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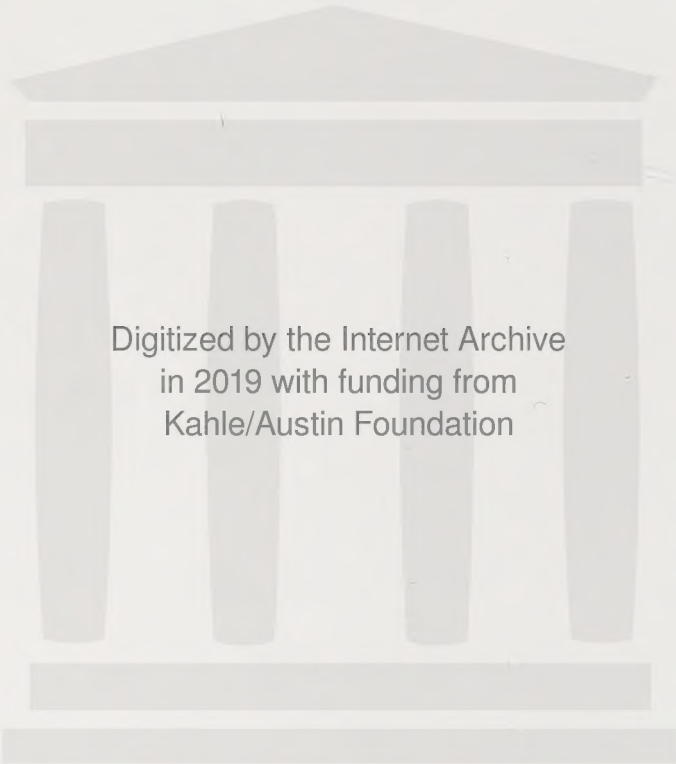

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THE JUDICIAL SYSTEM IN THE USSR

(Basic Insight)

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Translated from the Russian by Natalya SHEVYRINA
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Игорь Петрович Волошин
Лев Семенович Симкин

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CONTENTS

BASIC PRINCIPLES OF THE SOVIET JUDICIAL SYSTEM

"Justice is the basis of all public virtues," wrote Paul Henri Holbach.* To bring his words to life, it is essential that reliable guarantees of a truly democratic judicial system be worked out. Do such guarantees exist in the USSR? What are the basic principles of Soviet judicature?

The Court Alone... According to *Article 160 of the Soviet Constitution,* **"no one may be adjudged guilty of a crime and subjected to punishment as a criminal except by the sentence of a court and in conformity with the law."** The **two basic principles of Soviet law** stem from this article.

First: Justice in the USSR is exercised by the court alone. No one else—neither the procurator nor the police nor even an administrative body has the right to find a person guilty of a crime and subject him, or her, to punishment.

Second: The presumption of innocence, that is, the assumption that the defendant is not guilty unless so proved legally. It is the court's duty to check the defendant's entire account and take into consideration all his arguments and objections. The court demands convincing proof from the investigator and procurator of the accused citizen's guilt. If they fail to provide this, the defendant must be acquitted whether he has pleaded guilty or not guilty.

* Paul Henri Holbach (1723-1789), a French materialist philosopher.

The Soviet Constitution also grants the accused the right to legal defence. The procurator and investigator are not expected to necessarily condemn the person suspected of a crime—on the contrary, apart from gathering incriminating evidence, they are required to provide some proof of the defendant's innocence or of extenuating circumstances.

A person taken to court is granted a number of effective means to deny the accusation. Thus he has the right to know the grounds for his accusation, as well as to familiarize himself with the available evidence, take part in the investigation of the case, submit evidence and appeals and enter a plea of abatement against, say, a judge or prosecutor, appeal the investigator's or court's actions and hire a lawyer. The formal expert examination that follows the defendant's appeal is free of charge. As soon as the preliminary investigation is over, the person in charge of it must acquaint the defendant with all the materials of the case or otherwise a court hearing cannot be held. A trial of a case in the defendant's absence is an exception.

The Supreme Court of Soviet Georgia, for instance, heard the case of the Brazinskases (father and son) in their absence. In October 1970, they hijacked an airliner flying from Batumi to Sukhumi, killed an air hostess, Nadezhda Kurchenko, badly wounded the pilot and forced the crew to fly them to Turkey. The two criminals are presently residing in the USA, which was why the court had to hear the case in their absence. According to Alexander Rekunkov, Procurator-General of the USSR, the USA's refusal to allow the extradition of Brazinskases is against international law and impedes the anti-terrorist efforts of the international community.

Any court trial in the USSR is based on the court's direct investigation of the offence and its continuous hearing. Before handing down a decision, the court must question the defendant(s), victim(s) and witnesses, as well as consider the material evidence of the case. The same judges must conduct the entire trial.

The Court Language The USSR is a multinational state; therefore, all legal procedures are carried out in the language of the nationalities populating a particular constituent or autonomous republic. If the population of a certain region in a given republic speaks its own language, the court procedure must be conducted in that language.

Persons who have no command of the language in which the trial is being conducted will have a translator/interpreter provided by the court, whose task is to acquaint them with the case. The persons involved in the proceedings receive the main documents of the case translated into their native language and have the right to speak that language throughout the trial when giving evidence or making statements. Any violation of those rules could overturn the court's judgement.

The Constitution of the USSR envisages public hearings in all courts. It is common practice for Soviet courts to hold their sessions at the place where the defendant works, studies or lives. Thus, one out of four or five criminal cases is heard outside the court premises.

The law permits court trials to be held in camera only if state secrets are involved or in order to protect the privacy of the persons participating in the proceedings (in criminal cases the court may sit in camera if the defendant is under 16 years of age or in the case of a sexual crime). The verdict, however, is always made public.

Judges and Assessors "All courts in the USSR shall be formed on the principle of the electiveness of judges and people's assessors" *(Article 152 of the Soviet Constitution)*. People's judges of district (city) courts, the basic unit in the Soviet court system, are elected by the population, and other judges by Soviets of People's Deputies.* Such

* Soviets of People's Deputies are representative bodies of state authority. The Constitution of the USSR and those of the country's constituent and autonomous republics proclaim a universal system of state power made up of Soviets of People's Deputies and comprising the Supreme Soviet of the USSR, its counterparts in the constituent and autonomous republics and the local Soviets.

a democratic system has nothing in common with the system mostly practised in the West, where the population is not allowed to take part in the formation of the court. Soviet law is against the principle of appointing judges because its aspiration is to enhance the role of society in maintaining justice and to put judges under the people's supervision.

Party, Young Communist League, trade union, co-op and other public organizations represented by their district (city) bodies, as well as work teams and conferences of servicemen at military units have the right to nominate candidates for people's judges. According to Soviet law, any law school graduate of 25 and over has the right to be elected a judge.

The election campaign is run by a special commission made up of representatives of public organizations and work collectives. The most recent elections of people's judges were held in June 1987 and were run by 4,343 commissions consisting of a total of 47,700 members, 41 per cent of whom were workers and 12 per cent were farmers. 99.4 per cent of the electorate voted for 12,122 judges altogether.

People's judges are elected for a term of five years by the district (city) population on the basis of universal, equal and direct vote. **Universal** suffrage means that all Soviet citizens who are 18 or over have the right to vote, except those declared legally insane. The elections are **equal** because each voter has but one vote and everybody takes part in the elections on an absolutely equal basis. Incidentally, 44.5 per cent of all judges are women.

The elections of people's judges in the USSR are **direct,** which means that the citizens elect them by direct and secret ballot.

Courts in many countries are based on the principle that a judge may not be removed from office. Soviet law rejected that principle for many reasons. **First,** a judge's having a life term in office reduces society's role in law enforcement to nought. **Second,** electiveness is based on the assumption of the electorate's control over the judges and the latter's responsibility to the population.

Indeed, according to the law, the electorate has the right to recall judges before the end of their term who have proved to be inadequate (in 1986 alone, 73 judges were thus recalled). Such a right not only enables the electorate to express its full power, but also provides an important guarantee to the judges, for no one but the electorate can deprive them of their authority.

Foreigners often wonder why there is only one judge and two assessors in a Soviet court and why there is no jury.* Does it mean that the Soviet court's verdicts are biased? Not in the least!

The two people's assessors who take part in Soviet criminal and civil proceedings together with a judge (of the legal profession) have far broader rights than a jury in the West. They take equal part in deciding whether a crime has been committed, in determining the verdict and in sentencing. Such a system is far more democratic than that envisaging the judge's sole responsibility for punishment.

People's assessors have equal rights with the judge. They take part in the examination of all the materials of the case, and have the right to question all the participants in the court proceedings. The joint actions of a judge, who is a professional lawyer with expertise in legal matters and court practices, and his assistants, the people's assessors with their vast work and life experience, is a solid guarantee of fair and lawful court decisions. People's assessors are elected by a general meeting of the staff of a place of work or by a neighbourhood community for a term of two and a half years. They must be at least 25 years old, and, if elected, are expected to serve in court for two weeks a year.

At present there are 850,000 people's assessors in the USSR, 44.7 per cent of whom are workers, 7.5 per cent are farmers and a significant number are teachers, physicians or engineers.

The 1987 Plenary Meeting of the Supreme Court of

* The jury is a body of persons sworn to return a verdict on evidence in a court of law. Jurors are chosen or appointed with regard to certain conditions. For instance, in pre-revolutionary Russia they had to be substantial property owners and be loyal to the government.

the USSR considered the participation of people's assessors in court activity and sharply criticized those judges who underestimated their role in seeking the truth and who infringed upon their rights. It was proclaimed that a violation of people's assessors' rights was a valid reason for reversing a court's judgement.

In case of differences between the judge and the assessors the problem will be resolved by the majority vote. If one of three disagrees with the other two when summing up the case in private, he has the right to write down his dissenting opinion and express his idea for a settlement of the issue in dispute. His opinion will be considered by a higher court.

The high responsibility given to people's assessors is based on their having a thorough legal grounding which they are expected to enhance. For that purpose the majority of big cities and districts hold special courses where prominent lawyers lecture on the basic trends of law. This does not mean, however, that the public expects assessors to become professional lawyers. As Svetlana Kartseva, Chairperson of the Moscow Perovo District People's Court, correctly put it, "justice should be based, first and foremost, on the conscience, commonsense and emotions of people's assessors supplemented by the judge's professional knowledge."

Independent and Subject Only to the Law In what way is the Soviet court protected from Party or state pressure when considering criminal and civil cases? The *Soviet Constitution* states that **"Judges and people's assessors are independent and subject only to the law"** (*Article 155*). This means that nobody has the right to interfere in the administration of justice by the courts. For a judge there is no other superior but the law.

The judge's independence has firm legal guarantees. **First,** all judges in the country are elected, which means that only the electorate and not any officials or, say, Party bodies, can strip them of their powers. **Second,** the presence of an outsider at the conference between the judge and people's assessors preceding the final judge-

ment (in a civil suit) or verdict (in a criminal case) is prohibited and regarded as a reason for reversing the final decision. **Third,** according to the main principle of Soviet law, all citizens regardless of their social, property, official, national (racial) or religious status, are equal in the face of the law and court.

Yet, legal guarantees alone are not enough to fully implement the constitutional principle of the judge's independence. A policy of greater openness has made it possible to disclose some previously hushed-up facts concerning certain official pressure on judges aimed at making the latter issue desired judgements regardless of legality. Officials who try to put pressure on the court are now severely reprimanded by the Party and state. The January 1987 Plenary Meeting of the CPSU Central Committee dealing with the Party's personnel policy made it quite clear that it is impermissible to allow anyone to interfere in a court's activity.

The concept of a law-governed state adopted at the 19th All-Union Conference of the CPSU held in June 1988 is a major guarantee against interference in legal proceedings. The essence of the new concept put forward by the Party is that the government and all officials should abide by law, and not place themselves above it.

The resolution On Legal Reform adopted by the Conference includes specific measures to ensure the independence of judges. So that the election of district and city judges is not dependent on the local authorities it was recommended that this be done by the legislative body of a higher level and that longer terms of office be instituted. In accordance with the Law of December 1, 1988, adopted at the extraordinary 12th session of the Supreme Soviet of the USSR, appropriate changes have been made in Article 152 of the country's Constitution.

A GLIMPSE OF HISTORY

When People's Commissar of Justice* Dmitri Kursky entered the building of the Moscow region court in the Kremlin in November 1917, he found only messenger boys there. The appeal published in Soviet newspapers by the Commissariat to work in revolutionary courts was being ignored by lawyers. In those days the bourgeois paper called *Utro Rossii* (Morning Russia) reported "a large meeting of lawyers which passed a resolution to disobey the decrees of Soviet power and boycott the revolutionary courts". What was the reason for such a decision? What kind of institution was the pre-revolutionary court that it would be opposed to the people's power?

