹⁹ which took effect on 1 July. That was followed by wide ranging legislation (especially affecting employment) bringing East Germany more and more in line with the West, undermining the value of the experience disputes commission members had and rendering them useless as skilled administrators of the law. Virtually the whole of East Germany's employment legislation (which had been both comprehensive and sophisticated) was overturned²⁰.

This gave rise to a serious practical problem. The collapse of many East German businesses and enterprises coupled with the sacking of thousands of civil servants and other state employees made for increasing unemployment in what was still the GDR and commensurate pressure for the legal determination of a flood of employment cases. The previous reliance on the disputes commissions as a compulsory tribunal of first instance meant that there were few courts able to deal with these cases, and in any event many state courts (as well as the social courts) had virtually ceased to operate. A belated attempt to salvage the position was made with the passing of the *Gesetz über die Errichtung und das Verfahren der Schiedsstellen für Arbeitsrecht* ("GEV SchA") (Law on the Establishment and Operation of Arbitration Committees for Employment Law) on 29 June 1990²¹. It came into force on 1 July 1990, and at the same time (subject to some transitional provisions) the Law on the Social Courts and the two Orders were repealed in so far as they gave jurisdiction over employment cases to either type of social court. In theory, if not in practice, the other jurisdictions remained effective²². The law came into force on the basis of Article 6 paragraph 3 of the *Staatsvertrag*.

These new arbitration committees were intended to see to fair but summary disposal of employment cases. Committees were to be formed in all concerns with more than 50 staff, but

19 Gesetz zum Vertrag über die Schaffung einer Währungs- und Wirtschafts- und Sozialunion zwischen der DDR und der BRD (GBl I 1990 Nr 34 p. 331)

20 Cf. R. Kissel *Arbeitsrecht nach dem Staatsvertrag* *Deutsch-Deutsche Rechts-Zeitschrift* 5/1990 pp. 155-159

21 GBl. I 1990 Nr. 38 p. 505

22 § 24 GEV SchA

they could also be established in places where the number was below 50. The members (the new law adopted the old term for lay judges) were to be elected by secret ballot and there was to be equal representation as between employer and employees under an independent chairman. Unlike the members of the disputes commissions, members did not have to be drawn from the workplace itself, although they had to be over the age of 25 and have experience of working life²³. The process of formation and election was subject to the supervision of the area courts²⁴. Members had to act independently²⁵ and were to sit for a four year period of office²⁶.

The new committees were to be compulsory tribunals of first instance for all employment disputes²⁷. If a committee was unable or failed to deal with a dispute within two months of an application being made, the case could be referred to the area court²⁸; furthermore, a case could be referred to the area court by the members if they took the view that it was factually or legally too complicated for them to decide²⁹.

The new law gave the committees jurisdiction over all disputes between employers and employees so that West German law would automatically fall to be considered as it came into force³⁰.

Little guidance was given on procedure. The emphasis was on informality, but only written applications could be made, and even these had to be in duplicate³¹. No advisory role was envisaged for members, and it does not appear to have been contemplated that they would carry

23 § 6 GEVSchA

24 § 5(5) & § 2(6) GEVSchA

25 § 3 GEVSchA

26 § 7 GEVSchA

27 § 2(1) GEVSchA

28 § 2(3) GEVSchA

29 § 17 GEVSchA

30 § 1 GEVSchA

31 § 11(1) GEVSchA

out the extensive investigations that had been imposed on social court members. Hearings, however, were to be held as quickly as possible, in public, and proceedings were to be directed by the chairman³². The committees were under a duty to attempt to effect a settlement between the parties³³. Records were to be kept³⁴. A respondent who failed to appear could find orders made against him in his absence; an applicant who failed to appear could have his application dismissed³⁵. Decisions had to be recorded in the form of an order recording the time and place of the hearing, the names of the members, the applicant and the respondent, the principal findings, the decision itself and an indication of the right to appeal³⁶. Appeal lay to the area court³⁷. Orders could only be executed after application to the area court³⁸. Records had to be preserved for two years³⁹. A fine of up to 10,000 Marks could be imposed for interfering with the committees or their work⁴⁰.

The new arbitration committees were, at least in theory, not seen as part of the same tradition as the disputes commissions:

"The arbitration committees for employment law are not a further stage in the development of the old disputes commissions, but that does not mean that positive experiences should be ignored"⁴¹.

And indeed whilst the differences between the new committees and the old commissions can clearly be seen (the lack of an investigative, educational or political function, the ability to be

32 § 12 GEVSchA

33 § 12(3) GEVSchA

34 § 13 GEVSchA

35 § 15 GEVSchA

36 § 16 GEVSchA

37 § 19 GEVSchA

38 § 20 GEVSchA

39 § 21 GEVSchA

40 § 22 GEVSchA

41 H. Matthias/E. Schroeder Die Errichtung und das Verfahren der Schiedsstellen für Arbeitsrecht *Neue Justiz* 8/1990 p. 341

represented at hearings, and so on), the similarities are more striking (the emphasis on conciliation, the procedural informality, lay participation, speed of process), and the employer/employee balance simply goes back to older traditional forms. Appeal to and control by the area court also recall the position of the commissions, as does their main stated aim, "the protection of the parties and the possibility of resolving disputes in a quick, simple and uncomplicated way"⁴². However, the emphasis remained firmly on the settlement of individual disputes rather than the uncovering and disposal of the roots of strife in society and at work.

Perhaps because the new arbitration committees were in fact too similar to their predecessors (or perhaps because they were not similar enough) they had failed to get off the ground by 1 September 1990, the date by which they were supposed to have been formed throughout the country⁴³. It is said that by that date committees had only been set up in less than 10% of all workplaces⁴⁴. The reason was probably less to do with any antipathy to the new institutions *per se* so much as people's concerns with more immediately pressing matters such as securing or obtaining employment, worry about rents and schools, educational places and the new economic climate coupled with a sense of the ephemeral: for it was clear to all that most East German institutions now had only a short time to live and that the reunification of the two Germanies would be no such thing but rather a subsuming of the East into the West.

That growing awareness was borne out when reunification came about on 3 October 1990. The takeover of the East by the West was made clear by application to the reunification of paragraph 23 of the Federal Basic Law⁴⁵ which was used to incorporate the GDR into the existing

42 H. Matthias/E. Schroeder Die Errichtung und das Verfahren der Schiedsstellen für Arbeitsrecht *Neue Justiz* 8/1990 p. 341

43 §6(4) GEV SchA

44 Interview with Dr. Stefan Otte of *Tribüne* 29.8.1990

45 BGBl. 1949 p. 1

federation⁴⁶. The law of the Federal Republic of Germany took immediate effect in the former German Democratic Republic (subject to minor adaptation and amendment) and East German law was swept away save for certain exceptions provided for in the unification treaty⁴⁷. The GDR was contemptuously dismissed as "[the] unjust regime of the SED"⁴⁸. Nowhere in the treaty were any real concessions made to forty years of an alternative legal system. The administration of justice came broadly into line with that in the West⁴⁹.

Decisions of East German courts retained limited validity; all criminal court decisions became subject to an automatic right of appeal (by cassation)⁵⁰; decisions of social courts were rendered ineffective in that they were declared to be incapable of execution⁵¹, although in practice it would seem likely that few decisions could have remained to be enforced given that by late 1990 the social courts had suffered a year of desuetude. Most jurisdictions previously exercised by the social courts were subsumed in the general legal and courts structure.

However, employment law was to be administered by special chambers of the area or district courts⁵². In discussions with the West, the GDR Ministry of Justice negotiators had urged their western counterparts to preserve aspects of the social courts⁵³. They failed. The recently created arbitration committees remained effective in the former GDR as a compulsory first instance tribunal in the majority of employment cases, the area court being the court of first instance only

46 Vertrag zwischen der BRD and der DDR über die Herstellung der Einheit Deutschlands vom 6. September 1990 Kapitel I Art 1(1) (*Bulletin der Presse- und Informationsdienst der Bundesregierung*) Nr 104 p.877 ("Einigungsvertrag") (GBl. I 1990 Nr. 64 p. 1627)

47 Einigungsvertrag Kapitel III Article 8

48 Einigungsvertrag Kapitel V Article 17

49 Principally by the application in the East of the Gerichtsverfassungsgesetz in the version of 9 May 1975 (BGBl. I p. 1077) as amended on 5 April 1990 (cf. BGBl. I p. 701), but also additionally by means of a whole range of Federal legislation too wide ranging in scope to be set out here in detail

50 Einigungsvertrag Kapitel V Article 18

51 Einigungsvertrag Kapitel III Article 8 and Anlage Kapitel III Sachgebiet A Rechtspflege Abschnitt III 3 j

52 Einigungsvertrag Anlage I Kapitel III Abschnitt III I t & w

53 Interview with Dr. Frank Thiele GDR Ministry of Justice 28.8.1990

in certain limited circumstances (where a party was under arrest pending investigation or the employee was in military service or had changed his place of employment) or where no committee had been formed⁵⁴.

Provision was also made for the setting up of arbitration committees (*Schiedsstellen*) in the community, and in fact a law providing for the setting up of arbitration committees in the towns and communities of the former GDR had been passed in September 1990⁵⁵. These committees drew on the experience of the arbitration commissions and also again on the old institution of the *Schiedsmann*; they were to be "a democratic model for the resolution of disputes out of court"⁵⁶.

Committees were to be formed in every community and electoral ward of each town so that each should cover no more than approximately 1,000 inhabitants. However, practical considerations such as transport facilities and distance were to be taken into account, so one committee could, for example, cover more than one community⁵⁷. This clearly followed the principles that had been applied to the formation of the arbitration commissions⁵⁸.

The new arbitration committees were to function as committees of three (including a chairman)⁵⁹, although a sole arbitrator could hear a case if that was felt desirable. The members of the committees had to be registered voters, 25 years of age or more, local residents and persons who enjoyed a measure of respect and authority within their community⁶⁰. They could be proposed by political parties or other organizations and were subject to election not by direct vote

54 Einigungsvertrag Sachgebiet A Kapitel VIII 15

55 Gesetz über die Schiedsstellen in den Gemeinden vom 13.9.1990 (GBl. I 1990 Nr. 61 p. 1527) ("GSchG")

56 I. Mattheus/K. Schüler Die Tätigkeit der Schiedsstellen in den Gemeinden - eine neue Form außergerichtlicher Schlichtung *Neue Justiz* 11/1990 p. 494

57 § 1 GSchG

58 I. Mattheus/K. Schüler Die Tätigkeit der Schiedsstellen in den Gemeinden - eine neue Form außergerichtlicher Schlichtung *Neue Justiz* 11/1990 p. 494

59 § 2 GSchG

60 § 3 GSchG

but on a vote taken by the relevant local authority. The period of office was five years⁶¹.

The new arbitration committees were given jurisdiction over both civil and criminal matters. Civil disputes were, for jurisdictional purposes, defined as civil disputes relating to money or property under the Civil Procedure Code and included claims for debt, damages, rent, and the price of goods sold and disputes between residents and neighbours⁶².

The process of arbitration in the case of civil disputes was initiated by application⁶³ which could be made orally or in writing⁶⁴. A date was then fixed by the committee. Failure to appear could result in the imposition of a fine of up to 50 Marks. The proceedings were conducted orally but not in public. The parties had to appear in person but could bring with them a friend to assist. A record was to be kept of the proceedings, in particular of any agreement reached as a result of the arbitration process⁶⁵. Any agreement reached had the force of law in that it could be enforced by execution⁶⁶.

Criminal jurisdiction was similar to that of the West German *Schiedsmann* in that conciliation remained an essential pre-requisite of bringing a private prosecution (*Privatklage*)⁶⁷. Again the committee was to fix a hearing date, but in the case of conciliation before prosecution the parties could be represented by a legal advisor. If conciliation failed, the arbitration committee was to certify that, and the private prosecution could proceed.

61 § 5 GSchG

62 § 13 GSchG

63 § 14(1) & (21) GSchG

64 § 22 GSchG

65 § 31 GSchG

66 § 34 GSchG

67 The *Privatklage* is a form of criminal proceedings brought by one individual against another in a private capacity under the Criminal Proceedings Order (Strafprozeßordnung) for minor matters such as insult, petty assault, nuisance, threats, minor damage to property, unauthorised opening of post etc. Under § 380 StPO such a prosecution may only be brought after conciliation has been tried and failed.

In the case of criminal proceedings arising other than on the basis of a private prosecution, jurisdiction was founded on a referral by the procurator who would refer cases to the arbitration committee if the level of guilt of the accused was slight, the consequences of the wrong done were not significant (for example, if the level of damage was no more than 300 Marks), the accused consented to referral, and the prospects of successful conciliation appeared good⁶⁸. The aim of the conciliation process was "to restore the peace that has been disrupted by the offence"⁶⁹. Referral was by written decision of the procurator. It would be sent to the committee together with a summary of the relevant facts and evidence. The committee could object to the referral (as could the social courts) if, for example, the case did not appear to be suitable for conciliation (for example, because the accused had denied the offence), although if the procurator rejected the objection the arbitration committee was obliged to deal with the case⁷⁰.

The aim of the conciliation process was to reconcile wrongdoer and victim: "The arbitration committee is a mediator between offender and victim"⁷¹. The wrongdoer was supposed to offer some form of compensation to his victim such that criminal proceedings become unnecessary. He was intended to assume voluntary obligations; the committee had no power to impose any. However, any obligations undertaken had to be fulfilled and proof of their fulfilment had to be given to the procurator within two weeks of the time stipulated for obligations to be fulfilled⁷².

Arbitration committees in the community (unlike their counterparts in the workplace) charged a fee of 15 Marks, 30 Marks if conciliation was successful⁷³. Running and administration costs were a charge on the local authority which was obliged under the legislation to provide a suitable

68 § 40 GSchG

69 I. Mattheus/K. Schüler Die Tätigkeit der Schiedsstellen in den Gemeinden - eine neue Form außergerichtlicher Schlichtung *Neue Justiz* 11/1990 p. 496

70 § 42(1) & (2) GSchG

71 I. Mattheus/K. Schüler Die Tätigkeit der Schiedsstellen in den Gemeinden - eine neue Form außergerichtlicher Schlichtung *Neue Justiz* 11/1990 p. 496

72 § 45 GSchG

73 §§ 46 ff. GSchG

room and funds for books, stationery and so on⁷⁴.

The law of 13 September 1990 came into force on 3 October 1990 (on the coming into effect of the unification treaty), and thereupon the old arbitration commissions were abolished (along with the remaining functions of the disputes commissions). The former social courts were obliged to pass any cases still before them to the district courts or to return to the relevant referring body any case sent to them by referral, and all documents and records had to be delivered up to the relevant district court⁷⁵. All social court decisions and orders ceased to have effect in that no execution could be levied unless a declaration had been made before 3 October⁷⁶.

Thus, the tradition of the social courts was to some limited extent maintained, if only on what was generally supposed to be a temporary basis pending full integration of East Germany into the Federal German legal system.

74 § 12 GSchG

75 §57(1) GSchG

76 § 57(2) GSchG

Chapter XII

Conclusion

The former German Democratic Republic has been described as "the unloved country", the product of an historical mistake¹; its legal system was generally dismissed by western legal writers as a tool of repression in the hands of a totalitarian dictatorship, itself controlled by the Soviet Union, and the only function of which was to further the political goals of the ruling communist party². The GDR was not, it was said, a *Rechtsstaat*, a state governed by the rule of law³. Whilst we have seen that the social courts were an integral part of this maligned system and that aspects of their operation (in particular their role as social overseers and regulators in the workplace and in the community) had their sinister side, they also had strong positive features which, it is submitted, substantially outweighed the negative characteristics, set them apart from much that could be justifiably criticized in the workings of East German justice and from which valuable lessons can be drawn. Sifting the positive from the negative is not, however, an easy task: although a vast amount of written information exists on the social courts, little material is available to assist in elucidating their operation on a day-to-day level, and their disparate and unpredictable functioning precluded my attending any hearings or interviewing anyone at the receiving end of social court justice. Any attempt at evaluating the social courts must necessarily, therefore, be based to some extent on impression and speculation.

That said, impressions cannot be discounted. The social courts do appear to have been viewed positively and to have enjoyed a large measure of respect in the GDR. This is not an impression derived simply from reading the numerous articles devoted to them, some of which are mildly critical, but the majority of which abound with references to their work as "konsequent und

1 M. Simmons The Unloved Country: A Portrait of East Germany Today (London, 1989) p. 1

2 Cf. G. Brunner Einführung in das Recht der DDR (Munich, 1979) pp. 1-2

3 G. Brunner Einführung in das Recht der DDR (Munich, 1979) p. 20

wirksam" (consistent and effective); it is also based on personal impression, albeit anecdotal and unrepresentative, drawn from those in the GDR with whom I had discussions and interviews over a period of just over four years. Certainly those interviews cannot be said to be representative in that those with whom I have had contact were very much part of the legal establishment of the GDR and were in many cases intimately involved in the social courts system, so that it would have been surprising to encounter any seriously negative opinions. Furthermore, the number of people with whom I succeeded in making contact cannot be regarded as statistically significant. It has not been possible to check and substantiate their positive assertions by reference to objective information. To have attempted any sort of "opinion poll" on the social courts during the lifetime of the GDR would have been impractical, and similarly to have endeavoured to carry out "market research" during or just after the *Umbruch*, when all institutions were being not merely criticized but vilified, would have been of questionable value.

However, in January 1990 a small scale opinion poll was carried out on 1,400 GDR citizens asking their reactions to aspects of their legal system⁴. 19.5% of those questioned expressed themselves to be very satisfied with the standard of justice, 50.6% partly satisfied, and only 27.4% dissatisfied; 43% of persons interviewed believed that their courts were objective, 34.3% did not, and 22.7% expressed no opinion on the question. (Unfortunately no specific reference was made to the social courts, save to indicate that only 4.9% of people turned to them as a preferred source of legal advice.) If the social courts can be regarded as part and parcel of the legal system to which that poll relates and these figures can be regarded as a reflection of opinion on the commissions as well as on the state courts they are not as poor a reflection on a leading institution of a system in the process of downfall as might be expected if the social courts were, in fact, nothing more than tools of social discipline.

Furthermore, the genuineness of the attempts made by some GDR officials to preserve the social

4 W. Hinrichs Im Namen des Volkes? (Ergebnisse einer soziologischen Untersuchung) *Neue Justiz* 7/1990 p. 310

courts while most of the East German legal system was being rejected⁵ is cogent evidence of their perceived worth, as are the positive opinions expressed about the work of the commissions, even after unification, by people with no obvious motive for standing by the institution other than a sincere belief in its value⁶. The real enthusiasm for the social courts communicated to me by all interviewed in connexion with this dissertation cannot be adequately conveyed in the written word.

Given that one of the aims of the social courts (and of the administration of justice generally in the GDR) was to foster a consciousness of socialist legality, the question must be asked to what extent they succeeded in doing so. Did they contribute to the creation of a socialist society and did they enhance the productivity that the GDR so badly needed? Here, too, no truly satisfactory answer can be given. The collapse of the East German economy has been well publicized and documented⁷, and such socialist consciousness as remained or existed in East Germany was not sufficient to prevent Chancellor Kohl from securing an easy victory in free elections in which capitalism was offered as a direct alternative to communism. The failure of East German institutions on the economic and propaganda fronts is, to that extent, trite knowledge. It is, however, impossible to evaluate the extent to which, in a society in which everything was connected or interwoven, any one institution can be said to have succeeded or failed; one can merely point to the humiliating extent to which the *Gesamtstaat* that was The German Democratic Republic, and of which the social courts were a small constituent part, so manifestly failed.

The social courts inevitably evinced characteristics that reflected some of the negative aspects of the East German state. The strong ties between the disputes commissions and the trades unions and the FDGB (almost totally discredited during the *Umbruch*) clearly marked them as part of the GDR's political system rather than as independent organs of impartial justice. The predominance of material responsibility cases makes it inevitable that they be regarded as organs

5 See chapter XI and interview with I. Matheus 28.8.1990

6 Interview with Dr. W. Jatzlauk 21.9.1991 and undated letter from E. Krebs received 19.12.1991

7 See, for example, P.J. Bryson/M. Melzer The End of the East German Economy: From Honecker to Reunification (London, 1991)

of discipline and tools of production. The closeness of the social courts to the people they were there to serve was, as we have seen, a double-edged sword, their accessibility laudable, their watching presence less so. The process of "education" or "self-education" that lay at the heart of social court activity was similarly ambiguous. These factors that conjure up so much that was mistrusted in the communist state did not, however, appear to have detracted significantly from an underlying trust in the fundamental worth of the social courts. If there were faults in these respects they were in the method of operation rather than fundamental flaws in the system itself.

More positively, however, one can more readily say that the social courts did succeed in one of their aims, that of involving the people in the administration of justice and bringing a fairly substantial proportion of the population into direct contact with the law. The social courts enjoyed a steady growth in number, and the number of members likewise grew consistently, both objectively and as a percentage of the total population⁸; there was a good spread of age and an impressive degree of equality of representation by reference to gender, as well as a high degree of worker participation⁹. Nor can it be said, in spite of the restrictions that applied to the nomination and election process, that the social courts were merely institutions of the ruling party, since a high proportion of social court members were not members of the SED, and many belonged to no party at all¹⁰. The number of members re-elected may be seen as a testimony to the confidence of the electors in their members, but could equally be interpreted as a manifestation of a lack of willingness to serve or of the inability of some to secure nomination¹¹.

The true extent of lay penetration into the administration of justice is another aspect of the social courts that is hard to assess; this, too, cannot be objectively ascertained with any real degree of accuracy. Whilst undoubtedly it is true that in the GDR the majority of judges (in the sense of

8 See Appendix D tables 1,2 & 3

9 See Appendix D tables 4, 5, 6 & 7

10 See Appendix D table 8

11 See Appendix D table 9

those sitting in judgement) were lay people¹² (the members of the social courts, but also the lay assessors — *Schöffen* — who sat with the judges in the state courts), one cannot simply aggregate the available statistics, as many social court members would have sat as assessors too, and a certain number of people would have been members of both a disputes commission and an arbitration commission. Nonetheless, the extent of lay involvement on a continuing basis (as opposed to the occasional basis on which juries function) was impressive.

Judged by a number of traditional or long standing western or "bourgeois" criteria the social courts evinced a number of positive characteristics. Dispensing justice without the need for recourse to lawyers was a feature of Thomas More's Utopia, a place where the people "have no barristers to be over-ingenious" because "[t]hey think it better for each man to plead his own cause, and tell the judge the same story as he'd otherwise tell his lawyer"¹³. Similarly, justice administered "on the spot" and without undue delay is an aspiration with long antecedents. William Cole, writing in the seventeenth century, complained about the delay and injustice caused by the "sophistry, quirks and quibbles of the lawyers" and asked, rhetorically, if a case had to be heard in order to resolve a dispute "why is it not better to have it tried in the neighbourhood, while it is fresh, green and new...and in places where [the witnesses'] lives and conversations are known"¹⁴. Recently, in this country, even members of the judiciary have tentatively suggested that there might be a case for civil justices to hear minor civil law disputes in much the same way in which lay magistrates deal with petty crime¹⁵. Lay participation in the hearing of employment disputes has been a feature of the administration of justice in Britain since 1964.

