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SOVIET CRIMINAL LAW—THE LAST SIX YEARS

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As revealed in the following article, since 1957 the Soviet Union has devoted considerable attention to the field of criminal law. Activity in this area gives evidence of new trends and interests. The time is thus appropriate for an analytical review of Soviet action and thinking concerning crime and punishment and the administration of criminal justice. The first portion of this article is devoted to a review of legislative enactments and judicial decisions during the period from the beginning of 1957 to the end of 1962. The second portion presents an analysis of the principal trends which the author discerns from a study of this period.—EDITOR.

I. LEGISLATIVE AND JUDICIAL DEVELOPMENTS,
1957-1962

A. *Legislation of the USSR*

Legislation of the Union of Soviet Socialist Republics includes laws, decrees (*ukaz*) of the Presidium of the Supreme Soviet (the collective head of State of the USSR), decrees (*postanovlenie*) of the Council of Ministers of the USSR, and decrees (*postanovlenie*) issued by the Supreme Court of the USSR.

1. Article 14*u* of the Constitution was modified by a law of 11 February 1957¹ to the effect that the promulgation of general codes, which formerly had been the task of the federal legislature, was transferred to the legislative bodies of the 15 Union republics. Only the drafting of Basic Principles (which, in the case of criminal law, includes the general part of the code) was reserved to the federal legislature.

2. A law of the following day (12 February 1957)² amended articles 104 and 105 of the Consti-

The following abbreviations have been used:
Ved. = Vedomosti Verkhovnogo Soveta (State Gazette)
BVS = Biulleten' Verkhovnogo Suda SSSR (Bulletin of the Supreme Court of the USSR)
SGP = Sovetskoe Gosudarstvo i Pravo (Soviet State and Law)
Slu = Sovetskaia Iustitsiia (Soviet Justice)
SZ = Sotsialisticheskaia Zakonnost' (Socialist Legality).

¹ Ved. SSSR 1957 no. 4, text no. 63.

² Ved. SSSR 1957 no. 4, text no. 84.

tution and abolished chapter VII of the Law on the Court Organization (Law of 16 August 1938). All these measures deal with the Supreme Court of the USSR.

3. At the same time, a new Statute of the Supreme Court of the USSR was introduced, consisting of 20 articles.³ We shall return to this subject below.

4. On the occasion of the fortieth anniversary of the October Revolution, a general amnesty was issued (decree of the Presidium of the Supreme Soviet of 1 November 1957).⁴ This amnesty included, among other things, the release of the following groups of prisoners: men over 60 years of age, women over 55 years of age, pregnant women, women with children under 8 years, and children under 16 years. All prison sentences of more than 3 years were halved.

This decree was not applicable to those convicted either of offenses against the State (chapter I of the special part of the 1926 Criminal Code of the RSFSR), or of the crimes of banditism, murder, manslaughter, robbery with violence, grievous bodily harm, serious forms of hooliganism (see below), rape, and theft of socialist property on a large scale. Also excluded from the decree were those with a second or later conviction for theft, those who had already been convicted three times,

³ Ved. SSSR 1957 no. 4, text no. 85.

⁴ Ved. SSSR 1957 no. 24, text no. 589.

and those prisoners who had misbehaved while serving their sentence.

5. The Plenum of the Supreme Court, in a decree of 27 June 1958⁵ addressed to the Criminal Chamber of the Supreme Court, drew the attention of this Chamber to its special functions in relation to the editing and publishing of decisions, the examination of criminal court practice and judicial statistics, and instruction in the field of administration of justice.

6. On 25 December 1958,⁶ the Supreme Soviet of the USSR passed the Basic Principles of Criminal Legislation of the USSR and the Union republics, the Law on the Crimes against the State, the Law on Military Crimes, the Basic Principles of Criminal Procedure of the USSR and the Union republics, and a host of other laws of less interest (see further this paper sub "Codification of Criminal Law").

7. In a joint decree of the Central Committee of the Communist Party and the Council of Ministers of the USSR dated 2 March 1959,⁷ it was stated that in the future the public would be assigned a greater role in the effort to control crime (see below, pp. 265-66). This is a remarkable piece of legislation, not specifically provided for in the Constitution; such joint decrees usually contain basic statements concerning a new line to be followed in a particular area of legislation.

8. The Plenum of the Supreme Court devoted three decrees to the question of how this last mentioned policy should be implemented by the courts.⁸

9. A decree of the Presidium of the Supreme Soviet of the USSR dated 13 January 1960⁹ adds a second paragraph to article 1 of the Law on Crimes against the State; this paragraph provides that Soviet citizens recruited by foreign espionage agencies are not punishable if they have not yet carried out any espionage activities, and if they have notified the authorities promptly about their connections with such agencies.

10. A decree of the same body of 23 August 1960¹⁰ enacted new Disciplinary Regulations for the Armed Forces of the Soviet Union.

11. A decree of the Presidium of the Supreme

Soviet of 24 February 1961¹¹ added a new article (article 27) to the Law on Crimes against the State, in order to correct an obvious drafting omission.

12. A decree of the same body of 25 March 1961¹² added a second paragraph to article 25 of the Law on Crimes against the State, by which the penalties for serious forms of illegal currency transactions were sharply increased.

13. The death penalty was introduced by a decree of the Presidium of the Supreme Soviet of the USSR for a number of crimes, including theft of State or social property on a very large scale, professional counterfeiting, and specific crimes (such as terrorizing other prisoners, attacking the prison administration, or organizing or participating in groups organized for these purposes) committed by especially dangerous recidivists or persons serving sentences for serious crimes.¹³ Up to this time the list of capital crimes had included some crimes against the State, some military crimes, and murders committed under aggravating circumstances.

14. Fraud in planning accounts was penalized by a decree of 24 May 1961.¹⁴

15. The Plenum of the Supreme Court of the USSR devoted two decrees to the diversification of prisons and corrective labor institutions, pointing out that the court in its sentence should determine the type of institution to which the offender will be committed.¹⁵

16. Capital punishment was also introduced for serious forms of illegal currency transactions, the penalties for which had been increased already earlier in 1961.¹⁶

17. Criminally careless use or storage of agricultural machinery, resulting in damage to the machinery, was made punishable by a decree of the Presidium of the Supreme Soviet of 29 December 1961.¹⁷

18. A decree of 15 February 1962¹⁸ introduced new rules aimed at the protection of policemen and members of Voluntary People's Brigades (see below); in particularly serious cases of attempts on

¹¹ Ved. SSSR 1961 no. 9, text no. 91.

¹² Ved. SSSR 1961 no. 13, text no. 137.

¹³ Ved. SSSR 1961 no. 19, text no. 207.

¹⁴ Ved. SSSR 1961 no. 22, text no. 225.

¹⁵ Decree of 19 June 1961, BVS 1961 no. 4, pp. 5-7; decree of 31 July 1962, BVS 1962 no. 5, pp. 13-16.

¹⁶ Ved. SSSR 1961 no. 27, text no. 291, decree of 1 July 1961.

¹⁷ Ved. SSSR 1962 no. 1, text no. 5.

¹⁸ Ved. SSSR 1962 no. 8, text no. 83.

⁵ BVS 1958 no. 5, pp. 5-6.

⁶ Ved. SSSR 1959 no. 1, text nos. 6, 8, 10, 15.

⁷ *Izvestiia* 10 March 1959.

⁸ Decree of 19 June 1959, BVS 1959 no. 4, pp. 4-7; decree of 19 December 1959, BVS 1960 no. 1, pp. 9-12; decree of 26 March 1960, BVS 1960 no. 3, pp. 5-10.

⁹ Ved. SSSR 1960 no. 3, text no. 24.

¹⁰ Ved. SSSR 1960 no. 34, text no. 325.

the lives of these persons the death penalty must be applied.

19. A decree of the same day extended the applicability of capital punishment to serious cases of rape.¹⁹

20. A decree of 20 February 1962 provided increased penalties (up to the death penalty) for officials accepting bribes.²⁰

21. During 1961 and 1962 the Plenum of the Supreme Court of the USSR made more and more use of its power to issue authoritative interpretations of the law. The same right has been given to the Plenums of the Supreme Courts of the Union republics. In a decree of 31 March 1962 the USSR Plenum encouraged the Plenums of the republican Supreme Courts to avail themselves more freely of this possibility.²¹

B. The Most Important Legislative Acts of the Union Republics

1. Measures taken in October, 1956,²² against nomadic gypsies might be seen as the first move in a campaign against "parasites," that is, persons who live on income not earned by their own labor or on income derived from the exercise of illegal professions or practices.

The Uzbek SSR was the first republic to pass a law against "parasites and anti-social elements," on 27 May 1957.²³ According to this law, persons who do no regular work, such as tramps, gypsies, etc., may be exiled by a public assembly to labor colonies for a period not exceeding five years. The decision of the public assembly had to be sanctioned by the local executive committee, but the ordinary courts were completely excluded from this procedure. Similar laws were passed in the Turkmen, the Latvian, the Tadzhik, the Kazakh, the Armenian, the Azerbaidzhan, the Kirghiz, and the Georgian republics.²⁴ According to the last enactment published in this series, the decree of the Presidium of the Supreme Soviet of the

Georgian republic, only the executive committee itself was entitled to exile "parasites."