In Camera Among the officials of the Russian Imperial Ministry of Justice 40.4 per cent belonged to the aristocracy, 22.8 per cent were members of officials' and army officers' families, 14.5 per cent were family members of church officials and 4.8 per cent were merchants. The prosecutors were even more privileged in their social composition. An act of the State Council, the top legislative body of Imperial Russia, directed that only "very loyal" persons be appointed to procurators' posts. Obviously, the members of the aristocracy were considered to be most loyal and, therefore, the most suitable for the position, for they filled 85.4 per cent of the top posts

* From 1917 to 1946 ministries were called People's Commissariats, and ministers—People's Commissars.

of the procuracy of the Senate.* The majority of investigators (70 to 75 per cent) also belonged to the nobility. Corruption flourished among court and procuracy officials, who were closely linked with lawyers. Only a lawyer with a service record of at least five years with the Ministry of Justice could become a barrister-at-law.**

Naturally, the court protected the interests of the upper classes. Its verdicts and severe sentences were by nature anti-democratic. Thus the court sentenced workers who called for strikes or peasants demanding land to penal servitude. Lawyers charged high fees for their services. For instance, a merchant named Vilyano, accused of bribing customs officers of the city of Taganrog, was charged a fee of 100,000 roubles by his lawyer named Passover. Naturally, no worker taken to the tzarist court could count on efficient defence. No wonder Lenin warned his imprisoned comrades "...to be wary of lawyers and not to trust them".

To stamp out the growing revolutionary movement in 1906, the state set up courts-martial to hear the cases of accused revolutionaries in camera, that is, behind closed doors. No lawyers were allowed, and the court most often sentenced the prisoners to death (950 out of 1,100 defendants). The defendants were not allowed to appeal the verdicts, and the sentence was executed at once.

"Away with the mummy-courts, altars of dead Justice! Away with banker-judges prepared to suck the blood of the living on the new grave of Capital's unlimited power!" exclaimed Anatoli Lunacharsky, a distinguished Soviet statesman, in 1918.

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* The supreme body of justice in Imperial Russia.

** A lawyer in the state service working for a circuit court or a chamber of appeals in Russia (1864 to 1917).

In that period a chamber of appeals dealt with major criminal and civil suits, as well as with offences committed by officials and appeals against the judgements of circuit courts. A court circuit comprised two or three districts (uyezds). An uyezd was an administrative territorial unit in Imperial Russia.

The First Decrees on the People's Court The First Decree on the Court declaring the courts from before the Revolution abolished was adopted on November 24, 1917. They were replaced with the local people's courts made up of elected representatives from the working people. Every case was heard by one permanent judge and two people's assessors. Appeals against their verdicts and rulings were considered by uyezd courts (or congresses of the local judges in the capitals).

The First Decree on the Court laid the foundation of the Soviet court system by ensuring its main principles, that is, elected judges, open hearings and the participation of people's representatives in the enforcement of justice.

As far as the election of judges was concerned, left-wing Socialist-Revolutionaries (a bourgeois-democratic party represented in the government) were against it—they insisted that judges should be appointed. The Bolsheviks,* however, won and their proposal was adopted. From the very first days of the Revolution judges were elected by the population.

The judges were assisted in court by people's assessors elected by workers and peasants. Before the Revolution the court had jurors who were appointed by special Zemstvo** commissions with the participation of members of the procuracy and chaired by the marshal of the nobility*** (not elected). This, naturally, determined what type of jurors were chosen.

The First Decree on the Court left only one of the

* Bolshevism as a political concept emerged during the election of the leadership of the Russian Social-Democratic Labour Party at its 2nd Congress (1903): Lenin's supporters won the majority and their opponents remained in the minority. From 1917 to 1952 the word "bolsheviks" was part of the Party's official name. As of 1952 it has been called the Communist Party of the Soviet Union (CPSU).

** The Zemstvo was made up of elected local government bodies, which existed in Russia beginning in 1864. The Zemstvo was in charge of education, health care, road construction, etc. The system of elections ensured the dominance of the landed gentry.

*** Marshals of the nobility were elected by the Gentry's Assembly which was a body of the nobility's self-government in Russia from 1785 to 1917.

former legal institutions intact, the Justice of the Peace. The new socialist state intended to cooperate with the lowest rank of the old court authorities, the office of the Justice of the Peace. Some of the Justices, loyal to the revolutionary state, had the right to be elected to new courts, but it was usually a revolutionary who was elected a people's judge.

One of those first judges once recalled: "We felt very apprehensive at first because we had to start without any legal knowledge, experience or regulations. We had to judge people always apprehensive that we might be making a mistake or condemning an innocent person."

In the years immediately after the Revolution the new judges began to study law at workers' faculties* and evening courses and later at specialized institutes. In Imperial Russia women could not dream of "serving Themis". The Revolution put an end to women's discrimination in this field and in all other spheres of state activity.

The reactionary forces in Russia opposed the emergence of a new system of justice. Thus the newspaper *Russkie Vedomosti* wrote that doing away with the old court was as ridiculous "as abolishing trade or the Volga's navigability". Yet, the revolutionary decree was not intended to abolish all the positive elements of the old judicial system. The new courts could use certain of the old laws that had not been cancelled by Soviet power.

New revolutionary legal attitudes brought about new forms of law being implemented through the activity of the court. For instance, it was back then that probation was first introduced into Russia's legal practices (this will be dealt with in more detail later).

The creation of new legislation was making steady progress and on March 7, 1918, the Second Decree on the Court was adopted. It stipulated that given the multinational nature of the country court proceedings

* Workers' faculties in the period from 1919 to 1940 were general educational institutions in the USSR for preparing young people without secondary education for college. They were run by higher schools, and their course took 3 to 4 years.

were to be conducted in the language of the majority of the population in the region where the case was being heard.

The first legal acts on courts were a convincing manifestation of Lenin's nationalities policy. Before the Revolution no representatives of national minorities were allowed to be judges, whereas after it they were granted the right to occupy any court positions.

The Soviet authorities were very sensitive when restructuring court activities in the formerly backward ethnic provinces of Russia, taking local tradition and religious beliefs into consideration. This is quite understandable: the bourgeois court system functioning before the Revolution could be abolished as soon as Soviet power was proclaimed, but to do the same to the national courts of the various non-Russian nations and ethnic groups would be insulting to them. Thus, for many years after the Revolution, the people of Central Asia sought justice in the court of the Sharia, or aksakals,* though their judgements could be appealed against in the people's court.

From the very beginning Soviet justice rejected the old system of courts having different structures and numerous stages. A universal people's court was set up to deal with the overwhelming majority of criminal and civil cases. The Soviet authorities simplified the structure of the court and put an end to red tape, thus making it easily accessible to the population.

At the same time, it must be remembered that the Soviet judicial system was formed during the Civil War and foreign military intervention,** when the young Soviet state was involved in a fierce, uncompromising struggle against enemy agents, traitors, deserters, etc. The counterrevolutionaries' crimes were considered by

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* The courts based on the Sharia, that is, Muslim legal and religious norms. An aksakal is a respected tribal chieftain or elder in Central Asia and the Caucasus.

** The war of the working class and the peasants led by the Communist Party to defend the gains of the Great October Socialist Revolution against domestic and foreign counterrevolutionary forces in 1918-1920.

revolutionary tribunals made up of one permanent judge and not two, but six assessors. The task of suppressing the enemy's fierce resistance was given to that judicial body.

In the summer of 1918 the left-wing Socialist-Revolutionaries attempted to take power, but their conspiracy was found out, and they were dismissed from the government. Then they took up arms against the government but were quickly suppressed. On November 27, 1918 the Supreme Revolutionary Tribunal heard the case against the participants in the aborted coup, Promyan, Kamkov, Karelin, Blyumkin and others, and sentenced each to 3 years imprisonment.

But the revolutionary tribunals were a temporary measure, and when the Civil War was over, the two judicial systems gradually merged.

Law Enforcement "The slightest lawlessness, the slightest infraction of Soviet law and order is a loophole the foes of the working people take immediate advantage of", wrote Lenin in his letter to the workers and peasants.

The laws protecting citizens' rights and preventing arbitrariness on officials' part were adopted in Russia right after the Revolution.

The Soviet procuracy set up upon Lenin's initiative acted not only as the prosecutor in criminal proceedings but also as an independent law enforcement body on a nationwide scale.

Over 50 per cent of the procurators in the immediate post-Revolution years were of working-class or peasant origin. Many of them had no legal grounding whatsoever, and they had to gain professional experience through their work.

A special state commission was set up to work out a law on the procuracy. The majority of its members voted for the "dual" subordination of procurators, making them responsible to both the centre (superior procurator) and to the local authorities, claiming that the bulk of the existing state bodies were operating according to the same principle. Lenin was against it.

He wrote in a letter to the Party's Politbureau: "'Dual' subordination is needed where it is necessary to allow for a really inevitable difference. Agriculture in Kaluga Gubernia differs from that in Kazan Gubernia." ...The law must be uniform, he wrote, and there cannot be Kazan justice different from Kaluga justice. That was why Lenin suggested that procurators should be subordinated only to the centre and that they should appeal against all the unlawful actions on the local authorities' part. His point of view was fixed in the new law.

It was only natural that, in addition to abolishing the imperial court system, the revolutionary government also dealt with the lawyers who had protected the interests of the landed gentry and capitalists. Not that this meant that the new system of justice could function with the accused being without defence. Professional lawyers usually refused to appear in people's courts, and the newly-born state had not yet lawyers of its own. That was why the First Decree on the Court stipulated that any honest citizen with civil rights could act as an attorney for the defence.

Yet practice showed that defence could be effective only as part of a legal system, otherwise many of the accused were not defended at all. As to the young state's enemies, they easily found lawyers ready to defend them in court, who frequently used their right to uncensored speech for counterrevolutionary propaganda.

So an official legal profession was established in 1918. The members of the bar association were elected by Soviets of Workers', Peasants' and Soldiers' Deputies. Their salaries were paid by the state out of the fees collected for legal services rendered to citizens. From the very start, however, the law granted free legal advice to those unable to pay.

The bar association soon ceased to exist for lack of specialists: the small number of former lawyers who agreed to appear in the Soviet court were intimidated by the lawyers' councils which continued their illegal activities.

In 1920 Soviet officials began to act as lawyers in court. According to the law adopted at that time,

"defence for a citizen accused of a crime is a social duty of all those whose occupation, education, party or service record make them fit to act as an attorney for the defence". Such people would take a leave from their main work to appear in court with no loss in pay.

The Soviet legal profession came into existence as a result of many years of trial and error. Its most efficient structure was worked out in 1922, when the first stage of peaceful socialist construction made it possible to train legal personnel. The lawyers' association was described as a voluntary organization protecting citizens' rights and legal interests.

The Court Reform In 1922 the country launched a court reform, taking a number of major steps aimed at restructuring its law enforcement bodies. The new uniform court system consisted of 3 elements: the district people's court, the regional court and the Supreme Court of the Republic.

The shaping of the court system was finally completed in 1924, when the Union of Soviet Socialist Republics was established. At that point, the Supreme Court of the USSR became the highest judicial body. It is this system whose basic elements are still in effect.

The young state went through a period of economic decay following the Civil War during which private enterprise flourished. Lenin insisted "... that the People's Courts of the Republic should keep close watch over the activities of private traders and manufacturers and, while prohibiting the slightest restriction of their activities, should sternly punish the slightest attempt on their part to evade rigid compliance with the laws".

The Soviet court dealt severely with those who tried to corrupt Soviet state officials. In 1925 the Supreme Court of the USSR tried and sentenced a group of officials from the USSR State Bank and several private businessmen, who were accused of acting in collusion. The businessmen bribed the officials in order to purchase 364,000 puds of grain (1 pud = 16 kg) at reduced prices and then resell the grain on the starving country's black market.

Court trials of the most active members of the counterrevolutionary Union For the Defence of the Homeland and Liberty took place in Petrograd, Minsk and Kharkov. They were accused of conspiracy, causing panic among the population and undermining the already suffering national economy.

In 1924 Boris Savinkov, a well-known terrorist living abroad, was arrested while crossing the Soviet border and tried in Moscow. He admitted that his organization which was fighting against the Soviet state had supplied intelligence to the French and Polish secret service organizations for ample remuneration. The Military Division of the USSR Supreme Court sentenced him to capital punishment, but the Central Executive Committee of the USSR* commuted the punishment to 10 years imprisonment.

Court System: Gains and Losses The 1936 Constitution of the USSR proclaimed the basic democratic principles of justice, such as the implementation of justice by elected judges, the participation of people's assessors in court hearings, the independence of judges and their subordination to the law alone. The 1977 Constitution elaborated those principles, extended citizens' rights to defence in court and free legal advice and worked out new basic regulations on judges' links with the population, the accountability of judges and assessors to the people, etc.

The structure of the Soviet court today fully corresponds to the country's national and state composition.

Justice is ensured by the courts of the USSR and those of its constituent and autonomous republics.

The courts in Union republics consist of three main parts:

— district (city) people's courts;

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* The Central Executive Committee of the USSR was the top body of state authority in the USSR from 1922 to 1938. It functioned between the Congresses of the Soviets, which elected it.

— Supreme Courts of autonomous republics or autonomous areas, as well as territorial and regional courts;

— the Supreme Court of a Union republic.

The basic element of a republic's court system is the people's court (district or city) which deals with over 90 per cent of all civil and criminal cases. Its jurisdiction covers civil suits on property rights between individuals and state bodies, as well as labour and housing disputes, alimony claims, property division and other cases. It also deals with thefts of state and public property, crimes against the life, health and dignity of persons (second-degree murder, assault and battery, criminal insult and slander), as well as with cases of violence and vandalism, thefts, robberies, crimes committed by officials, economic offences and other suits.

The courts of appeal do not have to review many cases heard at the court of trial. They deal mostly with grave crimes, such as banditry, theft of state property on a large scale, first-degree murder and complicated civil cases. The court of appeal is mostly engaged in checking the legal grounds of verdicts and judgements made by people's courts.