There is, however, one major sense in which the social courts represented an advance in the way in which legal systems approach the problem of disorder in society. Whereas in traditional western

12 D. Childs The GDR; Moscow's German Ally (London, 1983) p. 137

13 Thomas More Utopia (transl. P. Turner) (Harmondsworth, 1965) p. 106

14 William Cole A Rod for the Lawyers (London, 1659)

15 B. Clapham The Case for Civil Justices *Litigation* Vol. 9 3/1990 pp. 104-106

or "bourgeois" legal systems the emphasis has always been and remains on the resolution of individual disputes or the punishment of individuals, the social courts aimed to educate and reform not just the individual but society itself. Here, too, it could be said that the social courts merely continued and gave effect to an established vision in seeking to rehabilitate as well as, and even in priority to, righting wrongs and imposing sanctions. As the French historian, Michel Foucault, has shown, the enforcement of the law in western Europe has always taken (and still takes) the individual as its target, initially imposing itself and the will of the society in which it functioned on the individual by the infliction of pain or even death, remedies against the body, later by the confinement of the body through imprisonment. Only in the eighteenth century did attention begin to turn away from punishing the body and towards the soul or personality of the wrongdoer such that "the expiation that once rained down upon the body" was replaced gradually by "a punishment that acts in depth on the heart, the thought, the will, the inclinations"¹⁶. A society that was once concerned to eliminate wrongdoers by death or captivity and to deter potential wrongdoers by the spectacle of punishment gave way to a system of police and administrative and legal institutions designed to impose social control, to see that discipline prevailed. The function of the East German social courts (in conjunction with other institutions) in seeking to educate the individual, to work on the deviant personality so as to induce social conformity by enhancing adherence to socialist legality and to increase the efficiency and output of productive processes, so often depicted in the west as a sinister peculiarity of communist legal systems, was and is a feature of capitalist legal systems which have also relied on the law as an aid to production, the creation of wealth or the retention of wealth by a certain class¹⁷.

A limited but important triumph of the social courts system was, then, their pushing forward this tradition and way of thinking into a new phase by regarding the object of its activity as the whole of society: it was not just the wrongdoer or the deviant who was the target, the subject of rehabilitation or correction, as the process in which the commissions were involved extended also

16 M. Foucault Discipline and Punish: the Birth of the Prison (transl. A. Sheridan) (Harmondsworth, 1977) p. 16

17 M. Foucault Discipline and Punish: the Birth of the Prison (transl. A. Sheridan) (Harmondsworth, 1977) pp. 142 ff.

to enfold all parties, witnesses, managers, workers, collective, those present at a hearing, and those beyond.

A similarly important facet of the social courts system was the way it broke down the traditional divide between civil and criminal wrongs as part of an all embracing approach to disruption in the smooth running of society. Whilst a clear division between civil and criminal jurisdictions may be seen as valuable in assisting in the resolution of complex legal disputes, at the level of petty crime and minor civil wrongs, both may legitimately be said to be disruptive (as opposed to a serious threat to the social order) and best dealt with at the level at which they are directly experienced.

The social courts may have been part and parcel of a social, political and economic system that conspicuously failed, but they met real needs and went some way towards fulfilling a number of aspirations that many have professed and deemed worthy of regard, the most important of which was the endeavour to strike at the root of conflict and disorder and to seek to eliminate them in the society from which they sprang. In the words of Confucius:

"If I judge a dispute I cannot do other than what others do, but what I sincerely want is to do my best to see that there is no dispute"¹⁸.

18 Quoted in Y. Noda Introduction to Japanese Law (transl. A.H. Angelo) (Tokyo, 1976) p. 23

APPENDICES

APPENDIX A: THE LEGISLATION¹

Law Concerning the Social Courts of the German Democratic Republic of 25 March 1982¹ — Social Courts Law — (Law Gazette I No. 13 p. 269)

Chapter I

General Provisions

§ 1

- (1) The social courts consist of the disputes commissions and the arbitration commissions.
- (2) This Law defines the duties, formation, election, jurisdiction, operation and management of the social courts.
- (3) The functions, method of operation of and support for the disputes commissions and arbitration commissions shall be defined more particularly by Orders of the Council of State. The federal executive of the Federation of Free German Trades Unions shall be entitled to make proposals in relation to the disputes commissions.
- (4) The term "social organs of the administration of justice" in the Criminal Code, the Criminal Procedure Code and other legal provisions shall mean the social courts established under this Law.

§ 2

- (1) The social courts shall administer justice within the framework of the powers conferred on them by law. The whole of their activity shall be directed towards counteracting the causes and conditions likely to give rise to legal disputes and breaches of the law.
- (2) The members of the social courts shall be elected. They shall report on their activities. They may be removed from office.
- (3) The members of the social courts shall be independent in the exercise of their duties to administer justice. They shall be bound only by the Constitution, the laws and other legal provisions of the German Democratic Republic.

1 A translation of the Law Concerning the Social Courts appears in *Law and Legislation in the GDR* 1-2/1983 pp. 54-68; translations of the Disputes Commissions Order and Arbitration Commissions Order appear in the same edition of *Law and Legislation in the GDR* at pp. 69-96 and pp. 97-123 respectively. These do not take into account the 1989 amendments, and the translations themselves leave much to be desired. Whilst it is hoped that these translations are an improvement, they still suffer from some of the ponderousness and reflect some of the inconsistencies of the original German texts. Where there is no obvious English equivalent for a German term I have adopted the same term as that used by the translator of the text for *Law and Legislation in the GDR*. The translations provided are all based on the text of the Ministerium der Justiz/Bundesvorstand der FDGB booklet Gesellschaftliche Gerichte. Konfliktkommissionen Schiedskommissionen Textausgabe mit Sachregister published by Verlag Tribüne and Staatsverlag der Deutschen Demokratischen Republik (Berlin, 1989), the handbook most commonly used by social court members.

§ 3

- (1) The function of the social courts shall be to promote activities within society with the aim of implementing socialist legality and safeguarding order, discipline and safety in combines, enterprises, towns and communities. Their objectives shall be
 - to protect the socialist state, social order and socialist property,
 - to protect, safeguard and enforce the legally guaranteed rights and interests of citizens,
 - to strengthen socialist civic and legal consciousness among citizens, to promote their willingness voluntarily to observe socialist law and to encourage intolerance in the face of anti-social conduct.
- (2) The disputes commissions shall report on their experiences to the management of enterprises and to the trades union committees of enterprises, thereby assisting managers in fulfilling their responsibility for enforcing socialist legality and safeguarding order, discipline and safety, and the trades unions in exercising their right to participate in the development and implementation of socialist employment law and in seeing that it is adhered to in society.
- (3) The arbitration commissions shall report on their experiences to the local authorities and their organs in the towns and communities, to the committees of the National Front of the GDR and to the boards of producers' cooperatives, thereby assisting them in fulfilling their responsibility for enforcing socialist legality and safeguarding order, discipline and safety in the area in which they operate.

Chapter II

Formation and Election

§ 4

Formation of Disputes Commissions

- (1) Disputes commissions shall be formed in popularly owned enterprises and enterprises of like status, health service institutions, cultural and educational institutions, municipal institutions, vocational training institutions and social organizations employing more than 50 staff. Disputes commissions may be formed in enterprises with a smaller number of staff provided there is a trades union organization there.
- (2) Disputes commissions shall be formed in accordance with social requirements in agricultural and horticultural producers' cooperatives which have a trades union organization. They shall have jurisdiction over citizens employed there.
- (3) Disputes commissions should generally be responsible for no more than 300 staff. In forming disputes commissions regard should be had to the spheres of activity of the trades unions committees.
- (4) The term "enterprises" in this Law shall mean the enterprises, institutions, organs,

organizations and producers' cooperatives referred to in subsections 1 and 2 above.

§ 5

Formation of Arbitration Commissions

- (1) Arbitration commissions shall be formed in towns and communities. Arbitration commissions shall also be established in accordance with social requirements in agricultural and horticultural cooperatives and in cooperatives of fishermen and craftsmen.
- (2) The area council, municipal council in urban districts or the borough council in towns with boroughs shall determine the areas within their territory in which arbitration commissions shall be formed. In determining such areas they shall ensure that citizens have proper access to an arbitration commission. In particular, regard shall be had to the number of residents, size of the area and access to transport. In towns one arbitration commission should generally be responsible for no more than 8,000 residents.
- (3) Where substantial changes occur in the number of residents in an area covered by an arbitration commission, the area, municipal or borough council shall propose resolutions for boundary changes in their area, having regard to the criteria set out in sub-section 2 above. They shall do so in conjunction with the committees of the National Front of the GDR.

§ 6

Principles governing Elections

- (1) The members of the social courts shall be citizens who are exemplary in their work and in their social and personal conduct and who enjoy respect and trust. They may be elected if they have completed their 18th year on the relevant election day.
- (2) The members of the social courts shall be elected by direct ballot by citizens or by the local authorities.
- (3) After election the members of the social courts shall solemnly undertake to act in a just and impartial manner and to do all that is within their power to implement socialist legality and to promote order, discipline and safety. On election they shall receive written confirmation of their office.
- (4) The members of the social courts shall elect a chairman and one or more deputies.
- (5) The members of the social courts shall report to their electors on the manner in which they have carried out the duties they have assumed as a result of being elected.
- (6) Members of social courts in enterprises and producers' cooperatives may be removed from office by their electors, and in towns and communities by local authorities if they act contrary to the Constitution or the law or otherwise in breach of their duties. They may also be removed if for reasons of health or for other reasons they are no longer able to carry out their duties.

Election of Disputes Commissions

§ 7

- (1) Pursuant to their constitutional rights, the trades unions shall organize the election of members of the disputes commissions. The federal executive of the Federation of Free German Trades Unions shall take the necessary action to prepare and conduct the elections.
- (2) The trades unions committees of enterprises shall be responsible for preparing and conducting elections. The managers of enterprises shall make the necessary facilities available.
- (3) Candidates for disputes commissions shall be nominated in trades union branches and proposed by the trades unions committees of enterprises at meetings of the employees.

§ 8

- (1) Members of disputes commissions shall be elected by secret ballot of employees in accordance with the principles applicable to trades union elections for the same term of office as trades union executives and committees.
- (2) Between 8 and 15 members shall be elected to each disputes commission. In enterprises with less than 100 employees the number of members may be reduced to 6.
- (3) Elected members of the disputes commissions (§ 6(3)) shall be sworn in by the trades union committees of the enterprises.

§ 9

By-Elections

- (1) By-elections of members shall be called where the proper operation of a disputes commission is not possible. In such cases the trades union committee of the enterprise shall conduct the by-election.
- (2) The preparation for and conduct of by-elections shall be regulated by §§ 6-8 of this Law.

Election of Arbitration Commissions

§ 10

- (1) The Minister of Justice shall make such regulations as may be necessary for the preparation and conduct of elections of members of the arbitration commissions.
- (2) Local authorities in towns, urban districts and communities and the boards of producers' cooperatives shall be responsible for preparing and conducting elections.
- (3) Candidates for the arbitration commissions shall be proposed in towns and communities by the democratic parties and social organizations and in producers' cooperatives by the board.
- (4) Candidates who have been proposed for the arbitration commissions by the democratic

parties and social organizations shall be nominated by the committees of the National Front of the GDR which shall submit the names of candidates who have been nominated to the appropriate town, urban district or community council.

- (5) The bodies entitled to propose candidates shall determine any objections raised against individual candidates.

§ 11

- (1) Members of arbitration commissions shall be elected in towns and communities by the local authorities and in producers' cooperatives by the members of the cooperatives for the same term of office as local authorities.
- (2) Between 8 and 15 citizens shall be elected to each arbitration commission. In exceptional cases the number of members may be reduced to 6 or increased to 20.
- (3) Where the area council has decided to form one arbitration commission for several communities each community council shall elect the members residing in its area.
- (4) Elected members of the arbitration commissions (§ 6 (3)) shall be sworn in by the returning officer.

§ 12

By-elections

- (1) By-elections of members shall be called where the proper operation of an arbitration commission is not possible. In such cases the town, borough or community council or the board, in the case of a producers' cooperative, shall conduct the by-election.
- (2) The preparation for and conduct of by-elections shall be regulated by §§ 6, 10 and 11 of this Law.

Chapter III

Jurisdiction, Method of Operation and Decisions

Material Jurisdiction

§ 13

- (1) The disputes commissions shall hear and decide
 - employment disputes, including disputes arising out of the innovators' legislation,
 - minor offences where the case has been referred by the investigating authorities, the procurator or the courts,
 - misdemeanours,
 - breaches of regulation where the case has been referred by the relevant disciplinary authorities,
 - breaches of educational obligations,
 - simple civil disputes between citizens or between enterprises and their employees.

- (2) Disputes commissions shall pass any application relating to employment law to the area court if at any time before the hearing the procurator or the area executive of the Federation of Free German Trades Unions apply for hearing by the area court or if the director of an area court orders a hearing by the area court.
- (3) The area court shall have jurisdiction to hear any employment dispute without prior hearing by the disputes commission if other legislation so provides.

§ 14

Arbitration commissions shall hear and decide

- simple civil disputes between citizens and simple civil and other disputes, including disputes arising out of the innovators' legislation between producers' cooperatives and their members to the extent that laws or other regulations so provide,
- minor offences where the case has been referred by the investigating authorities, the procurator or the courts,
- misdemeanours,
- breaches of regulation where the case has been referred by the relevant disciplinary authorities,
- breaches of educational obligations.

§ 15

The social courts shall hear and decide other legal disputes and breaches of the law where the law so provides.

§ 16

Territorial Jurisdiction

- (1) The disputes commissions shall have jurisdiction to hear and decide employment disputes between employees and enterprises. In other matters they shall have jurisdiction if the respondent or accused is an employee of the enterprise.
- (2) The arbitration commissions shall have jurisdiction to hear and decide cases if the respondent or accused resides or works within their area. If the applicant alone resides within their area they may exercise jurisdiction if the principal issue in dispute falls within their area and no significant expenses are envisaged in conducting the hearing there.
- (3) Where citizens are accused jointly of a minor offence, misdemeanour or breach of regulation and the legal requirements for referral to a social court apply to more than one of them, either the disputes commission for the area in which the breach has been committed or the accused resides or works or the arbitration commission for the area in which the breach has been committed or the accused resides shall have jurisdiction.
- (4) Where parents or guardians are jointly responsible for a breach of educational obligations

the social court for the area in which a parent or guardian works or resides shall have jurisdiction. Minors shall be summoned for breach of educational obligations to appear before the social court in the area of which they reside, work or are undergoing vocational training.

Method of Operation

§ 17

- (1) Members of the social courts shall give advice to citizens, assist them in clarifying legal problems and explain the effects of legal provisions.
- (2) Members of the social courts shall have the right to initiate conciliation with a view to avoiding and eliminating legal disputes and breaches of the law.

§ 18

- (1) The social courts shall hear and decide cases on the basis of an application or a referral.
- (2) The social courts shall hear and decide matters as a collective sitting with at least 4 members.
- (3) Hearings by the social courts shall be public.
- (4) The social courts shall ascertain the facts which are relevant to enable them to decide the case before them.
- (5) Every person participating in the hearing shall have the right to contribute towards resolving the dispute by asking questions and making suggestions. The social courts shall conduct hearings such that this right can be fully exercised.
- (6) Applicants, respondents and accused shall be obliged to appear before the social courts in person. They shall be entitled to legal advice before the hearing, in particular from the trades unions, area courts and from lawyers.
- (7) The social courts shall have the right to monitor the implementation of their decisions.

§ 19

Decisions and Appeals

- (1) The social courts shall decide claims by making an order, by confirming terms of settlement or by declaring whether or not there has been a breach of the law and by imposing educational measures.
- (2) Decisions of the social courts may be appealed. Appeal lies to the area court.
- (3) Decisions of the social courts may be varied or set aside only on the grounds and in the manner provided by the law.

§ 20

Educational Measures

- (1) In dealing with minor offences, misdemeanours, breaches of regulation, breaches of educational obligations and breaches of socialist work discipline, the disputes commissions and arbitration commissions may impose educational measures appropriate to the circumstances as follows:
1. An undertaking given by a citizen to apologize to the injured party or before his collective may be confirmed or an obligation to do so may be imposed.
 2. An undertaking given by a citizen to pay a sum of money by way of damages in accordance with the law or to make good damage by his own work may be confirmed or an obligation to do so may be imposed.
 3. An undertaking given by a citizen to perform up to 20 hours unpaid community service in his free time may be confirmed.
 4. Other undertakings given by a citizen conducive to developing, encouraging and ensuring conduct in keeping with socialist law may be confirmed.
 5. A citizen may be reprimanded.
 6. A citizen may be ordered to pay a fine of between 10 and 500 Marks.
- (2) The social courts may confirm undertakings given by a work collective, residents' association, other collective or individual citizen which are conducive to the education of the offender.
- (3) The arbitration commissions may impose penalties of up to 50 Marks for the purpose of ensuring the orderly conduct of their business.

§ 21

Recommendations

- (1) The social courts shall, as a result of hearings and conciliation, make recommendations with a view to eliminating the causes and conditions which have been found to give rise to legal disputes and breaches of the law and overcoming deficiencies and illegalities.
- (2) Managers of enterprises to whom a recommendation has been directed shall reply to it in writing within 2 weeks.
- (3) The social courts shall have the right to monitor the implementation of their recommendations.

§ 22

Duties of Central Organs

- (1) In accordance with its responsibility for the management of the administration of justice by the courts, the Supreme Court shall safeguard the uniform application of the law by the social courts and the supervision and enforcement of their decisions.
- (2) In accordance with the constitutional rights of the trades unions, the federal executive of the Federation of Free German Trades Unions shall be responsible for the general management of the disputes commissions, the training of members, analysis of their activities and of their social effectiveness and the dissemination of positive experiences.
- (3) The Minister of Justice shall be responsible for the general management of the arbitration commissions, the training of members, analysis of their activities and of their social effectiveness and the dissemination of positive experiences.
- (4) The Supreme Court, the federal executive of the Federation of Free German Trades Unions and the Minister of Justice shall coordinate their work in managing the social courts. In carrying out their duties they shall cooperate with the Procurator General, the Minister of the Interior, the Chief of the German People's Police and the national council of the National Front of the GDR.
- (5) The federal executive of the Federation of Free German Trades Unions, the Minister of Justice, the President of the Supreme Court and the Procurator General shall be entitled to apply to the Supreme Court for guidelines to be issued and orders made for the purpose of ensuring the uniform application of the law by the social courts.

§ 23

Duties of the Area Courts

- (1) The area courts shall ensure the uniform application of the law by the social courts within their territory. They shall take such steps as may be necessary to enforce the decisions of the social courts.
- (2) The area courts shall be responsible for providing regular guidance to the arbitration commissions and for training their members, the analysis of activities and of the social effectiveness of the arbitration commissions and the dissemination of positive experiences.
- (3) In training the arbitration commissions, the area courts shall cooperate with the procurator's office, the People's Police and the appropriate local authorities and their organs and with the area committees of the Federation of Free German Trades Unions.
- (4) The area courts shall assist the trades unions in the task of guiding the disputes commissions and training members.

§ 24

Duties of the District Courts

The district courts shall ensure the uniform application of the law by the social courts within their territory. They shall ensure that the area courts fulfil their duties towards the social courts.

§ 25

Arbitration Commissions Advisory Councils

- (1) Arbitration commissions advisory councils shall be established under the auspices of the directors of the area and district courts.
- (2) Arbitration commissions advisory councils shall act as advisory bodies to the director. Each advisory council shall be headed by the director or his deputy. It shall consist of representatives of the procurator's office, the German People's Police, the area or district council, the area or district committee of the National Front of the GDR and the area or district executive of the Federation of Free German Trades Unions and the chairmen of the arbitration commissions. The chairmen of the arbitration commissions shall be co-opted onto each advisory council by the director.
- (3) Advisory councils shall advise and assist the director in the following:
 - ensuring the uniform application of the law by the arbitration commissions;
 - promoting the social effectiveness of the activities of the arbitration commissions;
 - training the members of the arbitration commissions;
 - directing the members of the arbitration commissions in relation to legal propaganda activities;
 - organizing effective cooperation between the arbitration commissions and local authorities and their organs and the committees of the National Front of the GDR in particular in safeguarding order, discipline and safety in towns and communities.

§ 26

Duties of the Procuracy

The procurator's office shall cooperate with the social courts. It shall examine their decisions, appeal against illegal decisions and, together with the social courts, evaluate the results thereof. The procurator's office shall assist the trades unions and the courts in directing the social courts and their members by providing regular information and training.

§ 27

Duties of Local Authorities and Councils

- (1) Local authorities and councils in areas, towns, urban districts and communities shall, in cooperation with the area court, the relevant trades union executives and committees, the procurator's office, local offices of the German People's Police and committees of the

National Front of the GDR, be responsible for the evaluation of the experiences of the social courts for the purpose of the coordinated combating and prevention of crime and other breaches of the law. They shall, in cooperating with the above mentioned bodies, inform the social courts of problems in the development of social life in the area for which they are responsible.

- (2) Local authorities and councils in towns, urban districts and communities shall receive reports from the arbitration commissions at regular intervals, evaluate their experiences and assist them in their work.
- (3) Town, urban district and community councils shall
 - provide the necessary facilities to enable the arbitration commissions to operate,
 - register forthwith the fines and penalties imposed by the social courts, take the necessary steps to ensure payment thereof on time, and, in cases of delay in payment, apply to the area court for leave to enforce and levy execution in accordance with the provisions of the Civil Procedure Code,
 - ensure compliance with undertakings to perform unpaid community service confirmed by the social courts.

§ 28

Duties of Trades Union Committees in Enterprises

- (1) Trades union committees in enterprises shall cooperate closely with the disputes commissions. They shall be responsible for providing regular guidance for the disputes commissions and training their members in particular by organizing training sessions for members, receiving reports from the disputes commissions, analyzing their activities and social effectiveness and disseminating positive experiences.
- (2) The trades union committees in enterprises shall be assisted in carrying out their duties by the management and senior staff of enterprises. They shall, at regular intervals, together with the managers and senior staff of the enterprises, evaluate the experiences derived from the work of the disputes commissions and ensure that those experiences are drawn upon in improving the management of their enterprise.

§ 29

Duties of Management

- (1) The management of enterprises shall provide all necessary assistance to the disputes commissions and inform them of any problems in the development of the enterprise which are of importance to their work. The general managers of combines and managers of enterprises shall evaluate the experiences of the disputes commissions and draw on them for the purpose of improving management in cooperation with the trades union committees of the enterprise.

- (2) Management shall provide the necessary facilities to enable the disputes commissions to operate in their enterprise.