After some hesitation the RSFSR followed with a decree of 4 May 1961.²⁵ This decree laid down that not only the public assembly, with the subsequent sanction of the local executive committee, could exile "parasites," but also the courts (i.e. the people's court). The example of the RSFSR was soon followed by the Lithuanian, Ukrainian and Belorussian republics,²⁶ while the Uzbek and Kazakh republics apparently brought their previous legislation into line with that of the RSFSR.²⁷ No pertinent information is available about the state of affairs in the other republics, but from a decree of the Plenum of the Supreme Court of the USSR addressed to all courts it would appear that at the time of that decree (12 September 1961) the court was the normal authority entitled to exile "parasites" in all republics.²⁸

2. Another move in the same campaign is the revival of comrades' courts in all republics (see below, page 266).

3. The Presidia (heads of State) of the Supreme Soviets of the Tadzhik, Georgian, Armenian, Kirghiz, Azerbaidzhan, Belorussian, Estonian, Kazakh, Lithuanian, and Latvian SSR's abolished the Ministries of Justice in these republics.²⁹ In all probability this was also done in the Moldavian, Turkmen, and Uzbek republics; but it was not done in the RSFSR and the Ukraine. The responsibilities of these ministries, which were limited—as the care of prisoners at that time belonged to the Ministry of Internal Affairs of the USSR³⁰—were transferred to the Supreme Courts of the respective republics.

¹⁹ Ved. RSFSR 1961 no. 18, text no. 273.

²⁰ SZ 1961 no. 8, p. 79.

²¹ BVS 1961 no. 5, pp. 36, 38.

²² BVS 1961 no. 5, pp. 8-11.

²³ *Tadzhikistan*: decree of 17 November 1958, BVS 1959 no. 1, p. 44; *Georgia*: BVS 1959 no. 4, p. 41; *Armenia*: *ibid.*; *Kirghizia*: *ibid.*; *Azerbaidzhan*: BVS 1960 no. 4, p. 63; *Kazakhstan*: *ibid.*; *Estonia*: *ibid.*; *Belorussia*: *ibid.*; *Lithuania*: decree of 5 August 1959, Ved. Litovskoi SSR 1959 no. 15, text no. 158; *Latvia*: the abolition of the Latvian Ministry of Justice can be inferred from article 48 of the Constitution of the Latvian SSR, as amended, see Ved. Latviiskoi SSR 1960 no. 45, p. 34.

²⁴ The USSR Ministry of Internal Affairs was abolished by a decree of the Presidium of the Supreme Soviet of the USSR of 13 January 1960, Ved. SSSR 1960 no. 3, text no. 25. Its tasks were transferred to the corresponding Ministries of the Union-republics. The republican Ministries of Internal Affairs were renamed Ministries for the Protection of Public Order; see for the RSFSR: decree of 28 August 1962, Ved. RSFSR 1962 no. 35, text no. 535.

¹⁹ Ved. SSSR 1962 no. 8, text no. 84.

²⁰ Ved. SSSR 1962 no. 8, text no. 85.

²¹ BVS 1962 no. 3, pp. 38-39.

²² Decree of the Presidium of the Supreme Soviet of the USSR of 5 October 1956, Ved. SSSR 1956 no. 21, text no. 450.

²³ Pravda Vostoka 29 May 1957.

²⁴ *Turkmenskaia Iskra* 1 June 1957, *Sovetskaia Latvia* 15 October 1957, *Kommunist Tadzhikistana* 23 January 1958, BVS 1958 no. 2, p. 46 (Kazakhstan), *Slu* 1958 no. 5, p. 73 (Armenia), *SZ* 1958 no. 8, p. 91 (Azerbaidzhan), *SZ* 1959 no. 3, p. 81 (Kirghizia), *SZ* 1960 no. 11, p. 82 (Georgia).

4. In the RSFSR the effort to increase public participation in the struggle against crime found expression in Regulations on the Comrades' Courts³¹ and Regulations on the Voluntary People's Brigades;³² the latter are to be regarded as an unpaid assistant police force, with rather limited authority, to help maintain order in the streets and in public buildings, cinemas, etc.

5. During 1959, 1960, and 1961, pursuant to the Basic Principles of Criminal Legislation of December, 1958, Criminal Codes were enacted in all Union republics (see this paper sub "Codification of Criminal Law").

6. New Regulations on Corrective Labor Colonies and Prisons of the Ministry of Internal Affairs of the RSFSR were enacted by an RSFSR decree of 29 August 1961.³³ These Regulations presumably supersede the corresponding provisions of the RSFSR Corrective Labor Code of 1933.

7. Regulations on the Administrative Committees of City and Rayon Soviets (decree of the Presidium of the Supreme Soviet of the RSFSR of 30 March 1962)³⁴ contained provisions concerning the function and procedure of these committees, which deal with petty offenses not coming within the scope of criminal law proper. The severest penalty that can be imposed by these committees is a fine; in that case the offender has the right to appeal to the People's Court.

C. The Codification of Criminal Law

Originally, the various member States of the Soviet Union had their own codes of law. In the largest and most important member State, the Russian Socialist Federal Soviet Republic (RSFSR), until recently the Criminal Code of 1926 was in force. This Code was directly applied in some Union republics, and in others it was copied more or less slavishly. The 1936 Constitution of the USSR stipulated that there were to be (Federal) Codes operative for the entire Union. With a few exceptions, however, (e.g., the 1938 Law on the Court Organization of the USSR) this

³¹ Decree of the Presidium of the Supreme Soviet of the RSFSR of 3 July 1961, Ved. RSFSR 1961 no. 26, text no. 371.

³² Decree of the Council of Ministers of the RSFSR and of the Office for the RSFSR of the Central Committee of the CPSU of 30 March 1960. The text of these Regulations can be found in *Spravochnik družinnika (THE VOLUNTARY POLICEMAN'S GUIDE)*, Moscow 1961, pp. 16-24.

³³ Decree of the Presidium of the Supreme Soviet of the RSFSR, Ved. RSFSR 1961 no. 37, p. 556; unfortunately *Vedomosti* do not give the text of the decree.

³⁴ Ved. RSFSR 1962 no. 13, text no. 166.

provision has not been carried out. In the years 1955 and 1956 increased activity in this field was noticed for the first time, but this activity was disrupted by the constitutional reform of 12 February 1957, mentioned above, which returned to the Union republics the power to issue their own Codes. Only the promulgation of basic principles was reserved to the union legislature. According to a report in *SIU* in January, 1958,³⁵ drafts of a new Criminal Code and a Code of Criminal Procedure were at that time in circulation in the RSFSR. The texts of these drafts, however, have not been published, so that it is possible only to obtain some idea of their contents from the reactions expressed in readers' letters to the journals. Similar drafts appear to have been in existence in the other Union republics in 1958.

In May, 1958, the drafts of the basic principles which had been promised in the preceding year were published, and on December 25th the Basic Principles of Criminal Legislation were adopted by the Supreme Soviet, together with the Principles of Criminal Procedure and Court Organization and the laws concerning crimes against the State, military crimes, and military tribunals. (The passing of the last three laws was in conflict with the Constitution of the USSR, which reserves to the union legislature only the power to promulgate *basic principles*.) The Principles of Criminal Legislation regulate the general part of the Criminal Code and deal with the following matters: the operation of the Criminal Code in time and space, the definition of punishable offenses, the definition of such matters as intention and negligence, minority, age limits, non-imputability, self defense, the defense of necessity (*force majeure*), attempt and participation, the kinds of punishments with their *general maxima and minima*, aggravating and extenuating circumstances, *concursum*, conditional sentence, parole, and limitation.

The most striking differences from the former provisions are as follows: the imposition of punishment is henceforth only to be possible in relation to a penal offense stated by the law (introduction of the *nullum crimen, nulla poena* rule); the abolition of analogy;³⁶ the replacement of the terms "socially-dangerous act" and "legal measure for

³⁵ *SIU* 1958 no. 1, pp. 29 ff.