The Supreme Court of the USSR and **military tribunals** fall into the category of **all-Union courts.**

The Supreme Court of the USSR consists of the Plenary Assembly, Civil Division, Criminal Division and Military Division. The USSR Supreme Court is currently chaired by former Minister of Justice Vladimir Terebilov, a distinguished court figure who was elected to the post by the Supreme Soviet of the USSR.

The top judicial body of the country is the **Plenary Assembly of the Supreme Court,** consisting of all the members of the USSR Supreme Court, including the chairmen of the Supreme Courts of all the constituent republics. This is an example of Soviet federalism.

The Plenary Assembly's main task is to consider the materials summing up the country's court activities and work out the guidelines of law enforcement in civil and criminal proceedings for all courts.

The Supreme Court of the USSR has the right to

legislative initiative, which means that in reviewing court activities it points out blank spots in the existing laws, reveals contradictory or obscure points in legislation and appeals to the Presidium of the Supreme Soviet of the USSR to consider those matters requiring legislation.

In addition, the Plenary Assembly of the USSR Supreme Court deals with appeals submitted by the Chairman of that court and the Procurator-General of the USSR against verdicts and judgements of the USSR Supreme Court Divisions. It also deals with decisions of the constituent republics' Supreme Courts that contradict national legislation or infringe upon the interests of other constituent republics. Do the respective decisions of the Assembly have legal power?

The decisions passed by the Assembly in each case have the power of law only as regards that particular case. The term "judicial precedent" is absent from Soviet law, which means that a verdict from one case does not create a precedent to be considered by all courts when hearing a similar case. Every case is highly individual, which is why only the court can investigate it thoroughly, consider all the circumstances and make a correct decision.

The Divisions of the USSR Supreme Court act as trial courts only in cases of extraordinary importance. For instance, in July 1987 the Criminal Division chaired by Raimond Brize convicted the former management of the Chernobyl nuclear power plant, sentencing its director, V. Bryukhanov, to 10 years imprisonment. The court established that he was guilty of criminal negligence, of taking no measures to limit the scale of the disaster and of deliberately distorting data on the radiation, resulting in delays in the evacuation of the local population. The former chief engineer N. Fomin and his deputy, A. Dyatlov, were charged with failing to enforce safety regulations at the plant and convicted.

The USSR Supreme Court also supervises court activity. As for the management of court activity, it is the function of the USSR Ministry of Justice. The Ministry has no right to interfere in the handling of

court cases: its duty is to create all the necessary conditions, including material ones, for the performance of justice. The Ministry also runs advanced training courses for judges.

Apart from public courts, the USSR also has military tribunals to hear all cases of crimes committed by servicemen and reservists during a course of training, as well as all cases of espionage regardless of whether the accused is a civilian or a serviceman. The military tribunals are guided by the same laws and codes as the regular people's courts.

Warren Berger, then Chief Justice of the US Supreme Court, who visited the Soviet Union in the late 1970s, said in an interview to a UPI correspondent published in the *International Herald Tribune* that the Soviet court system had many advantages over other court systems and that they could be used to improve the American judicial system as well.

Yet, when dwelling on the advantages of the Soviet system, the hardest period of its history cannot be ignored. In the 1930s and the 1940s a number of grave violations of legal procedure resulting from the personality cult surrounding Stalin took place in the country. Regrettably, they were sanctioned by the laws of that period. In 1934 a Special Meeting of the People's Commissariat of Internal Affairs was set up, which was granted the right to use extrajudicial procedures.* As for the existing democratic guarantees of justice, they were reduced as much as required, especially in the cases of persons accused of state crimes. As a result, many innocent people suffered undeserved penalties.

Naturally, that did a lot of damage to the reputation of Soviet courts, and put the democratic principles of the Soviet judicial system to the test. In the late 1950s, after the 20th CPSU Congress (held February 14-25, 1956), a number of practical measures were taken to overcome the consequences of Stalin's personality cult. In particular, all extrajudicial procedures were abol-

* Extrajudicial procedure means the trial of criminal cases and the imposition of punishment for them by other bodies than the court.

ished, and a uniform order was established for court hearings of all categories of crime, state crimes included. While this, of course, had a positive effect on law enforcement in the country, the stagnation surrounding Soviet society over the last two decades contributed negatively to the legal system.

Crime grew while the law made weak attempts to reduce theft of state property, bribery, black-marketeering and other offences. The court's activities became burdened with red tape, and violations of citizens' rights could be observed in judicial proceedings.

The January 1987 Plenary Meeting of the CPSU Central Committee demanded that an end be put to preconception and bias in preliminary investigations and court hearings, and to indifference to people's future on the part of the officials involved.

Today the Soviet press openly writes about court errors and suggests measures to eliminate them. Openness is the best guarantee that the advantages of the Soviet judicial system will be fully implemented.

CRIME AND PUNISHMENT

There is a long-standing legal principle which Soviet law observes to the letter: a crime is defined as such (and punished) only if the law has the respective provisions. A crime, according to the Soviet definition, is a socially dangerous, culpable act described in the criminal code and infringing upon the interests protected by that code.

Yet, Soviet law has never had a formal approach to that definition. That is why an action, or lack of action which, formally speaking, has features of an act described in the criminal code but is not socially dangerous because of its insignificance, cannot be recognized as a crime.

What is believed to be a characteristic feature of a crime is an act. No intentions or views, no matter how criminal, can be considered an actual crime. Thoughts cannot be punished—only practical actions that go against the law.

Crime in the USSR: Figures and Facts

The most frequent crimes are those against property (with mercenary motives), such as thefts, misappropriations of state property and profiteering, which amount to 46 per cent of all legal offences committed in the country. The so-called domestic crimes are also quite common. For instance, 70 per cent of the murders committed in the USSR occur in private and are caused by alcohol abuse (an intoxicated person loses self-control, grabs a knife and stabs someone). This is in contrast to the USA, where 80 per cent

of murders are committed in public places (in the streets, parks, etc.). We also have to fight against organized crime—suffice it to mention the additions* of millions of tons of non-existent cotton to the planned quota exposed in Uzbekistan; shop personnel's crimes revealed in Rostov and major misappropriations committed in Moldavia. These stories have all been covered in the Soviet press.

Recently, as part of glasnost, crime statistics have begun to be published. Reporters in Moscow, for instance, meet once a week with top police officials to hear a day-by-day report for the week on the crime situation in the city. Here is an example of the crimes committed in one day: *one murder, one grave physical injury, one car accident (an intoxicated driver of a Lada car collided with a truck, causing casualties) and nine burglaries.* Not much for a huge city like Moscow!

Mind you, those statistics reflect a general tendency: in 1986 the crime rate in the country dropped by 4.6 per cent as compared to 1985; the number of murders dropped by 21.7 per cent, that of grave physical injuries by 24 per cent, that of robberies and assaults by 25 per cent and that of thefts by 13 per cent.

The incidence of grave crimes in the USSR is 17 times lower than in the USA.

The Purpose of Criminal Punishment

What kinds of punishment are imposed by Soviet law? It is commonly thought abroad that Soviet courts often prescribe severe penalties or even vote for capital punishment. Is that really so?

The Soviet criminal policy is based on Lenin's idea that "...the preventive significance of punishment is not

* According to Soviet criminal law, this is a specific kind of offence committed by **officials** who deliberately distort figures in reports on the fulfilment of economic plans submitted to the state. Higher indices of planned production quotas, that is, the amount of manufactured and sold goods, the total amount of work done, etc., are also included in this category.

in its severity, but in its inevitableness". That is why our legislation on punishment for crimes is sufficiently humane. It denies life imprisonment, for instance, the maximum term not being more than 15 years. As for capital punishment, which exists in 127 other countries besides the USSR, the Soviet press has recently launched a public discussion of the issue. Its participants, especially writers and members of the medical profession, believe that a socialist society should not have capital punishment. They say that human life is sacred and that murder, even when legal, is impermissible.

Most lawyers are also in favour of its gradual abolishment. Capital punishment is imposed in exceptional cases, and the number of death sentences is gradually going down. Legislation limiting the death sentence only to crimes involving the taking of life would be a major step towards the abolishment of capital punishment. In practice, that is what is occurring. The Rostov Region Court, for example, imposed the death sentence on the brothers Tolstopyatov, the ringleaders of an armed gang who had committed a number of armed robberies and murders.

Another tendency is not to imprison. For the last five years the number of those sent to prison has dropped by 10 to 12 per cent. This first of all can be attributed to the dropping crime rate that has been observed in recent years. But it is also a result of a new awareness of the negative consequences of such a punishment (the prisoners' ruined family life and loss of social links). Short terms of imprisonment often prove to be especially ineffective: attempts to reform the convict made at corrective institutions often fail for lack of time, whereas a person who committed an offence of the law is more likely to fall under the corrupt influence of hardened, incorrigible criminals. That is why the court has recently been using milder sentences which do not involve isolation from society. The existing legal norms envisaging imprisonment have been supplemented with an alternative punishment: correctional labour

(taking place at the convict's place of employment with a part of the wage being withheld) and a penalty, which has recently been increased.

Today severe punishment is usually imposed only on persons who have committed grave offences endangering people's health and life, as well as on incorrigible criminals, fraudulent embezzlers and grafters. Imprisonment is actually never imposed on persons who have committed less dangerous crimes for the first time and who are engaged in socially useful work.

The court has lately begun to postpone punishment in a number of cases to give the convict a chance to repair the damages, get a job and be treated for alcoholism. If the person in question fails to meet his obligations, the court has the right to send him to jail. Those who have been sentenced to a term of imprisonment may also be released on probation. If they commit another crime during the term they did not serve, it will be added to a new term.

The Soviet court imposes a punishment unknown in the West: probationary sentence with compulsory work involving no isolation from society—only supervision. Such persons are sent to work for the period of their punishment (2 or 3 years) at a specific place (not necessarily in their home town) without being under guard. The only restriction is that they are not allowed to leave the place without the permission of the supervising body. If they work well and commit no new crimes, their term of punishment may be reduced.

The court imposes criminal punishment within the framework of a certain law. Yet, the court can impose a punishment below the lowest limit envisaged by the law, if there are extenuating circumstances, such as sincere repentance, if the criminal has turned himself in to the authorities, voluntary repairing of the damage that was done, or if the crime was caused by grave personal or family motives, committed under threat or instigated by the victim's wrongful acts. Here is an example of extenuating circumstances, as the court saw them, in a crime committed by a teenager.

The Court and Teenagers

Vyacheslav Polunin, an 8th-grader of a boarding school in Bendery, Moldavia, stole several car radios. His record was not particularly good, and the circumstances of his case made him expect a term of imprisonment in a juvenile delinquent institution. A few years ago there would have been no alternative to this, but in our times he has been allowed to stay at his boarding school. Why?

The judges took all the motives of his behaviour into consideration. They wondered why he wanted all those radios. Did he profit by selling them? It turned out that he gave them to his friends because he wanted them "to respect" him, as he put it. Indeed, young people gain each other's respect for their scholastic abilities, say, or for being good at sports. It is not surprising that the boy, an orphan from the age of 8, also wanted the respect of his peers, only he chose the wrong way to win it.

The court postponed the sentence, and if Vyacheslav commits no further offences and behaves well, it will never be enforced.

Not long ago a delegation of American lawyers visited the Soviet Union. Reading the Soviet press, they came to the conclusion that the number of crimes committed by teenagers and other young people had increased, and asked whether this was really so.

Actually, the number of crimes committed by persons under age (and their percentage in the crime rate) is dropping annually, and amounts to 3-10 per cent in the various constituent republics. As for the increase of reports published in newspapers, this can be attributed to the current atmosphere of greater openness, where the statistics on juvenile delinquency are no longer hushed up, and the faults in teenage law enforcement are made public.

Urbanization has been found to cause an increase in juvenile delinquency all over the world, and the Soviet Union is no exception. The main emphasis in the Soviet Union is placed on prevention, which is quite specific here. Every street in the neighbourhood is under the

supervision of the local housing administration. Each one has its own funds comprised of two per cent of the rent and utility rates, and the housing administration uses the money to involve the local youngsters in all kinds of extra-curricular activities, such as hobby-clubs, sports centres, etc. Voluntary inspectors are in charge of "problem kids".

Teenage crime is known to be committed mostly by children coming from families with a lot of problems, whose parents are overly strict, cruel or alcoholic. The Ministry of Internal Affairs runs specialized commissions staffed by experienced lawyers and teachers to deal with problem teenagers. Those parents who neglect their parental duties and have a bad influence on their children are likely to be penalized by commissions for teenage affairs—public bodies endowed with significant authority run by the local Soviets of People's Deputies (municipal councils). Such a commission has the right to ask the court to deprive such persons of their parental rights and place their children in boarding schools or under someone else's guardianship.

Legal education in the USSR begins at school. Senior students of secondary schools and those of vocational and technical schools are taught basic state and legal concepts and acquainted with their political, labour and property rights and duties, as well as with punishments for all kinds of law violations.

But even the most exhaustive preventive measures (and we have not yet reached that point) cannot be considered a panacea for the disease known as juvenile delinquency. The law has established 16 as the minimum age (14 in some cases) at which teenagers can be charged with crime or other law offence. As was mentioned earlier, punishment in such cases is often of an educational nature, involving no imprisonment.