§ 30

Duties of the Area and District Committees of the Federation of Free German Trades Unions

- (1) The area committees of the Federation of Free German Trades Unions shall be responsible for providing regular guidance for the disputes commissions and training their members, in particular by ensuring, by means of training sessions, legal conferences, exchanges of experiences and analyses, that positive experiences are disseminated and the effectiveness of the disputes commissions is enhanced. They shall also ensure that trades union organizations in the enterprises fulfil their duties towards the disputes commissions.
- (2) The area committees of the Federation of Free German Trades Unions shall be assisted in fulfilling these duties by the procurator's office and the area courts. They shall cooperate with the local authorities and their organs and with the German People's Police.
- (3) The district committees of the Federation of Free German Trades Unions shall ensure that the area committees of the Federation of Free German Trades Unions fulfil their duties towards the disputes commissions.

§ 31

Duties of Committees of the National Front of the GDR

- (1) The committees of the National Front of the GDR in towns and communities shall cooperate with the arbitration commissions and promote the effectiveness of their activities. They shall inform the arbitration commissions of the development of the lives of citizens in socialist community life and assist residents' associations by undertaking educational duties.
- (2) The committees of the National Front of the GDR in towns and communities shall make use of the experiences arising from the work of the arbitration commissions for the purpose of general political activity with a view to safeguarding order, discipline and safety in towns and communities.

§ 32

Duties of Boards of Producers' Cooperatives

- (1) The boards shall assist the social courts operating in producers' cooperatives and evaluate their experiences.
- (2) The boards shall provide the necessary facilities to enable the social courts to operate.

§ 33

Honouring the Work of the Social Courts

- (1) Trades union executives and committees and committees of the National Front of the GDR shall have the right to submit proposals to honour the work of the disputes and arbitration commissions or they may honour such work themselves.
- (2) The management of enterprises, local authorities, the procurator's office and the courts shall honour meritorious work of disputes commissions, arbitration commissions and individual members.
- (3) Honours shall take the form of letters of commendation, material and financial bonuses, certificates of merit from the federal executive of the Federation of Free German Trades Unions and the Minister of Justice, decorations of the National Front of the GDR, the Medal of Honour of the Organs of the Administration of Justice, the Medal for Services to the Administration of Justice or the award of other social or state decorations.

Chapter V

Concluding Provisions

§ 34

Amendment to the Criminal Code

The Criminal Code of the German Democratic Republic of 12 January 1968 (Law Gazette I No. 1 p. 1) in its amended version of 19 December 1974 (Law Gazette I No. 3 p. 14) and in the version of the 2nd Criminal Law Amendment Law of 7 April 1977 (Law Gazette I No. 17 p. 139) shall be amended as follows:

§ 29(1) shall read as follows:

"(1) The social organs of the administration of justice may, as a result of a hearing of minor offences, apply the following educational measures:

1. An undertaking given by a citizen to apologize to the injured party or before his collective may be confirmed or an obligation to do so may be imposed.
2. An undertaking given by a citizen to pay a sum of money by way of compensation for damages in accordance with the law or to make good damage done by his own work may be confirmed or an obligation to do so may be imposed.
3. An undertaking given by a citizen to perform up to 20 hours unpaid community service in his free time may be confirmed.
4. Other undertakings given by a citizen conducive to developing, encouraging and ensuring conduct consistent with socialist law may be confirmed.
5. A citizen may be reprimanded.
6. A citizen may be ordered to pay a fine of between 10 and 500 Marks."

§ 35

Amendment to the Law on the Prevention of Breaches of Regulation

The Law on the Prevention of Breaches of Regulation of 12 January 1968 (Law Gazette I No. 3 p. 101) in the version of the Foreign Currency Law of 19 December 1973 (Law Gazette I No. 58 p. 574), the Law of 19 December 1973 amending the Criminal Code, the Assimilation Law and the Law on the Prevention of Breaches of Regulation (Law Gazette I No. 64 p. 591) and the 3rd Criminal Law Amendment Law of 28 June 1979 (Law Gazette I No. 17 p. 139) shall be amended as follows:

§ 31(2) shall read as follows:

"(2) Subject to these conditions, breaches of regulation may be referred where they are directly connected with actions of the offender in his enterprise or where they affect socialist community life in the town or community or constitute infringements of public order or safety, state or economic measures in the area, or breach legal provisions concerning health and safety at work, fire prevention, environmental protection or price regulations."

§ 36

Coming into Force

- (1) This Law shall come into force on 1 January 1983.
- (2) At the same time the Law of 11 June 1968 on the Social Courts of the German Democratic Republic (Law Gazette I No. 11 p. 229) and § 206 of the Law on Court Procedure in Civil, Family and Employment Cases — Civil Procedure Code — (Law Gazette I No. 29 p. 533) of 19 June 1975 shall be repealed.

Order of the Council of State of the German Democratic Republic on the Operation of Disputes Commissions — Disputes Commissions Order — of 12 March 1982 (Law Gazette I No. 13 p. 274, Law Gazette I 1983 No. 28. p. 276) as amended by the Amendment Order of 3 March 1989 (Law Gazette I No. 8 p. 117) ♦

In accordance with § 21 of the Law of 25 March 1982 concerning the Social Courts of the German Democratic Republic (Law Gazette I No. 13 p. 269) it is ordered as follows:

I

Mode of Operation of Disputes Commissions

§ 1

Conciliation and Applications

- (1) Disputes commissions or individual members shall, by means of discussion, assist employees in their area of operation who seek advice by clarifying legal matters, by enforcing their rights under the law and by advising them on compliance with legal obligations. They shall assist in explaining the provisions of the law.
- (2) Disputes commissions or individual members shall accept written or oral applications for a hearing and decision. Disputes commissions shall keep a written record of oral applications.
- (3) In cases of simple civil disputes or insult, defamation or breach of residential peace, disputes commissions or individual members may, in the course of preparation for a hearing or otherwise, hold conciliation discussions with the applicant and the respondent or the accused. If no resolution of the dispute is achieved by such discussions a hearing shall take place.
- (4) If, as a result of conciliation discussions, obligations are entered into, a written record thereof shall be made.
- (5) Disputes commissions may make recommendations in connexion with conciliation discussions (§ 16).
- (6) In cases of employment disputes, minor offences, misdemeanours concerning property, breaches of regulation and breaches of educational obligations, a hearing shall take place if an application has been made or a referral decision has been received.
- (7) Disputes commissions shall maintain a register of their activities and written records of individual hearings.

Preparation for Hearings

§ 2

- (1) Disputes commissions shall check that any application or referral decision complies with the legal requirements. They shall prepare the hearing in such a way that the facts underlying the dispute can be comprehensively discussed and established.
- (2) The chairman, in consultation with the members, shall determine the steps to be taken to that end. In preparation for the hearing the chairman and members shall gather the necessary information, obtain any documents required and acquaint themselves with the law relating to the case.
- (3) Hearings before disputes commissions shall take place within 4 weeks of receipt of an application or referral decision. If, exceptionally, this period is exceeded the reasons therefor shall be recorded in writing.

§ 3

- (1) The chairman shall ensure that the subject matter, time and place of the hearing are published at least 1 week before the hearing.
- (2) The applicant, the respondent, the accused and any other citizens or representatives of state organs whose participation is required to resolve the dispute shall be given adequate notice and in any event a minimum of 1 week's notice of the hearing. They shall be obliged to appear at the hearing.
- (3) The respondent or the accused shall be given details of the contents of the application or referral decision with the summons.
- (4) Disputes commissions may summon representatives of the enterprise, state organs, social organizations or other social bodies with a view to increasing the social effectiveness of a hearing.
- (5) Disputes commissions, in conjunction with trades union executives in enterprises and shop stewards, shall endeavour to ensure, in particular, that workers' collectives participate in hearings.

§ 4

- (1) If the applicant or the respondent is a minor, his parents or guardians shall also be summoned to attend the hearing. If necessary, representatives of youth aid bodies, schools, enterprises and youth organizations may be involved in the hearing.
- (2) Where the accused is a minor, his parents or guardians, representatives of his school, enterprise or youth organization shall be summoned to attend the hearing. If necessary, representatives of relevant youth aid bodies should be involved in the hearing.

Conduct of Hearings

§ 5

- (1) Disputes commissions shall sit with at least 4 members to hear and decide cases.
- (2) Hearings shall be conducted by the chairman or a deputy. If both are prevented from attending or if it is desirable for some other practical reason, another member may be appointed to conduct a hearing.
- (3) The result of the hearing shall be recorded in writing. The person responsible for keeping the records need not be a member of the disputes commission.

§ 6

- (1) A member of a disputes commission may not take part in hearing or deciding a matter if he
 - is interested in the hearing as applicant, respondent or accused or has suffered damage by reason of the breach of the law with which the commission is concerned,
 - is the spouse or a close relative of the applicant, respondent, accused or injured party.
- (2) The disputes commission shall make a final decision on any objection raised by the applicant, respondent, accused or injured party to any member taking part in a hearing. Such objection may be made at any time up to the commencement of the hearing. Should the objection be justified, the member concerned may not take part in hearing and deciding the matter.

§ 7

- (1) Hearings before disputes commissions shall be public and shall, as a rule, take place outside working hours. Hearings shall be conducted in the presence of the applicant and the respondent or accused.
- (2) A disputes commission may summon to the hearing citizens who are not employees of the enterprise if it is necessary for the purpose of resolving the dispute.

§ 8

- (1) Disputes commissions shall be obliged to establish the facts which are necessary to reach a decision as well as the causes and conditions giving rise to the legal dispute or breach of the law with which they are concerned. They shall obtain such information about the personal and financial circumstances of the applicant, the respondent or the accused as may be necessary to enable them to reach a decision.
- (2) In ascertaining the level of responsibility of a minor for a minor offence, misdemeanour, breach of regulation or breach of educational obligations, disputes commissions shall take into account any special circumstances concerning that person's development and

upbringing.

- (3) The members of the disputes commission, the applicant, the respondent and the accused and any other persons taking part in a hearing shall be entitled to express their views on the facts, the causes and conditions giving rise to the dispute or breach of the law, the conduct of the citizen concerned and any matters contributing to a resolution of the dispute.
- (4) Trades union committees, shop stewards of trades union groups and the representatives of work collectives shall be entitled to express the views of their collectives.

§ 9

If a hearing relates to a minor offence or misdemeanour, any related simple civil disputes (§ 50) may, on application, also be disposed of at the same time if they can be resolved without the need for further preparation.

§ 10

- (1) If, in the case of an employment dispute, the applicant or the respondent fails to appear at a hearing, a second hearing date shall be fixed. The same shall apply if a citizen accused of a minor offence, misdemeanour, breach of regulation or breach of educational obligations fails to attend a hearing.
- (2) The disputes commission, with the assistance of the relevant enterprise trades union committee, shop steward and work collective, should endeavour to ensure that the applicant, the respondent or the accused appears on the second hearing date. The consequences of any failure to appear for a second time shall be set out in the summons (§§ 24, 30, 36, 44 and 49).

Conclusion of Hearings

§ 11

- (1) At the conclusion of a hearing the disputes commission shall decide the claim by making an order, confirming a settlement or declaring whether or not there has been a breach of the law and shall impose educational measures.
- (2) The disputes commission shall order the case to be dismissed if the claim is unfounded, if confirmation of a settlement has to be refused as contrary to the principles of socialist law or if it finds that there has been no breach of the law.
- (3) Disputes commissions may make recommendations as a result of a hearing (§ 16).

§ 12

- (1) Disputes commissions shall deliberate their decision in public. By comprehensive discussion and clarification of the facts they shall endeavour to reach a unanimous decision.
- (2) If, exceptionally, a unanimous decision cannot be reached, a decision may be reached by a majority of the members of the disputes commission who have heard the case.
- (3) The decision shall be made public at the hearing.

§ 13

- (1) The order shall contain
 - date and place of the hearing,
 - the names of the members of the disputes commission who decided the case,
 - name, age, occupation and address of the applicant and the respondent or accused,
 - details of the applications made,
 - a short statement of the findings of fact and the reasons on which the decision made is based,
 - the decision reached as a result of the hearing,
 - notice of the right to appeal against the decision of the disputes commission and of the right to apply for the order to be enforced by levy of execution.
- (2) The order shall be signed by the chairman of the hearing and be delivered within 2 weeks to the applicant and the respondent or accused personally or by recorded delivery.
- (3) A copy of the order shall be sent within 2 weeks to the area procurator and, if the case has come to the commission by referral, to the referring body. If the order provides for payment of a fine or confirms an obligation to perform community service, a copy shall be sent to the local authority (§ 57 (2) and (3)).
- (4) Orders made by disputes commissions shall not be kept on personnel files.

§ 14

- (1) No fees shall be charged for the work of disputes commissions.
- (2) Disputes commissions may order the reimbursement, in accordance with the relevant legal provisions, of expenses necessarily incurred by the applicant, respondent, accused, injured party or any citizen who has been summoned to a hearing to give evidence.

Measures to Enhance Effectiveness

§ 15

- (1) Where necessary, disputes commissions shall use their influence to ensure that the educational process begun during a hearing is continued with the assistance of the relevant

social organizations and, in particular, that of any works collective.

- (2) Disputes commissions may at a hearing order their decision (once it has become enforceable and incapable of being appealed) to be made public in the enterprise in a suitable manner for a fixed period not exceeding 1 week if to do so will enhance its educational effect.
- (3) Disputes commissions shall monitor the implementation of their decisions. They may, after a hearing in cases of minor offences, misdemeanours, breach of regulation or breach of educational obligations, order a citizen to report to them to confirm that he has complied with obligations imposed by their decision and to provide evidence of payment of any money ordered to be paid.
- (4) Citizens shall be obliged to appear before and report to disputes commissions.
- (5) If a disputes commission establishes that a citizen has failed to comply with any educational measures imposed by an order, the chairman may convene another hearing (§ 57(4)).
- (6) If a citizen's contract of employment is terminated within 6 months after a hearing, a disputes commission may forward a copy of any order it has made to the trades union committee of his new enterprise for the purpose of ensuring the enforcement of educational measures.

§ 16

- (1) If a disputes commission establishes the existence of causes or conditions giving rise to legal disputes or breaches of the law it shall make recommendations to the managers of the relevant enterprises, combines, state organs, organs responsible for directing the economy, institutions, or boards of producers' cooperatives and to the officers of the appropriate social organizations. The object of recommendations shall be to contribute to the strengthening of order, discipline and safety. Recommendations should contain suggestions as to how the causes and conditions giving rise to legal disputes and breaches of the law, deficiencies or illegalities can be eliminated.
- (2) Recommendations shall be sent to the person or body to whom they are directed within 2 weeks.
- (3) The managers to whom or organs to which a recommendation has been directed shall inform the disputes commission in writing within 2 weeks of the steps that have been taken as a result of the recommendation or of the reasons why the recommendation cannot be followed.
- (4) If such obligations are not complied with or if a recommendation is not acted on without reason, the disputes commission may inform the relevant superior manager or superior organ and require those obliged to do so under subsection 3 to comment on the recommendation. If as a result of failure to have regard to a recommendation any illegality

continues, the disputes commission shall notify the area procurator.

§ 17

- (1) Disputes commissions shall monitor the implementation of their recommendations. Managers, senior staff and trades union committees shall assist disputes commissions to do so.
- (2) Managers, senior staff and trades unions committees shall report on the implementation of recommendations at public meetings of the workforce.

II

Types of Cases heard by Disputes Commissions

Hearings of Employment Disputes

§ 18

- (1) Disputes commissions shall hear and decide disputes between employees and their enterprise concerning the existence and effect of rights and duties arising out of employment. They shall have jurisdiction over legal disputes concerning employment law claims under the Employment Code and other provisions concerning employment, including global collective agreements, collective agreements in enterprises and other employment orders.
- (2) In particular, disputes commissions shall hear and decide
 - disputes concerning the conclusion, variation and termination of contracts of employment, and the appraisal of employees and of their performance,
 - disputes concerning wages paid to employees on the basis of prevailing wage tariffs and gradings, the legal validity of wage bases applied, wage differentials based on the quantity and quality of work output and supplementary, adjustment and compensation payments,
 - disputes concerning claims for repayment of wages by an enterprise,
 - disputes concerning legal claims by employees to year end bonuses and other bonuses, in particular those arising out of collective agreements, principles laid down by the enterprise or other agreements,
 - disputes concerning the existence of rights and duties arising out of apprenticeship, and the instruction and training of employees,
 - disputes concerning the regulation of working hours, convalescence leave and leave from work for social or personal reasons,
 - disputes concerning the working and living conditions of employees, health and safety at work, social care, the advancement of women, young people and other groups in relation to rights and duties connected with employment legislation,

- applications to bring educational proceedings as a result of breaches of work duties,
 - appeals by employees against disciplinary measures imposed under the Employment Code or other disciplinary provisions where a disputes commission has jurisdiction under such provisions,
 - damages claims on the part of the enterprise or the employee,
 - disputes arising out of the innovators' legislation in accordance with the provisions of the Innovators' Order.
- (3) Disputes commissions shall also hear and decide disputes between the Mutual Assistance Fund and its members relating to the repayment of loans, and disputes arising out of employment related tenancies.

§ 19

- (1) Application may be made by
- any member of staff of an enterprise on his own behalf or on behalf of his collective, if the application is made with the consent of the collective,
 - parents and guardians of members of staff of the enterprise who are minors,
 - the manager of the enterprise or any person delegated by him to do so,
 - the head of the superior organ of the enterprise in the case of an application directed against the manager of the enterprise,
 - the area procurator,
 - former members of staff of the enterprise, the manager of the enterprise or any person delegated by him in the case of claims arising out of former employment by the enterprise,
 - the enterprise trades union committee in the case of claims by the Mutual Assistance Fund for the repayment of loans.
- (2) Any applications relating to employment law claims made by the enterprise shall be made in writing. In particular, they shall contain
- precise details of the claim and a statement of the legal basis thereof,
 - an exact description of the relevant facts,
 - any causes and conditions giving rise to the dispute and suggestions as to how to eliminate them,
 - the available evidence.

If the application fails to meet these requirements the disputes commission may require any defects to be remedied.

§ 20

If a disputes commission finds that it does not have jurisdiction to hear a dispute, it shall make an order to that effect and direct the applicant to the relevant body. In such a case, the disputes

commissions may make recommendations for the elimination of causes and conditions giving rise to the dispute in question.

§ 21

- (1) The hearing shall be attended by the applicant, the respondent, parents or guardians of minors, representatives of the work collectives and the trades union and other employees who can contribute to a resolution of the dispute. The members of the relevant enterprise trades union committee, the shop steward and other officials of the trades union group shall be entitled to assist employees in enforcing their rights. In exceptional cases, such as prolonged illness or absence, the applicant or respondent may be represented by another citizen. A respondent may not be represented in educational proceedings arising out of a breach of employment duties.
- (2) The hearing shall be conducted in such a way that the facts of the case are comprehensively discussed with the applicant and the respondent, employees are informed of their rights and duties, and members of staff of the enterprise are educated in responsible conduct.
- (3) If the applicant and the respondent reach agreement in the course of the hearing, the disputes commission shall make an order confirming the settlement provided it accords with the principles of socialist law. If agreement is not reached or if confirmation of an agreement is refused, the disputes commission shall decide the claim. In the case of money claims the commission may, if necessary, stipulate an appropriate time for payment or payment by instalments. No agreement shall be made in educational proceedings arising out of a breach of employment duties.
- (4) If the applicant is out of time for making an appeal, on application showing good reason he shall be given leave to appeal out of time. An appeal made out of time by an employee may also be deemed to have been made in time if there are substantial reasons for doing so and the employee's interests make it necessary to do so.

§ 22

- (1) An application by an enterprise manager to institute educational proceedings for a breach of employment duties (§ 255 (3) of the Employment Code) shall contain
 - a description of the breach of discipline,
 - details of the causes and conditions giving rise to the breach,
 - an assessment of the employee's character.
- (2) A disputes commission may reject the application if the matter is not suitable for hearing by a disputes commission.

§ 23

- (1) Disputes commissions may, after educational proceedings arising out of a breach of employment duties, refrain from imposing educational measures if the educational purpose has been achieved by the hearing itself. A decision to that effect shall be recorded in the order.
- (2) Disputes commissions may impose the following educational measures:
 - An undertaking given by an employee to apologize before his collective may be confirmed or obligation to do so may be imposed.
 - Other undertakings given by an employee with a view to his complying with his employment duties may be confirmed.
 - An employee may be reprimanded.
- (3) Disputes commissions may confirm undertakings given by a work collective with a view to educating the employee.
- (4) If it is decided that there have been breaches of employment duties, educational measures shall be imposed in accordance with § 29 (1).

§ 24

- (1) An applicant may withdraw his application at any time up to the end of the hearing.
- (2) If an applicant fails to appear at a second hearing without reason his application shall be deemed to have been withdrawn. A decision to that effect shall be recorded in the order.
- (3) If a respondent fails to appear at a second hearing without reason the disputes commission may reach a decision in his absence if the facts are clear and if the applicant applies for a decision. If the disputes commission cannot make a decision, the claim may be made direct to the relevant area court.
- (4) If a respondent to educational proceedings for breach of employment duties fails to attend a second hearing without reason the disputes commission shall within 1 week return the application to the manager of the enterprise.

Hearings of Minor Offences

§ 25

- (1) Minor offences are anti-social criminal acts, committed intentionally or recklessly, which damage the rights and interests of citizens, socialist property, the state or social order or other rights and interests of society.
- (2) Disputes commissions shall hear and decide cases of minor offences if, having regard to the consequences of the offence and the level of guilt of the citizen concerned, his actions are not of a seriously anti-social nature and if, having regard to the deed itself and the

character of the citizen concerned, it seems likely that a disputes commission will have a real educational effect. Minor offences shall be referred to a disputes commission if the facts of the case are clear and the citizen concerned admits the offence. Offences committed carelessly may be referred to a disputes commission even if substantial damage has been caused provided the level of guilt of the citizen concerned is insignificant by reason of extraordinary circumstances.

- (3) Subject to these conditions disputes commissions shall hear and decide all minor offences, in particular
- minor offences against socialist or personal property,
 - personal injury,
 - breaches of provisions concerning health and safety at work.

§ 26

- (1) Cases may be referred to a disputes commission by the relevant investigating body, the procurator or the court.
- (2) In order to ensure a thorough hearing of the case, the referral decision shall contain in particular
- a summary of the facts and of the available evidence,
 - an assessment of what has occurred and reference to the criminal legislation that has been breached,
 - an assessment of the character of the citizen concerned in relation to the offence,
 - the reasons for referral to a disputes commission,
 - comments on the causes and conditions giving rise to the offence. If damage has been caused, an application for damages and the address of the injured party shall also be included.
- (3) Decisions to refer minor offences committed by minors shall also contain
- an assessment of the family and other social circumstances of the minor in relation to the offence,
 - statements regarding his guilty capacity,
 - suggestions for the effective involvement of state and social welfare bodies.
- (4) The referring body shall be responsible for assisting the disputes commission to deal with the case.

§ 27

- (1) Disputes commissions may appeal to the referring body against a referral at any time up to the conclusion of the hearing, if they are of the opinion that the requirements for referral (§ 25 (2)) have not been complied with or if for some other reason a case is not suitable for hearing by a disputes commission.

