Law and Communist Reality in the Soviet Union

by Charles S. Maddock and Kazimierz Grzybowski

In the society of the Soviet Union, the interest of the collectivist state is put first, and law and its procedures are geared to the same collectivist purposes. Law must serve the state and its interests, and a truly independent judiciary and Bar, as we know them in the United States, do not exist.

IN ANY SOCIETY law is both a reflection of the basic principles underlying that society and an instrument by which those principles are carried forward. Law not only represents the substance of the principles by which the state lives, but it also mobilizes the full force of the state in the implementation of those principles. The legal system in actual operation is, therefore, an excellent window through which we can observe the true nature of a society.

In its own literature the Soviet Union describes the real Soviet man as a "person who puts the interest of society first and is imbued with a sense of collectivism". This same statement continues:

> It cannot be said, of course, that everybody in the USSR measures up to that ideal. There are some who pull against the stream, against the efforts and ideas of the masses. It is extremely difficult, in a comparatively short period of time even with conditions as they are in the Soviet Union, *to rid people of an individualist outlook* [emphasis supplied]. Century-old traditions and the influence of a world in which individualism is assiduously cultivated have their effect. But the experience of the USSR shows that gradually it can be done.[1]

The emphasis in the Soviet Union on the interest of the people in mass rather than on the individual as a separate person is also carried forward in the provisions of Article 125 of the Constitution of 1936 regarding freedom: "*In conformity with the interests of the working people, and in order to strengthen the socialist system,* the citizens of the USSR are guaranteed by law: (a) freedom of speech; (b) freedom of the press; (c) freedom of assembly, including the holding of mass meetings; (d) freedom of street processions . . ." (emphasis supplied).

Freedom is guaranteed to strengthen the system—not the individual—for it is the system, not the individual as a part of the system, that is important.

The concern for people in mass is also clearly emphasized in Soviet law. So long as disputes between individuals do not affect the collective man, Soviet substantive law, both civil and criminal, follows the patterns of law in the civil law countries. When individual activity could pose a threat to the collective or the collective idea, however, the law makes an abrupt turn.

Soviet laws defining crimes are designed to permit purely subjective decisions concerning the existence and nature of any threat to the state. The major device employed is broad general language in the definition of various crimes.[2] In several republics "antiparasite" legislation has been enacted providing punishment, including banishment, for any "able bodied citizens leading an anti-social, parasitic way of life, deliberately avoiding socially useful labor, and likewise those living on unearned income".[3] Similar laws are in effect covering other vaguely defined antisocial activity that can catch troublemakers of almost any description—these are the "hooliganism" laws.[4]

The toleration of vagueness in the definition of criminal activity—vagueness that is typified in such words as

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1. GRIGORIAN, SOVIET SOCIETY 192 (Novosti Press Publishing House).
2. 2 GSOVSKI & GRZYBOWSKI, GOVERNMENT, LAW AND COURTS IN THE SOVIET UNION AND EASTERN EUROPE 937, 946 (1960).
3. *Id.* at 965. See also, BERMAN, SOVIET CRIMINAL LAW AND PROCEDURE 3, 6, 9, 10, 11, 70 (1966); Grzybowski, *Soviet Criminal Law,* in PROBLEMS OF COMMUNISM, March-April, 1965, at 53.
4. 2 GSOVSKI & GRZYBOWSKI, *supra* note 2, 968-969, note 3.

"antisocial" and "socially unfit"—is one of the major differences between the Soviet and the United States legal systems. In the United States an individual is entitled to know with reasonable precision what conduct constitutes a crime. If the definition is not clear, the law will be held unconstitutional.

In addition to the acceptance of vague standards that would be wholly unacceptable in the United States, there is another basic difference in the Soviet approach to the definition of crime. In the United States criminal activity is divided into three broad general areas: serious crimes requiring intent; less serious crimes where either intent or negligence may be a basis for liability; and minor crimes, such as traffic violations, where the act alone carries the penalty.