³⁶ Article 16 of the former Criminal Code of the RSFSR allowed the imposition of a penalty in cases of "socially dangerous acts" not mentioned by the Code, by reference to a provision of the Code which defined the "most similar" offense. In this way any unwanted activity could be branded a criminal offense *per analogiam*.

social protection" by "crime" and "punishment"; the reintroduction of the principle of guilt into the law; and in criminal procedure, the greater emphasis now put on the right to defense, and the obligation placed on the prosecuting State attorney to produce sufficient evidence; in future arrest may be carried out only with the approval of the State attorney or upon the order of the court. These Principles of Criminal Legislation and Criminal Procedure, which form the foundation for the criminal legislation of the USSR and its 15 union republics, will not be discussed any further here, since there is sufficient Western literature available on the subject.³⁷

The union republics were thus enabled to begin their legislative work. In the course of 1959, drafts of criminal codes appeared everywhere; in several republics this happened as early as February (and probably even earlier in some places), barely a few weeks after the publication of the Basic Principles.³⁸ What probably happened is that older drafts were adapted at the last moment to the new Principles. In Uzbekistan, a Criminal Code was passed in this way and put into force by the Supreme Soviet of that republic by 21 May 1959,³⁹ and in Kazakhstan a Code was passed in July, 1959,⁴⁰ (becoming effective on 1 January 1960). We may well wonder why a small Central Asian republic took the lead in the codification race; in the Soviet Union it is usual for the RSFSR to set the pace. (The same occurred, although probably for other reasons, with the so-called anti-parasite legislation: here too the Uzbek SSR took the initiative.) A closely related question is: to what extent were the legislatures able to work independently, free from the influence and aspirations of the central government? There are several factors which make it difficult to analyze the relationship between the competency and the actual power of the union legislature and that of the legislatures of the member states. On the one hand, the legal provisions on this point are not always equally clear, and on the other hand, the union legislature frequently does not restrict itself within the established limits. As far as criminal law is concerned, the union legislature is competent only to issue basic principles (since February,

1957), but nonetheless, military crimes and crimes against the State are controlled by union criminal legislation. Further, even when the limits of legislative power are clear, and both parties abide by them, a crucial influence on the lower legislature can still be exercised through other channels—i.e., the Communist Party and the official bureaucratic hierarchy. For instance, when, as reported above, a number of smaller republics almost simultaneously abolish their ministries of justice, or pass almost identical measures against certain undesirable phenomena such as hooliganism or the so-called parasites, it is difficult not to conclude that this is in fact the result of instructions from the central authority. This is also consistent with what we know of other areas of public life in the Soviet Union.

However, on closer examination, in the case of the codification of the criminal law, matters seem to be somewhat different. In other words, the decentralization begun in 1957 by Khrushchev (including the division of the country into a number of economic districts, which has been a measure of real significance to the economy of the country) seems also to a certain extent to have been seriously applied in the field of law. The author is inclined to accept that there was no prototype Criminal Code formulated by the central authority and sent to the member states to be copied with minimal modifications. In support of this it should be pointed out, among other things, that there were other means available by which the desired legal uniformity could have been guaranteed. In the first place, the legislative power of the union republics was considerably reduced by its limitation to the special parts of the criminal law, and, even within these limits, various areas, such as crimes against the State and military crimes, were already exhaustively regulated by the union legislature. The remaining offenses have, during recent years, been the subject of lively discussion in the law journals of the Soviet Union, often leading to definite conclusions, such as that a certain penal offense should be dropped, that a particular definition should be modified, etc. Finally, in the beginning of 1959, four inter-republican conferences on the codification of criminal codes were held, in Kiev (for the Ukraine, White Russia, and Moldavia), in Tiflis (for the three Trans-Caucasian republics), in Riga (for the three Baltic republics), and in Tashkent (for the five Central Asian republics).⁴¹ Delegates from Moscow were present at all

³⁷ Grzybowski, K., in *Osteuroparecht 1960*, no. 2/3, pp. 108-22; 7 HIGHLIGHTS OF CURRENT LEGISLATION AND ACTIVITIES IN MID-EUROPE 1959 no. 1, p. 3 ff.; no. 2/3, p. 49 ff.; no. 5/6, p. 227 ff.; 3 LAW IN EASTERN EUROPE (Leyden 1959).

³⁸ SZ 1959 no. 3, pp. 7-8.

³⁹ Cf. Ved. SSSR 1960 no. 3, text no. 16.

⁴⁰ Cf. Ved. SSSR 1960 no. 3, text no. 19.

⁴¹ SZ 1959 no. 7, pp. 3-6.

four conferences and took an important part in the discussions of the draft codes of the relevant member states. The importance of these conferences can also be inferred from the fact that it was planned to have the lectures and discussions printed. It is interesting to note, in this connection, that the leading article, in SZ 1959, No. 7,⁴² remarked that this material might be of future use in the interpretation of the law; the extensive legislative material usually available to us in the West, in the form of ministerial memoranda, parliamentary debates, and other documents, is, for the most part, missing in the Soviet Union, because the representative bodies pass all bills unanimously and without any serious discussion. The reason for this, as is well known, is that in the Soviet Union, for certain reasons, the decisions are prepared and made in advance, before a matter is considered by the Supreme Soviet or by any other representative body. The parliaments are only supernumeraries in a huge stage show, participants in a liturgy the course of which they themselves do not determine. Yet, it would seem that in applying and interpreting the law, the need is felt to be able to refer to the deliberating phase of the legislative process.

A small example might throw some light on the procedure followed in the preparation of the criminal codes of the member states. B. S. Nikiforov, the chief of the criminal law department of the All-Union Institute for Legal Sciences, has discussed, in an article in SZ,⁴³ the drafts of various republics. In dealing with the draft Criminal Code of the Moldavian SSR, he criticizes the Moldavian framers for unnecessarily making punishable a number of offenses, which, in his opinion, are totally unimportant, such as the illegal sale of houses and the illegal manufacture of objects for religious services, e.g., crosses, icons, etc. It cannot be doubted, in the present author's opinion, that the views of so influential a man as Nikiforov will be taken into account in Moldavia; this demonstrates at the same time both the freedom which the drafters have to make such regulations, which are not found in the other republics, and the control exercised on them from outside.

Consideration of the Uzbek Criminal Code also strengthens the impression that the regional legislature can act on individual initiative, albeit with

in rather narrow limits, and with due allowance for outside criticism.⁴⁴

The first part of the Code is an almost literal reproduction of the Basic Principles, with a few additions and elaborations, as allowed or prescribed by the Basic Principles: e.g., the Code provides definitions of "recidivists" (art. 23) and "especially serious crimes" (art. 23), which were not defined in the Basic Principles.

In the special part of the Code the different kinds of offenses are grouped in chapters. The sequence of the chapters differs from that followed in the old codes. This change has a certain significance, for the sequence of the chapters in the special part offers an (unofficial) indication of the degree of seriousness attached to the different types of crimes by the lawmakers. The sequence of the Uzbek code is: crimes against the State; crimes against life, health, freedom, and the dignity of persons; crimes against socialist property; crimes against personal property; crimes against political and labor rights of citizens; crimes committed by officials in the carrying out of their duties; crimes against the administrative order; crimes against public order and security; and, finally, military crimes. These come last, not because they are of relative unimportance, but because they are to be regarded as a kind of appendix to the Code.

The most salient feature of the Uzbek Code is the tendency towards maximum penalties lower than those provided by the old Code.

It is possible that the Uzbek Code was a model for the new criminal codes of the other republics; however, if that were the case, one might have expected a somewhat longer test-period (the Uzbek Criminal Code was passed in May, 1959, the Kazakh Code in July, 1959, and seven other criminal codes at the end of 1960 and during the first weeks of 1961). This interval of about a year and a half should preferably be explained otherwise: during this period the Soviet government had embarked on a policy called "the participation of the public in the struggle against crime" (this subject will be dealt with summarily at the end of this article). The implementation of this policy necessitated a number of minor alterations in the draft criminal codes, and has probably been the major cause of the delay in the enactment of criminal codes in the other 13 republics.

⁴⁴ This is confirmed by the Chairman of the Legal Committee of the Council of Ministers of the Armenian SSR, Ioannesian (the former Armenian Minister of Justice), in an article in SGP 1960 no. 3, p. 46.

⁴² *Ibid.*

⁴³ SZ 1959 no. 8, pp. 7-13.

The most important event in Soviet criminal law since the Basic Principles of 1958 was undoubtedly the enactment of the new Criminal Code of the RSFSR on October 28, 1960 (the Code came into force on January 1, 1961). The Code contains 269 articles (as against 205 in the old Code) and an appendix.

Like the Uzbek Code, the Russian Code in its general part (corresponding with the Basic Principles) supplies more or less precise definitions of several concepts which were only mentioned, but not explained in the Basic Principles, e.g., "especially dangerous recidivists" (see article 23 of the Basic Principles and article 24 of the CC of the RSFSR). It elaborates on some points which were left to the legislatures of the republics by the Basic Principles; for instance, article 21 of the Code provides for two kinds of punishment which are not found in the Basic Principles: dismissal from employment, and payment of compensation for damage caused by the offense. The Code also lists more aggravating and extenuating circumstances (arts. 38 and 39) than those in the Basic Principles (arts. 33 and 34). In many instances, in both the general part and the special part, allowances have been made for new institutions, deriving from the "participation of the public in the struggle against crime," such as the comrades' courts and the new organization of probation. The most important addition to the general part of the Code is a completely new chapter (VI) "On Compulsory Medical and Educational Measures." This consists of six articles (58-63), some of them quite long, establishing new rules for dealing with persons who commit an offense while suffering from mental diseases, or while under the influence of drugs, etc., and with children below the age limit for criminal responsibility.