- (2) In such cases the referring body shall reconsider its decision. If it confirms the referral it shall be binding on the disputes commission.

§ 28

- (1) Disputes commissions may impose the following educational measures at the end of the hearing:
- An undertaking given by a citizen to apologize to the injured party or before his collective may be confirmed or an obligation to do so may be imposed.
 - An undertaking given by a citizen to pay money by way of damages in accordance with the law or to make good damage by his own work may be confirmed or an obligation to do so may be imposed.
 - An undertaking given by a citizen to perform up to 20 hours unpaid community service in his spare time may be confirmed.
 - Other undertakings given by a citizen conducive to developing, encouraging and ensuring conduct consistent with socialist law may be confirmed.
 - A citizen may be reprimanded.
 - A citizen may be ordered to pay a fine of between 10 and 500 Marks. A minor may be ordered to pay a fine of up to 300 Marks provided he has an income or assets of his own.
- (2) A disputes commission may confirm undertakings given by a work collective, residents' association, other collective or individuals to educate a citizen. Such undertakings shall contain provisions which can be monitored and which contribute to the development of socialist consciousness and the elimination of the causes and conditions giving rise to breaches of the law.
- (3) An undertaking given by a citizen to make good damage caused shall be confirmed only with the consent of the injured party.
- (4) A disputes commission may refrain from imposing educational measures if that is appropriate taking into account the seriousness of the offence and the overall behaviour of the citizen after the offence, and if any attempt to make good the damage leads the commission to believe that he will in future respect the socialist legal order. A decision to refrain from imposing measures shall be recorded in the order.

§ 29

- (1) If educational measures are necessary to induce a citizen to abide voluntarily by socialist law, the disputes commission shall impose measures, which, having regard to the nature and seriousness of the offence, the circumstances in which it was committed and the citizen's character, fulfil this purpose most effectively. A disputes commission may also impose a number of educational measures in conjunction with one another.
- (2) A fine shall be imposed if the nature and seriousness of the offence, having regard to the

character of the citizen, make it desirable to exercise a long term effect on him in the interest of protecting socialist society. In particular, a fine shall be imposed if the offence evinces a lack of respect for the values of other employees or their personal property, greed or disregard for money or property rights.

- (3) In imposing a fine and determining its amount the financial circumstances of the citizen concerned and any obligation to pay damages as a result of the offence shall be taken into consideration. In the case of a minor a fine shall be imposed only if he has an income or assets of his own. If a fine or order to pay money by way of damages are imposed, a time or times for payment may, if necessary, be provided for in the order; time for the payment of damages shall only be given with the agreement of the injured party.
- (4) An undertaking to perform unpaid community service in spare time shall only be confirmed if the offence involves damage to or the destruction of public property or assets. The disputes commission may stipulate a time by which the citizen shall report to the local authority (§ 57 (3)).

§ 30

- (1) If a citizen fails without reason to appear at a second hearing, the disputes commission shall return the case to the referring body within 1 week.
- (2) A case shall not be returned to the referring body if it concerns a minor offence the prosecution of which is possible only by application (§ 2 of the Criminal Code) and the application has been withdrawn. An application may be withdrawn at any time up to the conclusion of the hearing by the disputes commission. If that occurs the proceedings shall be discontinued by order.

Hearings of Misdemeanours

§ 31

- (1) Misdemeanours are breaches of legally guaranteed interests of society or the citizen where both the effects and the level of guilt of the citizen concerned are not significant and which are defined as such in the Criminal Code or other legislation. They may take the form of
 - misdemeanours relating to property,
 - insult and defamation,
 - breach of residential peace in citizens' flats or houses, or affecting other accommodation or premises.
- (2) A misdemeanour relating to property is committed if the offence, having regard to all the circumstances, the damage caused, the level of guilt of the citizen concerned and his character, is of a minor nature, and the damage caused or intended does not exceed 100 Marks. As a rule this will apply only in the case of a first offence.

§ 32

- (1) Disputes commissions shall hear and decide cases of misdemeanours if an injured party, work collective, residents' association or other aggrieved party makes an application or if a matter is referred by the German People's Police or a manager responsible for discipline.**
- (2) A disputes commission may hear and decide misdemeanour cases only if the misdemeanour is not time barred at the time the application is made. The limitation period for misdemeanours is 6 months.**
- (3) In cases of insult, defamation and breach of residential peace, the application must be made within 1 month of the misdemeanour coming to the attention of the injured party. If the time for making an application has passed through no fault on the part of the applicant, a disputes commission may allow the application to be made out of time.**

§ 33

- (1) Applications for hearing of misdemeanours shall be made in writing or orally and shall contain, in particular,
 - a summary of the facts and the available evidence,**
 - details of any claims for damages or other civil claims.****
- (2) §§ 26(2) and (3) shall apply to the contents of the referral decision.**
- (3) The disputes commission shall make an order dismissing any application made by a citizen for hearing of a misdemeanour if the application on its face shows that no misdemeanour has been committed, the misdemeanour is time barred or the application has been made out of time without good reason (§ 32(2) and (3)).**

§ 34

- (1) Disputes commissions, together with the applicant, the accused and other citizens, shall, when hearing a misdemeanour case, ascertain the facts and establish the causes and conditions giving rise to the dispute.**
- (2) Disputes commissions may return a case to the German People's Police for further investigation if they are unable to resolve it on the basis of the evidence at their disposal or if, after examining the effects of the offence and the level of guilt of the citizen concerned, they reach the conclusion that a minor offence has been committed. A decision to this effect may also be taken in the course of the hearing.**
- (3) The German People's Police may refer the case back to the disputes commission after investigation. A decision to do so shall be binding on the disputes commission.**

§ 35

- (1) Disputes commissions may appeal against a referral to the German People's Police or to the manager responsible for discipline at any time up to the conclusion of a hearing if they**

are of the opinion that the requirements for a hearing (§ 31) have not been complied with or a minor offence has been committed.

- (2) In such cases the German People's Police or the manager responsible for discipline shall reconsider the decision. A second decision to refer shall be binding on a disputes commission.

§ 36

- (1) Hearings of misdemeanours shall take place in the presence of the applicant and the accused. In exceptional cases such as prolonged illness or prolonged absence the applicant may be represented by another citizen.
- (2) In cases of misdemeanours concerning property disputes commissions may decide a case in the absence of the applicant if the written application relating to the misdemeanour is sufficiently substantiated.
- (3) If the accused fails to attend a second hearing without reason, the disputes commission may, exceptionally, decide the case in his absence if the facts have been established and a decision is possible in accordance with § 11(1) or (2). Otherwise the case shall be returned within 1 week to the German People's Police for further steps to be taken.

§ 37

- (1) A disputes commission may refrain from imposing educational measures as a result of a hearing of a misdemeanour if the requisite educational purpose has been achieved by the hearing itself. This shall be recorded in the order.
- (2) In cases of insult, defamation or breach of residential peace disputes commissions shall attempt to effect a conciliation between the accused and the applicant. If conciliation is achieved the commission may refrain from imposing educational measures. The terms of conciliation shall be recorded in the order.
- (3) Disputes commissions may impose the following educational measures:
 - An undertaking given by a citizen to apologize to the injured party or before his collective may be confirmed or an obligation to do so may be imposed. The same applies to an undertaking to withdraw an insult or defamatory statement in suitable fashion in front of the same circle of people who heard it.
 - An undertaking given by a citizen to pay money by way of damages in accordance with the law or to make good damage by his own work may be confirmed or an obligation to do so may be imposed.
 - Other undertakings given by a citizen conducive to safeguarding the honour and dignity of the individual and protecting his home may be confirmed.
 - A citizen may be reprimanded.
 - A citizen may be ordered to pay a fine of between 10 and 300 Marks.

- (4) In addition § 28(2) and (3) shall apply.
- (5) The educational measures set out in § 29(1) to (3) shall apply where a decision is reached in relation to a misdemeanour case.
- (6) If as a result of a hearing of a case of insult, defamation or breach of residential peace it is not proved that a misdemeanour has been committed and there is no possibility of further investigation of the matter by the German People's Police, the disputes commission shall make an order declaring that no misdemeanour has been committed.

§ 38

- (1) If the applicant has also insulted or defamed the accused, such misdemeanour may, on application, be dealt with at the hearing unless it occurred more than 6 months previously.
- (2) If conciliation cannot be effected between the applicant and the accused educational measures may be imposed on one or both of them.

§ 39

- (1) An applicant may withdraw his application at any time up to the conclusion of the hearing.
- (2) If an applicant fails without reason to appear at a hearing of a case concerning insult, defamation or breach of residential peace his application shall be deemed to be withdrawn.
- (3) In such cases the disputes commission shall discontinue the hearing of the case by order.

Hearings of Breaches of Regulation

§ 40

- (1) Breaches of regulation are culpable breaches of the law evidencing a lack of discipline and which hinder the administration of the state or impede the development of socialist community life but which do not seriously interfere with the interests of socialist society or individual citizens and are not therefore criminal in nature.
- (2) Only breaches of the law which are expressly defined as such constitute breaches of regulation.

§ 41

- (1) Disputes commissions shall hear and decide breaches of regulation directly connected with a citizen's work in his enterprise which constitute infringements of health and safety at work, fire prevention, environmental protection or price regulations.
- (2) Disputes commissions shall hear cases if they are referred to them by an authority empowered to impose administrative sanctions. A matter may be referred if the facts of the case are clear and, having regard to the nature and circumstances of the breach and the character of the citizen concerned, a hearing by a disputes commission is likely to have

a better educational effect.

§ 42

- (1) In order to ensure a thorough hearing of the case, the referral decision shall contain in particular
 - a summary of the facts and of the available evidence,
 - details of the legal provision that has been breached,
 - the reasons for referral to the disputes commission,
 - comments on the causes and conditions giving rise to the breach of regulation.If damage has been caused the application for damages and the address of the injured party shall be included.
- (2) A disputes commission may return the matter to the referring body at any time up to the conclusion of the hearing if the requirements for referral (§ 41) have not been complied with. The referring body shall then deal with the matter and bring it to a conclusion.

§ 43

- (1) Disputes commissions may impose the following educational measures at the end of a hearing:
 - An undertaking given by a citizen to apologize to the injured party or before his collective may be confirmed or an obligation to do so may be imposed.
 - An undertaking given by a citizen to pay money by way of damages in accordance with the law or to make good damage by his own work may be confirmed or an obligation to do so may be imposed.
 - An undertaking given by a citizen to perform up to 15 hours unpaid community service in his spare time may be confirmed.
 - Other undertakings given by a citizen conducive to maintaining order, discipline and safety may be confirmed.
 - A citizen may be reprimanded.
 - A citizen may be ordered to pay a fine of between 10 and 300 Marks. A minor up to the age of 16 may only be ordered to pay a fine of up to 20 Marks. The amount of the fine may not exceed the maximum fine which can be imposed under the relevant regulation from time to time.
- (2) In addition § 28(2) and (3) shall apply.
- (3) The educational measures set out in § 29 shall also apply in cases of breaches of regulation.
- (4) A disputes commission may refrain from imposing educational measures if that is appropriate having regard to the seriousness of the breach of regulation and the overall behaviour of the citizen after the breach and if any attempt to make good the damage

leads the commission to believe that he will, in future, respect the socialist legal order. A decision to refrain from imposing measures shall be recorded in the order.

§ 44

If a citizen fails without reason to appear at a second hearing the disputes commission shall return the case to the referring body within 1 week.

Hearings of Breaches of Educational Obligations

§ 45

- (1) Disputes commissions shall hear and decide cases concerning the conduct of citizens who as parents or guardians fail to ensure that children of school age or minors regularly attend lessons at general polytechnic schools or vocational training institutions or keep them from attending other compulsory school functions or prevent them from obeying school rules or otherwise fail to comply with obligations arising in connexion with their education.
- (2) Disputes commissions shall also hear and decide cases concerning the conduct of minors (pupils over the age of 14 and apprentices) who persistently act in breach of their educational obligations.

§ 46

- (1) Applications for a hearing may be made by the headteacher of the school, with the consent of the parents' committee, or the by the principal of a vocational training institution if attempts to exercise an influence over the parents or guardians of the minor concerned have failed.
- (2) Applications that are insufficiently particularized may be returned to the applicant.

§ 47

- (1) The purpose of a hearing should be to encourage the parents or guardians concerned to ensure that children or minors for whom they are responsible comply with their educational obligations in full. If this is achieved as a result of a hearing, educational measures need not be imposed. This shall be recorded in the order.
- (2) Disputes commissions may impose the following educational measures on parents or guardians:
 - Undertakings given by a citizen which help to ensure regular attendance at school by a child of school age or minor may be confirmed or an obligation to do so may be imposed.
 - Undertakings given by a citizen which help to ensure that a child of school age or minor attends compulsory school functions, obeys school rules or complies with educational

obligations may be confirmed or an obligation to do so may be imposed.

- A citizen may be reprimanded.
 - A fine of between 10 and 150 Marks may be imposed.
- (3) A disputes commission may confirm undertakings given by a work collective, residents' association or an individual citizen to assist parents or guardians in complying with their obligations in relation to the upbringing of a child or minor.
- (4) In deciding cases of breaches of educational obligations, educational measures shall be imposed in accordance with § 29 (1) to (3).
- (5) Disputes commissions may instruct a minor who is in breach of educational obligations on his duties.

§ 48

- (1) The purpose of a hearing should be to encourage a minor who has been found responsible for behaviour of the type referred to in § 45 to comply with his educational obligations. If this is achieved as a result of the hearing educational measures need not be imposed. This shall be recorded in the order.
- (2) Disputes commissions may impose the following educational measures on minors:
- Undertakings given by a minor which help to ensure that he complies voluntarily with requirements arising out of his legal obligations in relation to his schooling or apprenticeship may be confirmed or such obligations may be imposed.
 - Other undertakings given by a minor which help to instil in him a spirit of cooperation and a sense of shared responsibility for his work at school or at his vocational training institution may be confirmed.
 - A minor may be reprimanded.
- (3) A disputes commission may confirm undertakings given by parents or guardians, a collective or individual citizens to assist the minor in complying with what is required of him.
- (4) In deciding cases of breaches of educational obligations educational measures shall be imposed in accordance with § 29 (1).

§ 49

- (1) If a parent or guardian fails without reason to appear at a second hearing, the disputes commission may decide the case in his absence if the facts of the case are clear. If the disputes commission cannot decide the case, it shall return it to the applicant within 1 week.
- (2) If a minor fails to appear at a second hearing without reason the case shall be referred within 1 week to the area schools' council or to the head of the department of vocational training and vocational guidance of the relevant area local authority.

Hearings of Simple Civil Disputes

§ 50

- (1) Disputes commissions shall hear and decide
 - simple civil disputes between citizens or between an enterprise and members of staff involving sums of money up to a value of approximately 1,000 Marks,
 - simple civil disputes between citizens which arise in their everyday life as a result of breaches of their rights or obligations, in particular those connected with their residence or accommodation,
 - other simple civil disputes between an enterprise and members of staff.
- (2) Applications for a hearing may be made by one or more citizens or, in the case of disputes between citizens concerning residence or accommodation, by committees of residents' associations.
- (3) Applications made by an enterprise shall be made by the manager or someone authorized by him and shall be made in writing.

§ 51

- (1) Hearings shall take place in the presence of the applicant and the respondent. In exceptional cases, such as prolonged illness or prolonged absence, the applicant or the respondent may be represented by another citizen.
- (2) At the hearing the disputes commission shall endeavour to bring about a settlement between the applicant and the respondent in accordance with the principles of socialist law. It shall confirm the terms of such a settlement by order. Where a money claim is settled appropriate terms for payment or payment by instalments may be agreed if necessary.
- (3) If the applicant and the respondent cannot reach agreement or if a settlement cannot be confirmed because it is contrary to the principles of socialist law, the disputes commission shall decide the dispute on the joint application of the applicant and the respondent or on the application of the applicant, provided that the facts of the case are simple, have been fully established and do not give rise to difficult problems of law.

§ 52

- (1) A disputes commission shall decline to hear a matter if the facts are not simple, cannot be established by examining the applicant, the respondent and other citizens, or give rise to difficult problems of law. It may do so at any time up to the conclusion of the hearing.
- (2) An applicant may withdraw his application at any time up to the conclusion of the hearing.
- (3) If the applicant, the respondent or both fail to appear at a hearing without reason or if a settlement cannot be reached or a decision made in accordance with § 51 (3), the disputes

commission shall make an order discontinuing the proceedings.

- (4) In any of the events referred to in subsections 1, 2 or 3 above, the applicant shall be notified of his right to apply to the area court.

III

Appeals against and Enforcement of Decisions

§ 53

Rights of Appeal

- (1) The applicant and the respondent in employment disputes and civil disputes, the applicant in a case of insult, defamation or breach of residential peace, and the accused in cases of minor offences, misdemeanours, breaches of regulation or breach of educational obligations shall have the right to appeal in writing against a decision of a disputes commission within 2 weeks of receipt of the order either to the area court or by lodging the appeal at a legal filing office. The injured party shall have the same right in so far as the decision relates to compensation for damages or expenses.
- (2) An appeal against a confirmation of terms of settlement in an employment dispute or civil dispute may be brought only on the grounds that the terms of settlement were not reached or that they are contrary to the principles of socialist law.
- (3) The procurator of the area in which a disputes commission operates may appeal to the appropriate area court against any decision of a disputes commission within 3 months of the making of the decision if the decision itself or individual obligations do not comply with the law.
- (4) The area court of the area in which the disputes commission operates shall have jurisdiction to decide the appeal. § 25 of the Civil Procedure Code shall apply to jurisdiction in employment cases.

Deciding the Appeal

§ 54

- (1) The relevant chamber of the area court shall decide any appeal against a decision of a disputes commission on employment law or civil disputes. It may, if it is necessary to enable it to reach a decision, obtain a report on the case from the disputes commission concerned, and summon the chairman or members of the disputes commission or other citizens to attend the oral hearing.
- (2) The provisions of the Law of 19 June 1975 on Court Procedure in Civil, Family and Employment Cases — Civil Procedure Code — (Law Gazette I No. 29 p. 533) shall apply to proceedings before the area court. § 296(5) of the Employment Code (in relation to employment cases) and § 70(1) of the Civil Procedure Code (in relation to civil disputes)

shall apply in relation to leave to appeal out of time.

- (3) There shall be no right of appeal against a decision of the employment law chamber on an appeal against a decision of a disputes commission on disciplinary proceedings for breach of employment obligations.

§ 55

- (1) The criminal chamber of the area court shall decide any appeal against a decision of a disputes commission on a minor offence, misdemeanour, breach of regulation or breach of educational obligations. It may, before reaching a decision, hold an oral hearing and hear the citizen concerned on his appeal. Further, it may, if it is necessary to enable it to reach a decision, obtain a report on the case from the disputes commission concerned, and summon the chairman or members of the disputes commission concerned or other citizens to attend the oral hearing.
- (2) The criminal chamber may set aside a decision of a disputes commission and return the case to the disputes commission with appropriate recommendations for the case to be reheard and redecided or it may refuse the appeal if there are no grounds for it. Before setting aside a decision of a disputes commission relating to damages, the injured party shall be given an opportunity to be heard on the appeal.
- (3) The criminal chamber may decide not to return a case to a disputes commission to be reheard and redecided and may decide the case itself if it is established that the accused is not responsible for the offence or if the appeal relates only to the amount of damages or the reduction of a fine. In cases of insult, defamation and breach of residential peace and in cases of claims for damages an amicable settlement may be reached.

§ 56

- (1) An appeal which is to be decided by the criminal chamber of an area court may be withdrawn at any time up to the conclusion of closing submissions at the oral hearing.
- (2) There is no further appeal against a decision of the criminal chamber of the area court.
- (3) The parties shall bear their own costs of the appeal to the criminal chamber. If it is established that an accused was not responsible for an offence his costs shall be met out of public funds if an application is made. Costs incurred out of public funds shall not be sought from the parties.

Enforcement of Decisions

§ 57

- (1) Citizens should fulfil any undertakings given or duties imposed on them voluntarily.
- (2) Payment of any fine shall be made to the local authority of the town, urban district or community in the area of which the citizen resides. The relevant disputes commission shall

be notified of payments made.

- (3) Any undertaking given by a citizen to perform unpaid community service in his spare time shall be fulfilled within 2 months. The local authority of the town, urban district or community in the area of which the citizen resides shall stipulate when and where such service is to be performed and inform the relevant disputes commission that it has been completed.
- (4) If a citizen fails to comply with any obligations stipulated in an order, the relevant disputes commission may hear the case again (§ 15 (5)) and may impose other suitable educational measures provided for in the legislation (§§ 23, 28, 37, 43, 47, 48).

§ 58

- (1) A decision of a disputes commission on a money claim or the payment of damages, imposing a fine, ordering the delivery up of chattels, or ordering a person to perform, acquiesce in or refrain from some action or ordering the reimbursement of expenses may be declared enforceable by the area court and executed.
- (2) A person who has a claim by virtue of a decision may apply to the area court for a declaration of leave to levy execution. The local authority shall have the same right in respect of a fine.

§ 59

- (1) The relevant chamber of the area court shall decide by order whether execution may be levied.
- (2) The provisions of the Civil Procedure Code shall apply to such proceedings before the area court.

IV

Special Provisions

§ 60

Time for Enforcement of Decisions

- (1) A decision of a disputes commission on minor offences, misdemeanours, breaches of regulation and of employment obligations and breaches of educational obligations shall be enforceable for a period of 1 year after the expiry of the time within which the decision may be appealed.
- (2) The limitation periods applicable to the levy of execution under § 480 of the Civil Code of the German Democratic Republic of 19 June 1975 (Law Gazette I No. 27 p. 465) shall apply to the execution of claims arising out of orders of disputes commissions.
- (3) The execution of fines shall be time barred after 2 years.

§ 61

Jurisdiction over Members of the Armed Services

- (1) Disputes commissions may not hear or decide minor offences, misdemeanours or breaches of regulation committed by members of the armed services.
- (2) If as a result of a minor offence or a breach of regulation committed by a member of the armed services a matter has been referred to a disputes commission, it shall declare that it has no jurisdiction and return the matter to the referring body.
- (3) If as a result of a misdemeanour committed by a member of the armed services an application is made to a disputes commission or if such a matter is referred to a disputes commission, it shall pass the application or the referral decision to the relevant commander or station chief or direct the applicant to the relevant commander or station chief.

V

Assistance to Disputes Commissions

§ 62

Duties of Enterprise Managers

- (1) The managers and senior staff of enterprises shall give their full support to the members of disputes commissions in the exercise of their duties and responsibilities. They shall, if requested by a disputes commission, permit members of the disputes commission to inspect enterprise documents, where to do so is necessary to enable the disputes commission to assess the merits of a case or the character of an employee, provided that social interests are not jeopardized thereby.
- (2) The managers and senior staff of the enterprises shall have regard to the experiences of disputes commissions in relation to the management of their enterprises.
- (3) They shall report to employees' meetings and to relevant enterprise trades union committees on the manner in which they have complied with their duty to give all round support to the disputes commissions.