The Court and Drunken Offences

As far as punishment is concerned, the law envisages a list of aggravating circumstances that is considered exhaustive, unlike that of attenuating circumstances.

Intoxication (including drug-induced) at the moment when a crime was committed is considered an aggravating circumstance, which is part of a large-scale programme now under way in the Soviet Union to eradicate alcohol abuse and alcoholism. To do away with this evil, which is a cause of crime, bad economic management and family and other social problems, the state has taken a number of radical economic, medical and legal measures. The production of hard liquor is annually decreasing, its sale near production units, construction sites, educational, medical and child-care establishments is banned; the hours of its sale at other shops are limited; and young people under the age of 21 cannot buy alcohol at all. The alcohol-addiction treatment available in the country has also been increased.

The range of legal measures aimed against alcohol abuse is quite broad. Administrative measures are taken against those managers who overlook, or allow drinking on the territory of their plants or offices up to the loss of their positions. Alcohol abusers are not entitled to any bonuses or discount vouchers to health resorts. Fines for law violations caused by intoxication have been increased. A person found guilty of drunk driving loses his licence for up to 3 years. A person guilty of getting a teenager drunk could be sentenced to as much as 5 years imprisonment.

There have been clear-cut results. The number of drunken offences has dropped by 26 per cent, and that of industrial and domestic injuries has also decreased. There has also been a nearly 33 per cent decrease in the number of persons taken to sobering-up centres.

While alcohol abuse has not vanished completely, of course—one out of three crimes and one out of five car accidents are caused by problem drinkers—the incidence of crimes committed by those under the influence of alcohol is steadily going down.

"Cannabis King" While on trial, he behaved himself, but before his arrest he would literally throw handfuls of banknotes into the air in his house and then dance on them when they

landed, screaming: "I know how to make money!" Indeed, he did make quite a lot of money selling hashish for 1,000 roubles a kilo.

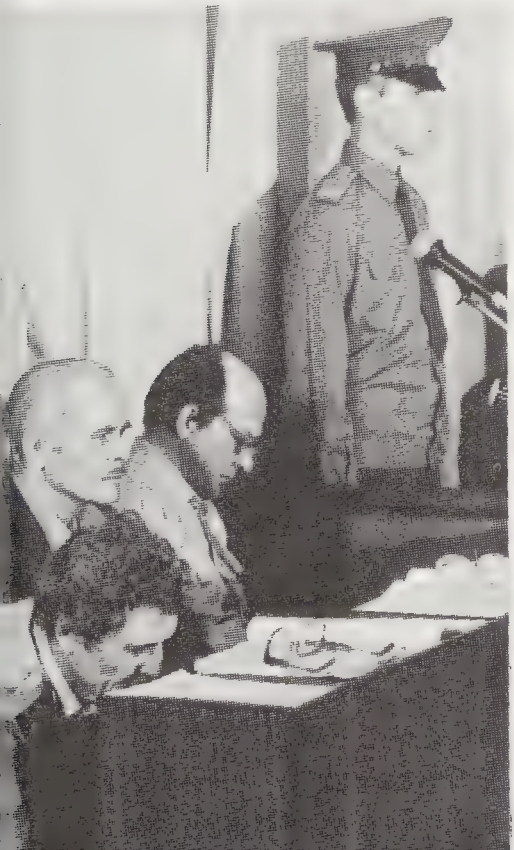
He is 42 and has served three terms in prison. The year before his arrest he did not work. Here, in the township in which he lived, he formed a gang of youngsters and introduced them to narcotics. Here, in the fields of a near-by collective farm, they gathered cannabis and made hashish out of it. A police search discovered 9 kilogrammes of the drug and 46 kilogrammes of cannabis flowers. "Cannabis King" was found guilty by a district court of Nikolayev Region and sentenced to 11 years of prison.

Yes, the Soviet Union has a drug problem as well, though for many years the subject was not publicly discussed. Now it is being discussed and many lawyers, doctors and public figures have joined efforts to eradicate that evil.

The laws envisaging punishment for narcotic offences have been updated. Now anyone caught taking unprescribed drugs is fined (Article 44, Code on Administrative Offences). Drug addicts refusing to have treatment or continuing to use drugs after treatment are sent to special medical corrective institutions by the court. In 1987 medical and educational establishments for drug addicts under 18 years of age were set up. They run general educational and vocational facilities.

The court holds those persons who illegally produce, purchase, store, transport or mail drugs for profit criminally responsible. Such persons face sentences of up to 10 years in jail, and repeat offenders or those conspiring with others to commit those crimes could receive the maximum sentence of 15 years (Article 224 of the Criminal Code of the Russian Federation). Those who violate the regulations of drug production, storage or sale are also liable to punishment, as are persons sowing or farming opium poppy, Indian cannabis and other plants whose cultivation is prohibited.

The number of registered drug addicts is not very high (about 0.04 per cent of the country's population), much lower than in the West, but comparisons in this

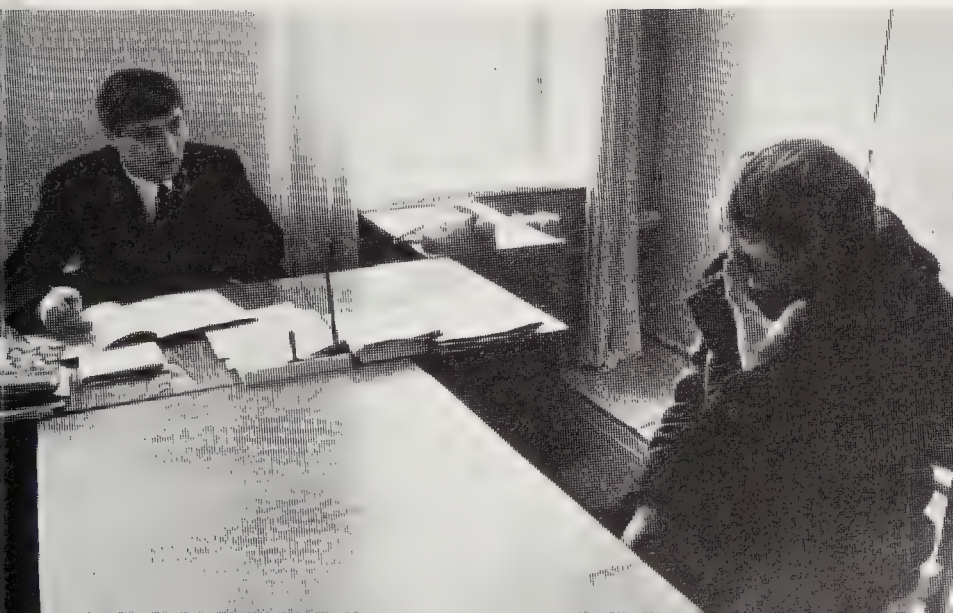


The Court Collegium on Criminal Cases of the USSR Supreme Court chaired by Raimond Brize (centre), a member of the USSR Supreme Court, is considering a charge against the former managers of the Chernobyl Nuclear Power Plant.

The public hearing of the case against West German citizen Mathias Rust at a session of the Court Collegium on Criminal Cases of the USSR Supreme Court. For his illegal entry into the USSR, violation of international flight regulations and grave hooliganism, the 19-year-old amateur pilot was sentenced to 4 years of imprisonment. Rust was in jail for one year two months and five days. By decision of the Presidium of the Supreme Soviet of the USSR, his sentence was lessened to the time already served and he was expelled from the country.

Experts reconstructing the portrait of a criminal on the basis of witnesses' descriptions at the Robot Laboratory.

The People's Court in Staritsa (Russian Federation). Procurator Valeri Vinogradov in conversation with a law offender.

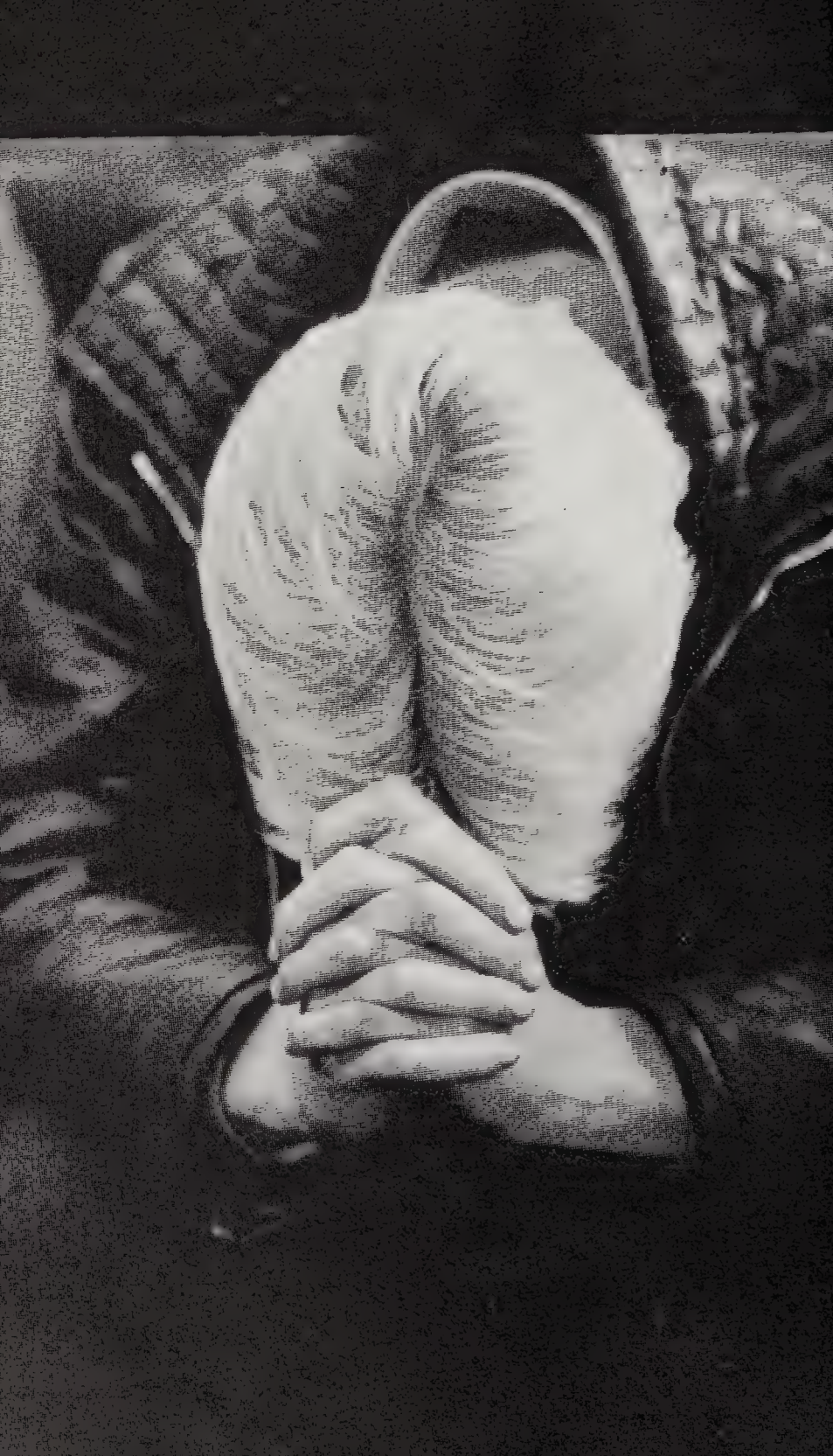


Reception of citizens at a legal advice bureau.

In court.
Lawyer Inna Sukhareva (Moscow) acting as defence attorney.