In the Soviet Union, however, the basic definition of crime places emphasis on social danger, and there is no division of crimes based upon intent or negligence. All crimes are lumped together, and the act in relation to its threat to society is the determinant of guilt and, in most cases, the punishment to be imposed.[5]

The Soviet approach to the definition of crime permits an even more unusual concept—crimes by analogy. This was a practice followed extensively under Stalin. It was dropped for a period but has been reinstituted. Under this concept criminal liability may be imposed for a socially dangerous act not expressly proscribed by making the act a crime under that article of the criminal code which proscribes the act that most nearly approximates the act complained of.[6]

Perhaps the greatest departure from our system, however, is found in the Soviet practice of secret statutes. Although there is a general legal requirement that all legislation framed either by the legislature or the executive must be published, the same law that makes this requirement provides in Section 2 that some of the legislation may be withheld from publication on order of the authorities enacting the legislation. The practice of using secret statutes has been followed both during and since the Stalin era.[7]

Finally, the courts have had no difficulty in important cases in finding a person guilty of a crime that was not defined as crime at the time of the act but which was made a criminal offense thereafter.

The use of ex post facto laws, secret statutes and the other practices described is abhorrent to our society, for we are deeply concerned with the protection of individuals within the framework of a clearly defined set of rules. However, if one starts out with the philosophical premise that the interests of the society itself are paramount and that the ruling élite is best able to determine what is and is not in the interest of that society, one undoubtedly will have little difficulty in justifying the steps that are taken to protect that society.

Criminal Procedure Also Reflects Collective Philosophy

The procedures followed in the Soviet Union in the investigation and trial of criminal cases also reflect a greater concern for the interest of the state than the interest of the individual.

The Procurator General of the Soviet Union supervises the strict execution of the laws by all ministries and government departments and the strict observance of the laws by all officials and citizens. He is elected by the Supreme Soviet for a term of seven years. He has a network of offices throughout the Soviet Union roughly parallel to the court organization. All personnel in his office are appointed, and they perform their functions independently of any local authority.

The procurators may act as public prosecutor, may enter any civil suit at any stage, may sanction the placing of any person under arrest, and they have wide powers in overseeing the legality of action by administrators, legislators and others. They also receive complaints from citizens, and they alone have the right under law to initiate proceedings for the protection or restoration of rights of private citizens.

Although the procurator may sanction an arrest, the arrest may be made without that sanction. When arrest is made without that sanction, the investigating agency (police or secret police) may hold the prisoner for not more than seventy-two hours. The procurator must be advised of the arrest within twenty-four hours and has an additional forty-eight hours within which to determine whether there are grounds for initiating a criminal case. If the procurator sanctions it, the suspect may be held for ten days without being informed of the charge against him. If the case presents special complications and if the Procurator General consents, the investigation and detention may be extended indefinitely.[8]

In the final analysis, all crucial decisions in the preliminary investigation are made by the procurator, and it is his office that controls the detention of a suspect and determines whether and when the suspect is to be brought to trial.

It is interesting to note that the only office that can initiate proceedings to protect the rights of individual citizens is the same office charged with the enforcement of the criminal law, including control of the investigation and detention of suspects. This is, of course, consistent with the philosophy that the state can and does protect all the rights of all citizens, and there is, therefore, nothing inconsistent with this dual role of the procurator.

The suspect has no right to see or talk to anyone, including a lawyer, until the investigating agency has decided that it has taken all necessary measures preliminary to asking the procurator to charge the suspect formally. At that time the suspect may have counsel and see the results of the investigation. The defense counsel then has a right to suggest additional areas of investigation and introduce additional materials concerning the guilt or innocence of his client.[9]