§ 63

Material Requirements

Enterprise managers and senior staff of enterprises shall provide the material facilities to enable disputes commissions to operate within them. This shall include in particular:

- making available the necessary legal texts, training materials and literature,
- making available rooms suitable for hearings,
- providing safe storage facilities for documents,
- ensuring the provision of clerical assistance and, if necessary, providing a clerk,

- making available the funds required for the operation of the disputes commissions and for the purpose of honouring their work.

§ 64

Reimbursement of Expenses

Enterprises shall reimburse members of disputes commissions expenses for which they apply, including those arising in connexion with training and education.

§ 65

Duty of Support

If a person responsible for assisting a disputes commission fails to fulfil his obligations the disputes commission shall be entitled to apply to that person's superior body to compel him to comply with his obligations.

§ 66

Storage and Delivery up of Documents

- (1) Disputes commissions shall store the written records of their activities and their register for a period of 2 years.
- (2) The storage period shall commence on the first day of the calendar year following the date of the conclusion of the matter or, in the case of the register, on the date of the last entry.
- (3) After the expiry of the storage period the records and register shall be delivered to the area court having jurisdiction for the area in which the disputes commission operates.

VI

Concluding Provisions

§ 67

- (1) This Order shall come into force on 1 January 1983.
- (2) At the same time the Order of the Council of State of the German Democratic Republic of 4 October 1968 on the Election and Operation of Disputes Commissions — Disputes Commissions Order — (Law Gazette I No. 16 p. 287) shall be repealed.

Order of the Council of State of the German Democratic Republic on the Operation of Arbitration Commissions — Arbitration Commissions Order — of 12 March 1982

(Law Gazette I No. 13 p. 283) as amended by the Amendment Order of 3 March 1989 (Law Gazette I No. 8 p. 118)

In accordance with § 1 of the Law of 25 March 1982 concerning the Social Courts of the German Democratic Republic (Law Gazette I No. 13 p. 269) it is ordered as follows:

I

Mode of Operation of Arbitration Commissions

§ 1

Conciliation and Applications

- (1) Arbitration commissions or individual members shall, by means of discussion, assist citizens in their area of operation who seek advice by clarifying legal matters, by enforcing their rights under the law and by advising them on compliance with legal obligations. They shall assist in explaining the provisions of the law.
- (2) Arbitration commissions or individual members shall accept written or oral applications for a hearing. Arbitration commissions shall keep a written record of oral applications.
- (3) Arbitration commissions may set aside times for consultations.
- (4) In cases of simple civil disputes or insult, defamation or breach of residential peace, arbitration commissions or individual members may, in the course of preparation for a hearing or otherwise, hold conciliation discussions with the applicant and the respondent or the accused. If no resolution of the dispute is achieved by such discussions a hearing shall take place.
- (5) If, as a result of conciliation discussions, obligations are entered into, a written record thereof shall be made.
- (6) Arbitration commissions may make recommendations in connexion with conciliation discussions (§ 16).
- (7) In cases of minor offences, misdemeanours concerning property, breaches of regulation and breaches of educational obligations or of socialist employment discipline on the part of a member of a producers' cooperative, a hearing shall take place if a referral decision has been received or an application has been made.
- (8) Arbitration commissions shall maintain a register of their activities and written records of individual hearings.

Preparation for Hearings

§ 2

- (1) Arbitration commissions shall check that any application or referral decision complies with the legal requirements. They shall prepare the hearing in such a way that the facts underlying the dispute can be comprehensively discussed and established.
- (2) The chairman, in consultation with the members, shall determine the steps to be taken to that end. In preparation for the hearing, the chairman and members shall gather the necessary information, obtain any documents required and acquaint themselves with the law relating to the case.
- (3) Hearings before arbitration commissions shall take place within 4 weeks of receipt of an application or referral decision. If, exceptionally, this period is exceeded the reasons therefor shall be recorded in writing.

§ 3

- (1) The chairman shall ensure that the subject matter, time and place of the hearing are published at least 1 week before the hearing.
- (2) The applicant, the respondent, the accused and any other citizens or representatives of state organs whose participation is required to resolve the dispute shall be given adequate notice, and in any event a minimum of 1 week's notice of the hearing. They shall be obliged to appear at the hearing.
- (3) The respondent or the accused shall be given details of the contents of the application or referral decision with the summons.
- (4) Arbitration commissions may summon representatives of state organs, social organizations, National Front of the GDR committees, residents' committees, enterprises, producers' cooperatives or other social bodies with a view to increasing the social effectiveness of the hearing.

§ 4

- (1) If the applicant or the respondent is a minor, his parents or guardians shall also be summoned to attend the hearing. If necessary, representatives of youth aid bodies, schools, enterprises and youth organizations may be involved in the hearing.
- (2) Where the accused is a minor, his parents or guardians, representatives of his school, enterprise or youth organization shall be summoned to attend the hearing. If necessary, representatives of relevant youth aid bodies should be involved in the hearing.

Conduct of Hearings

§ 5

- (1) Arbitration commissions shall sit with at least 4 members to hear and decide cases.
- (2) Hearings shall be conducted by the chairman or a deputy. If both are prevented from attending or if it is desirable for some other practical reason, another member may be appointed to conduct a hearing.
- (3) The result of the hearing shall be recorded in writing. The person responsible for keeping the records need not be a member of the arbitration commission.

§ 6

- (1) A member of an arbitration commission may not take part in hearing or deciding a matter if he
 - is interested in the hearing as applicant, respondent or accused or has suffered damage by reason of the breach of the law with which the commission is concerned,
 - is the spouse or a close relative of the applicant, respondent, accused or injured party.
- (2) The arbitration commission shall make a final decision on any objection raised by the applicant, respondent, accused or injured party to any member taking part in a hearing. Such objection may be made at any time up to the commencement of the hearing. Should the objection be justified, the member concerned may not take part in hearing and deciding the matter.

§ 7

- (1) Hearings before arbitration commissions shall be public and shall, as a rule, take place outside working hours. Hearings shall be conducted in the presence of the applicant and the respondent or accused.
- (2) The arbitration commission shall be entitled, in exceptional circumstances, to exclude individual citizens from a hearing if to do so is conducive to resolving the dispute.
- (3) An arbitration commission may impose a fine of up to 50 Marks on any person taking part in a hearing who shows gross disrespect to the commission by improper behaviour.

§ 8

- (1) Arbitration commissions shall be obliged to establish the facts which are necessary to reach a decision as well as the causes and the conditions giving rise to the legal dispute or breach of the law with which they are concerned. They shall obtain such information about the personal and financial circumstances of the applicant, the respondent or the accused as may be necessary to enable them to reach a decision.
- (2) In ascertaining the level of responsibility of a minor for a minor offence, misdemeanour,

breach of regulation or breach of educational obligations, arbitration commissions shall take into account any special circumstances concerning that person's development and upbringing.

- (3) The members of the arbitration commission, the applicant, the respondent and the accused and any other persons taking part in a hearing shall be entitled to express their views on the facts, the causes and conditions giving rise to the dispute or breach of the law, the conduct of the citizen concerned and any matters contributing to a resolution of the dispute.

§ 9

- (1) If a hearing relates to a minor offence or misdemeanour, any related simple civil or other legal disputes (§ 17) may, on application, be disposed of at the same time if they can be resolved without the need for further preparation.
- (2) Where a simple civil dispute is related to a misdemeanour, both may be disposed of at one hearing. § 22 shall apply to such a hearing.

§ 10

- (1) If a citizen accused of a minor offence, misdemeanour, breach of regulation or breach of educational obligations fails to appear at a hearing, a second hearing date shall be fixed. The same shall apply if the respondent fails to appear on the hearing of an application relating to a breach of socialist work discipline.
- (2) Arbitration commissions, with the assistance of the social bodies, should endeavour to ensure that the accused or the respondent appears on the second hearing date. The consequences of failure to appear for a second time shall be set out in the summons (§§ 21, 28, 34, 42 and 47).
- (3) If the accused or the respondent fails to attend a hearing without reason an arbitration commission may impose a penalty of up to 50 Marks.

Conclusion of Hearings

§ 11

- (1) At the end of a hearing the arbitration commission shall decide the claim by making an order, confirming a settlement or declaring whether or not there has been a breach of the law and shall impose educational measures.
- (2) The arbitration commission shall order the case to be dismissed, if the claim is unfounded, if confirmation of a settlement has to be refused as contrary to the principles of socialist law or if it finds that there has been no breach of the law.
- (3) Arbitration commissions may make recommendations as a result of a hearing (§ 16).

§ 12

- (1) Arbitration commissions shall deliberate their decision in public. By comprehensive discussion and clarification of the facts, they shall endeavour to reach a unanimous decision.**
- (2) If, exceptionally, a unanimous decision cannot be reached, a decision may be reached by a majority of the members of the arbitration commission who have heard the case.**
- (3) The decision shall be made public at the hearing.**

§ 13

- (1) The order shall contain**
 - date and place of the hearing,**
 - the names of the members of the arbitration commission who decided the case,**
 - name, age, occupation and address of the applicant and the respondent or accused,**
 - details of the applications made,**
 - a short statement of the findings of fact and the reasons on which the decision made is based,**
 - the decision reached as a result of the hearing,**
 - notice of the right to appeal against the decision of the arbitration commission and of the right to apply for the order to be enforced by levy of execution.**
- (2) The order shall be signed by the chairman of the hearing and be delivered within 2 weeks to the applicant and the respondent or accused personally or by recorded delivery.**
- (3) A copy of the order shall be sent within 2 weeks to the area procurator and, if the case has come to the commission by referral, to the referring body. If the order provides for payment of a fine or confirms an obligation to perform community service, a copy shall be sent to the local authority (§ 53 (2) and (3)).**

§ 14

- (1) No fees shall be charged for the work of arbitration commissions.**
- (2) Arbitration commissions may order the reimbursement, in accordance with the relevant legal provisions, of expenses necessarily incurred by the applicant, respondent, accused or injured party or any citizen who has been summoned to a hearing to give evidence.**

Measures to Enhance Effectiveness

§ 15

- (1) Where necessary, arbitration commissions shall use their influence to ensure that the educational process begun during a hearing is continued with the assistance of the relevant social organizations in the towns, communities, producers' cooperatives or enterprises.**

- (2) Arbitration commissions may at a hearing order their decision (once it has become enforceable and incapable of being appealed) to be made public in the appropriate residence, residential area, producers' cooperative or enterprise in a suitable manner for a fixed period not exceeding 1 week if to do so will enhance its educational effect.
- (3) Arbitration commissions shall monitor the implementation of their decisions. They may, after a hearing in cases of minor offences, misdemeanours, breaches of regulation or breach of educational obligations, order a citizen to report to them to confirm that he has complied with obligations imposed by their decision and to provide evidence of the payment of any money ordered to be paid.
- (4) Citizens shall be obliged to appear before and report to arbitration commissions. In the event of failure to appear without reason, arbitration commissions may impose a penalty of up to 50 Marks
- (5) If an arbitration commission establishes that a citizen has failed to comply with any educational measures imposed by an order, the chairman may convene another hearing (§ 53(4)).

§ 16

- (1) If an arbitration commission establishes the existence of causes or conditions giving rise to legal disputes or breaches of the law it shall make recommendations to the managers of the relevant state organs, organs responsible for directing the economy, combines, enterprises and institutions or to the board of the relevant producers' cooperative and to the officers of the appropriate social organizations. The object of recommendations shall be to contribute to the strengthening of order, discipline and safety. Recommendations should contain suggestions as to how the causes and conditions giving rise to breaches of the law and legal disputes, deficiencies or illegalities can be eliminated.
- (2) Recommendations shall be sent to the person or body to whom they are directed within 2 weeks.
- (3) Arbitration commissions shall monitor the implementation of recommendations they have made.
- (4) The managers to whom or organs to which a recommendation has been directed shall inform the arbitration commission in writing within 2 weeks of the steps they have taken as a result of the recommendation or of the reasons why the recommendation cannot be followed. They shall cooperate with the arbitration commission in giving effect to recommendations.
- (5) If such obligations are not complied with or if a recommendation is not acted on without reason, the arbitration commission may inform the appropriate superior manager or superior organ and require those obliged under subsection 4 to comment on the recommendation. If as a result of failure to have regard to a recommendation any illegality

continues, the arbitration commission shall notify the area procurator.

II

Types of Cases Heard By Arbitration Commissions

Hearings of Simple Civil Disputes and Other Disputes

§ 17

- (1) Arbitration commissions shall hear and decide**
 - simple civil disputes between citizens which arise in their everyday life as a result of breaches of their rights or obligations, in particular connected with their residence or accommodation,
 - simple civil disputes between citizens or between producers' cooperatives and their members involving sums of money up to a value of approximately 1,000 Marks,
 - other simple proprietary disputes including disputes between producers' cooperatives and their members in connexion with the innovators' legislation under the provisions of the Innovators' Order,
 - applications for a hearing relating to breach of socialist work discipline by members of producers' cooperatives.
- (2) Applications for a hearing may be made by one or more citizens, or, in the case of disputes between citizens concerning residence or accommodation, by the committees of residents' associations.**
- (3) Applications made on behalf of a producers' cooperative shall be made in writing by the board or the chairman.**

§ 18

- (1) Hearings shall take place in the presence of the applicant and the respondent. In exceptional cases, such as prolonged illness or prolonged absence, the applicant or the respondent may be represented by another citizen. Another citizen may not appear in place of the respondent in cases of breach of socialist work discipline.**
- (2) At the hearing the arbitration commission shall endeavour to bring about a settlement between the applicant and the respondent in accordance with the principles of socialist law. It shall confirm the terms of such a settlement by order. Where a money claim is settled appropriate terms for payment or payment by instalments may be agreed if necessary. Cases involving a breach of socialist work discipline may not be disposed of by settlement.**
- (3) If the applicant and the respondent cannot reach agreement or if a settlement cannot be confirmed because it is contrary to the principles of socialist law, the arbitration**

commission shall decide the dispute on the joint application of the applicant and the respondent or on the application of the applicant, provided that the facts of the case are simple, have been fully established and do not give rise to difficult problems of law.

§ 19

- (1) An application by the board of a producers' cooperative for hearing of a breach of socialist work discipline by a member must contain
 - details of the breach of discipline,
 - details of the causes and conditions that have been established,
 - an assessment of the character of the member of the cooperative.
- (2) An arbitration commission may reject an application if the matter is not suitable for hearing by an arbitration commission.

§ 20

- (1) An arbitration commission may, after a hearing relating to a breach of socialist work discipline, refrain from imposing educational measures if the hearing itself has had sufficient educational effect. This shall be recorded in the order.
- (2) An arbitration commission may impose the following educational measures:
 - An undertaking given by a member of a producers' cooperative to apologize to his collective may be confirmed or an obligation to do so may be imposed.
 - Other undertakings given by a member of a producers' cooperative conducive to maintaining socialist work discipline may be confirmed.
 - A reprimand may be given to a member of a producers' cooperative.
- (3) Undertakings given by a work collective for the purpose of the education of a member of a producers' cooperative may be confirmed.
- (4) Educational measures in accordance with § 27(1) shall be applied in cases relating to breaches of socialist work discipline.

§ 21

- (1) An arbitration commission shall decline to hear a matter if the facts are not simple, cannot be established by examining the applicant, the respondent and other citizens, or give rise to difficult problems of law. It may do so at any time up to the conclusion of the hearing.
- (2) An applicant may withdraw his application at any time up to the conclusion of the hearing.
- (3) If the applicant, the respondent or both fail to appear at a hearing without reason or if a settlement cannot be reached or a decision made in accordance with § 18(3), the arbitration commission shall make an order discontinuing the proceedings.
- (4) If the respondent in a hearing relating to a breach of socialist work discipline fails to appear at a second hearing without reason, the arbitration commission shall within 1 week

return the application to the board of the relevant producers' cooperative.

- (5) In any of the events referred to in subsections 1, 2 or 3 above, the applicant shall be notified of his right to apply to the area court.

§ 22

Combined hearings of simple civil disputes coupled with insult, defamation and residential nuisance.

- (1) Where simple civil disputes between citizens arising out of breaches of rights or obligations relating to residence or accommodation are coupled with insult, defamation or breach of residential peace, an arbitration commission may, on application, decide both matters at one hearing.
- (2) §§ 29 to 37 shall apply to the hearing and decision in relation to the misdemeanour and § 17(2) together with §§ 18 and 21 shall apply to the hearing and decision in relation to any civil dispute. Both decisions shall be incorporated in one order.

Hearings of Minor Offences

§ 23

- (1) Minor offences are anti-social criminal acts, committed intentionally or recklessly, which damage the rights and interests of citizens, socialist property, the state or social order or other rights and interests of society.
- (2) Arbitration commissions shall hear and decide cases of minor offences if, having regard to the consequences of the offence and the level of guilt of the citizen concerned, his actions are not of a seriously anti-social nature and if, having regard to the deed itself and the character of the citizen concerned, it seems likely that an arbitration commission will have a real educational effect. Minor offences shall be referred to an arbitration commission if the facts of the case are clear and the citizen concerned admits the offence. Offences committed carelessly may be referred to an arbitration commission even if substantial damage has been caused provided the level of guilt of the citizen concerned is insignificant by reason of extraordinary circumstances.
- (3) Subject to these conditions arbitration commissions shall hear and decide all minor offences, in particular
- minor offences against socialist or personal property,
 - personal injury,
 - breaches of provisions concerning health and safety at work.

§ 24

- (1) Cases may be referred to an arbitration commission by the relevant investigating body, the procurator or the court.
- (2) In order to ensure a thorough hearing of the case, the referral decision shall contain in particular
 - a summary of the facts and of the available evidence,
 - an assessment of what has occurred and reference to the criminal legislation that has been breached,
 - an assessment of the character of the citizen concerned in relation to the offence,
 - the reasons for referral to an arbitration commission,
 - comments on the causes and conditions giving rise to the offence. If damage has been caused, an application for damages and the address of the injured party shall also be included.
- (3) Decisions to refer minor offences committed by minors shall also contain
 - an assessment of the family and other social circumstances of the minor in relation to the offence,
 - statements regarding his guilty capacity,
 - suggestions for the effective involvement of state and social welfare bodies.
- (4) The referring body shall be responsible for assisting the arbitration commission to deal with the case.

§ 25

- (1) Arbitration commissions may appeal to the referring body against a referral at any time up to the conclusion of the hearing if they are of the opinion that the requirements for referral (§ 23(2)) have not been complied with or if for some other reason a case is not suitable for hearing by an arbitration commission.
- (2) In such cases the referring body shall reconsider its decision. If it confirms the referral it shall be binding on the arbitration commission.

§ 26

- (1) An arbitration commission may impose the following educational measures at the end of a hearing:
 - An undertaking given by a citizen to apologize to the injured party or before his collective may be confirmed or an obligation to do so may be imposed.
 - An undertaking given by a citizen to pay money by way of damages in accordance with the law or to make good damage by his own work may be confirmed or an obligation to do so may be imposed.
 - An undertaking given by a citizen to perform up to 20 hours unpaid community service

in his spare time may be confirmed.

- Other undertakings given by a citizen conducive to developing, encouraging and ensuring conduct consistent with socialist law may be confirmed.
 - A citizen may be reprimanded.
 - A citizen may be ordered to pay a fine of between 10 and 500 Marks. A minor may be ordered to pay a fine of up to 300 Marks provided he has an income or assets of his own.
- (2) An arbitration commission may confirm undertakings given by a work collective, residents' association, other collective or individuals to educate a citizen. Such undertakings shall contain provisions which can be monitored and which contribute to the development of socialist consciousness and to the elimination of the causes and conditions giving rise to breaches of the law.
- (3) An undertaking given by a citizen to make good damage caused shall be confirmed only with the consent of the injured party.
- (4) An arbitration commission may refrain from imposing educational measures if that is appropriate taking into account the seriousness of the offence and the overall behaviour of the citizen after the offence, and if any attempt to make good the damage leads the commission to believe that he will in future respect the socialist legal order. A decision to refrain from imposing measures shall be recorded in the order.

§ 27

- (1) If educational measures are necessary to induce a citizen to abide voluntarily by socialist law, the arbitration commission shall impose measures, which, having regard to the nature and seriousness of the offence, the circumstances in which it was committed and the citizen's character, fulfil this purpose most effectively. An arbitration commission may also impose a number of educational measures in conjunction with one another.
- (2) A fine shall be imposed if the nature and seriousness of the offence, having regard to the character of the citizen, make it desirable to exercise a long term effect on him in the interest of protecting socialist society. In particular, a fine shall be imposed if the offence evinces a lack of respect for the values of other employees or their personal property, greed or disregard for money or property rights.
- (3) In imposing a fine and determining its amount the financial circumstances of the citizen concerned and any obligation to pay damages as a result of the offence shall be taken into consideration. In the case of minors a fine shall be imposed only if he has an income or assets of his own. If a fine or order to pay money by way of damages are imposed, a time or times for payment may, if necessary, be provided for in the order; time for the payment of damages shall only be given with the agreement of the injured party.
- (4) An undertaking to perform unpaid community service in spare time shall only be confirmed if the offence involved damage to or the destruction of public property or assets.

The arbitration commission may stipulate a time by which the citizen shall report to the local authority (§ 53 (3)).

§ 28

- (1) If a citizen fails without reason to appear at a second hearing, the arbitration commission shall return the case to the referring body within 1 week.
- (2) A case shall not be returned to the referring body if it concerns a minor offence the prosecution of which is possible only by application (§ 2 of the Criminal Code) and the application has been withdrawn. An application may be withdrawn at any time up to the conclusion of the hearing by the arbitration commission. If that occurs the proceedings shall be discontinued by order.

Hearings of Misdemeanours

§ 29

- (1) Misdemeanours are breaches of legally guaranteed interests of society or the citizen where both the effects and the level of guilt of the citizen concerned are not significant and which are defined as such in the Criminal Code or other legislation. They take the form of
 - misdemeanours relating to property,
 - insult and defamation,
 - breach of residential peace in citizens' flats or houses, or affecting other accommodation or premises.
- (2) A misdemeanour relating to property is committed if the offence, having regard to all the circumstances, the damage caused, the level of guilt of the citizen concerned and his character, is of a minor nature and the damage caused or intended does not exceed 100 Marks. As a rule this will apply only in the case of a first offence.

§ 30

- (1) Arbitration commissions shall hear and decide cases of misdemeanours if an injured party, work collective, residents' association or other aggrieved party makes an application or if a matter is referred by the German People's Police or a manager responsible for discipline.
- (2) An arbitration commission may hear and decide misdemeanour cases only if the misdemeanour is not time barred at the time the application is made. The limitation period for misdemeanours is 6 months.
- (3) In cases of insult, defamation and breach of residential peace, the application must be made within 1 month of the misdemeanour coming to the attention of the injured party. If the time for making an application has passed through no fault on the part of the applicant, an arbitration commission may allow the application to be made out of time.