The special part of the Code is divided into 12 chapters: crimes against the State; crimes against socialist property; crimes against life, health, freedom, and the dignity of persons; crimes against the political and labor rights of citizens; crimes against the personal property of citizens; economic crimes; crimes committed by officials in the carrying out of their duties; crimes against the administration of justice; crimes against public order, public security, and public health; crimes constituting remnants of local customs; and military crimes. (Note the difference in the sequence between this enumeration and that in the Uzbek Criminal Code.)

The chapter on crimes against the State is an almost verbatim reiteration of the "Law on the Crimes against the State." (*Supra* p. 250, sub. 6, and p. 252.) A striking feature of the chapter on crimes against socialist property is the disappearance, in many cases, of minimum penalties. This is an important step forward. The maximum penalties are generally less severe than under the old law.

In the next chapter, the article which deals with murder committed under aggravating circumstances (art. 102) gives a list of these circumstances which can be regarded as exhaustive. Where a murder comes within the scope of article 102, the murderer can be condemned to death (provided, of course, that the general conditions for the application of the death penalty are fulfilled). Article 102 includes murders committed in a blood-feud (the former Code did not contain such a provision). This seems strange to the Western reader, who is inclined to regard the influence of tribal customs as a certain justification of the criminal's conduct.

A general characteristic of the special part of the Code is the lowering of maximum penalties; we have already seen the same trend in the Uzbek Criminal Code. In some instances the offender can be punished only if an administrative penalty has already been applied to him previously for the same type of offense (e.g., article 166: poaching). Administrative penalties are entirely outside the competence of the ordinary courts and may be imposed for minor misdemeanors by the people's judge as *unus iudex* or by the administration; they are not governed by criminal law. In chapter VI (Economic Crimes) the definition of speculation has been considerably broadened. According to article 154, speculation is now defined as the purchase and sale of goods and other objects with the intention of making a profit.

Article 206, the first article of Chapter X (Crimes Against Public Security, Public Order and Public Health), defines hooliganism (*khuliganstvo*), which is numerically one of the most prominent offenses in the Soviet Union. Such a definition was an unfortunate omission from the old code. According to article 206, hooliganism includes all intentional (deliberate) acts which grossly violate the public order and which demonstrate an obvious lack of respect towards society. Article 209, in the same chapter, appears to have been designed as the Russian counterpart to the "parasite laws" in a

number of other Soviet republics (see above). It penalizes tramps and pedlars, but only if these persons have been warned twice before by the authorities; it is superseded now by the RSFSR parasite decree. Also worthy of mention is article 227, which is directed against persons who, as organizers of religious communities, conduct any activity which causes damage to health or which is accompanied by sexual perversions. The article seems to have in mind certain mystical sects which now and again are mentioned in the Soviet press.

It should be noted that the RSFSR Code still contains a chapter on "Crimes Constituting Remnants of Local Customs." The Uzbek Code, obviously for "cosmetic" reasons, did not contain a similar chapter, but had corresponding provisions scattered all through the Code. The chapter in the RSFSR Code applies only in those regions where the offenses mentioned are remnants of local customs. For instance, bigamy committed by an Adyge man in the Adyge Autonomous District is punishable under article 235 (imprisonment or corrective labor up to one year), while bigamy committed by a Russian in Moscow is punishable under article 201 (corrective labor up to one year, or a fine up to 500 (since 1 January 1961: 50) roubles or public reprimand).

The appendix to the Code enumerates those assets which cannot be confiscated.

Shortly after the enactment of the Russian Criminal Code, similar codes were enacted in the Ukraine, Georgia, Latvia, Estonia, Belorussia and Azerbaidzhan.⁴⁵ Later on in 1961⁴⁶ Kirghizia, Armenia, Moldavia, Lithuania, Tadzhikistan and Turkmenistan followed.

D. Administration of Justice

In 1957-1962 197 criminal cases were published in BVS, the organ of the Supreme Court of the USSR, part of them *in extenso*, the rest in the form of abstracts. In the consideration and analysis of these cases it should be kept in mind that the Supreme Court, in selecting and publishing them, took into account, among other things, the need

⁴⁵ Cf. Pravda Ukrainy 29 December 1960 (Ukraine); Izvestiia 1 January 1961 (Georgia); Izvestiia 8 January 1961 (Latvia); Izvestiia 10 January 1961 (Estonia); Ved. SSSR 1961 no. 4, text no. 40 (Belorussia); Ved. SSSR 1961 no. 4, text no. 37 (Azerbaidzhan).

⁴⁶ Cf. Ved. SSSR 1961 no. 15, text no. 163 (Kirghizia); no. 23, text no. 238 (Armenia); no. 23, text no. 236 (Moldavia); no. 34, text no. 358 (Lithuania); no. 48, text no. 485 (Tadzhikistan); Turkmenskaia Iskra 23 December 1961 (Turkmenia).

to provide instruction for the lower ranks of the judiciary; such a policy emerges from the Statute of the Supreme Court (art. 9). The court practice, as published in BVS, is therefore more an index of the criminal policy of the Soviet Union than of criminality.

These 197 decisions were taken by the following courts:

The Plenum of the Supreme Court of the USSR...	75
The Criminal Chamber of the Supreme Court of the USSR.....	76
The Military Chamber of the Supreme Court of the USSR.....	22
The Presidium of the Supreme Court of the RSFSR.....	6
The Criminal Chamber of the Supreme Court of the Ukrain. SSR.....	5
The Presidium of the Supreme Court of the Latvian SSR.....	7
The Presidium of the Supreme Court of the Lithuanian SSR.....	2
The Presidium of the Supreme Court of the Uzbek SSR.....	1
The Presidium of the Supreme Court of the Turkmen SSR.....	1
The Presidium of the Supreme Court of the Tadzhik SSR.....	1
The Presidium of the Supreme Court of the Moldavian SSR.....	1
	<hr/> 197

Generally in the Soviet Union the chief interested parties (the defendant, the prosecution, the victim, the civil plaintiff and civil defendant, and some others) may appeal once to a higher court. Besides appeal there is the so-called extraordinary protest procedure. An extraordinary protest can be lodged by the chairman or the state attorney (the *prokuror*) of the court involved or of the next higher court. An extraordinary protest need not be, and often is not (see following paragraph), detrimental to the interests of the defendant, although it is heard without the participation of the defendant or his counsel. The overwhelming majority of the decisions dealt with in this review were made as a result of such extraordinary protest procedures.

The first striking observation is, perhaps, that most of the decisions brought about an improvement in the position of the defendant (154 cases); in 43 cases of this group the defendant was even acquitted. This is especially remarkable because the progress of a case through the various courts

is sometimes very slow; in four instances the case had been tried by six different courts (not taking into account the fact that cases are frequently referred back to another court). In 38 cases the published verdict worsened the position of the defendant, and in five cases neither improvement nor deterioration could be established.

As far as could be determined in the majority of the cases studied, the highest authority itself decided the main issue. Only in 51 cases did the text report reference to a lower court, usually because of inadequate investigation.

The original charges in these 197 cases can be tabulated as follows:

1. Homicide.....	58
2. Manslaughter.....	3
3. Grievous bodily harm, caused intentionally.....	8
4. Light bodily harm, caused intentionally..	1
5. Homicide, committed in self defense....	2
6. Rape.....	9
7. Abortion.....	1
8. Crimes affecting safety in mines.....	3
9. Hooliganism.....	7
10. Resisting the police.....	1
11. Making counterfeit money.....	1
12. Illegal marriage.....	1
13. Speculation.....	4
14. Offenses against the nationalization of land (Art. 87-a of the old CC of the RSFSR).....	1
15. Exercising an illegal occupation.....	3
16. Theft of socialist property.....	53
including, in the form of banditism. (6)	
17. Theft of private property.....	28
including, in the form of robbery.. (6)	
18. Counter-revolution.....	1
19. Crimes against the State (not further described).....	1
20. Transport offense (Art. 59-3c of the old CC of the RSFSR).....	7
21. Arson.....	1
22. Corruption.....	3
23. Misuse of authority by officials.....	9
24. Neglect of official duty.....	1
25. Failure to obey a superior (military) officer.....	1
26. Desertion.....	2
27. Unauthorized absence of military personnel.....	6
28. Transport offense by military personnel..	3
29. Not identifiable.....	3

Multiple charges are responsible for the fact that this total is higher than the number of cases. With regard to the list of crimes we can note the following:

Ad. 1.: Soviet criminal law makes no distinction between murder and manslaughter as separate crimes. Premeditation can, however, constitute an aggravating circumstance, in which case the death penalty or a maximum punishment of 15 years is possible as opposed to a maximum of 10 years in the case of the unqualified crime (according to the old CC of the RSFSR).

Ad. 9: See above p. 255.

Ad. 13: See above p. 255.

Ad. 14: This generally concerns occupations which violate the socialist economic system.