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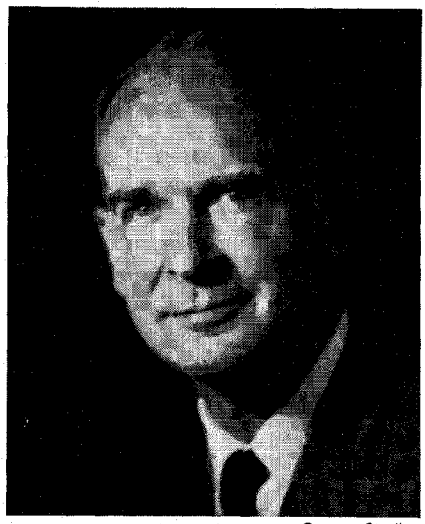
5. GRZYBOWSKI, SOVIET LEGAL INSTITUTIONS 182 (1962).
6. AMERICAN BAR ASSOCIATION, A CONTRAST BETWEEN THE LEGAL SYSTEMS IN THE UNITED STATES AND IN THE SOVIET UNION 116, 130 (1968).
7. *Economic Crimes in the Soviet Union*, 5 J. INT'L COMM'N JURISTS 3, 14 (1964).
8. *Supra* note 6, 34-38, 118, 131, 140-141 *passim*.
9. *Id.* at 156-157, 168, 187.

The courts have no control of the case or any right to intervene until the case is filed formally in court. This is a very real departure from the systems in England and the United States.

The trial procedure permits the accused and his counsel to participate actively in the examination of the evidence presented.

In the Soviet Union, if an individual is actually brought to trial, particularly in those situations in which the state feels threatened, few people have any doubt regarding his guilt. If the man weren't guilty, he would never have been brought to trial—after all, the procurator who brought the suspect to trial has the responsibility to see that *all* laws, including those protecting individuals, are properly enforced. This same attitude exists to some degree in the United States—in the public mind, at least—but our legally protected presumption of innocence is much stronger and our courts go to great lengths to assure its application. In the Soviet Union, however, courts are not simply judicial bodies as we know them. They are part and parcel of the single apparatus charged with bringing the dream of the Soviet state to its full reality.



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Charles S. Maddock (left), who is general counsel of an industrial corporation, served as Chairman of the American Bar Association Committee on Education About Communism and Its Contrast with Liberty Under Law. He was educated at the University of Colorado (B.A. 1932) and the Harvard Law School (LL.B. 1935). Kazimierz Grzybowski is on the Duke University faculty. He holds law degrees from Harvard and the University of Lwow and was a member of the Polish judiciary and a professor of law at Lwow as well as at other institutions. He has written widely and served as editor in the Foreign Law Division of the Library of Congress.

Courts Help Build the Communist Society

Vyshinsky, one of Stalin's most important lieutenants in the field of law and administration of justice, asserted:

> The Soviet court participates directly in the historic venture of the construction of the communist society. Punishing pitilessly plunderers of the socialist property, thieves, swindlers, speculators, hooligans, do-nothings, and absentees from work, our courts burn out the familiar stigma of capitalism, which has still survived in Soviet life. Our courts struggle against these survivals in the human conscience . . . educating the bearers of such survivals.[10]

This role of the Soviet courts has been continued to the present time. Article 3 of the 1958 U.S.S.R. Fundamental Principles of Court Organization provides:

> By all its activity, the court shall educate citizens in the spirit of loyalty to the Motherland and to the cause of communism, and in the spirit of exact and undeviating execution of Soviet laws, of a protective attitude toward socialist property, of observance of labor discipline, of an honorable attitude toward state and social duty, and of respect for the rights, honor and dignity of citizens and for rules of socialist communal life.[11]

This concept is translated into various provisions of the Code of Criminal Procedure. A case may be transferred to another court in order to secure "the educational role of judicial examination". The court has the duty to elucidate the causes and conditions facilitating the commission of a crime and to take measures to eliminate them. Finally, the court may send a copy of the judgment to the place of work, study or residence of the convicted person.[12]

The ultimate aim is to use cases important in terms of socialist re-education as examples of conduct basically abhorrent to the Soviet society and to equate criminal punishment with social censure. Prosecution of crimes must not only bring the criminal to justice, but also, in cases of special interest to the state, the trial must result in the involvement of the public in the process of condemnation.[13]