§ 31

- (1) Applications for hearing of misdemeanours shall be made in writing or orally and shall contain, in particular,
 - a summary of the facts and available evidence,
 - details of any claims for damages or other civil claims.
- (2) § 24(2) and (3) shall apply to the contents of any referral decision.
- (3) The arbitration commission shall make an order dismissing any application made by a citizen for hearing of a misdemeanour if the application on its face shows that no misdemeanour has been committed, the misdemeanour is time barred or the application has been made out of time without good reason (§ 30(2) and (3)).

§ 32

- (1) Arbitration commissions, together with the applicant, the accused and other citizens, shall, when hearing a misdemeanour case, ascertain the facts and establish the causes and conditions giving rise to the dispute.
- (2) Arbitration commissions may return a case to the German People's Police for further investigation if they are unable to resolve it on the basis of the evidence at their disposal or if, after examining the effects of the offence and the level of guilt of the citizen concerned, they reach the conclusion that a minor offence has been committed. A decision to this effect may also be taken in the course of the hearing.
- (3) The German People's Police may refer the case back to the arbitration commission after investigation. A decision to do so shall be binding on the arbitration commission.

§ 33

- (1) Arbitration commissions may appeal against a referral to the German People's Police or to the manager responsible for discipline at any time up to the conclusion of a hearing if they are of the opinion that the requirements for a hearing (§ 29) have not been complied with or a minor offence has been committed.
- (2) In such cases the German People's Police or the manager responsible for discipline shall reconsider the decision. A second decision to refer shall be binding on an arbitration commission.

§ 34

- (1) Hearings of misdemeanours shall take place in the presence of the applicant and the accused. In exceptional cases such as prolonged illness or prolonged absence the applicant may be represented by another citizen.
- (2) In cases of misdemeanours concerning property arbitration commissions may decide a case in the absence of the applicant if the written application relating to the misdemeanour is

sufficiently substantiated.

- (3) If the accused fails to attend a second hearing without reason, the arbitration commission may, exceptionally, decide the case in his absence if the facts have been established and a decision is possible in accordance with § 11(1) or (2). Otherwise the case shall be returned within 1 week to the German People's Police for further steps to be taken.

§ 35

- (1) An arbitration commission may refrain from imposing educational measures as a result of a hearing of a misdemeanour if the requisite educational purpose has been achieved by the hearing itself. This shall be recorded in the order.
- (2) In cases of insult, defamation or breach of residential peace arbitration commissions shall attempt to effect a conciliation between the accused and the applicant. If conciliation is achieved the commission may refrain from imposing educational measures. The terms of conciliation shall be recorded in the order.
- (3) Arbitration commissions may impose the following educational measures:
 - An undertaking given by a citizen to apologize to the injured party or before his collective may be confirmed or an obligation to do so may be imposed. The same applies to an undertaking to withdraw an insult or defamatory statement in suitable fashion in front of the same circle of people who heard it.
 - An undertaking given by a citizen to pay money by way of damages in accordance with the law or to make good damage by his own work may be confirmed or an obligation to do so may be imposed.
 - Other undertakings given by a citizen conducive to safeguarding the honour and dignity of the individual and protecting his home may be confirmed.
 - A citizen may be reprimanded.
 - A citizen may be ordered to pay a fine of between 10 and 300 Marks.
- (4) In addition, § 26(2) and (3) shall apply.
- (5) The educational measures set out in § 27(1) to (3) shall apply where a decision is reached in a misdemeanour case.
- (6) If as a result of a hearing of a case of insult, defamation or breach of residential peace it is not proved that a misdemeanour has been committed and there is no possibility of further investigation of the matter by the German People's Police, the arbitration commission shall make an order declaring that no misdemeanour has been committed.

§ 36

- (1) If the applicant has also insulted or defamed the accused, such misdemeanour may, on application, be dealt with at the hearing unless it occurred more than 6 months previously.
- (2) If conciliation cannot be effected between the applicant and the accused educational

measures may be imposed on one or both of them.

§ 37

- (1) An applicant may withdraw his application at any time up to the conclusion of the hearing.
- (2) If an applicant fails without reason to appear at a hearing of a case concerning insult, defamation or breach of residential peace his application shall be deemed to be withdrawn.
- (3) In such cases the arbitration commission shall discontinue the hearing of the case by order.

Hearings of Breaches of Regulation

§ 38

- (1) Breaches of regulation are culpable breaches of the law evidencing a lack of discipline and which hinder the administration of the state or impede the development of socialist community life but which do not seriously interfere with the interests of socialist society or individual citizens and are not therefore criminal in nature.
- (2) Only breaches of the law which are expressly defined as such constitute breaches of regulation.

§ 39

- (1) Arbitration commissions shall hear and decide breaches of regulation which affect socialist community life in towns or communities and infringements of public order or safety, infringements of state and economic measures in the local area, and infringements of health and safety at work, fire prevention and environmental or price regulations.
- (2) Arbitration commissions shall hear cases if they are referred to them by an authority empowered to impose administrative sanctions. A matter may be referred if the facts of the case are clear and, having regard to the nature and circumstances of the breach and the character of the citizen concerned, a hearing of the case by an arbitration commission is likely to have a better educational effect.

§ 40

- (1) In order to ensure a thorough hearing of the case, the referral decision shall contain in particular
 - a summary of the facts and of the available evidence,
 - details of the legal provision that has been breached,
 - the reasons for referral to the arbitration commission,
 - comments on the causes and conditions giving rise to the breach of regulation.

If damage has been caused the application for damages and the address of the injured party shall also be included.

- (2) An arbitration commission may return the matter to the referring body at any time up to the conclusion of the hearing if the requirements for referral (§ 39) have not been complied with. The referring body shall then deal with the matter and bring it to a conclusion.

§ 41

- (1) Arbitration commissions may impose the following educational measures at the end of a hearing:
- An undertaking given by a citizen to apologize to the injured party or before his collective may be confirmed or an obligation to do so may be imposed.
 - An undertaking given by a citizen to pay money by way of damages in accordance with the law or to make good damage by his own work may be confirmed or an obligation to do so may be imposed.
 - An undertaking given by a citizen to perform up to 15 hours unpaid community service in his spare time may be confirmed.
 - Other undertakings given by a citizen conducive to maintaining order, discipline and safety may be confirmed.
 - A citizen may be reprimanded.
 - A citizen may be ordered to pay a fine of between 10 and 300 Marks. A minor up to the age of 16 may only be ordered to pay a fine of up to 20 Marks. The amount of the fine may not exceed the maximum fine which can be imposed under the relevant regulation from time to time.
- (2) In addition § 26 (2) and (3) shall apply.
- (3) The educational measures set out in § 27 shall also apply in cases of breaches of regulation.
- (4) An arbitration commission may refrain from imposing educational measures if that is appropriate having regard to the seriousness of the breach of regulation and the overall behaviour of the citizen after the breach and if any attempt to make good the damage leads the commission to believe that he will, in future, respect the socialist legal order. A decision to refrain from imposing measures shall be recorded in the order.

§ 42

If a citizen fails without reason to appear at a second hearing the arbitration commission shall return the case to the referring body within 1 week.

§ 43

- (1) Arbitration commissions shall hear and decide cases concerning the conduct of citizens who as parents or guardians fail to ensure that children of school age or minors regularly attend lessons at general polytechnic schools or vocational training institutions, or who keep them from attending other compulsory school functions or prevent them from obeying school rules or otherwise fail to comply with obligations arising in connexion with their education.
- (2) Arbitration commissions shall also hear and decide cases concerning the conduct of minors (pupils over the age of 14 and apprentices) who persistently act in breach of their educational obligations.

§ 44

- (1) Applications for a hearing may be made by the head teacher of a school, with the consent of the parents' committee, or by the principal of a vocational training institution if attempts to exercise an educational influence over the parents or guardians or the minor concerned have failed.
- (2) Applications that are insufficiently particularized may be returned to the applicant.

§ 45

- (1) The purpose of a hearing should be to encourage the parents or guardians concerned to ensure that children or minors for whom they are responsible comply with their educational obligations in full. If this is achieved as a result of a hearing, educational measures need not be imposed. This shall be recorded in the order.
- (2) Arbitration commissions may impose the following educational measures on parents or guardians:
 - Undertakings given by a citizen which help to ensure regular attendance at school by a child of school age or minor may be confirmed or an obligation to do so may be imposed.
 - Undertakings given by a citizen which help to ensure that a child of school age or minor attends compulsory school functions, obeys school rules or complies with educational obligations may be confirmed or an obligation to do so may be imposed.
 - A citizen may be reprimanded.
 - A fine of between 10 and 150 Marks may be imposed.
- (3) An arbitration commission may confirm undertakings given by a work collective, residents' association or an individual citizen to assist parents or guardians in complying with their obligations in relation to the upbringing of a child or minor.
- (4) In deciding cases of breaches of educational obligations, educational measures shall be

imposed in accordance with § 27(1) to (3).

- (5) Arbitration commissions may instruct a minor who is in breach of educational obligations on his duties.

§ 46

- (1) The purpose of a hearing should be to encourage a minor who has been found responsible for behaviour of the type referred to in § 43(2) to comply with his educational obligations in full. If this is achieved as a result of the hearing educational measures need not be imposed. This shall be recorded in the order.
- (2) Arbitration commissions may impose the following educational measures on minors:
- Undertakings given by a minor which help to ensure that he complies voluntarily with requirements arising out of his legal obligations in relation to his schooling or apprenticeship may be confirmed or such obligations may be imposed.
 - Other undertakings given by a minor which help to instil in him a spirit of cooperation and a sense of shared responsibility for his work at school or at his vocational training institution may be confirmed.
 - A minor may be reprimanded.
- (3) An arbitration commission may confirm undertakings given by parents or guardians, a collective or individual citizens to assist the minor in complying with what is required of him.
- (4) In deciding cases of breaches of educational obligations educational measures shall be imposed in accordance with § 27(1).

§ 47

- (1) If a parent or guardian fails without reason to appear at a second hearing the arbitration commission may decide the case in his absence if the facts of the case are clear. If the arbitration commission cannot decide the case it shall return it to the applicant within 1 week.
- (2) If a minor fails to appear at a second hearing without reason the case shall be referred within 1 week to the area schools' council or to the head of the department of vocational training and vocational guidance of the relevant area local authority.

Appeals against and Enforcement of Decisions**§ 48****Rights of Appeal**

- (1) The applicant and the respondent in civil and other legal disputes, the applicant in a case of insult, defamation or breach of residential peace, and the accused in cases of minor offences, misdemeanours, breaches of regulation or breach of educational obligations shall have the right to appeal in writing against a decision of an arbitration commission within 2 weeks of receipt of the order either to the area court or by lodging the appeal at a legal filing office. The injured party shall have the same right in so far as the decision relates to compensation for damages or expenses as shall a citizen on whom a penalty has been imposed (§§ 7(3), 10(3) and 15(4)).
- (2) An appeal against a confirmation of terms of settlement in a civil or other legal dispute may be brought only on the grounds that the terms of settlement were not reached or that they are contrary to the principles of socialist law.
- (3) The procurator of the area in which an arbitration commission operates may appeal to the appropriate area court against any decision of an arbitration commission within 3 months of the making of a decision if the decision itself or individual obligations do not comply with the law.
- (4) The area court of the area in which the arbitration commission operates shall have jurisdiction to decide the appeal.

Deciding the Appeal**§ 49**

- (1) The civil chamber of the area court shall decide any appeal against a decision of an arbitration commission on civil or other legal disputes. It may, if it is necessary to enable it to reach a decision, obtain a report on the case from the arbitration commission concerned or summon the chairman or members of the arbitration commission or other citizens to attend the oral hearing.
- (2) The provisions of the Law of 19 June 1975 on Court Procedure in Civil, Family and Employment Cases — Civil Procedure Code — (Law Gazette I No. 29 p. 533) shall apply to proceedings before the area court. § 70(1) of the Civil Procedure Code shall apply in relation to leave to appeal out of time.
- (3) There shall be no right of appeal against a decision of the civil chamber on an appeal against a decision of an arbitration commission on breach of socialist discipline at work by a member of a producers' cooperative.

§ 50

- (1) The civil chamber of the area court shall decide any appeal against a decision of an arbitration commission on simple civil disputes and any connected misdemeanour in the form of insult, defamation or breach of residential peace (§ 22).
- (2) § 49(1) sentence 2 and the provisions of the Civil Procedure Code shall apply to proceedings relating to appeals against the civil law part of the decision.
- (3) The provisions of §§ 51 and 52(1) shall apply to proceedings relating to appeals against the part of the decision relating to a misdemeanour. There is no right of appeal against this decision.

§ 51

- (1) The criminal chamber of the area court shall decide any appeal against a decision of an arbitration commission on a minor offence, misdemeanour, breach of regulation or breach of educational obligations and any appeal against a penalty. It may, before reaching a decision, hold an oral hearing and hear the citizen concerned on his appeal. Further, it may, if it is necessary to enable it to reach a decision, obtain a report on the case from the arbitration commission concerned and summon the chairman or members of the arbitration commission concerned or other citizens to attend the oral hearing.
- (2) The criminal chamber may set aside a decision of an arbitration commission and return the case to the arbitration commission with appropriate recommendations for the case to be reheard and redecided or it may refuse the appeal if there are no grounds for it. Before setting aside a decision of an arbitration commission relating to damages, the injured party shall be given an opportunity to be heard on the appeal.
- (3) The criminal chamber may decide not to return a case to an arbitration commission to be reheard and redecided and may decide the case itself if it is established that the accused is not responsible for the offence or if the appeal relates only to the amount of damages or the reduction of a fine. In cases of insult, defamation and breach of residential peace and in cases of claims for damages an amicable settlement may be reached. The criminal chamber shall decide any appeal against a penalty and the case shall not be returned to the arbitration commission to be redecided.

§ 52

- (1) An appeal which is to be decided by the criminal chamber of an area court may be withdrawn at any time up to the conclusion of closing submissions at the oral hearing.
- (2) There is no further appeal against a decision of the criminal chamber of the area court.
- (3) The parties shall bear their own costs of the appeal to the criminal chamber. If it is established that an accused was not responsible for an offence, his costs shall be met out of public funds if an application is made. Costs incurred out of public funds shall not be

sought from the parties.

Enforcement of Decisions

§ 53

- (1) Citizens should fulfil any undertakings given or duties imposed on them voluntarily.
- (2) Payment of any fine or penalty shall be made to the local authority of the town, urban district or community in the area of which the citizen resides. The relevant arbitration commission shall be notified of payments made.
- (3) Any undertaking given by a citizen to perform unpaid community service in his spare time shall be fulfilled within 2 months. The local authority of the town, urban district or community in the area of which the citizen resides shall stipulate when and where such service is to be performed and inform the relevant arbitration commission that it has been completed.
- (4) If a citizen fails to comply with any obligations stipulated in an order the relevant arbitration commission may hear the case again (§ 15(5)) and may impose other suitable educational measures provided for in the legislation (§§ 20, 26, 35, 41, 45, 46).

§ 54

- (1) A decision of an arbitration commission on a money claim, or the payment of damages, imposing a fine, ordering the delivery up of chattels or ordering a person to perform, acquiesce in or refrain from some action, imposing payment of a penalty or ordering the reimbursement of expenses may be declared enforceable by the area court and be executed.
- (2) A person who has a claim by virtue of a decision may apply to the area court for a declaration of leave to levy execution. A local authority shall have the same right in respect of a fine or penalty.

§ 55

- (1) The civil chamber of the area court shall decide by order whether execution may be levied.
- (2) The provisions of the Civil Procedure Code shall apply to such proceedings before the area court.

Special Provisions

§ 56

Time for Enforcement of Decisions

- (1) A decision of an arbitration commission on minor offences, misdemeanours, breaches of regulation, breaches of work discipline and breaches of educational obligations shall be enforceable for a period of 1 year after the expiry of the time within which the decision may be appealed.
- (2) The limitation periods applicable to the levy of execution under § 480 of the Civil Code of the German Democratic Republic of 19 June 1975 (Law Gazette I No. 27 p. 465) shall apply to the execution of claims arising out of orders of arbitration commissions.
- (3) The execution of fines or penalties shall be time barred after 2 years.

§ 57

Jurisdiction over Members of the Armed Services

- (1) Arbitration commissions may not hear or decide minor offences, misdemeanours or breaches of regulation committed by members of the armed services.
- (2) If as a result of a minor offence or breach of regulation committed by a member of the armed services a matter has been referred to an arbitration commission, it shall declare that it has no jurisdiction and return the matter to the referring body.
- (3) If as a result of a misdemeanour committed by a member of the armed services an application is made to an arbitration commission or if such a matter is referred to an arbitration commission, it shall pass the application or the referral decision to the relevant commander or station chief or direct the applicant to the relevant commander or station chief.

V

Assistance to Arbitration Commissions

§ 58

Arbitration Commissions Advisory Councils

- (1) Arbitration commissions advisory councils under the auspices of the directors of the district courts or area courts shall support and promote the work of the arbitration commissions and shall assist in enhancing their social effectiveness.

- (2) The advisory councils shall, on the basis of a working plan, deal primarily with ways of supporting the work of the arbitration commissions. In particular they shall:
- evaluate the administration of justice by the arbitration commissions and their social effectiveness in the various areas of law in which they operate,
 - evaluate the practice in relation to referrals or applications relating to minor offences, misdemeanours, breaches of regulation and breaches of educational obligations,
 - promote the work of members of arbitration commissions in relation to legal propaganda,
 - organize effective cooperation between arbitration commissions and local authorities and their organs and committees of the National Front of the GDR, in particular in safeguarding order, discipline and safety in towns and communities,
 - arrange conferences and exchanges of experience for chairmen and members of arbitration commissions,
 - propose measures for the training of members of arbitration commissions,
 - ensure the capacity of arbitration commissions to function, in particular in connexion with by-elections or changes in the areas in which arbitration commissions operate,
 - make proposals for the recognition of good work done by arbitration commissions and to honour arbitration commissions or individual members.
- (3) Advisory councils shall also meet to evaluate and consider practical experiences brought to their attention by the courts and other bodies represented on them with a view to fulfilling their legal obligations for the management and support of the work of the arbitration commissions.
- (4) The chairman and members of advisory councils shall evaluate the meetings of the advisory councils in their areas and shall instigate any measures necessary and report the results to the advisory councils.

§ 59

Material Requirements

Local authorities (in towns, urban districts and communities) and the boards of producers' cooperatives shall provide the material facilities to enable the arbitration commissions to operate within their area. That shall include in particular:

- making available the necessary legal texts, training materials and literature,
- making available rooms suitable for hearings and consultations,
- providing safe storage facilities for documents,
- ensuring the provision of clerical assistance and, if necessary, providing a clerk,
- making available the funds required for the operation of the arbitration commissions and for honouring their work.

§ 60

Reimbursement of Expenses

- (1) Local authorities (in towns, urban districts and communities) or producers' cooperatives shall reimburse members of arbitration commissions expenses for which they apply in connexion with the work of the arbitration commissions.
- (2) The area courts shall reimburse members of arbitration commissions expenses necessarily incurred in connexion with management and training.

§ 61

Duty of Support

If a person responsible for assisting an arbitration commission fails to fulfil his obligations the arbitration commission shall be entitled to apply to that person's superior body to compel him to comply with his obligations.

§ 62

Storage and Delivery up of Documents

- (1) Arbitration commissions shall store the written records of their activities and their register for a period of 2 years.
- (2) The storage period shall commence on the first day of the calendar year following the date of the conclusion of the matter or, in the case of the register, on the date of the last entry.
- (3) After the expiry of the storage period the records and register shall be delivered to the area court having jurisdiction for the area in which the arbitration commission operates.

VI

Concluding Provisions

§ 63

The Minister of Justice shall, in conjunction with the relevant central bodies, have the power to take any measures which may be necessary to give effect to this Order. To this end he may issue regulations.

§ 64

- (1) This Order shall come into force on 1 January 1983.
- (2) At the same time the Order of the Council of State of the German Democratic Republic of 4 October 1968 on the Election and Operation of Arbitration Commissions — Arbitration Commissions Order — (Law Gazette I No. 16 p. 299) in the version of the Law of 19 June 1975 on Court Proceedings in Civil, Family and Employment Matters — Civil Procedure Order — (Law Gazette I No. 29 p. 533) and the First Regulation of 7 May 1973

on the Arbitration Commissions Order — Order on the Status, Duties and Mode of Operation of Arbitration Commissions Advisory Councils under Directors of Area Courts and Praesidia of District Courts (Advisory Councils Order) — shall be repealed.

It has not been possible for the purpose of this thesis to witness a hearing before a social court at first hand in spite of attempts (with the cooperation of the GDR Embassy in London, the Ministry of Justice and the Lawyers' Association of the GDR) to do so and in spite of personal contact with members of disputes commissions in Berlin and Aue. A major problem was ascertaining information regarding hearings: they were, as we have seen, convened quickly and informally; they were not notified to any central authority or published outside the social group immediately concerned with the hearing. Furthermore, work on this dissertation began in 1988, and by late 1989 the GDR was already in decline, and the social courts appear to have ceased functioning by late 1989/early 1990¹. The following selection of reports of cases (summarized in my own words rather than translated) heard by social courts is therefore derived from written sources.

Case 1: Employment dispute heard by the disputes commission at the Reichsbahnamt Zwickau "7th October" works²

The hearing took place on an unspecified date in 1952 before a commission of four, two representatives of management and two of the trades union. The hearing was in public and was said to be binding on the parties subject to right of appeal to the employment court (*Arbeitsgericht*). Decisions had to be reached unanimously (not by majority) failing which the case would in any event have been referred to the employment courts.

The case itself concerned a woman crane operator who claimed legally due supplements for work done on Sunday. She had, before making her application, only been paid on the basis of actual time worked.

The hearing took place with almost no formality. The application appears to have been made orally. After seeking approval from the applicant on the composition of the commission, the members began to investigate the case by asking questions and obtaining documents (here the pay records). In the course of its inquiries the commission was able to establish that the crane driver had indeed been required to work on Sundays and upheld her claim. It decided therefore that she should receive back pay in respect of the supplements due.

1 Interview with E. Krebs 27.2.1990

2 Reported in *Arbeit und Sozialfürsorge* 22/1952 pp. 564-565

The hearing is reported to have been conducted in a matter of fact but conciliatory fashion and is said to have had a positive effect on those who witnessed it, one of whom is reported as saying, "This way we can see that justice is not just being spoken — as has unfortunately often been the case so far — but is actually being done". The article describing the hearing praises the conciliatory approach of the commissions and the value of "on the spot" hearings and alludes to the political significance thereof.

[Comment: This scant and informal report of activity at the "7th October" works is important as it appears to be the first written record of a hearing of this type and it pre-dates the first formal legislation in 1953.]

Case 2: Employment dispute — worker whose absence causes damage may be held liable³

The disputes commission of VEB R. decided on 6 August 1981 that a worker whose culpable absence from work caused the loss of a shift's work could be held liable for the material damage caused thereby.