Ad. 15: Banditism consists of being a member of a permanent armed band which systematically carries out robberies.

Ad. 19: This article makes punishable breaches of labor discipline committed by transport workers, as a result of which damage is likely to be caused or is actually caused. In practice it almost always concerns traffic offenses.

We will now examine more closely the numerically strongest groups in this list: homicide and theft (which together form almost two-thirds of the published cases).

In 9 of the 58 published cases of homicide, the last hearing of the case brought the defendant no improvement in his position because the original conviction was upheld; in two other cases the original conviction was upheld, but extenuating circumstances were recognized. In another case a young man escaped capital punishment for a murder committed on his 18th birthday, because the Plenum of the Supreme Court accepted that he had not completed his eighteenth year of life until midnight on the day of his birthday. In eight cases the accused was acquitted: twice by recognition of self defense, and in six cases because of insufficient evidence. In the other nineteen cases, in which the evidence was considered faulty or inadequate, the case was referred back to a lower court. In more than half of the cases discussed, the crime was committed under the influence of alcohol (33 times). The final result of the 58 original convictions for intentionally committed murder can thus be distinguished as follows:

Original verdict sustained.....	11
(No improvement in position of accused.....	9)

(Extenuating circumstances recognized..... 2)
 Quashed because of defective evidence..... 25
 (Referred back to a lower court..... 19)
 (Acquittal..... 6)
 Modification of the charge..... 20
 (In the Soviet Union the higher court can modify the charge and then decide the case itself without referring it back.)
 (Unqualified murder..... 5)
 (Manslaughter..... 8)
 (Homicide committed while exceeding the limits of self defense..... 2)
 (Homicide committed under the influence of a strong emotion..... 1)
 (Grievous bodily harm..... 3)
 (Hooliganism..... 1)
 Self defense..... 2
 —
 58

It is noteworthy that in the case of theft, also, most of the final decisions were to the advantage of the defendant. Of the six original convictions for banditism and the six for robbery, only one was sustained. An appreciable percentage of the thefts were also committed under the influence of alcohol (12 of 81).

The original convictions were dealt with as follows:

Original conviction sustained..... 25
 (No improvement in position of accused..... 13)
 (Reduction of punishment..... 12)
 Quashed because of defective evidence..... 33
 (Referred back to another court..... 16)
 (Acquittal..... 17)
 Quashed because of non-observance of technical rules of procedure..... 1
 Modification of the charge..... 22
 (Less serious form of theft..... 11)
 (Hooliganism..... 3)
 (Abuse of authority..... 8)
 —
 81

Conviction for abuse of authority instead of theft of socialist property occurs especially with conversion by officials where there is no clear intent to appropriate public property for personal use.

Some of the decisions published in BVS are indicated as abstracts; if we may infer from this that the others are reported *in extenso* we can then deduce that the specifications provided for by

law concerning the form of verdicts are not taken seriously by the highest courts in the Soviet Union: as an example, a report of the composition of the court is never made even though required by the law of procedure. The decisions rarely exceed two printed pages (in bold type). Daring juridical constructions are not to be found here; the most interesting aspect of the published cases is that they provide a glimpse of the actual practice of the administration of justice in penal cases.

The short opinions often have a journalistic tone; their informal character and close resemblance to the vernacular of newspaper and radio certainly make them more readable than the general run of decisions in other countries. In the six years under review only once was a judgment annotated. We give below a translation of a decision of the Plenum of the Supreme Court of the USSR, as it was printed in BVS 1959, no. 5.⁴⁷

“The difference between indirect intent and criminal recklessness consists in this, that in the first case the perpetrator intentionally allows the possible consequences to arise, while in the second case he hopes on insufficient grounds to forestall them.

“The case GANANIUK, E. V.
 Decision of the Plenum of the Supreme Court of the USSR of 17 June 1959.

“On 7 October 1958 the people’s court of the Stalin district of the city of Erevan convicted E. V. GANANIUK under Art. 162 paragraph 1 [the subparagraph of the Article was not indicated] of the Criminal Code of the Armenian SSR.

“The Criminal Chamber of the Supreme Court of the Armenian SSR on 14 October 1958 upheld the verdict of the people’s court.

“GANANIUK was found guilty of the intentional killing of the boy Artiusa GRIGORIAN under the following circumstances. In the course of trying out his motorcycle on 25 September 1958 on Tel’man Street in the city of Erevan, GANANIUK drove at a high speed (65–70 km per hour), as a result of which he hit the boy GRIGORIAN who was crossing the street and who died on the spot of the skull injuries he received.

“The deputy Procurator General of the USSR, who considered the definition of the act committed by GANANIUK according to

⁴⁷ BVS 1959 no. 5, pp. 6–8.

Art. 162 CC of the Armenian SSR as incorrect, lodged a protest with the Presidium of the Supreme Court of the Armenian SSR in which he entered a plea that the criminal actions committed by GANANIUK be defined according to Art. 165 CC of the Armenian SSR. The Presidium of the Supreme Court of the Armenian SSR did not agree with this, and dismissed the protest on 16 February 1959.

"On the same grounds the President of the Supreme Court of the USSR lodged a protest with the Plenum of the Supreme Court of the USSR.

"After examining the documents and evaluating the grounds set forth in the protest, and after having heard also the conclusion of the deputy Procurator General of the USSR, who agreed with the protest, the Plenum of the Supreme Court of the USSR found that the protest should be granted on the following grounds.

"In rejecting the protest, the Presidium of the Supreme Court of the Armenian SSR came to the conclusion that the convicted GANANIUK had committed the crime, not through negligence, but with indirect intent. In this respect the Court considered it sufficient to refer to only one circumstance which in its opinion completely characterized the nature of the convicted man's guilt, namely, the fact that GANANIUK consciously drove at a high speed, that is to say, to the infringement of the law committed by him; it did not consider the attitude of the accused with regard to the results foreseen by him (which were afterwards realized), whereas it is the determination of just this circumstance which is of crucial importance in establishing the boundary between intent and negligence in the form of criminal recklessness.

"The documents of the present case show that GANANIUK, on 25 September 1958 at about 17:00 o'clock, left the technical school where the motorcycles were parked with the intention of checking his sports-motorcycle for a race. Riding along Tel'man Street, GANANIUK noticed that because working hours were over the number of pedestrians had increased. In order to avoid possible accidents, he decided to go back to the school and after having turned around he reduced his speed.

"According to his own report, he kept to a speed of between 45-50 km per hour, not going slower even at an intersection.

"At that moment there suddenly appeared at an unmarked pedestrian crossing a child who crossed the street from left to right. GANANIUK, who wanted to avoid running into the child, began to brake and attempted to pass the child on the left, but in doing so he hit the child on the elbow as a result of which it was thrown 3 to 4 meters to the side and died of the head injuries it received.

"From what has been set forth it follows that the conclusion of the Presidium of the Supreme Court of the Armenian SSR, that GANANIUK violated the rules for driving motor vehicles, is in agreement with the documents. This violation consists of the fact that GANANIUK, although he reduced the speed of his motorcycle, on his way back to the garage, nevertheless rode at a speed of 45-50 km per hour instead of the speed of 30 km per hour prescribed for that locality. He also failed to exercise due caution at the intersection.

"Nonetheless, it is also clear that GANANIUK, although he committed a violation of the regulations for driving motor vehicles, took into account the fact that the street on which he rode back to the garage was a dead-end street and that there was very little pedestrian traffic on it. Because he was an excellent driver, he also counted on the fact that should pedestrians appear on the road he could avoid them without causing them any harm. This conviction was based on years of experience with, and an unusually good control over, the motorcycle, which was supported by the report included in the dossier.

"Consequently it must be accepted that GANANIUK was aware of the harmful consequences which his behavior in the given circumstances could cause; this fact, however, still did not provide any grounds on which it could be found that the act committed by GANANIUK was committed with indirect intent, because in such cases the guilty individual foresees and intentionally allows the possibility of the occurrence of socially-dangerous consequences. Although GANANIUK in the given instance did foresee the possibility of the occurrence of such consequences of his behavior, he at the same time counted,

without sufficient grounds, on being able to prevent these consequences. It should therefore be recognized that GANANIUK did not commit the act with indirect intent, as incorrectly stated in the decision of the Presidium of the Supreme Court of the republic, but through negligence in the form of criminal recklessness.

"Concerning the Court's reference to the fact that GANANIUK fled from the scene of the accident and left the victim behind in a dangerous condition, it should be noted that this fact, in the particular instance, has no connection with the question concerning the subjective aspect of the original punishable act. Nor can it be considered as a circumstance which aggravates his guilt, because statements made by the accused which are not contradicted by any other evidence, indicate that after running down the child he brought the motorcycle to a stop and attempted to help the victim but was forced to leave the scene of the accident because the crowd which had gathered threatened to attack him with stones.

"At the time of the accident GANANIUK was sober. He is described as a well-disciplined and hard-working student and as a first-rate sportsman who had taken part in many important competitions.