In aid of this procedure, the U.S.S.R. Supreme Court has the power and responsibility to issue directive rulings or instructions concerning the proper exercise of the judicial function. In such a directive ruling of October, 1963, concerning the trial of economic crimes, the court directed that the widest possible publicity be given the trial and sentences in those cases and further insisted that the trials should be attended by delegations from social organizations.[14]

The manner in which all agencies of the government work together in the educational opportunities associated with the prosecution of offenders is underlined clearly by the activities of the

10. VYSHINSKY, TEORIA SUDEBNYKH DOKAZATELSTIV V SOVETSKOM PRAVE 25 (1950).
11. VEDOMOSTI VERKHOVNOGO SOVETA SSSR (Bulletin of the Supreme Soviet of the U.S.S.R.) No. 1 (1959).
12. *Supra* note 6, at 214-215.
13. *Supra* note 5, at 118-128.
14. *Supra* note 6, at 117-118.

state-controlled press when important cases are involved. The role of the press in such cases is crucial. It is the duty of the press to create an atmosphere in which public condemnation of the criminal actions and effective educational influence of the judicial action are assured. In more important cases, particularly when a judicial campaign aiming at the eradication of certain adverse social attitudes is in progress, it is normal that meetings are held demanding severe sentences upon the criminals. Telegrams are sent to the court demanding proper punishment, and articles appear in the press informing readers of these happenings and demanding just retribution for the crimes committed.

Press Stirs Up Feeling Against Defendants

The prosecution of Daniel and Sinyavsky furnishes an excellent example. Andrei Sinyavsky, author and critic, and Yuri Daniel, author and translator, published a novel, a play and some short stories abroad under assumed names and without the knowledge of Soviet authorities. These works criticized some aspects of Soviet life and particularly "socialist realism", the official Soviet canons of art. Both authors were taken into custody in the fall of 1965, and their arrest and coming trial were announced by the Soviet radio on January 3, 1966, together with a comment that the authors wrote works that were malicious, libelous and illiterate and that their punishment would certainly have the backing of the Soviet public. On January 13, 1966, *Izvestia* came out with an article entitled "Turncoats", whose author quoted out-of-context passages which the procurator later quoted in his accusation, with a following comment: "The first thing you feel in reading their works is revulsion. It is repugnant to cite the vulgarities in which the pages of their books abound. Both delve into sexual and psychopathological 'problems' with morbid lust. Both exhibit moral degradation, both bespatter paper with everything that is most vile and filthy."

This article was followed by a series of reports that included letters from the readers. *Izvestia* reported that this article aroused deep indignation of the Soviet community against the writers. The writers were described as "double-dealing hypocrites", "criminals", "malicious slanderers" and so forth, and all without the incriminated books being available to the Soviet public.

Three weeks later the trial began. On the eve of the first session of the court an article appeared in *Izvestia* in which the author assured the public: "Actions of Sinyavsky and Daniel fall directly under Article 70 of the Criminal Code. The two deliberately and secretly sent our enemies works that, of course, evoked a hostile attitude toward Soviet rule, served as ammunition for ideological subversion against our country, damaged the prestige of the Soviet state . . .".

Similar articles appeared in other papers during the course of the trial, which ended with a spate of articles applauding conviction. At the same time there was no coverage of the proceedings in the court in the proper sense for the reader's information or consideration.[15]

Independent Judiciary and Bar Are Unknown

There is no such thing as an independent judiciary in the Soviet Union —certainly not as we know it, nor is there an independent professional Bar.

Soviet lawyers, who correspond professionally to our attorneys-at-law, are called advocates, and under the 1962 statute regulating their position they provide defense counsel at preliminary investigations and in court and render other legal assistance to citizens, enterprises and organizations.

They are organized into colleges of advocates, which fall under the category of "voluntary organizations" in order to distinguish them from state organizations. Although membership in a college of advocates is voluntary, it is nevertheless indispensable for legal practice. Colleges of advocates are organized on the level of the autonomous republics, territories, regions and certain large municipalities and correspond roughly to local bar associations. There is no national organization of the legal profession.