The four respondents to the application worked on a continuous shift system as die-moulders. On 24 June 1981 during the course of the day they drank alcohol to excess and were unable to start work at the beginning of their shift at 10.00pm as they were supposed to. The whole shift was thus abortive. The same occurred on 26 June, and the enterprise applied to the disputes commission on the basis of material responsibility for damages amounting to 6,807 Marks. The disputes commission found that the respondents had indeed caused the loss and ordered them to pay damages accordingly.

The basis of that decision was:

The fact that the respondents failed to start work on time on 24 and 26 June caused disruption to production, which in spite of urgent steps taken, could not be avoided. Thus three Siemens-Martin furnaces could not be tapped off as they should have been. The ensuing waiting time adversely affected the quality of the steel giving rise to a loss in its value. Furthermore it was necessary to heat the furnaces that had not been tapped off beyond the normal time while replacement staff were found, giving rise to extra costs for the provision of heating oil, compressed air and electricity amounting to 4,807 Marks.

The respondents' failure to appear for work meant extra work for those who had come to work

³ Reported in *Neue Justiz* 9/1982 pp. 423-424

On the shift and they had to be paid an understaffing allowance of 108.00 Marks. In addition the enterprise incurred travelling costs of 6 Marks because they had sent out to the respondents' flats on 24 June to bring them in to work.

The damages caused by the respondents were made up as follows:

115.40 M	diminution in value (pan A)
1,770.00 M	diminution in value (pan B)
4,807.00 M	extra energy costs
108.60 M	understaffing allowances
6.00 M	travel costs
<hr/>	
6,807.00 M	

These were the damages that could be directly proved as a result of the respondents' failure to start work.

The respondents knew that the enterprise, and in particular their shift, was short of staff. They also knew that meeting production needs would be made more complicated, indeed almost impossible, by the absence of a number of workers. Only thanks to the prudence of the shift management and the exemplary willingness of the respondents' colleagues were further losses avoided.

The respondents all had sufficient production experience to be aware of the fact that their absence from work would cause disruption to production and thereby a loss of quality and other damage. The disputes commission was of the view that the four respondents were all guilty of conditionally wilful negligence and were responsible for the whole of the damage directly caused in accordance with § 261(3) of the Employment Code.

[Comment: We are told in an editorial comment following the case report that as a result of the case the director of the enterprise concerned sent around an organizational memo on the subject of lost shifts after agreeing it with the enterprise union, an example of the way in which a hearing was supposed to be used to have wider effect beyond the individual circumstances of the particular case.

The case is typical of many reported in relation to material responsibility, a matter that management was legally bound to take up to maintain order and discipline and production levels⁴. The disciplinary effect of such proceedings is obvious; indeed the editorial note informs readers

4 Cf. §§ 265-266 AGB (GBl. I 1977 Nr. 36 p. 405)

that the decision of the commission and the memorandum sent both met with the universal approval of other workers.

Finally it should be noted that this case appears to be the first reported decision of a social court, earlier decisions forming the subject of reports being cases heard on appeal. It appears to establish no new law, for there were many cases on material responsibility going up to the Supreme Court, and it must therefore be presumed that it was reported, over a year after the event, to give a fillip to the status of the social courts following the legislation passed in March 1982.]

Case 3: Jurisdiction over petty crime — minor ordered to pay damages and undertake unpaid work⁵

This case reports a decision of the arbitration commission of Finsterwalde of 2 October 1986.

The case came before the commission by referral in respect of a breach of regulation. A minor, D., had smashed the window of the editorial office of a newspaper, *Der Lausitzer Rundschau*, at about 9pm on 23 August 1986. He admitted what he had done, but said that he had not gone out to break the window but had been angry at having been jilted by his girlfriend. At the time of the incident he had been under the influence of alcohol. He had not used anything to break the window but had smashed it with his hand.

At the hearing D. expressed his willingness to pay for the damage. He had already contacted the editorial office of *Der Lausitzer Rundschau* and apologized for his behaviour. The apology had been confirmed by the manager of the office.

D. had been an apprentice with the railway (Deutsche Reichsbahn) since 1 September 1986. His superior, who attended the hearing, confirmed that his behaviour had been good during the preceding week. His performance and behaviour were on occasions very good.

The damages to be made good were the cost of temporary boarding put up after the incident, and the cost of a complete new window. The invoice would be sent to the accused after completion of repairs.

The arbitration commission, after hearing the case, confirmed the accused's undertakings
(a) to pay the cost of the damage on receipt of the invoice, and

5 *Der Schöffe* 4/1987 p. 92

(b) to be to make input work in his spare time for the general good of the community.

In accordance with § 53(3) SchKO the local authority was to fix when and where the work was to be done.

[Comment: The clear facts and admission of guilt make this a text book case for hearing by a social court. Note the inquiry into the boy's general behaviour and his voluntary assumption of his obligations to make restitution and subject himself to an educational measure. The case report, incidentally, bears the number 23/86 implying that by October the Finsterwalde commission had already dealt with 22 cases — over two a month.]

Case 4: Jurisdiction over a minor civil matter — neighbours' dispute⁶

This case reports a decision of the arbitration commission, Berlin Johannisthal-Nord, of 22 May 1986.

For a number of months the respondent had been complaining about excessive noise from the applicant's television in a neighbouring flat. The reason for the loudness of the volume was said to be the deafness of the applicant's cohabitor, although the applicant denied that the volume was in fact too loud, saying it was normal.

At the beginning of March 1986 there were further arguments between the parties about the volume of the television. In spite of the fact that the respondent's son had spoken to the applicant personally the noise continued, and the respondent in anger had torn down the applicant's aerial which was fixed next to the former's window, rendering reception impossible. By application dated 7 March 1986, which reached the arbitration commission on 30 April 1986, the applicant claimed damages under the relevant law for wrongful damage to the aerial.

The arbitration commission heard the case with both parties present and advised them at length on § 328 Civil Code⁷ and §§ 34ff. of the Berlin By-laws and on noise prevention generally. It warned the respondent that her damaging the aerial had been unlawful and was not the appropriate means of dealing with a residential dispute. Since the unlawful behaviour of the respondent was beyond dispute, she was ordered to pay damages under § 330 Civil Code.

6 *Der Schöffe* 1/1987 p. 24

7 GBl. 1975 I Nr. 27 p. 465ff.; the section allowed a person suffering nuisance to seek an order stopping it and restraining the party committing it from continuing it

The report goes on to say that the respondent showed that she recognized the wrong in her behaviour, and that as a result of the hearing the following was ordered:

1. The respondent undertook to see that the television aerial damaged by her at the beginning of March 1986 was repaired by an engineer before 30 June 1986 and to bear the costs of the repairs.
2. The agreement was confirmed by the commission.

[Comment: The case reports no unusual or strange points of law but illustrates the approach of social courts in endeavouring to confirm an agreement reached rather than imposing remedies on the parties, and the concern of the social courts to explain the law affecting the dispute. Note, however, the delay in the application being dealt with.]

Case 5: Appeal on an employment dispute from disputes commission to district court to regional court to supreme court⁸

The employee had been employed at his enterprise since 1983 and had been working for some time there as a software engineer. He was given a severe reprimand on 17 February 1988 for having stayed off work without permission from 11 January to 8 February 1988.

He appealed against the reprimand to the disputes commission and applied at the same time for payment of his salary which had been docked. The commission refused his application, and the district court decided the case the same way, both upholding the employer's view that the absence was unwarranted as the employee was neither on holiday nor on study leave.

The regional court found again for the employer.

The President of the Supreme Court intervened by way of cassation⁹ on the ground that § 182 Employment Code¹⁰ had not been applied. The cassation was upheld.

The reprimand remained unaffected: the employee had not given the employer adequate information about his absence from work; no holiday had been taken, and there was no medical

8 Oberstes Gericht Urteil vom 29.12.1989 OAK 34/89 *Neue Justiz* 5/1990 pp. 222-223

9 Cassation was a power given to the Supreme Court and regional courts to intervene to quash decisions wrong in law (§ 160 ZPO, § 311 StPO). Cassation could be commenced at the instigation of the President of the Supreme Court (as in this case) or the Procurator General.

10 § 182 AGB gave a worker the right to paid leave for public and military service, education, training and examinations.

certificate in respect of illness. However, the Supreme Court held that the courts and the commission had failed to establish whether there were other good reasons for absence from work (which would be paid). The employee had been engaged in a course of distance learning in information technology entitling him to leave¹¹. Such leave fell to be paid under § 182 Employment Code. The employee had had to attend various courses in January/February 1988 and take examinations. It was not open to the enterprise to refuse leave for such purposes. The decision of the regional court was thus overturned as irregular, and the case was referred back to the district court to establish the precise amount of time off due to the employee and hence the amount of payment due to him.

[Comment: This is one of the last reported cases concerning the social courts but is also interesting in that it illustrates the way in which all the courts fell under the ultimate control of the Supreme Court which could intervene at any stage to rectify injustice. Note also that the disputes commission's initial involvement appears to have been as a tribunal of appeal in respect of a disciplinary measure imposed by the enterprise.]

Case 6: An employment case illustrating the role of the procurator in relation to the work of the disputes commissions¹²

The procurator of the Cottbus district had established that the management of VEB G. was not taking adequate steps to respond to recommendations made by the disputes commission at the enterprise. This failure was leading to continued breaches of employment legislation which in turn was causing legal disputes regarding wages and related matters. The procurator lodged a protest pursuant to §§ 38 and 39 of the Procuracy Law¹³.

The report makes the following points:-

The 13th Plenum of the the Central Committee of the SED had emphasized the need to maintain socialist legality as a prerequisite to fulfilling the needs of the economy and to improving working and living conditions.

11 Anordnung über die Freistellung von der Arbeit sowie über finanzielle Regelungen für das Fern- und Abendstudium und die Weiterbildungsmaßnahmen an den Hoch- und Fachschulen vom 1.7.1973 (GBl. I Nr. 31 p. 305) in the version of 1.7.1981 (GBl. I Nr. 24 p. 299)

12 Protest des Staatsanwalts des Bezirks Cottbus vom 24. Januar 1975 PSF 317/IV - 113 reported in *Neue Justiz* 12/1975 pp. 377-378.

13 Gesetz über die Staatsanwaltschaft der DDR vom 17.4.1963 (GBl. I 1963 Nr. 4 p. 57). The protest was a form of action which could be taken by the procuracy pursuant to its general duty to oversee the administration of justice. The application could be directed against state organs, combines, cooperatives and other bodies of a corporate nature.

Combines and Publicly Administered Enterprises of 28 March 1973¹⁴ provided that managers of enterprises were obliged to create conditions conducive to worker cooperation and participation and to work closely with the state and social organs of the administration of justice. That principle was contravened if managers failed to comply with their duties under § 65 KKO¹⁵ to support and strengthen the work of the disputes commissions with a view to upholding the legally guaranteed rights of workers and maintaining order, safety and discipline. The experience of the disputes commission must be drawn on with a view to improving management within the enterprise, and, in particular, scrupulous regard must be had to recommendations made pursuant to §§ 22 and 23 KKO¹⁶; steps taken as a result of recommendations were to be reported at staff and trades union meetings. Recommendations made by disputes commissions were a specific form of organized participation of the whole work force in the management and development of society. Their purpose was to ensure that the causes and conditions leading to legal disputes and breaches of the law could be remedied, quite apart from the individual case concerned, and to see that shortcomings and illegalities were overcome.

It would detract from the effectiveness of hearings before disputes commissions if the two week period prescribed for a response to recommendations was not adhered to, leading to laxness in monitoring any internal rules made as a result of recommendations received.

Investigations by the procuracy had revealed the following breaches to which attention had been drawn by the disputes commission:

1. Contracts of employment were defective in that they gave only general job descriptions without specifying the principal remit of jobs. This — as the disputes commission had already indicated in a recommendation — had led to uncertainty on the part of employees;
2. Contrary to the then prevailing legislation, no lists were displayed giving details of work categories. As a result of a recommendation a list had been drawn up, but it had not been agreed with the trades union;
3. Employees had from time to time been paid according to the whims of individual managers instead of in accordance with the relevant work categories, contravening the principle of payment

14 Verordnung über die Aufgaben, Rechte und Pflichten der volkseigenen Betriebe, Kombinate und VVB vom 28.3.1973 (GBI. I 1973 p. 129)

15 § 62 KKO 12.3.1982

16 § 21 GGG 25.3.1982

The disputes commission had established the existence of circumstances conducive to employment disputes, and no proper steps had been taken. The report concludes: "The maintenance of legality and the enhancement of safety, order and discipline are above all matters of political and ideological education. Thus it is necessary that illegality should be eradicated and steps should be taken to ensure close cooperation with the disputes commission based on a relationship of trust and to encourage the employees at the enterprise to mobilize themselves to fulfil their legal and political duties".

[Comment: This is not strictly a case report in the sense that a court was involved. The protest was a legal step taken by the procurator where the law was not being complied with. It took the form of a requirement on the part of the recipient to respond within a given time to the procurator's questions regarding the running of an organization's affairs. Failure to comply could result in formal court proceedings.

A note by Ruth Sorge, the procurator concerned, confirms that VEB G. subsequently mended its ways and that as a result of the intervention a new spirit of trust and cooperation was brought about, including regular meetings between management and the chairman of the disputes commission.

Clearly the case was reported for its propaganda effect rather than because of any special legal principle involved.]

APPENDIX C: FORMS AND MATERIALS¹

1. Summons (blank form)²

HEARING OF THE DISPUTES COMMISSION

of the _____ section

of _____

A hearing of the disputes commission is to take place on _____

at _____ o'clock

(Name of Applicant)*

(Name of Respondent)*

(Name of Accused)*

The subject of the hearing is an application/referral decision relating to

All colleagues are invited to attend.

Every person present has the right under § 14(2) of the Disputes Commissions Order of 4 October 1968 (Law Gazette p.287) to express his opinion on the facts, causes and conditions of the dispute/breach, the conduct of the parties and the measures required to resolve the dispute.

Chairman of the disputes commission

* Delete if not applicable

1 Forms were all provided by Edgar Krebs, chairman of disputes commission, Aue.

2 Although these forms were out of date (in that they still referred to the Disputes Commissions Order of 1968), old forms appear to have remained in use, even in 1990.

BERATUNG DER KONFLIKTKOMMISSION

des Bereiches

des

(Name des Betriebes)

Am

findet um

Uhr

im

eine Beratung der Konfliktkommission statt.

(Name des Antragstellers*.)

(Name des Antragsgegners*.)

(Name des beschuldigten Bürgers*.)

• Gegenstand der Beratung ist der Antrag / die Übergabeentscheidung wegen

Alle Kollegen werden dazu eingeladen.

Jeder Teilnehmer hat gemäß § 14 Abs. 2 der Konfliktkommissionsordnung vom 4. Oktober 1968 (GBl. I S. 287) das Recht, seine Meinung zum Sachverhalt, zu den Ursachen und Bedingungen des Rechtsstreits / der Rechtsverletzung, zum Verhalten der Beteiligten und über erforderliche Maßnahmen zur Überwindung des Konfliktes darzulegen.

Vorsitzender der Konfliktkommission

• Nichtzutreffendes ist zu streichen.

(516) 1744 Ag 219/P 4o/82 1oo-4

2. Order (from real case)

ORDER

The following members of the disputes commission participated at the hearing of the disputes commission of the adult and vocational training section of the Council for the Area of Aue on 17.5.1989:

Coll. Krebs
(Chairman of the Hearing)

Colleague Braunert
Colleague Seliger
Colleague Wilhelm
Colleague Heidrich

The composition of the disputes commission complies with the requirements of §§ 5 and 6(1) of the Disputes Commissions Order of 12 March 1982 (Law Gazette I No 13 p. 274)

Applicant/Referring Body: Karin Bloszik d.o.b. 03.07.1957

Address: 9400 Aue, Schneeberger Str. 52

Respondent/Accused: Adult training dept. Aue d.o.b.
Aue Kindergarten, Beethovenstr. 5

Address: represented by colleague Schulze — head teacher

(In the case of enterprises insert its designation and address together with name and description of its representative).

The subject matter according to the application/referral decision* received on 30.04.89 was as follows:

*** Delete if not applicable**

Facts and reasons for the decision:

On 28.4.89 the Applicant applied to the appropriate disputes commission of the adult and vocational training section for the correct application of §§ 67-69 of the Employment Code to be guaranteed in relation to the preparation of her final assessment. She gave reasons for that in her application. At the hearing it was established beyond doubt that there had been a number of contraventions of the above mentioned sections on the part of the head teacher of the Aue Kindergarten, Beethoven Str. 5, Colleague Schulze. Contrary to the express provisions of the law, neither the members of the collective nor the Applicant herself had been invited to discuss the assessment. An express request to show the complainant the assessment was not complied with. Wording that gave rise to dispute and which has been the subject of this hearing in front of the collective and in the presence of the complainant has had to be clarified.

PS. The complainant is required, forthwith on her return from her holiday, to contact the head teacher of the Kindergarten to agree times for a collective discussion and the handing over of the assessment. The disputes commission recommends that this be done by 15.6.89.

Decision:

- 1. The person responsible for writing the assessment must comply with the obligations arising out of § 67 of the Employment Code. Under § 67(2) and sentence 2 of § 67(1) an assessment or report on performance must be handed to the applicant without delay. That is compulsory under the Code.**
- 2. The criteria for preparation of the assessment set out in § 68 (1) of the Employment Code must be strictly observed in drafting the new assessment.**
- 3. An assessment is an act of state management, and signature by the section of enterprise trades union committee is of no legal effect and must not appear.**
- 4. Under § 68(2) of the Employment Code the head of the Kindergarten must ensure that the assessment is discussed in the collective and that the employee, Mrs Bloszik, is able to participate in the discussion.**

The following recommendations were given:

The decision, recommendations and right of appeal were made known orally to the parties at the hearing.

Under § 53(1) of the Disputes Commissions Order of 12.3.1982 (Law Gazette I p. 274) the decision can be appealed in writing to the appropriate area court within 2 weeks after receipt. The appeal can also be made orally at the legal filing office of the area court.

Under § 58 of the Disputes Commissions Order this order may, on application, be declared enforceable by execution.

Under § 69 of the Employment Code you have the right as complainant to appeal to the area court of Aue against the contents of your assessment. Time limit 3 months after handing over the assessment.

Aue, 17.5.89

[signature]
Chairman of the hearing

Distribution (Applicant, Respondent, Accused, Area Procurator, referring body, local council):*

Copies: 1 x Commission
1 x Applicant
1 x Respondent (Coll. Schulze)
1 x Area Schools Council

Note for trades union members:

Every trades union member has the constitutional right to be represented by the union in relation to his employment rights. Thus, in the event of an appeal to the area court against an order of the disputes commission he can apply to his union committee or union executive for legal representation under § 5(1) of the Civil Procedure Order.

* Underline as applicable

Beschluß

In der Beratung der Konfliktkommission

des Bereiches Volks- und Berufsbildung

des Rates des Kreises Aue am 17.5.1989
(Name des Betriebes)

haben folgende Mitglieder der Konfliktkommission mitgewirkt:

Koll. Krebs

Leiter der Beratung

Kollegin Braunert

" Seliger

" Wilhelm

Kollege Heidrich

Die Zusammensetzung der Konfliktkommission entspricht den Anforderungen gemäß §§ 5 und 6 Abs. 1 der Konfliktkommissionsordnung vom 12. März 1982 (GBl. I Nr. 13 S. 274)

Antragsteller/~~Übergebendes Organ~~ Karin Bloszik 03.07.1957
geb. am:

wohnhaft 9400 Aue, Schneeberger Str. 52

Antragsgegner/beschuldigter

Bürger: Abt. Volksbildung Aue geb. am:

Kindergarten Aue, Beethovenstr. 5

wohnhaft: vertreten durch Kolln. Schulze - Leiterin -

(Bei Betrieben sind Bezeichnung und Anschrift sowie Name und Funktion des Vertreters des Betriebes anzugeben).

Der Beratung lag folgende(r) am 30.4.89 eingegangene(r)

Antrag/Übergabeentscheidung* zugrunde:

* Nichtzutreffendes ist zu streichen.

Entscheidung:

1. Der für die Abfassung der Beurteilung zuständige Leiter hat antragsgemäß die Maßnahmen aus dem § 67 AGB zu realisieren. Gem. Abs. 2 des § 67 und Satz 2 Abs. 1 ist die Beurteilung oder Leistungseinschätzung dem Antragsteller unverzüglich auszuhändigen. Das ergibt sich zwingend aus dem Gesetz.
2. In der Neuauflage der Beurteilung sind die Kriterien für die Ausfertigung aus dem § 68 Abs. 1 AGB strikt zu beachten.
3. Die Beurteilung ist ein staatlicher Leitungsakt, Unterschriften der BGL, SGL usw. sind rechtsunwirksam und haben zu unterbleiben.
4. Gem. § 68 (2) AGB hat die Leiterin des Kindergartens zu sichern, daß die Beurteilung im Arbeitskollektiv beraten wird und die Werktätige, hier Frau Bloszik, an der Beratung teilnehmen kann.

Es wurden folgende Empfehlungen gegeben:

Sachverhalt und Gründe für die Entscheidung:

Die Antragstellerin beantragte am 28.4.89 vor der zuständigen Konfliktkommission der Abt. Volks- und Berufsbildung die richtige Anwendung der §§ 67 - 69 AGB bei der Ausfertigung ihrer Abschlußbeurteilung zu garantieren. Sie legte dabei die im Antrag aufgeführten Gründe vor. In der Beratung wurde zweifelsfrei festgestellt, daß mehrfach Verstöße gegen o.a. Paragraphen durch die Leiterin des Kindergartens Aue, Beethovenstr. 5, Kollegin Schulze, vorlagen. So waren entgegen ausdrücklicher im Gesetz bestimmter Normen weder die Mitglieder des Kollektivs und die Antragstellerin selbst zur Beratung über die Beurteilung hinzugezogen worden. Dem ausdrücklichen Verlangen, der Klägerin die Beurteilung auszuhändigen, war nicht gefolgt worden. Strittige Formulierungen, die in der nun zu folgenden Beratung vor dem Kollektiv und in Gegenwart der Klägerin beraten werden müssen, sind zu klären.

PS. Die Klägerin wird beauftragt, sich unmittelbar nach Rückkehr aus ihrem Urlaub, mit der Leiterin des Kindergartens in Verbindung zu setzen, um die Termine für die Kollektivberatung und die Aushändigung der Beurteilung abzustimmen. Die Konfliktkommission empfiehlt hierzu einen Zeitraum bis zum 15.6.89.

Die Entscheidung, die Empfehlungen und die Rechtsmittelbelehrung wurden den Teilnehmern in der Beratung mündlich bekanntgegeben.

Gemäß § 53 Abs. 1 KKO vom 12. 3. 1982 (GBl. I S. 274) kann gegen die Entscheidung innerhalb von 2 Wochen nach Empfang schriftlich Einspruch beim zuständigen Kreisgericht eingelegt werden. Der Einspruch kann auch mündlich bei der Rechtsantragsstelle des Kreisgerichts zu Protokoll gegeben werden.