"Taking into account the cited concrete circumstances of the case, which provide grounds for reducing the punishment imposed on GANANIUK, the Plenum of the Supreme Court of the USSR concurs in the protest and decides in accordance with point 'b' of Art. 9 of the Statute of the Supreme Court of the USSR:

"The decision of the Presidium of the Supreme Court of the Armenian SSR of 16 February 1959 concerning E. V. GANANIUK is quashed, and the verdict of the people's court of the Stalin district of the city of Erevan of 7 October 1958 and the decision of the Criminal Chamber of the Supreme Court of the Armenian SSR of 14 October 1958 are quashed; the acts of GANANIUK are to be defined according to Art. 165 of the CC of the Armenian SSR, instead of according to Art. 162, paragraph 1 of the CC of the Armenian SSR."

The crux of the case is clear; it concerns the

borderline between intent and negligence. In the field of procedural law many comments could be made which would, however, carry us too far afield. The author would point out only the remarkable fact that at no point is there any indication of what punishment was meted out by the first court or, later on, by the Appeal Court. At the end of the decision we see that the act committed apparently falls under a different article than that originally applied, but nothing is said concerning the actual punishment, even though the Supreme Court does not refer the case back. In some of the decisions, however, the sentence is reported.

Finally, we must mention that in 55 of the 197 cases discussed in this review the offenses were committed under the influence of alcohol, according to the published verdicts and abstracts.

The Bulletin of the Supreme Court of the USSR contains, as well as decisions in individual cases, general instructions (in the form of decrees) concerning the interpretation of the law. The growing number of such decrees seems to point to the increasing importance attached to this part of the task of the Supreme Court. In one exceptional case an individual decision was given the force of a general instruction; as in most continental countries, there is generally no force of precedent in the Soviet Union.⁴⁸

II. RECENT TENDENCIES IN SOVIET CRIMINAL LAW

Soviet criminal law seems, during recent years, to have been dominated chiefly by two tendencies. These tendencies can be characterized as a strengthening of socialist legality and an effort to fight crime more effectively.

Socialist legality is a concept in Soviet jurisprudence which has undergone appreciable modification over the years. At present it shows, to some extent, signs of resemblance to such typically Western constitutional principles as the independence of the judiciary and reasonably guaranteed rights of the accused.

This development is undoubtedly a reaction to the arbitrary and unlawful procedures of the Stalin era. It seems likely that the new leading class in the Soviet Union—the high-level party functionaries, the industrial and economic leaders, the higher civil servants, and all those who to-

⁴⁸ BVS 1962 no. 6, pp. 32–35, decision of 30 November 1962.

gether possess the actual political power in the Soviet Union—is not prepared, in the long run, to live and work under the insecurity of a Stalinist climate.

Besides this tendency towards strengthening socialist legality, which we may regard as a reaction to the recent past, there can also be perceived an effort to fight crime more effectively. These two phenomena are of course not unconnected. The latter can be seen, in a way, as another reaction to the Stalin era. In those days most problems were answered with slogans, and there was little concern with a systematic and rational criminal policy. Those responsible for framing criminal law usually took incidental measures against certain currently troublesome kinds of penal offenses, such as theft of government property, carelessness in production, absenteeism, etc. In addition, in various periods (particularly in the thirties), criminal policy was, for the most part, determined by the need to supply fixed numbers of forced laborers.

There is reason to assume that these measures caused no significant drop in ordinary crime. In the post-war years many new regulations were promulgated,—for example, the decrees of June 4, 1947, concerning theft of public and private property⁴⁹ and the decree of April 30, 1954, concerning the re-establishment of the death penalty for murder committed under aggravating circumstances.⁵⁰

Soviet jurists have said, in referring to the actual connection between socialist legality and the fight against crime, "that a consistent maintenance of socialist legality is in no way in contradiction with the effort to fight crime, but on the contrary is precisely the most important prerequisite for accomplishing this end."⁵¹

Socialist legality thus signifies a state in which law rules the country, in which the existing laws are strictly upheld, and in which it is endeavored to regulate by law all rights and duties considered to be of some importance. These two phenomena, the strengthening of socialist legality and the attempt at effective control of crime, will now be discussed separately in the light of opinions expressed in Soviet law journals.

⁴⁹ Ved. SSSR 1947 no. 19.

⁵⁰ Ved. SSSR 1954 no. 11.

⁵¹ Leader article in SZ 1957 no. 2, p. 11.

A. *The Strengthening of Socialist Legality*

This effort is expressed primarily in the demolition of many institutions dating from the Stalin era. The accepted doctrine on this point is that Stalin, who was otherwise not without merit, made the great mistake of building up around himself a pernicious cult of his own person, and that this cult made it possible for the criminal Beria and his associates to infiltrate the government apparatus, which they then used to destroy true communists. The more serious outgrowths of this system were uprooted in the years immediately after 1953; attention is now directed to the elimination of all Stalinist thinking.

Because ideological continuity is of great importance in Marxism, a connection was sought with the older generation of jurists of the period just after the October revolution. The well-known leading figures of the first ten years of Soviet law, Stuchka, Pashukanis, Krylenko, and others, reviled during the thirties by Vyshinsky and finally purged, have been rehabilitated.⁵² Vyshinsky himself is now sharply criticized.⁵³ The Stalin period is regarded as a temporary aberration, and for each new standpoint an attempt is made to show it to be completely in agreement with, and originating from, Leninist principles. Even the most technical legal problems are continually solved with a reference to some pronouncement by Lenin. Pre-revolutionary Russian jurisprudence enjoys a benevolent regard.

In 1961 and 1962 a sharper ring might be heard (following suit to Khrushchev's renewed attacks on the cult of the personality) in the criticism of the Stalin era and particularly the Vyshinsky school of law.⁵⁴

The strengthening of socialist legality is implemented principally through criminal procedure. This is understandable if it is kept in mind that the actual content of Soviet criminal law, with its many vague and broad definitions and numerous escape clauses, is realized by its application within the framework of criminal procedure.

In the criminal law proper, various old ideas have re-emerged. They are to a certain extent

⁵² Cf. Strogovich, M. S., *At the Sources of Soviet Jurisprudence*, in SZ 1957 no. 10, pp. 19–25.

⁵³ Cf. Aleksandrov, M., *Strengthening Socialist Legality and the Application of Soviet Law*, in *Vestnik Moskovskogo Universiteta (Law Series)* 1957 no. 2, pp. 103–117.

⁵⁴ Cf. Piontkovskii, A., *Unmask Completely the Fallacious Views of Vyshinsky in the Theory of Soviet Criminal Law*, SZ 1962 no. 7, pp. 10–15.

incorporated in the Basic Principles of Criminal Legislation of December 1958, namely the elimination of analogy and the consistent application of the rule that punishment can be imposed by the court only for an offense created by a criminal law. Both these rules, however, had long been accepted in actual practice. Analogy was seldom applied, and not at all in recent years, according to L. Smirnov, vice-president of the Supreme Court of the USSR.⁵⁵ The same informant also states that the rule that punishment can be imposed only through a court sentence implies in part a reaction against the "administrative jurisdiction" of organs of the Ministry of Internal Affairs, i.e., the notorious MVD.⁵⁶

In this context the so-called parasite legislation is to be seen as a serious backward step. Under it, an individual can be banished for five years by a people's meeting solely on the grounds of a "parasitic, anti-social" way of living. These measures have been criticized in the law journals,⁵⁷ and the turn taken by parasite legislation in 1961 (on which we reported above, see text at page 251) seems to imply a modest triumph for socialist legality.

Another success scored by socialist legality was the provision for appeal to the people's court where fines are imposed by administrative committees (see text at page 252).

In criminal procedure, a sensitive area had been the preliminary investigation. There were numerous complaints about the manner in which the investigation was sometimes carried out. The principal question here was which authority should carry out the investigation. The former situation, in which it was made in part by the police and in part by special investigators attached to the *Prokuratura*, was considered unsatisfactory.⁵⁸ Possible solutions were to assign the investigative power either to the police, to the *Prokuratura*, to the courts, or to a special department attached to the Ministry of Justice (the police are under the jurisdiction of the Ministry of Internal Affairs; the *Prokuratura* is completely independent and organized along hierarchical lines). Article 28 of the

Basic Principles of Criminal Procedure finally decided the matter in favor of the *Prokuratura*.

Investigation of crimes against the State is still in the hands of the personnel of the KGB, the Committee for National Security, which is responsible to the Council of Ministers and which is the successor to the MVD in this respect (art. 28 of the Basic Principles of Criminal Procedure). Since the fall of Beria, the importance and influence of this special police seem to have been greatly reduced.

Khrushchev stated at the 21st Party Congress in January 1959 that at that time there were no longer any prosecutions for political crimes in the Soviet Union. We know, however, that since then several espionage trials have been held (e.g., that of Powers).