In order to engage in practice, lawyers must be members of law offices (juridical consultation offices), which are run by managers appointed by the college of advocates. A client seeking legal advice reports to the manager, who is required to distribute the work among the advocate members of the law office, having regard to their qualifications and to personal requests for their services.

Those eligible for membership in the lawyers' colleges are: (1) graduates from law schools on university level; (2) persons with legal training or short courses in law of from six months to one year with experience in judicial work or at least one year as a judge, governing attorney, investigator or legal counsel; and (3) persons without legal training but with experience in the above capacity of at least three years.

Self-government of the lawyers' colleges is limited by the powers of the councils of ministries of the autonomous republics or executive committees of the territorial, regional or municipal soviets, which supervise the activities of the colleges at the level on which colleges are established. In addition, general supervision of the colleges is carried on by the Juridical Commission of the Council of Ministers. This commission is authorized to disbar a member for "demonstrated unsuitability for the performance of the duties of an attorney-at-law" and for "the commission of offenses that bring discredit on the title of Soviet attorney-at-law". The administrative authorities of the territorial units have the same power of disbarment at the level on which colleges are established. An appeal from their decisions lies to the Juridical Commission of the Council of Ministers.[16]

The usefulness of the legal profession is recognized in the Soviet Union,

15. *Supra* note 6, at 276-277. See also Barry & Berman, *The Soviet Legal Profession*, 82 HARV. L. REV. 1, 22-23 (1968).

16. *Supra* note 6, at 256, 272. See also Barry & Berman, *supra* note 15, at 14 and 15.

but, at the same time, the social order is such that a truly independent legal profession is intolerable. All arms of society are fully committed to the communist ideology and each functions in its own field and in co-operation with all others to cleanse the society of the remnants of bourgeois capitalism, including the concept that individuals can have value and dignity apart from the collective.

In such a society the concept that anyone should have a right to stand up against the state and be aided by a lawyer in doing so is completely unthinkable—philosophically impossible. And therein lies the root difference between our two societies.

Soviet System Dictates the Role of Law

Any consideration of what may happen in the future regarding the judicial process or the role of law in the Soviet Union must take into account the nature of the Soviet system itself. Until that system is changed radically, there is very little possibility that the role of law in the Soviet Union will begin even to approximate what we understand it to be in the United States. This is not said in judgment or moral evaluation —it is simple fact. The Communist Party establishes and maintains the philosophy and inspires all action and control, directly or indirectly by all departments of government, including the administration of justice. An *independent* judiciary and professional Bar simply have no place in such a society.

The contrast between the Soviet and American systems of government is nowhere better delineated than by an examination of the role played by law in the two societies.

Samuel Pool Weaver Constitutional Law Essay Competition

A prize of $2,500 has been established for the 1969 Samuel Pool Weaver Constitutional Law Essay Competition conducted by the American Bar Foundation. The final date for submission of essays is November 1, 1969, and the subject is "Problems Involved in a Constitutional Convention under Article V". With respect to the subject, the Foundation has issued the following explanation:

> By the provisions of Article V of the United States Constitution, Congress shall call a convention for proposing amendments "on the application of the Legislatures of two-thirds of the several States". An application by one more state will provide the requisite number, necessitating the calling of a constitutional convention. Should such a situation develop, a number of novel problems will arise, the solutions to which will have far-reaching consequences.

The competition is open to all members of the American Bar Association in good standing, including new members elected prior to September 1, 1969, except members of the Board of Governors of the American Bar Association and officers and employees of the American Bar Foundation and the American Bar Association. Participants will be required to assign to the Foundation all rights in essays prepared for and entered in this competition. With regard to those essays not selected for publication by the Foundation, arrangements by authors for publication will be honored by the Foundation.

Essays on the subject published during the period November 1, 1968-October 31, 1969, will also be considered.

All necessary instructions and complete information may be secured upon request to: Samuel Pool Weaver Constitutional Law Essay Program, American Bar Foundation, 1155 East 60th Street, Chicago, Illinois 60637.