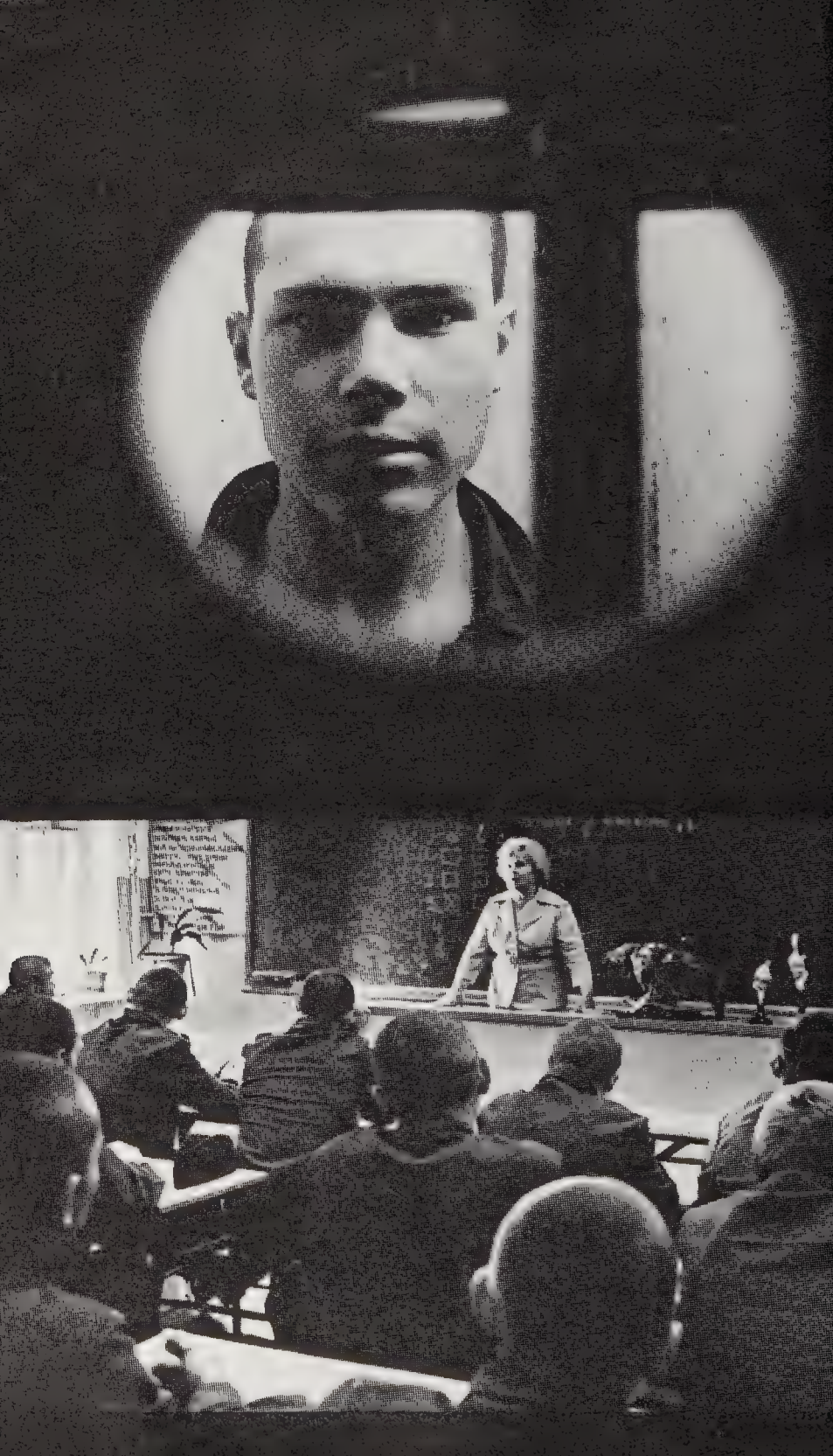
A witness giving testimony.

Waiting for the verdict...



The Iksha correctional labour colony in Moscow Region.

This is where the law offender is going to live, work and study.



Meeting the family.

Free at last!

case are meaningless, because drug addiction is a tragedy no matter where or how frequently it occurs.

Two thirds of the drug addicts are under 30, and 23 per cent of them spend from one to three thousand roubles a month on drugs. To get the money, they often must resort to crime.

We cannot speak as yet of any large-scale organized crime linked to drugs, but in recent years drug addiction has become quite widespread in some parts of the country. Just 10 years ago, for instance, drug-related crimes were extremely rare in the Far East and Maritime Territory. Now one out of 11 law offences committed there are caused by drugs. How did this happen? Apparently, there are a lot of Southern and Manchurian cannabis plants growing wild in the area, and no measures have ever been taken to destroy them. The mass media evaded the issue, and no one tried to explain the situation to the population, so the growth of the number of drug users was unrestricted.

Now the authorities of Maritime Territory have worked out and are implementing a broad programme to eradicate narcotics, which includes the destruction of the crops, a broad educational effort, locating drug addicts and other measures.

CIVIL LAW

The rector of a college in Odessa* took a strong disliking to one of his staff members. He wrote a letter to the Ministry of Higher and Specialized Secondary Education of the Ukraine, in which he described the staff member as a bad worker and rude. Not long after that, however, the rector had to issue his subordinate a public apology and send a new letter to the Ministry retracting his accusations. This all came about as a result of the case coming before the Odessa People's Court under the laws protecting a citizen's dignity and honour. The Court also issued an intermediate order addressed to the minister, pointing out that the rector's behaviour was impermissible. The latter was officially reprimanded.

According to Article 7 of the Fundamentals of Civil Legislation of the USSR and the Union Republics, citizens have the right to sue by law for retraction of statements defamatory to their honour and dignity. Where statements defamatory to the honour and dignity of a citizen are circulated through the press they must, if found untrue, be retracted in the press as well. Where the court judgement has not been carried out, the editor may be fined. Payment of fine does not relieve the wrongdoer from the duty to perform the action prescribed by the court judgement. All court expenses are paid by the person found guilty of defamation.

In this case, the wronged staff member used his constitutional right when he appealed to court to pro-

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* Odessa is a big port city in the Ukrainian SSR, on the Black Sea.

tect him, because according to the Soviet Constitution, every citizen is entitled to court protection if an offence is committed against his honour or dignity, life or health, liberty or property.

Some people prefer court protection to any other because it is simple and readily available.

First, applications to the court are not a complicated procedure, the only requirement being that there be a clear account of the case. **Second,** court expenses are low. **Third,** the proceedings are very simple, and the judgement is made very quickly. Alimony claims and labour disputes, for example, are heard within ten days, and other cases within a month.

Reinstatement in a Job There is no unemployment in the Soviet Union, but every coin has a reverse side to it. Still, we can hardly agree with those journalists who write that unemployment helps enhance work efficiency. Surely they know that the right to a job is one of the main gains of socialism.

When dealing with labour disputes, the court acts on the assumption that it is essential to consolidate the constitutional right to work.

Almost 50 per cent of the suits for job reinstatement annually heard by the courts are satisfied. Citizens go to court when they think they have been illegally fired or laid off (personnel reduction is sometimes found necessary to maintain the balance of workforce between different industries). Such cases are usually very acute and painful, which, of course, is quite understandable. Every person would like to occupy the same position as long as possible, for this is linked with a system of bonuses and other advantages for workers having a long, uninterrupted service record. Other factors making a worker prefer a particular enterprise can be the presence of friends at work, the job's close proximity to the worker's home and so on.

...Viktor Petrov, a mechanic of the Moscow Bykovo Airport, was fired by the management for an unexcused

absence from work one day. Petrov held that the management had no right to do this and appealed to a district people's court. The court considered the matter and established that Petrov's dismissal had been against the law. Though he had indeed failed to show up for work one day, it could not be regarded as a case of absenteeism because he had been transferred to another sector without his consent. Petrov objected to the noise level in the new workshop, saying that for medical reasons it was excessive for him. The management, however, did not accept his explanation, because the noise level was within admissible limits. The court applied to the mechanic's neighbourhood health centre, which confirmed that such a level of noise was hazardous for the worker.

Three days later Viktor Petrov was reinstated in his job (court judgements in the USSR must be carried out within ten days), and the management had to pay his full wages for the days he had missed against his will.

The court rules the same way in cases of workers who have resigned against their will, the damages being paid by the official who forced the worker to hand in a resignation.

Or take another example. The necessity of staff reductions at the Krivoy Rog Construction Board in the Ukraine resulted in Nina Vasilenko being laid off. However, Nina's suit was accepted by the court, which cancelled the management's order and reinstated her in her job.

While at first sight staff reduction would appear to be a valid reason for lay offs the management in that particular case gravely violated dismissal regulations. The Labour Code of the Ukrainian republic, like those of the other constituent republics, rules that in case of staff reduction the family and financial status of every worker in question must be taken into account. The Vasilenkos have two children, but that important factor was ignored. In addition, no one offered Nina another job, which is also a violation of regulations.

Housing and Social Justice

Another broad category of civil suits comprises the division of flats and houses and the exchange of housing, termination of contracts on rented apartments, etc. The number of such suits exceeds 250,000 a year.

The Soviet Constitution grants all citizens the right to housing. 119.8 million square metres of housing was built in the USSR in 1986. The state pays the bulk of maintenance expenses.

The duty of the court is to protect citizens' rights to housing. What rights do they have?

According to the Law on Housing passed in 1981, citizens in need of better living conditions are provided with permanent housing in accordance with the existing regulations. The state also gives municipal housing to those whose private houses will have to be demolished in the state's interests (the owners receiving due compensation). A person renting an apartment has the right to share it with his family, all of them enjoying equal rights to it.

The Law on Housing also envisages that in the case of an illegal reception of an apartment the certificate to housing* might be cancelled, and the persons who came into its possession as a result of an illegality will be evicted without being offered another residence.

Article 55 of the Soviet Constitution states: "Citizens of the USSR are guaranteed inviolability of the home. No one may, without lawful grounds, enter a home against the will of those residing in it." Violations of citizens' rights to housing are liable to punishment as criminal offences.

To Preserve the Family

Another common category of law suits comprises family disputes. According to *Article 53 of the Soviet*

* A certificate to housing is a document giving a person legal grounds for a contract on renting the apartment, or room mentioned in the certificate and to live in it, whether it is part of state (municipal) property or of a housing co-operative. The certificate is issued following the resolution of the Executive Committee of the local (on the municipal level) Soviet of People's Deputies.

Constitution, the family is protected by the state in the USSR, and the court is expected to consolidate it. In what ways can the court do this?

The law envisages two ways of dissolving a marriage: at state registry offices (for couples with no children under age) and in court (for couples with children under age or in cases of contested divorce or property division disputes).

The court has the right to dissolve the marriage only after it determines that the couple cannot continue living together and preserving the family, that is, that the marriage has ceased to exist. When hearing divorce suits, the court's duty is to find out if reconciliation is really impossible. To do so, the court has the right to postpone the hearing for up to 6 months, which is in fact a very effective measure. Sociological research shows that if the hearing is postponed for 3 months, 25 per cent of the couples filing for divorce reconcile, and if the interval is increased to 6 months, this percentage reaches 30.

The court often discovers that the divorce suit is a result of objective problems. This is especially true with young couples. In such cases the court often turns to the organizations functioning at the couple's place of work, and together they all work out a way of dealing with whatever the particular problem was. This frequently solves the problem and averts a divorce.

Divorce is not especially expensive here in the USSR: the court determined state tax cannot exceed 200 roubles.*

Once a divorce is granted, the court takes measures to protect the interests of the under-age children: they stay with the parent with whom they will be better off. The other parent pays child support.

If a child is born to an unmarried couple (10 to 12 per cent such cases), the overwhelming majority of fathers willingly admit their paternity and pay child support. The court, if need be, can establish paternity if it is cognizant of certain facts, such as, for instance, that

* 100 dollars are equal to 58 roubles 43 kopecks.

the couple used to share a flat and household expenses before the baby was born, or that the father used to help the mother bring up and support the child.

Civil Law: Problems and Prospects

Efforts to establish new legal guarantees to protect citizens' rights and freedoms is a typical feature of the current democratic reforms. Suffice it to mention the Law on the Procedure for Legal Appeal Against Unlawful Acts by Officials which was recently adopted by the Supreme Soviet of the USSR. This principle was first proclaimed in the 1977 Constitution. *Article 58* acknowledges the citizens' right "to lodge a complaint against the actions of officials, state bodies and public bodies... in a court, in a manner prescribed by law". Yet, for ten years, that law remained unelaborated because of the general atmosphere of disregard for certain democratic institutions in the late 70s-early 80s.

Some government officials reasoned that there was no point in taking disputes to court since they had always been dealt with by administrative bodies, arguing also that it might spoil the administrations' reputation. Others were afraid that the courts would become overloaded. But all of them were oblivious to the fact that it was a constitutional right they were dealing with. For a long time it was ignored that disputes would be handled in a far more democratic way by a court than by an administrative body.

Indeed, it is a much better bet to count on protection from bureaucracy in court than in an official's office. When a person turns for protection to the boss of the official whose actions he is appealing against (that is, in administrative order), the former is quite likely to be biased. As for the court, it is independent in its judgement and guided by the law alone. A private consideration of a complaint by an administrator is incomparable to an open and direct court hearing. Besides, the citizen and the official in question face the court as equals with the same legal rights. There is no doubt that

the court's control over officials' actions is far more effective than administrative control.

Everyone who has ever turned to the court for legal protection is well aware of that fact. As was mentioned earlier, the old regulations also gave citizens a chance to appeal against certain administrative decisions in court, for instance, in the case of groundless dismissals, confiscation of property by financial bodies or cancelling of certificates to housing. Court judgements usually satisfied the citizens, which was confirmed by the fact that only 5 per cent of all court orders were appealed against in a higher court. Yet not all citizens could go to court to settle disputes because the latter had the right to deal only with a limited range of suits.

After the 27th CPSU Congress, when the new law was drafted, the press launched a public debate on the criteria by which the legislators should be guided while drawing up the range of actions to be appealed against in court. Some lawyers believed that a list of such actions should be compiled, others were of the opinion that no list could comprise all possible violations of citizens' rights and, therefore, they might not always be able to count on court protection.

Yet, all those problems were eventually resolved. The legislators chose the more democratic way and did not compile a list. A citizen can appeal in court against any decision which he feels has deprived him of an opportunity to exercise his rights or charged him with an unlawful obligation.

Before resorting to court, a citizen is expected to apply to the superiors of the official who has wronged him. This gives the administration a chance to right the wrong quickly, without appearing in court. This regulation does not infringe on citizens' rights, as the existing law rules out the forwarding of their complaints to the official whose actions are being appealed against.

Such court suits are not taxed if they have legal grounds. If the appeal is judged to be groundless or slanderous, the plaintiff must pay all the court expenses. If the court rules against the official, then it is he, of course, who must pay expenses.

The court must hear such cases openly, in public, and the court investigation if necessary may involve not only the plaintiff and the official in question, but also representatives of public organizations and work collectives. The measures taken in response to a court order must be reported to the plaintiff and the court within a month's time.