One of the most important developments with regard to socialist legality is the increase in legal protection given to the individual. There are two instances of this in criminal law: first, the new criminal legislation provides more procedural guarantees than formerly pertained for the accused in a criminal trial; second, the law and the administration of justice now assist the victim of the crime. Such assistance can be seen in the broad interpretation and close attention given by the Supreme Court to the operative provisions concerning self defense, and in the interest shown, particularly in the literature, in the parties to a civil suit and in the victims of crime.⁵⁹

A few years ago a wide-spread controversy developed among Soviet jurists concerning the evidentiary value of confessions by accused persons.⁶⁰ In the Stalin-Vyshinsky period confessions, especially in political trials were often the most important or only evidence. (This reliance upon confessions might be explained in the following way: if the accused has not committed the act but must nevertheless be convicted for other reasons, a confession has appreciable propaganda value and restores, as it were, the broken spiritual solidarity in a totalitarian society.) At present the opinion prevails that a confession is a form of evidence equal to other forms, but that a confession not supported by other evidence is not adequate as complete proof.

The attempt to introduce particular mitigating factors and more differentiation in penal sanctions may be seen both as a strengthening of the

⁵⁵ In a statement concerning the new Basic Principles, BVS 1958 no. 4, p. 22.

⁵⁶ *Ibid.*

⁵⁷ For instance, by the Moscow law faculty, in *Vestnik Moskovskogo Universiteta (Law Series)* 1958 no. 1, pp. 189-91.

⁵⁸ Rudenko, R. (the Procurator General of the USSR), in *SZ* 1959 no. 4, pp. 3-15.

⁵⁹ Gal'perin, I., in *SGP* 1957 no. 10, pp. 45-54.

⁶⁰ Rakhunov, R. D., in *SGP* 1956 no. 8, pp. 34-43.

principle of socialist legality and as an endeavor to find more effective methods for fighting certain forms of criminality.

The Supreme Court of the USSR has given the courts several instructions (as a consequence of the decisions of the 21st Party Congress; see *infra*, p. 265), all of which aim at a milder policy towards accused and convicted persons. There is hardly a single writer who does not point out the need for, and the benefits of, less drastic penal intervention; according to present opinion stern measures are necessary only against repeated offenders, although with respect to such offenders it must be kept in mind, too, that the primary objective is re-education. It was reported above that in the criminal codes already passed, the maximum sentences in many cases have been considerably reduced.

Besides reflecting the realization that it is undesirable to apply the rather severe penalties provided in cases of common theft and "hooliganism" to insignificant offenses, the steps taken to provide separate penal provisions for mild forms of such offenses also reflect a policy to intervene in areas previously outside the scope of criminal law. This view is supported especially by the new penal measures introduced in various Union republics against the less serious forms of speculation and related practices, making possible a more effective control of undesirable forms of private commercial enterprise.

After 1960, the campaign for socialist legality, having reached certain targets, subsides, and the legislative fervor of the Soviet state turns towards other aims. In 1961 and 1962 there is a sudden growth in the number of capital crimes. Possibly the increased freedom of recent years has engendered among private citizens and Soviet officials alike those practices now being eyed with jealous disapproval by the regime. Private trade, bribery, "speculative" dealings in gold and foreign currency, plan-fraud—all this not seldom on an extensive scale and not infrequently by high-ranking officials—have elicited a prompt and vigorous reaction from the obviously vexed authorities.⁶¹ But the newly created capital crimes cannot be attributed entirely to this reaction. The introduction of capital punishment for serious cases of rape, prison riots, and violence against policemen seems to be motivated by the regime's annoyance

⁶¹ Cf. Leon Lipson, *Execution: Hallmark of "Socialist Legality"*; Harry Willets, *The Wages of Economic Sin*, in 11 PROBLEMS OF COMMUNISM no. 5.

with hardened criminals (those most liable to receive a death sentence in such cases). Annoyance has always been one of the chief elements of the Soviet attitude towards crime; in a militantly organized and dynamic society like the Soviet Union, forever chasing its citizens towards the fulfilment of the next plan, the criminal is more of a nuisance and a greater burden on progress than in more static or freer societies. The social straggler is invited to rejoin the ranks immediately, and if he cannot or will not do so, he is annihilated. This political context explains the polarization which has taken place in recent years in Soviet criminal policy: lighter penalties for petty offenses, harsher penalties for serious offenses.

B. *The Control of Criminality*

Crime, according to Marxism, is a phenomenon which cannot take root in a socialist society and which must inevitably die out there. The criminality which still exists in such a society is explained as being due to remnants of capitalism in the consciousness of individual Soviet citizens and to outside influences. This explanation was initially considered as conclusive, closing the door to any sociological and psychological approach to the problem of crime. The resulting lack of recognition of criminology as a science in the Soviet Union is evident by its absence from literature references and bibliographies. It should be noted, however, that in recent years there has been less readiness to accept a proposition which is at best a primitive apriorism.⁶² It is quite evident that gradually the need has developed to acquire some understanding of the causes of criminality and effective counter-measures against it.

Soviet jurists have never lacked ingenuity in finding a theoretical-Marxist basis for new ideas.

⁶² Cf. Gertsenzon, A., in *SIU* 1958 no. 1, p. 10 ff. and Sakharov, N., at a meeting of the All-Union Law Institute, *SIU* 1958 no. 1, p. 64 ff. In 1961 a monograph was published (A. B. SAKHAROV, *THE PERSONALITY OF THE OFFENDER AND THE CAUSES OF CRIME* (Moscow 1961)) which could properly be classified as criminological. The author is mainly concerned with a sociological approach to the crime problem, and is avowedly influenced by Czechoslovakian authors. Notwithstanding the rather primitive level of the book, it is the first study of this kind in the Soviet Union and therefore of great interest. Another important contribution to this discussion is *QUESTIONS OF THE METHOD OF STUDYING AND PREVENTING CRIMES* (Moscow 1962), edited by Professor A. A. Gertsenzon, who played a decisive role both in the elaboration of the RSFSR Criminal Code and in the re-emergence of criminology in the Soviet Union.

The problem of the causes of criminality has been discussed in particular by two of the most prominent theoreticians of criminal law, the Moscow professors Piontkovskii⁶³ and Utevskaia.⁶⁴ Piontkovskii distinguished between various groups of causes. Motives such as cupidity, revenge, jealousy, etc., express, according to him, ideas which originate and flower in exploiting societies; these can therefore quite justifiably be considered remnants of the past. In the Soviet Union there is no social basis for such ideas; their existence is a result of social consciousness lagging behind social reality. This gap must be bridged particularly by cultural-educational work. Another cause of criminality is the bourgeois influence to which some Soviet citizens are exposed. Further, there are "non-antagonistic contradictions" between the continually growing wishes of the population and the economic capacities of the country. (According to Marxist doctrine, there are antagonistic contradictions present in capitalist society which will inevitably cause this society to decline; non-antagonistic contradictions are also inherent in socialist society before the final stage of communism is reached; generally speaking these non-antagonistic contradictions are the driving force behind every social development.) Non-antagonistic contradictions appear, for instance, in the immense housing shortage in the Soviet Union, which is the immediate cause of all sorts of crimes. Finally, there are causes which are not to be found in the consciousness but in the *byt*, the habits of the people, such as the misuse of alcohol.

There is according to Piontkovskii no simple formula for fighting crime. Theft of socialist property must be checked mainly by better preventive and repressive control, and the control of alcoholism must be principally effected through the Komsomol. At the same time the whole system of imprisonment, in all its aspects, must be better regulated and organized. In this connection the writer remarks that this is of special importance in relation to repeated offenders. He suggests that a less automatic application of parole and improved organization of re-employment after release may have a favorable effect on recidivism.

Utevskaia seeks the explanation of the causes of criminality more in an elaboration and deepening of the concept "remnants of the past in human

consciousness." Both writers, however, urge study and work in various directions to arrive at a more practical and effective control of criminality; both also state that little has been done in this field.

In this new effort an important place has been assigned to the use of statistics, especially in the activities of the Supreme Court of the USSR. It is clear that this Court (as far as criminal law is concerned) must serve as a kind of study and action center in the campaign against crime. It must confine its attention to the study of criminal statistics and court practice in criminal cases and to the publication of these data. In this connection it is authorized to give directives to the courts about the application of legal provisions, and to submit bills to the legislature. The Supreme Court of the USSR occupies itself with the administration of justice only when the unity of law in the Soviet Union is threatened.

The basis for these new responsibilities of the Supreme Court was established by the above mentioned Statute for this Court passed on February 12, 1957, by the Supreme Soviet.⁶⁵ This Statute greatly limited the authority of the Supreme Court as far as the administration of justice was concerned. The Criminal and Civil Chambers of this Court (as far as appellate jurisdiction is concerned) now handle only protests of the President of the Supreme Court or of the Procurator General of the USSR against a verdict or decision of one of the Chambers of a Supreme Court of a Union republic (art. 11).⁶⁶

The Plenum of the Supreme Court hears, among other things, protests lodged by the President or the Procurator General of the USSR against a verdict or decision of one of the Chambers of the Supreme Court (art. 9-a), or of the Presidium of the Supreme Court of a Union Republic (art. 9-b).