Der Beschluß der Konfliktkommission kann gemäß § 58 KKO auf Antrag des Anspruchsberechtigten für vollstreckbar erklärt werden.

Gem- §69 AGB haben Sie als Klägerin das Recht,
gegen den Inhalt der Beurteilung Einspruch beim
Kreisgericht Aue einzulegen. Frist 3 Monate nach
Aushändigung d. Beurteilung
Aue, , den 17.5.89



Leiter der Befähigung

Verteiler (Antragsteller, Antragsgegner, beschuldigter Bürger, Staatsanwalt des Kreises, übergebendes Organ, örtlicher Rat):*

Verteiler: 1 x Kommission
1 x Antragsteller
1 x Antragsgegner (hier Kolln. Schulze)
1 x Kreisschulrat

Hinweis für Gewerkschaftsmitglieder:

Jedes Gewerkschaftsmitglied hat das satzungsmäßige Recht, die Gewerkschaften zur Vertretung seiner Rechte aus dem Arbeitsrechtsverhältnis in Anspruch zu nehmen. Es kann dementsprechend, legt es gegen den Konfliktkommissionsbeschluß Einspruch beim Kreisgericht ein, bei seiner gewerkschaftlichen Leitung oder seinem gewerkschaftlichen Vorstand Antrag auf Prozeßvertretung gem. § 5 Abs. 1 der Zivilprozeßordnung stellen.

* Zutreffendes unterstreichen.

3. Acknowledgement of Receipt of Recommendation (blank form)³

At a hearing of the the disputes commission of

the _____ section of _____ on _____

(Name of enterprise)

relating to _____

the following recommendations were made to _____

Under § 22 of the Disputes Commissions Order of 4 October 1968 (Law Gazette I p. 287) the disputes commission must be notified within 2 weeks of the steps taken in relation to the recommendation

Chairman of the hearing

Tear off here

I confirm having received on..... the recommendations in relation to.....contained in the order of the disputes commission dated.....

.....
Signed

3 Form out of date (cf. footnote 2)

Empfangsbestätigung für Empfehlungen

In der Beratung der Konfliktkommission des Bereiches _____

des _____ am _____
(Name des Betriebes)

wegen _____

wurden folgende Empfehlungen an _____ beschlossen:

Entsprechend § 22¹ der Konfliktkommissionsordnung vom 4. Oktober 1968 (GBl. I S. 287) ist innerhalb von 2 Wochen der Konfliktkommission mitzuteilen, was auf Grund der Empfehlungen veranlaßt worden ist.

_____, den _____

Leiter der Beratung

.....
Hier abtrennen

Ich bestätige hiermit, die im Beschluß der Konfliktkommission vom _____ wegen

_____ enthaltenen Empfehlungen am _____ erhalten zu haben.

Unterschrift

4. Postcard inviting members to training session (blank form)

Aue,.....

INVITATION

On behalf of the secretariat of the FDGB area executive, Aue, the secretary of your circle cordially invites Colleague
Enterprise
to the monthly training session for all disputes commission members by the organs of the administration of justice or FDGB area executive of Aue.

Time:

Place:

Topic:

Please show this invitation to your union chairman!

.....
Signed Circle Secretary

FDGB Area Executive
Law Commission
Aue (Saxony)
9400

Printed Matter

To Colleague:

Aue, den _____

Einladung

Für die monatliche Anleitung aller Mitglieder der Konfliktkommissionen durch die Rechtspflegeorgane bzw. durch den FDGB-Kreisvorstand Aue lädt Dich

Kollegin/Kollege _____

Betrieb _____

Dein Zirkelsekretär im Auftrag des Sekretariats des FDGB-Kreisvorstandes Aue recht herzlich ein.

Zeit: _____

Raum: _____

Thema: _____

Die Einladung ist Deinem BGL-Vorsitzenden vorzuzeigen!

Unterschrift - Zirkelsekretär

FDGB-Kreisvorstand
Rechtskommission
Aue (Sachs)
9400

DRUCKSACHE

Kollegin

Kollege

5. Certificate of Honour

In recognition of meritorious work in the administration of socialist justice the medal of honour of the organs of the administration of justice in gold is awarded to Karl-Heinz Müller



ALS ANERKENNUNG
FÜR VERDIENSTVOLLE MITARBEIT
IN DER SOZIALISTISCHEN RECHTSPFLEGE
WIRD

KARL-HEINZ MÜLLER

DIE
EHRENNADEL
DER ORGANE DER RECHTSPFLEGE
IN GOLD
VERLIEHEN



Berlin 18.5.89

Dear Colleagues,

At the beginning of this year's elections to the disputes commissions the minister of justice, Hans-Joachim Heusinger, praised the work of the disputes commissions in our country at a meeting at the "Progress" People's Male Clothing Enterprise in Berlin. He said: The social courts in our Republic demonstrate that the enforcement of socialist law is not just a matter for experts but a matter for all working people and the duty of all state managers. By their work the disputes commissions prove that, in our Republic, popular justice dispensed at the grass roots coupled with strict observance of the law to a high legal standard constitute a whole.

For years — according to the statistics — 93 per cent of all employment cases heard by the disputes commissions have been decided by them correctly and conclusively. That means that working people have confidence in their decisions or that their decisions have been confirmed by the courts which have had the task of deciding workers' appeals. Another statistic: in 1987 the disputes commissions heard about 74,500 cases of which 57,000 were employment disputes.

There is a reason for my mentioning these figures in my report on the work of our disputes commission during our last period of office. For they clearly show that the disputes commissions administer justice with great expertise and sympathy, and that in the field of employment law they are good "judges".

My disputes commission has been especially concerned over the last period of office with the rights and duties of the enterprise and of members of staff under the Employment Code. Preserving order, safety and legality is of particular importance here. We are a trades union enterprise; we publish books on employment law and bring out a daily newspaper which unfailingly features legal issues, so we have to set an example when it comes to standards, otherwise we would have no credibility in the eyes of those who work here. Of course, we can all make improvements if state managers, union officers and commission members work closely with one another, but during the last period we have made good progress by sorting out problems before it comes to a dispute by seeking advice at an early stage on the legal position, by recognizing the rights of the unions to participate and by making proper proposals within the enterprise.

⁴ Report provided by Bettina Herzog, chairman of disputes commission at Tribune, Berlin.

But let's come to the legal work of our disputes commission: the number of hearings increased by comparison with the period 85/87. Then I reported to you on six hearings; this time it is eight. And in a few days' time, shortly after being elected and sworn in, our new commission will be put to the test.

All the hearings had to do with employment law. Six times the director had to bring material responsibility claims against drivers for negligent driving leading to accidents. In these cases we had to assess the damages claimed by the applicant, the effects of what had happened and all the surrounding circumstances, and take into account the character and previous work record of the employee concerned and consider the level of compensation to be paid below or up to the level of the monthly wage tariff.

In five cases the cases were decided in accordance with the application but took into account, for example in the case of Ulli Noack, his social conditions and financial commitments, and ordered payment by appropriate instalments. In the case of colleague Kofferschläger we fixed the level of compensation below the level of the damages that had been claimed.

In addition to those cases we had to decide two claims from employees who appealed against disciplinary measures taken against them. Both hearings involved an enormous amount of time and effort (almost too much for a social court operating on a voluntary basis) and entailed a great deal of research on both the facts and the law. In both cases the measures were confirmed by the disputes commission. In both these cases, as well as in the others, no reservations were expressed by the procurator in Treptow. The recommendations we made, at least in the hearings of the appeals against the disciplinary measures, were taken account of or accepted by the relevant manager responsible. All the more disappointing then that all our efforts in the case of our colleague, Kurt Gerhard, to exercise some educational influence to help him and put him on the right path were in vain. Repeated breaches of discipline made it necessary to dismiss him without notice. A worker who doesn't want to understand won't understand, and, as I have already indicated, the disputes commission will shortly have to deal with this colleague again.

Nine members were elected to our disputes commission in 1987, but we were like the famous ten little niggers — soon there were only six. Two colleagues stopped work at the press or in the editorial office. One colleague on the newspaper, Kerstin Rummel, took an agreed sabbatical.

You may imagine that with this number of members there were occasions when we fell below the minimum number of 4 members required for a hearing. That did indeed occur, and thus we were not able to come together in every case within the four week period. We hope that this will not be a problem for the new commission.

At this point, as chairman of the social court, I should like to extend a special word of thanks to Renate Mosebach, Karl Glienke, Horst Drusche and Edelgard Sasse — as you know, all long serving disputes commission members — for their willingness, support and reliability. They can always be relied on, and only have to be asked once.

In preparing this joint report, as disputes commission members we came to the conclusion: the disputes commission must pay even closer attention to the monitoring of its decisions. The best way to do that is for one member to take on a concrete task, since not everything should be left to be shouldered by the chairman. After all, we are supposed to act collectively in the interests of legal certainty in this respect, just as we do in preparing and hearing the case. But a word of warning is necessary here to avoid giving the impression that our decisions are reached right at the start and are always unanimous — no, there is sometimes a dissenting vote at a hearing, and that is as it should be, even if the majority decision must, of course, prevail.

Let's come back to where we started — to employment law in practice. The Employment Code is now the law that affects every working person the most. For that reason it is important that every manager, in particular, has sufficient knowledge in this area to be able to make hard and fast decisions and explain them. Naturally, members of staff must also know their duties as well as their rights. The Employment Code, and the shop steward, should always be a working partner for both staff and management.

Here at the press and at the newspaper there are several disputes commission members at the disposal of each trades union committee and to whom anyone can turn if legal advice is needed. That facility is often used, but, unfortunately, we members have never got round to keeping records. Perhaps that would be something that could usefully be done in the next term of office, since giving legal advice accounts for a substantial proportion of the work of the commission.

In the period that has just passed, cooperation between the commission and the trades union committee, and in particular with Annelies Urban, and with management has been close and good. The shop steward, trades union committee and representatives of the collective of the worker concerned have invariably come to every hearing. That is of great importance for the colleague who is applicant or respondent, since his interests must be safeguarded. In addition, it helps us towards a just decision.

In order to pronounce the law, you need, of course, the necessary knowledge. This has been taught to us on a practical and up to date basis at the training sessions. For that we should thank in particular Ilona Steiner as chairman of the law commission of the enterprise trades union. She has used the training sessions on many occasions as an opportunity to consider with us

commission members problems which have cropped up in our places of work.

Members of the disputes commission go about with their eyes open at work, as indeed they should, and we notice a lot of things that could be put right if everyone just thought and people with responsibilities really felt responsible. I don't want to go into detail now, and a lot is probably trivial — but even trivial things that are wrong need not just be left. Order, discipline and safety affect all of us — and that begins with small things like not always making sure that the door is closed when you go for lunch. Why encourage crime just because we can't be bothered? It's not that as a commission we are trying to get out of hearings! But every hearing by the commission that can be avoided because right from the beginning everything is on the right legal track is still a success as far as we are concerned. And with this in mind, the disputes commission should in future see that it makes use of its right to make recommendations even when there has not been a hearing.

In the name of all of us who have served on the disputes commission I should like to thank you for the trust you have placed in us and today wish the new commission that is elected all the best for the 89/91 term.

APPENDIX D: STATISTICS¹

TABLE 1: NUMBER OF SOCIAL COURTS			
	Total number	Disputes commissions	Arbitration commissions
1954	5,682	5,682	-
1961	14,728	14,728	-
1965	19,674 e	18,380 e	1,294
1970	27,317 e	22,050 e	5,267
1975	28,244	23,120	5,124
1980	30,595	25,358	5,237
1985	32,296	26,744	5,552
1986	33,383	27,831	5,552
1987	34,085	28,533	5,552
1988	34,085	28,533	5,552
1989	35,077	29,290	5,787

TABLE 2: NUMBER OF SOCIAL COURT MEMBERS²			
	Total number	Disputes commissions	Arbitration commissions
1954	45,456	45,456	-
1961	116,653	116,653	-
1965	154,720 e	152,222 e	2,498
1970	246,124 e	190,622 e	55,502
1975	270,657	217,209	53,448
1980	284,119	229,829	54,290
1985	293,732	237,821	55,911
1986	306,478	250,567	55,911
1987	310,985	255,074	55,911
1988	310,985	255,074	55,911
1989	315,085	258,168	56,917

1 The ultimate source of statistical information on the social courts was the Ministry of Justice. The figures in this statistical appendix are derived either from the relevant Statistische Jahrbücher or directly from the Ministry. The main printed sources of statistical information are indicated in the Bibliography by an asterisk. An e next to a figure indicates an estimated figure.

2 No allowance has been made in the totals for potential overlapping membership.

TABLE 3: MEMBERS OF SOCIAL COURTS AS PERCENTAGE OF POPULATION²			
	Population (000)	Members (000)	% of population
1954	18,002	45.5	0.25
1961	17,079	116.7	0.68
1968	17,087	178.9	1.05
1977	16,758	279.1	1.67
1982	16,706	287.7	1.72
1984	16,671	293.7	1.76
1987	16,661	311.0	1.87
1988	16,675	311.0	1.87
1989	16,434	315.1	1.92

TABLE 4: MEMBERS OF SOCIAL COURTS BREAKDOWN BY SEX				
<i>% women</i>				
	1975	1980	1985	1989
Disputes commissions	42.5	43.6	45.4	47.1
Arbitration commissions	n.a.	n.a.	47.3	51.8

TABLE 5: MEMBERS OF ARBITRATION COMMISSIONS BY AGE		
<i>% of members</i>		
	1984	1989
Under 30 years old	13.1	13.7
31 – 40	23.3	27.8
41 – 50	30.3	26.8
51 – 65	28.5	26.8
Over 65	4.8	4.9
Total	100.0	100.0

TABLE 6: MEMBERS OF SOCIAL COURTS BREAKDOWN BY SOCIAL TYPE 1989			
% of members			
	All social courts	Disputes commissions	Arbitration commissions
Workers	52	55	39
Coop members	3	*	16
Others	45	45	45
Total	100	100	100

Note: See Table 7 for further breakdown for arbitration commissions

TABLE 7: MEMBERSHIP OF ARBITRATION COMMISSIONS BY SOCIAL TYPE		
% of members		
	1984	1989
Workers	38.6	38.8
Coop members	15.8	15.5
Employees	27.0	26.7
Intelligentsia	9.2	8.9
Other	9.4	10.1
Total	100.0	100.0

TABLE 8: MEMBERS OF SOCIAL COURTS BY POLITICAL PARTY MEMBERSHIP			
% of members	1982	1987	1989
Disputes commissions			
- SED	26.0	26.0	25.5
- other	3.3	3.2	3.4
- no party	70.7	70.8	71.1
Total	100.0	100.0	100.0
Arbitration commissions	1984	1989	
- SED	38.8	38.8	
- other	13.4	16.1	
- no party	47.8	45.1	
Total	100.0	100.0	

TABLE 9: MEMBERS RE-ELECTED				
% of members				
	1975	1980	1985	1989
Disputes commissions	60.3	67.5	68.0	74.8
Arbitration commissions	n.a.	n.a.	69.9	68.3

TABLE 10: LOCATION OF ARBITRATION COMMISSIONS			
% of total			
	1980	1985	1988
In communities	68.3	67.2	67.2
In towns and residential areas	30.1	31.1	31.1
In producers' coops	1.6	1.7	1.7
Total	100.0	100.0	100.0

TABLE 11: NUMBER OF SOCIAL COURT HEARINGS			
	Total Number	Disputes commissions	Arbitration commissions
1954	8,384	8,384	-
1965	61,783 e	59,200 e	2,583
1981	84,446	65,282	19,164
1985	93,329	73,964	19,365
1986	88,573	70,303	18,270
1987	92,148	74,490	17,658
1988	89,911	72,736	17,175
1989	85,143	69,075	16,068

TABLE 12: HEARINGS — BREAKDOWN BY TYPES OF CASES				
Number				
Disputes commissions	1984	1986	1988	1989
Employment	54,547	53,300	57,242	54,093
Minor offences	13,298	12,511	11,240	10,844
Misdemeanours	3,527	3,386	3,279	3,221
Breaches of regulation	713	645	589	533
Educational breaches	186	119	77	63
Civil disputes	332	342	309	321
Total	72,603	70,303	72,736	69,075
Arbitration commissions	1986	1987	1988	1989
Minor offences	5,677	5,439	5,108	4,870
Misdemeanours	6,401	6,319	6,126	6,052
Breaches of regulation	614	707	753	564
Educational breaches	455	408	355	267
Civil disputes & others	5,123	4,785	4,833	4,315
Total	18,270	17,658	17,175	16,068

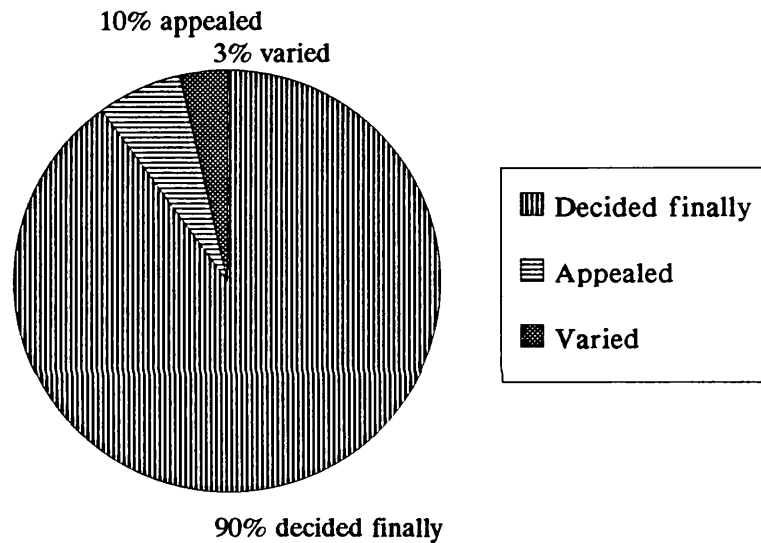
TABLE 13: PERCENTAGE OF CRIMINAL CASES REFERRED TO SOCIAL COURTS			
	Number Accused	Number Referred	% referred
Average 1970-74	97,818	24,018	24.6
1975	91,312	20,751	22.7
1980	99,881	19,442	19.5
1985	85,292	21,773	25.5
1986	82,753	20,651	25.0
1987	88,781	18,236	20.5
1988	86,413	18,880	21.8

Note: Figures for 1989 not available

TABLE 14: TYPES OF EDUCATIONAL MEASURE IMPOSED	
	%
Fine	56.6
Warning	40.8
Damages	35.6
Apology	10.6
Community service	9.0

- Notes: 1. Figures refer only to Vergehen
 2. Multiple measures imposed means that the total exceeds 100%
 3. 59% of fines imposed were under 150 Marks.

TABLE 15: APPEALS



- Notes: 1. Cf *Neue Justiz* 1978 p. 190 and 1982 p. 98
 2. Figures vary from source to source; it is possible that there is no really reliable information on the number of appeals.

TABLE 16: NUMBER OF RECOMMENDATIONS	
1984	10,924
1985	11,695
1986	9,669
1987	10,373

SOURCES

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Alper, B.S./Nichols, L.T. Beyond the Courtroom: Programs in Community Justice and Conflict Resolution (Lexington, Mass., 1981)

Amelungen, C. Werkschutz und Betriebskriminalität (Hamburg, 1960)

Amt für Erfindungs- und Patentwesen der DDR Neuererrecht. Textausgabe (Berlin, 1988)

1 An asterisk denotes a book or article containing statistical information.

A number of GDR periodicals contained (in almost every issue) an article or articles dealing directly or indirectly with the social courts. These included *Die Arbeit* (Verlag Tribüne, Berlin-Treptow), *Arbeitsrecht* (VEB Deutscher Zentralverlag, Berlin), *Arbeit und Sozialfürsorge* (VEB Deutscher Zentralverlag, Berlin), *Das Gewerkschaftsaktiv* (Verlag Tribüne, Berlin-Treptow), *Der Schöffe* (Staatsverlag der DDR, Berlin) and *Die Konfliktkommission Tribüne-Beilage* (Verlag Tribüne, Berlin-Treptow). It would have been impractical, and not illuminating, to include every article or mention in the bibliography. I have therefore concentrated on articles appearing in *Neue Justiz* and *Staat und Recht*, the two principal legal journals of the GDR. *Neue Justiz* continues to appear; *Staat und Recht* ceased publication in February 1991. Only articles specifically referred to or of particular interest from other publications are cited individually.

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1 Hereafter "EntOG"

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Interviews

Udo Wolf, General Secretary, Verband der Juristen der DDR, 18.7.1988 [Berlin]¹

Dr Heinz Hugot, Director, Stadtgericht, Berlin, 19.7.1988 [Berlin]¹

Dr Erich Buchholz, Dr Rolf Uhlmann, Faculty of Law, Humboldt Universität, Berlin, 19.7.1988 [Berlin]¹

Dr Friedrich Wolff, Dr Gregor Gysi, lawyers, Kollegium der Rechtsanwälte in Berlin, 20.7.1988 [Berlin]¹

Members of one of the 22 disputes commissions operating at Kabelwerk Oberspree, Berlin, 21.7.1988 [Berlin]¹

Edgar Krebs, chairman of disputes commission in the educational sector, Aue, 28.6.1989 [London]; 27.2.1990 [Karl-Marx-Stadt]²

Dr Maria Kozareva, Bulgarian lawyer, 9.8.1990 [London]

Dr Rolf Uhlmann, Faculty of Law, Humboldt University, Berlin, 28.8.1990 [Berlin]³

Ingetraud Matheus, Ministry of Justice (social courts section), expert and writer on arbitration commissions, 28.8.1990 [Berlin]⁴

Dr Frank Thiele, principal private secretary to the Minister of Justice, 28.8.1990 [Berlin]⁴

Bettina Herzog, legal editor of *Tribüne*, Berlin, chairman of disputes commission at *Tribüne*, 27 & 29.8.1990 [Berlin]⁵

Dr Stefan Otte, *Tribüne*, author of Die Konfliktkommission Ein Leitfaden at *Tribüne*, 29.8.1990 [Berlin]

Dr Wolfram Jatzlauk, formerly of law faculty, Potsdam-Babelsberg and Karl-Marx-Universität, Leipzig, 21.9.1991 [London]

Fanos Trebeshina, Albanian lawyer, 26.9.1991 [London]

Dr Maksim Haxhia, vice-dean and professor of penal law, University of Tirana, 10.4.1992 [Tirana]

Kudret Cela, Minister of Justice of Albania, 13.4.1992 [Tirana]

1 Interviews conducted before registration for this thesis; not fully documented

2 Herr Krebs also answered a detailed questionnaire on the workings of the disputes commissions and provided forms and materials from his own commission

3 Dr Uhlmann provided access to the law faculty library of the university and thereby to a number of unpublished dissertations

4 Frau Matheus and Dr Thiele provided access to Ministry of Justice figures where figures were not available or up to date in published sources

5 Frau Herzog provided me with unrestricted access for one day to the archives of her own commission and to the papers and reports sent to *Tribüne*, and permitted me to copy documents and reports therefrom