The new law permits citizens to appeal only against actions committed by individual officials, but many actions infringing on people's interests are known to be committed by state bodies. For instance, pensions are determined by a social security board,* and the new law has no provisions for citizens to appeal against its action if the pension is lower than it should be. That is why some lawyers (and the authors as well) believe that the law needs to be extended so as to permit people to appeal against an organization's decision.

* The district social security board, which is subordinate to the Executive Committee of a District Soviet of People's Deputies, is in charge of social welfare and services for senior citizens and the handicapped, as well as for families.

INTERMEDIATE ORDERS ARE IMPORTANT

The court's task is to investigate the case, consider it thoroughly and make a fair judgement. In addition, Soviet law makes the court responsible for finding out all the causes and circumstances that made a particular crime possible (Article 55 of the Fundamentals of Criminal Procedure of the USSR and the Union Republics). Moreover, the court must prove the existence of those causes and circumstances along with proving that the crime was committed and the defendant is guilty. Why this provision? To explain it, we had to look through files of criminal cases and talk to experienced judges.

Talgat Urmancheyev, Vice-Chairman of the Supreme Court of the Kabardino-Balkar Autonomous Republic, believes it only fair. "Do we judges have the right to commit ourselves only to the purely legal aspect of the case? Obviously, our position enables us to distinguish many serious social and economic reasons for every crime..."

He told us the following story.

Anatoli Golub, a man who had been on trial five times and who still refused to work, settled down in a railway trackman's hut near a double-track section of the North Caucasian Railway together with a girlfriend. Of course, the hut was not the most comfortable home, considering the noise of the trains, but they liked it there because they did not have to stir a finger to earn their living. How come? They could steal everything they wanted from the trains halted at the section, and

there were plenty of them, all unguarded, with their cars filled with foodstuffs, refrigerators and other goods...

The court had no trouble in proving them guilty. But the question was how the two thieves were able to steal so easily. The court investigated the circumstances and drew an unexpected conclusion. "Abandoned train" was a term then familiar at the North Caucasian Railway. It referred to trains without locomotives waiting at line ends for an indefinite period. In the summertime over 80 trains, literally abandoned, would wait for 10 to 15 days to be taken to their destinations.

The court issued an intermediate order, demanding that an end be put to that impossible situation.

As a result, quite a number of high railway officials were made answerable for refusing to receive the trains, and radical measures were taken to protect the trains against thieves. All that took place in 1983, and now the number of thefts has dropped significantly.

Intermediate orders do not always have to do with an offence against the law.

For instance. A man was murdered in a Tashkent street. Another man, Ilya Strelnikov, who happened to be passing by, chased the murderer, detained him and brought him to a police station. The court issued an intermediate order praising the man's courageous behaviour and forwarded it to his place of work. The management of the latter publicized the story and presented Strelnikov with a valuable gift.

An intermediate order can be rendered both in criminal cases and in civil suits. For instance, the fact that a court reinstated someone in his, or her, job shows that the management of the work place in question had violated labour legislation, and the court points out this fact to it. Soviet law stipulates that the persons to whom intermediate orders are addressed are to report the measures taken within a month.

The activists of the People's Assessors' Council, a voluntary organization uniting those members of the court, do the follow-up work on an intermediate order, helping to make sure it is carried out and taking measures against those officials who attempt to ignore it.

DOES THE PUBLIC PROSECUTOR ALWAYS ACCUSE?

The dock is occupied by an unpleasant-looking young man, his general look giving the impression that he has already served at least one prison term. The defendant is accused of violent behaviour, and he has admitted that he took reprisals by smashing office property.

The court discovered, however, that after serving his last term, the defendant decided to become a respectable citizen. He moved to another city where no one knew about his past and even decided to get married. But the young man had no place to live, and every time a room was vacated, the administration gave it to someone else. This happened 12 times. When it occurred the 13th time, the young man lost his temper and smashed everything in the office. They took him to court, and it looked likely that he would again be sentenced to jail.

However, the public prosecutor (Deputy City Procurator) Valentin Dyomin asked the court to release the defendant for probation. And the court of Judge Irina Gorbunova granted his request. Moreover, the procurator insisted that the officials who had driven the accused to his act of violence should be punished for provoking the law offence.

Against the Law The stand taken by Dyomin was against the decision made by his superior, the city procurator who had sanctioned the defendant's arrest. Yet, the former ap-

peared in court to defend his own point of view. Was it his personal initiative or duty as a procurator?

Indeed, a procurator works for an office where a rigid "vertical" hierarchy was introduced in the immediate years after the Revolution. Yet, to support public prosecution is one thing and to accuse the defendant at any price is something quite different.

The above-mentioned case was heard in the city of Vladimir several years ago. Today Valentin Dyomin is a deputy director of the All-Union Scientific Research Institute of the Procurator's Office of the USSR and lives in Moscow. He holds a law degree and is an author of numerous articles, in one of which he wrote: "How can one support a certain stand against one's own convictions, against the law and duty only because this view is backed by one's colleagues? Only a person with no principles can do that. It seems to me that such persons are not very typical of the Procuracy."

We would like to draw your attention to the words a g a i n s t t h e l a w. The point is that the law does not demand that the prosecutor support the accusation no matter what. That would render his participation in the proceedings senseless, for the drama of the trial is very likely to change his attitude towards the case.

By taking part in a court hearing the procurator protects the interests of the state and citizens' rights. If the defendant's guilt has been proved, the procurator is expected to support the public prosecution and thus protect society from the criminal. At the same time, if, according to Article 248 of the Criminal Procedure Code of the Russian Federation, "the procurator present at the court investigation of the case comes to the conclusion that the data of the court investigation do not confirm the accusation, his duty is to withdraw the charge". Lately this has happened on many occasions.

Still, the defendant's acquittal is, as Alexander Herzen put it in his time, a personal insult to the prosecutor, showing that he failed to prove the defendant's guilt or see his innocence.

That is why Soviet law charges the procurator with the job of supervising the actions of the legal bodies

conducting the preliminary investigation. He checks the legal grounds for the criminal charges made by the police, the main body in charge of the investigation. The purpose of legal supervision at that stage is to protect citizens from being charged without legal grounds or having their rights infringed upon in any other way. The procurator has the right to cancel any order rendered by the investigator, give the latter instructions, demand the case papers for personal examination and even take part in the investigation.

Regrettably, the procuracy has not always been up to the task: suffice it to recall the recently publicized data on charges against the innocent. Public attention was drawn to this in the June 1987 resolution of the CPSU Central Committee, "On Measures to Enhance the Role of the Procurator's Supervision in the Consolidation of Socialist Law and Order".

Who Is the Criminal Investigator Responsible To?

One of the reasons for the present situation is that some investigators, though not very many, belong to the procuracy. This explains the attempts of certain procurators to cover up errors in preliminary investigations, because they were often their own fault. Therefore, many lawyers (and the present authors) believe that the procuracy should not have its own investigators, that they should all be under the Ministry of the Interior, to which the majority of investigators already belong. Only then will the procuracy be able to supervise the investigation and check its legal grounds without bias. It is our view that it is only a matter of time before this system is introduced.

When the investigation is over, the procurator confirms the charge and turns the case over to the court. He may take part in the court hearing if he wishes to do so, and he has to if the court insists. From then on all the problems are dealt with by the court. The procurator cannot prescribe the court's course of action, though he may give his opinion on the matter. The public prosecutor represents one side of the case, and the lawyer

represents the other. Both are entitled to equal procedural rights.

However, this does not mean that the procurator ceases to protect the law when in court. His duty is to check the lawfulness of the proceedings and appeal against any order or verdict to a higher court if he feels it is against the law. Furthermore, the procurator supervises the implementation of court orders. It is also his duty, as regards detention, to see to it that the convicts' rights are observed and that the laws aimed at correcting and reforming the prisoner are followed to the letter.

The procuracy's law enforcement activities in the USSR vary, whereas its sole function in many Western countries is prosecution and accusation.

The Procuracy Supervises the Execution of Law

The procuracy supervises the execution of law by all ministries, state committees and departments, industrial enterprises and offices, collective farms, officials and citizens. The regulations on legal supervision are recorded in the Law on Procuracy passed in 1979. Its system is based on an administrative-territorial division and made up of the Procuracy of the USSR and those of the Union and autonomous republics, territories, regions, cities and districts. The main figure in the structure is the Procurator-General of the USSR appointed by the country's Supreme Soviet. Today this position is occupied by Alexander Sukharev. Other procurators are appointed by their superiors for a term of 5 years and are subordinate only to the former. The idea of such rigid subordination is to enable the procurators to perform their functions regardless of the local authorities.

Every Soviet citizen whose rights have been infringed on considers it natural to turn to the procuracy for protection. He knows that no matter how minor (or great) the offence might seem, the procuracy will do its best to right the wrong.

Valentina Ivanova, a mill-worker, came to the Procuracy of Achinsk District, Krasnoyarsk Territory.

She had just turned 55, the age of retirement for women in the USSR, and had applied for her pension. An inspector of the mill's personnel department was to prepare all the necessary papers within 10 days' time, but he neglected his duties and delayed the matter for several months. The District Procurator checked the facts and sued the mill for damages in Ivanova's favour. The court fully supported the procurator's charge, and the personnel inspector in question was reprimanded.

The procurator must appeal against any unlawful action on the part of any public body or servant to higher quarters. While never interfering in economic activities, the procurator sees to it that laws are administered correctly and universally.

Until recently that side of the procuracy's activity left much to be desired. That was why in late 1987 it acquired new rights—the right to postpone the enforcement of actions whose legality is being challenged, and the right to order officials to remove the most obvious violations of the law immediately. Such orders are compulsory to all.

THE THIRD SIDE OF THE TRIANGLE

The judge, prosecutor and lawyer make up a classical legal triangle. Though they are seated on different sides of the bench and often have different outlooks on the same event, they are still parts of one integrate whole. There cannot be any legal justice without the defence.

The history of justice is full of cases when the evidence presented by the prosecution was initially considered irrefutable, but it ultimately turned out that the defendant was innocent. That was exactly what happened with Vassili Nikonov, who was accused of first-degree murder and tried in Leningrad. The defendant pleaded not guilty; but the witness, on whose evidence the case actually rested, sounded very convincing. Though the crime was committed at night, he said that because of the full moon he could see the defendant stabbing his victim distinctly enough to recognize him even though they were separated by a distance of 10 to 12 metres.

The court had no evidence refuting the witness's statement, but the lawyer pointed out that among the evidence there was no objective data on what the weather had been that night.

On the lawyer's motion the court made inquiries at the meteorological station. The information provided by the latter made it clear that the witness for the prosecution had made a false statement: that night the sky was overcast, it was raining heavily, and he could not possibly have seen anything at such a distance. That and

other evidence made it possible to acquit the defendant. Some time later the actual murderer was found.

Of course, such cases are rare even in the practice of experienced lawyers. It is far more frequent that they have to defend persons guilty of a crime. In such cases the lawyer's duty is to help the court find out mitigating circumstances and return a milder verdict.

Finding out the truth is no easy task. The chances of a mistake being made by the investigator, procurator or court are high no matter how conscientious they are. It often happens that the persons in need of legal protection or court defence are ignorant in legal matters, and their ignorance can seriously impede the implementation of their right to defence.

That is why Soviet law not only grants citizens the right to defend themselves against the accusation, but also guarantees that right by the entire system of criminal proceedings and regulations.

"The Blessed Obstacles"

This system has been forming gradually, and it is still far from perfect. Before the late 50s the lawyer was allowed to be involved in criminal cases only during the actual trial. Beginning in 1958 lawyers were allowed to participate in all types of cases once the preliminary investigation was completed and the defendant was informed of this and acquainted with the materials of his case. In 1970 a law was passed permitting lawyers to become involved, with the procurator's permission, as soon as the defendant is charged.

The new law also outlined cases when the lawyer's participation in the preliminary investigation is compulsory, that is, cases involving persons under age, deaf, mute, blind and other physically or mentally handicapped persons who cannot exercise their own right to defence (from the moment the suit is brought against them), as well as persons with no command of the language in which the court proceedings are conducted, those accused of crimes meriting capital punishment (from the moment the accused is acquainted with the

materials of the case). The lawyer's presence is also compulsory in cases where a state or public prosecutor appears and in those involving persons with contradictory interests if at least one of them already has a lawyer. If the defendant has not retained a lawyer in any of the above-mentioned cases, the investigator, procurator or court must appoint one.

These regulations have now become a subject of public debate. This is only to be expected, for, although some of them are very democratic and can serve as an example for foreign legislators (those instances when a lawyer's participation in a court hearing is compulsory, for example), others do not fit the democratic nature of the reforms now under way in the USSR. Specifically, this refers to the admission of lawyers to the preliminary investigation. Lawyers may participate in it, in criminal offences, in only 20 out of 100 cases. In the remaining 80 cases they must wait till the preliminary investigation is over.

Readers familiar with the Anglo-American system where the lawyer can be present during the first police interrogation of his client, will be surprised to hear that this issue is even debatable. Regrettably, we have not as yet overcome the negative attitude towards the legal profession on the part of some investigators who believe that a lawyer only creates obstacles to the prosecution. Says Mikhail Bykov, Chairman of the Presidium of the Moscow Region Lawyers' Association: "If only one out of a thousand defendants is saved from a court error, we should bless those obstacles!"