At the same time as the judicial task of the Supreme Court of the USSR was reduced, its task in other fields was enlarged. In article 9 of the Statute, the Plenum is given the right to present drafts of laws to the Supreme Soviet; it is also charged with the publication of court practice, the analysis of judicial decisions, and the compilation of legal statistics. It can give directives for the elucidation and application of the law.

The personnel of the Supreme Court (president, 2 vice-presidents, counsellors, and people's assessors) cannot be arrested or prosecuted without the

⁶³ *The Causes of Crime and the Way To Fight Crime*, SGP 1959 no. 3, pp. 84-98.

⁶⁴ *Methods and Organization of the Study of Crime and the Criminal*, SGP 1959 no. 11, pp. 59-68.

⁶⁵ Cited *supra* note 3.

⁶⁶ Cf. Szirmai, Z., *Res Judicata in the Law of the USSR*, in 1 LAW IN EASTERN EUROPE (Leyden 1958).

approval of the Supreme Soviet or the Presidium of that body (art. 17). The chairmen of the Supreme Courts of the Union republics are *qualitate qua* members of the Supreme Court of the USSR (art. 3).

In the last few years figures on crime have occasionally been published in the Soviet Union. In March 1957, SGP published a rather unusual article, written by a district *prokuror* (State attorney) who, on the basis of statistical material, had made a study of the causes of crime in his district and then considered the most suitable methods for its prevention.⁶⁷ This article shows, even more clearly than the practice of the Supreme Court, how extremely important a part is played by alcohol in certain groups of offenses in the Soviet Union. According to the figures given by Iakovlev (concerning the Perm district in the eastern part of European Russia), 50% of the cases of theft of private property were committed by persons under the influence of alcohol; for the offense of "hooliganism" the figure was as high as 95% in the period under study. On the basis of this material, Iakovlev makes suggestions for effective prevention.

In an article in SGP by P. S. Romashkin and A. A. Gertsenzon the following percentages are given for offenses committed under the influence of alcohol: hooliganism 96%, murder 70%, rape 67% (these figures probably hold for the entire Union).⁶⁸

With an eye to this problem, many authors point out the primarily educational function which punishment must fulfill. Re-education must take first place particularly in the corrective labor colonies, where detention sentences are normally served in the Soviet Union. One of the ways of achieving this would be through more individualized treatment.⁶⁹ This is practicable because there are various types of colonies. Good behavior might earn transfer to a colony with a milder régime. The decentralization trend which began in 1957 has created some problems here, however, because since that time the colonies have been mainly under the administration of the district governments, and in general the aim is that a convicted person should serve his sentence in a colony located in his own district. It is obvious that the smaller districts,

⁶⁷ Iakovlev, M., *The Prevention of Crime (According to Data From the Molotov District)*, SGP 1957 no. 3, pp. 45-54. Since the fall of Molotov the district carries again its old name of Perm.

⁶⁸ SGP 1959 no. 2, pp. 32-47.

⁶⁹ Anushkin, G., *Urgent Problems of Prison Practice*, SZ 1957 no. 3, pp. 27-32.

particularly, cannot provide sufficient alternative types of treatment. In this case, it has been remarked, there should be no hesitation in committing a convicted person to a colony outside his own district.⁷⁰

Generally speaking, it can be said that, judging by articles and communications in the various law journals, considerable progress has been made towards a rational and balanced policy. There are supervisory commissions, made up of eminent officials of labor unions, kolkhozes, etc., who regularly visit the prisons and colonies in order to check on the performance of the prison administration, and who have interviews with the inmates in which complaints are heard.⁷¹ Apparently in some cases prisons or colonies are adopted by local factories, implying that assistance is given with regard to the work done by the prisoners, the vocational training of prisoners, and their employment after release.⁷² Mention is also made of rehabilitation commissions, which appear to play a special role in re-employment.⁷³ Extensive proposals for new penitentiary legislation are now under discussion.⁷⁴

The concept called "the participation of the public in the campaign against crime" was introduced by Khrushchev at a Komsomol congress in 1958 and again at the 21st Party Congress in January 1959. It dominated the field of criminal law in the Soviet Union in 1959 to such an extent that hardly anything was written on other questions. Since this subject is very extensive, and in a way separate from the main body of criminal law, we shall only touch upon some highlights here.⁷⁵

Besides the ordinary criminal law jurisdiction, Soviet law recognizes three exceptional kinds: administrative jurisdiction, disciplinary jurisdiction, and the so-called comrades' courts. The administrative jurisdiction is exercised by a court consisting of one people's judge, or by local administrative authorities, who may impose short detention sentences or fines for unimportant offenses such as

⁷⁰ Raskin, A. and Shishov, O., in *SIu* 1959 no. 5, pp. 14-17.

⁷¹ *SZ* 1959 no. 11, pp. 31-36.

⁷² *SZ* 1959 no. 12, pp. 23-29; *SIu* 1959 no. 12, pp. 16-19.

⁷³ SGP 1959 no. 6, pp. 128-33.

⁷⁴ Cf. Malandin, I. G., *Academic Conference on Codificational Problems of Corrective Labor Law*, *Pravovedenie* (Legal Science) 1961 no. 3, pp. 190-94.

⁷⁵ Cf. Glenn G. Morgan, *People's Justice: The Anti-Parasite Law, People's Voluntary Militia, and Comrades' Courts*, in *7 LAW IN EASTERN EUROPE*, pp. 49-81 (Leyden 1963).

small thefts and mild forms of hooliganism. This judicial procedure was introduced primarily to provide an alternative to the draconian punishments which were provided for the "full-sized" forms of offenses. Disciplinary jurisdiction can be exercised in all enterprises, businesses, and institutions.

The comrades' courts have existed for many years in agriculture, factories, and individual housing units. An attempt is now being made to revive these rather neglected institutions, among other ways by expanding their authority. The punishments which they may impose are rather insignificant, but their moral authority, if the reports are to be believed, is very great. They are meant to act on all sorts of small offenses which are too unimportant to be handled by the courts. In addition to the rules of Soviet law, they must also enforce the rules of Soviet morality.⁷⁶

Other expressions of the attempt to recruit the public's assistance in the campaign against crime are found in the setting up of a so-called voluntary people's militia. This is supposed to take over, to a large extent, the work of the police with regard to the maintenance of the public order. In addition, various committees, comprised of representatives of organizations and even of individual citizens, have been established to deal with such matters as child welfare and rehabilitation. Such volunteer organizations are apparently principally the product of local initiative; the voluntary people's militia, for instance, seems to have been the result of the initiative of Leningrad factory workers.

It is, in the author's opinion, impossible to give a simple explanation of this development. Some of the factors which might be mentioned are: the wish to take serious measures against particular social abuses; motives of economy (reduction in the number of judges and police personnel); the wish to permit, cautiously, some assumption of initiative by the population (perhaps because the Soviet regime will become increasingly dependent on the support of the population); and the wish to offer, for once, some competition to Yugoslavian socialist achievements by showing that the Soviet State, by transferring government functions to social organizations, is in the process of disappearing, as it should according to Marx.

⁷⁶ Min'kovskii, G. M., in SGP 1959 no. 12, pp. 92-97.

CONCLUSION

The political and economic decentralization initiated by the legislative work of the Supreme Soviet in February 1957 is, according to the signs available to us, for the most part dictated by the desire for greater efficiency, for more efficacious and appropriate work, and for less bureaucracy. The changes in the field of law certainly evidence these aims. The greater part of the readers' columns in SZ and SIu is taken up by complaints about bureaucracy.

Considerations of efficiency and economy can also be seen behind the reforms in the field of judicial organization, in particular of the people's courts. In Estonia and Armenia an experiment was made with the merger of people's courts of the familiar type (one judge and two people's assessors) into larger courts.⁷⁷ Since this reorganization apparently resulted in an appreciable economy of personnel and a simplification of the hierarchical control, the system was introduced in other republics as well (e.g., arts. 28 and 29 of the Law on the Court Organization of the RSFSR and art. 19 of the corresponding law of the USSR).

Finally, a favorable sign in Soviet criminal law is the indication of increased interest in the law of foreign countries. For example, the experience of satellite countries, which have not employed the doctrine of analogy, seems to have stimulated its abolition in the Soviet Union. While this increased interest is naturally directed especially toward the people's democracies, a certain revived interest and deepened criticism can also be observed with regard to Western criminal law. Until recently the horizon of Soviet legal study was limited to 19th century German doctrine, and the controversy with the West was expressed by Soviet legal literature in the traditionally Marxist churlish coffee-house style.

All things considered, it can be said that in recent years Soviet criminal law has shown a rapid development in a generally favorable direction. One should guard, however, against too much optimism; the course set by the party leadership is, for the present, binding and inescapable for the criminal law.

⁷⁷ SIu 1959 no. 8, pp. 47-52.