Most lawyers would like to have access to criminal proceedings at an earlier stage. Among them are Vladimir Terebilov, Chairman of the USSR Supreme Court, and the country's only lawyer who is a member of the Academy of Sciences of the USSR, Vladimir Kudryavtsev. We have reasons to believe that legislators will also come round to this point of view in the very near future.

The participants in the 19th Party Conference also spoke in favour of the defence counsel having a greater involvement in the preliminary investigation.

Lawyer's Rights Actually, today's legislation grants a lawyer broad enough rights. He may visit the defendant, familiarize himself with all materials of the case, submit evidence, make petitions, challenge the court, etc. If the lawyer joins the case at the stage of preliminary investigation, he has the right to be present when his client is charged with the crime, attend interrogations and take part in other inquiries, as well as to have his opinion mentioned in the records and make petitions and challenges. In the court hearing he has the same rights as the prosecutor.

The lawyer's rights are granted by the law. Article 6 of the USSR Act on Lawyers' Association, for instance, does not permit testimony from the lawyer, who has come to know the circumstances of the case in the performance of his professional duty.

The law not only ensures the defence attorney's right to keep confidential information, but also guarantees that he will be objective and unbiased. The Soviet judicial doctrine does not allow lawyers to resort to illegal means of defence. He has no right to withdraw from the case or to defend several persons having contradictory interests. On the other hand, the defendant, if necessary, can retain several lawyers.

Every defendant is entitled to choose his or her own lawyer, no matter to which association the latter belongs or where he lives. Only when the defendant does not know of a lawyer to choose does the head of the local legal advice service have the right to recommend one. If the lawyer retained by a citizen is engaged in another case, the law obliges the investigator and court to postpone those legal activities in which the defence attorney is to participate.

There is a charge for legal services, though it is very low, averaging 25 to 50 roubles. If the defendant in a criminal case, where the lawyer's participation is compulsory, is unable to pay the lawyer's fees, they are paid out of the Lawyers' Association funds. There is a whole list of categories of cases for which the lawyer involved charges no fees, such as, for instance, alimony claims, industrial health damage suits and labour disputes. The

lawyers also charge no fees from the disabled or servicemen on active duty.

Lawyers often complain about fee rates, for they have no right to accept more than the fixed price, even if the client wants to show his gratitude. Why not let him do so on a voluntary basis? This would make it possible for every defendant to legally remunerate his lawyer for a job well done by giving money to the legal advice bureau (the Soviet version of a law office). Part of this money could be used to pay lawyers for the cases they conduct free of charge.

Lawyers' Self-Government

The Soviet Union's 22,000 lawyers are united on a territorial principle into Republic, Territory, Region and District Associations. These voluntary organizations, whose executive body is a presidium, hold conferences to deal with their current affairs. All lawyers are attached to legal advice bureaus where they receive clients, give legal consultations, conclude agreements and compile simple legal papers.

One of these bureaus in Moscow is located in Sadovo-Triumfalnaya Street. It looked like a University auditorium during exams. Some lawyers were looking through law directories, others were busily writing, and two of them were engaged in a heated debate. We introduced ourselves.

Mikhail Muravyov has been working for the bureau for nearly 30 years. His colleague, Yevgeni Gorin, a former judge, had a shorter record.

The Lawyers' Association admits lawyers who have been in the legal profession for at least two years. Recent college graduates must go through a trainee course.

Muravyov deals with criminal cases, while Gorin specializes in civil suits, mostly legacy disputes, property division after divorce, and copyright and job reinstatement cases. Of course, civil suits are less dramatic, but an expert lawyer can always count on a successful outcome. As for criminal cases, the court seldom agrees with the lawyer. When this happens, the lawyer can

appeal the decision for reconsideration by a higher court.

"Once," Counsellor Muravyov told us, "I was retained by a civil engineer from Moscow, Lev Bubnov, who was the chief engineer of a bridge construction project on the Don River. Seven spans of the bridge had been erected and the eighth collapsed killing several people. The construction team responsible for the accident was taken to court, and my defendant was charged with miscalculating the strength of the bridge. Though I proved that the structure had collapsed through the builders' negligence, for another bridge of the same design was functioning safely in another town, the regional court found my defendant guilty anyway. I appealed. As a result, the verdict was cancelled and the case was remitted for further inquiry. Supplementary examination proved my client not guilty of criminal offence, and he was released by the court."

Lawyers give legal advice not only to individuals, but also to those enterprises which cannot justify the expense of a staff adviser for lack of regular work. Still, such places sometimes need a lawyer for consultations or in order to represent them in arbitration* or in court. In such cases the legal advice bureau signs a contract with the enterprise in question and sends its lawyers to protect its interests.

"The Iniurcolleguia Is Looking For..."

From time to time one can see this in Soviet newspapers. The Iniurcolleguia is a specialized legal office protecting the property interests of Soviet citizens abroad. Any lawyer can handle cases linked with international private law, but the Iniurcolleguia's vast experience and broad contacts with foreign collegues and insurance companies have earned it a solid reputation in the field.

The Iniurcolleguia deals mostly with succession cases.

* Arbitration deals with property disputes and other related matters and is set up by the sides' agreement or by a competent body.

Many emigrants have heirs only in the USSR, even if they have not maintained any relations for a long time or are unaware of each other's existence. That is what makes tracing them so difficult. The basic data are often quite vague, for instance "born in the Ukraine" or "studied in St. Petersburg".* The Iniurcolleguia resorts to advertising in the press only when all previous inquiries in archives and to bodies of authority and registry offices have failed completely. The Iniurcolleguia, at foreign lawyers' requests, also sometimes tries to track down relatives who have lost sight of one another for various reasons.

The Western press often claims that citizens of the USSR are not allowed to have property. As for their inheriting an estate abroad, especially in a capitalist country, it is alleged that it is not only quite useless to try and pass it on to the Soviet heir, but could even cause prosecution against him on the part of the state.

That was what the relations of the late André-Stefan Jaspar, who died in France, used to think. They knew that the deceased man's wife, Taisia Filippovich-Jaspar, lived in the USSR and, therefore, together with other relations, was his legal heir. Nonetheless, they decided to sell a collection of Chinese paintings (17th-19th cent.) which had belonged to the deceased. The collection was acquired in China where Jaspar lived in the 20s and 30s together with his wife, a Russian emigrant. Later they moved to France, and in the 60s Taisia Filippovich-Jaspar returned to the Soviet Union without divorcing her husband.

The widow turned to the Iniurcolleguia, and the lawyers in charge of her case did their best to protect her rights. She renounced her succession to the bulk of the property in favour of other heirs and received the entire collection of paintings following the decision of a French court. Later she donated over 100 pictures to the Kiev Museum of Western and Oriental Art where they are on permanent display.

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* St. Petersburg was the name of Leningrad before World War I, i.e., 1914.

A growing number of foreigners visit the Soviet Union every year. One can see cars bearing licenses from various countries on Soviet highways. Some of them, unfortunately, have accidents. If an accident is proved to have been caused by a Soviet citizen, the Iniurcolleguia will handle the damage suit for the foreigner. This is another aspect of its work.

NON-PROFESSIONALS IN COURT

Our story would be incomplete if we did not mention those non-professionals who have no law degree, but still play an important role in law enforcement. We are referring to public representatives.

Volunteers Help the Court

A court in Gorky Region heard a case against workshop supervisor Pyotr Kudrin, who was accused of violating the law on environmental protection and was likely to get a sentence of up to 5 years imprisonment. It was his fault that the enterprise's waste had been dumped into the river for a long time. A general meeting of the staff condemned his actions and decided to send its representative to the court. Forewoman Maria Kononova was elected to be this representative and serve as the public prosecutor in the case. She was known to have been demanding effective environmental protection measures for a long time.

According to Soviet law, public representatives can take part in the court investigation of criminal cases as public prosecutors or defence attorneys. They are elected by general meetings of the staff at enterprises or other organizations concerned. This general meeting usually also determines the public attitude towards the law offence in question and its public representative's stand in court.

Unlike the court and the investigators, which come to know the person whose case they are to hear only after he has been charged with the crime, the public

prosecutor or defence attorney can supply the court with information about what the defendant is like, such as his attitude towards work and his colleagues. This will help in estimating the degree of danger he presents to society and to find out the motives behind his offence.

The public prosecutor and defence attorney are authoritative representatives of society. The law endows them with broad rights in court proceedings: they can submit evidence and participate in court debates. The public prosecutor can voice his considerations concerning the application of criminal law and punishment for the accused, but he also has the right to withdraw the accusation if the court hearing has given him grounds. As for the public defence attorney, he has the right to voice his opinion on attenuating circumstances or evidence leading to acquittal, as well as on the possibilities of mitigating the punishment and handing the defendant over to his work team for reforming. As a matter of fact, it is not always possible to distinguish between the functions performed by the two public representatives in court.

For instance, though Kononova condemned Kudrin in her address to the court, she also asked the court on behalf of her workshop formerly headed by the defendant to commute the sentence, in consideration of his service record and deeply felt repentance. The court agreed with the public opinion and sentenced Kudrin to corrective labour without deprivation of liberty* for one year. Kudrin was removed from his post after the court hearing and transferred to another job at the same enterprise.

* Correctional labour without deprivation of liberty envisages compulsory work for the state, with a part of the wages going to the state. It is a punishment for crimes that present no particular social danger, its term varying from 2 months to 2 years. Persons sentenced to corrective labour at the place of their work can be transferred to other posts on the same grounds as other workers, that is, according to labour legislation.

Comradely Court A comradely court is an effective way of dealing with law offenders. What kind of court is it? A court of honour or a private judgement of close friends? Or is it something like a legal lynching?

It is none of those. A comradely court is an elected public body based on the law. Such courts are very common in the USSR—there are over 300,000 of them all in all, and the number of their members exceeds two million.

A comradely court is elected by open ballot at the general meeting of the staff of an office, production unit, state farm or agricultural co-operative having at least 50 workers. Such a court can also be elected by a neighbourhood, that is, by a general meeting of the residents of an apartment building in town or a village in the country. The members of such a court are elected for a term of two years.

Comradely courts investigate labour-discipline violations, defamation of character, slander, petty law offences, minor family conflicts, small-scale violations of environmental protection laws and so on. The court and procuracy often entrust them with cases of minor crimes, such as first-time theft cases and similar offences. The offenders themselves usually do not regard comradely court hearings as a relief from punishment. On the contrary, there have been many cases when the accused was prepared to pay any damages rather than face a comradely court.

The punishment inflicted by such a court is usually a social censure or a comradely warning. However, in cases of labour-discipline offences (violation of safety regulations, absenteeism, etc.) it has the right to demand that the accused, if found guilty, be transferred by the management to a lower paying position for a certain period of time. Similarly, if a worker whose job is linked with educational activity is found guilty of amoral behaviour, he must be fired. Other punishments include urging the trade union or the management to deprive the guilty worker of his annual bonus, discount vouchers to vacation or health resorts, etc.

In cases of minor thefts the comradely court can impose fines on the accused of up to 30 roubles or make him pay the damages. If the comradely court's decision is not carried out on a voluntary basis, the case is passed over to the people's judge who checks the legal grounds for the court's decision and enforces it by law.

Of course, no member of a comradely court is as thoroughly grounded in legal matters as professional lawyers, but they act within the framework of the law whose enforcement is ensured by legal acts. A decision made by a comradely court can be appealed against to a trade union committee or Executive Committee of the local Soviet of People's Deputies, which have the right to revoke or modify the judgement.

GUARANTEES OF JUSTICE

A character of a medieval fable who, while travelling in a foreign country, came upon a set of gallows remarked to his companions: "This means that I have come to a civilized country. It obviously has law and order and enforces justice, and justice means civilization."

Many centuries have passed since then, and people have realized that gallows do not always symbolize law and order, that is, justice and civilization. The history of government and law contains many examples proving this point of view. The 70-year history of the Soviet state is, regrettably, no exception, yet it is obvious to anyone that our law has always sought to meet the loftiest ideals of justice.

Recently, there has been much written about court errors in the Soviet press. One judge we know is annoyed by this coverage, because he feels it as an attempt to cast aspersions on the entire legal profession. "Judges are basically honest and sensible," he maintains, "and none of us are eager to condemn the innocent. If this does occur it's not a deliberate act, but an unfortunate mistake. Besides, such errors don't happen very often."

What Is an "Inculpatory Tendency"?

It was by no means accidental that the January 1987 Plenary Meeting of the CPSU Central Committee emphasized the necessity of teaching the staff of law enforcement bodies to learn to

always "work in a setting of greater democracy and public openness". Regrettably, not all judges have as yet learned this simple skill. Those who reason in the same way as such judges cannot understand that our society, which is learning how to live in an atmosphere of greater openness, has the right to know why unlawful actions can be committed on behalf of the state at all.

We have already quoted some examples of court errors. Now we would like to explain why unfair verdicts are possible at all and what guarantees of their withdrawal can be given.

The main reason for unfair verdicts is the so-called "inculpatory tendency" characteristic of some judges. Such judges have blind confidence in the preliminary investigation and rely only on it instead of taking the evidence given during the court hearing into consideration.

Even the most conscientious investigator can be misled by the circumstances of the case, especially when the accused does not deny his guilt. No wonder that the latter's confession was once known as "Key Evidence".

Yet, lawyers are well aware of the fact that, for various reasons, the accused may be moved to confess to a crime he has never committed. Sometimes by admitting a minor offence the accused wants to cover up for a major crime. In other cases he may be trying to cover up for a friend or relative or is forced to make a confession by corrupt investigators using illegal methods of interrogation. That is why, according to Soviet law, "the confession of guilt made by the accused can serve as grounds for a case only if the confession is confirmed by other evidence" (Article 77 of the Criminal Procedure Code of the Russian Federation).

In the past, many judges who failed to prove the defendant's guilt preferred to find any pretext to have the case re-investigated, no matter how flimsy that pretext might have been. As a result, the case would be quietly dismissed in the investigator's office rather than defendant being publicly declared not guilty in court. Lately the number of acquittals made in court has been slightly increasing.

Another manifestation of this "inculpatory tendency" is the handing down of deliberately, and sometimes very unfairly severe sentences. We have already discussed the humanization of criminal punishment observed in recent years, but some judges still regard severe punishment as a panacea.

The second reason is the so-called "simplification of the procedure", or, in other words, a deliberate neglect of legal proceedings, that is, of exact recording of the protocol, meticulous observation of the defendant's rights and so on. When this happens, all the means that have evolved throughout the long history of the court in order to guarantee justice and protect the accused from biasedness are completely ignored.

There are, of course, other reasons for court errors, for instance, violations of the judge's independence. They are far less common, and an open war is now being waged against them.

The Law on the Inviolability of the Person

The best way to prevent court errors, as we see it, is to consolidate the judicial guarantees of Soviet citizens' personal rights and freedoms.

Can law enforcement bodies intrude upon citizens' privacy, violate their homes or the privacy of their correspondence? Foreign readers, especially those from English-speaking countries, often ask us about this. This is quite natural, for their interest in human rights is very much connected with their history. Indeed, the first provisions concerning personal freedoms can be found in the Great Charter (Magna Charta, England, 1215). Five centuries later those freedoms were elaborated to an as yet unprecedented extent by the American Constitution. Today they are recorded in international agreements on human rights. The Soviet Union has also signed them, and its national legislation fully corresponds to them, as well as to Article 17 of the international act on civil and political rights, which states that no one can be subjected to arbitrary or unlawful intrusion into his private life and family, or arbitrary

and unlawful infringement upon his honour and reputation.

Article 54 of the Soviet Constitution declares: "Citizens of the USSR are guaranteed inviolability of the person. No one may be arrested except by a court decision or on the warrant of a procurator." Of course, if a person is caught red-handed while committing a grave crime, or eyewitnesses recognize him as a criminal, he may be detained by the authorities. However, the procurator should be informed about the fact within 24 hours and issue a warrant for the person's arrest or sanction his release within the next 48 hours.

In other words, a person may be deprived of liberty only on certain legal grounds and following a specific procedure. Thus the law rules that preliminary detention (arrest) can be used, as a rule, against a citizen accused of a crime whose punishment is imprisonment of more than one year. In the majority of cases where preliminary detention is not permitted the investigator usually secures the appearance of the defendant in court by making the latter sign a recognizance not to leave without his permission.

The term of pre-trial detention cannot exceed 2 months, except for a very complicated case when the Procurator of a constituent republic may extend it to six months, and in exceptional cases when the Procurator-General of the USSR can sanction the detention of the accused for 9 months.

A person accused of committing a crime punished by an administrative fine can be detained for no more than 3 hours.

US legislation contains a provision on preventive imprisonment authorizing the judge to detain any person he deems socially dangerous to keep him behind bars until trial. It often happens that among those people found to be dangerous and detained are peace activists. Stephanie Farrior, legislative director of the National Committee against Repressive Legislation, emphasized that that particular article is used to put speakers at demonstrations and other activists in jail without trial.

Any citizen of the USSR is protected against unlawful arrest. That is why unlawful imprisonment or groundless arrests resulting from arbitrary actions on the part of criminal investigators, judges and other officials are regarded as crimes against justice. According to Article 178 of the Criminal Procedure Code of the Russian Federation, unlawful arrest is punished by up to one year of imprisonment, and if the detained person was known to be innocent, by a term of up to 10 years. The criminal law also envisages a penalty (including imprisonment) for unlawfully committing someone to a mental institution.

Not long ago the Supreme Court of the Russian Federation heard a case against Victor Shchegol, the Procurator of Oktyabrsky District of Krasnodar, and Alexander Kegeyan, a senior investigator. With the use of illegal investigating measures they had accused Gennadi Abolmasov of murdering his own mother. Fortunately, before a verdict was given the police of the town of Mogilyov detained a man named Karagodin who confessed his guilt. The inquiry that followed confirmed that he was the murderer.

In the verdict the court defined the causes of the offence committed by the officials of the Krasnodar Procuracy, saying that the two had been motivated by career considerations and wanted to cover up their professional incompetence with impressive statistics of success. The two were sentenced to criminal punishment, that is, to corrective labour with 20 per cent of their pay being transferred to the state budget. In addition, they were fined 6,000 roubles for damages to the man they had arrested and tried to frame up.

Or take another example. Fourteen persons in Vitebsk Region (Soviet Byelorussia) were charged with murders that were later proved to have been committed by a hardened criminal. The investigators, eager to solve the murder as quickly as possible, arrested those people without adequate legal grounds. Those officials were found guilty by the court and sentenced to various terms of imprisonment.

The Vitebsk case received such nation-wide publicity

not only because it was unique—it was a serious warning to all those who attempt to violate citizens' rights.

As we have pointed out, the Constitution of the USSR guarantees the inviolability of a citizen's home, which means that even representatives of the authorities cannot enter a citizen's home without his permission. Exception from this rule based on security considerations are strictly limited by law and listed. Thus someone's home can be searched only with a warrant issued by the court or procurator. The law dictates that in order to issue such a warrant the authorities must have "adequate reasons to believe that an instrument of crime, objects or valuables obtained through crime or items and papers relevant to the court case can be found". Such a search is usually carried out in the daytime, in the presence of the suspect and two attesting witnesses*, preferably strangers. During the search an investigator shall not infringe upon the citizen's rights or damage his property.

According to article 136 of the Russian Federation's Criminal Code, unlawful search, eviction or other actions violating citizens' homes are punishable by up to one year of imprisonment, corrective labour or a fine.

According to *Article 56 of the Soviet Constitution*, the privacy of citizens, and of their correspondence, telephone conversations, and telegraphic communications is protected by law.

Unlike the authorities of many other countries, Soviet lawyers and courts do not take into consideration the evidence obtained by unlawful opening and inspection of letters. Tapped phone conversations and opened letters cannot be used as evidence in court. The law bans such actions and even punishes them severely.

An exception to that rule, however, are cases when the bodies of investigation or the court find it necessary to inspect the suspect's or defendant's correspondence in order to solve the crime as quickly and fully as possible.

* An attesting witness is, according to Soviet law, a person requested to be present at a search, examination, seizure, view of the premises, identification and other legal actions in cases prescribed by the law on criminal procedure.

The law on criminal procedure describes the grounds and the order of opening and inspecting citizens' correspondence in detail. Such an action can be warranted only by a procurator or the court. The inspection of correspondence and official recording of such inspections take place in the presence of attesting witnesses, usually officials from the post office.

This measure is used in the USSR only in cases of especially grave crimes. The law commits the investigator not to publicize the circumstances of citizens' private life.

Supervision of Court Activity

The main guarantee that court errors will be set right is that court activity is supervised by higher bodies of the system. The overwhelming majority of civil and criminal cases are heard by district or city courts, which enables higher courts (territorial, regional and the Supreme Courts of the Union and autonomous republics) to concentrate primarily on ensuring the lawfulness and legal grounds of court verdicts and judgements.

The latter may be appealed against within 7 to 10 days' time by any of the trial's participants (the convicted person, his lawyer, the plaintiff and others), and the procurator may lodge a protest to the full court on the regional level. The verdict does not come into effect until the case is heard by the court of appeal. That hearing does not involve any expenses on citizens' part. The full court's duty is to thoroughly investigate every appeal or protest and revoke or change the court ruling if the evidence supports such an action. The system known as cassation is the major guarantee of the rights and legal interests of the citizens involved in court proceedings.

One of the main democratic principles of the court of cassation is the inadmissibility of "a turn for the worse". That means that if the case is reconsidered on the defendant's appeal, the court of cassation may commute the sentence imposed by the court of trial, but it cannot give a harder punishment or try him for a

graver crime (Article 340 of the Criminal Procedure Code of the Russian Federation). Even if the court of trial hears the case for the second time, its first sentence having been rejected by the court of appeal, the punishment cannot be hardened unless new, aggravating evidence is discovered.

Another basic principle of the court of appeal is auditing. The court of appeal must investigate every case in full, without limiting itself to the arguments quoted in the appeal, for it might find an error in the judicial estimate of a certain aspect of the case in support of the defendant.

Among the reasons for revoking or modifying the sentence are inquiries and preliminary or court investigations that are one-sided or incomplete; a discrepancy between the conclusions of the verdict and the actual evidence; grave violations of the criminal procedure code; misadministration of criminal law or discrepancies between the severity of punishment and the gravity of the crime and the defendant's personality. The court of appeal has the right to commute the sentence if it is too severe, without changing the determination of the nature of the crime, or dismiss the case if the defendant's actions violated the law formally but were too insignificant.

After a cassational hearing of a case, or if the judgement or the verdict have not been appealed against within the fixed period, the court order comes into effect and is to be implemented. But sometimes it happens that a court error is not discovered immediately. It is the state's duty to make sure that every person found guilty of a crime is punished, and that no innocent person is convicted. In other words, the state must ensure that every legal dispute is solved according to the law. That is why all higher courts have the right to revoke verdicts and judgements that have already come into effect. To carry this out, which is known as a supervisory revision, the citizen's appeal is not enough. What is necessary in such a case, is a protest lodged by certain officials of the procuracy or the chairman of a higher court.

The revision of an absolution or conviction for being too lenient is allowed within a year of the verdict's coming into effect. When the issue involves the acquittal of a defendant or the commuting of a sentence, there is no time limitation.

It is up to the presidium of regional and other courts of the same rank, the full court and the Presidium of the Supreme Court of a constituent republic, and, in some cases, the Supreme Court of the USSR to review sentences that have come into effect.

The court system contains numerous guarantees of correction of judicial errors. The main thing is to make them effective in all cases. The reforms now under way in all legal and law enforcement bodies are to ensure justice. According to Vladimir Terebilov, Chairman of the Supreme Court of the USSR, the main thing our system of justice needs now is a new way of thinking. As for guarantees of fair court decisions, our courts are democratic enough to function without errors.

Igor VOLOSHIN
Lev SIMKIN
The Judicial System in the USSR

Dear Reader,

We hope that you have found this publication interesting and useful. We would be most grateful if you could fill out this questionnaire. All you have to do is put a cross in the appropriate box, or, where such boxes are not provided, express your opinion briefly and legibly.

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	Good	Satisfactory	Could be better	Hard to say
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...up-to-dateness?	025 ☐	026 ☐	027 ☐	028 ☐
...convincing argumentation?	029 ☐	030 ☐	031 ☐	032 ☐
...clear, easy-to-read style?	033 ☐	034 ☐	035 ☐	036 ☐
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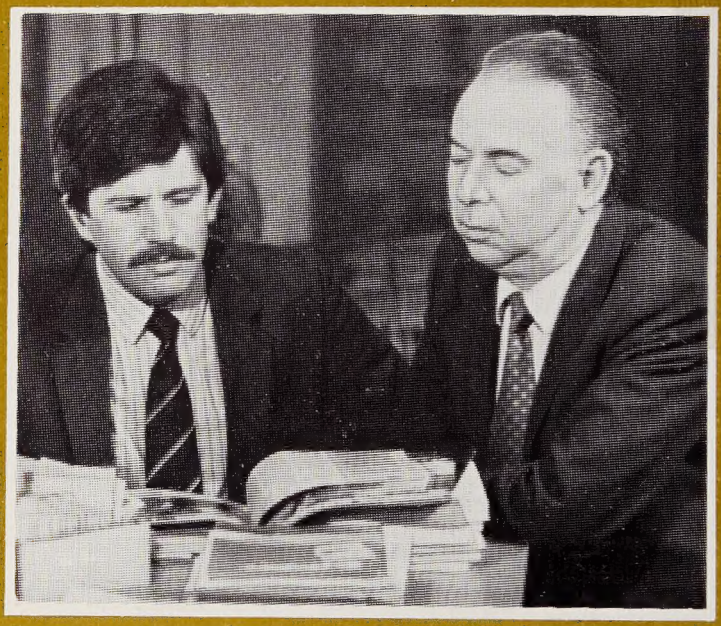

Igor VOLOSHIN (1934-88) graduated from Moscow State University in 1958 and worked for the USSR Ministry of Justice. He was a practicing lawyer.

He is the author of "Personal Property in the USSR", also published by the Novosti Press Agency Publishing House.

Lev SIMKIN (b. 1951) graduated from the All-Union Extra-Mural Law Institute in 1973. He holds a degree in law and chairs a department at the All-Union Institute of Judicial Workers' Advanced Training.

He is the author of two other books, "The People's Court and Crime Prevention" and "Bodies of Justice and Courts: Fighting Against Crime". He regularly contributes articles on judicial issues to the Soviet press.