Soviet Law and Government

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SOVIET LAW AND GOVERNMENT is published as a service for purposes of information and education. Articles are selected which best reflect developments in Soviet law and government and which are of most interest to those professionally concerned with these fields. All views expressed are those of the authors.

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Theory of the State

Kommunist, 1963, No. 13

A. Butenko

THE SOVIET STATE OF THE ENTIRE PEOPLE

Any true science, including social science, is critical by its very nature. The discovery of new phenomena and the accumulation of factual data require that established concepts be re-examined again and again, that firmly entrenched conclusions be refined, and that general descriptions be developed. This revolutionary and dynamic aspect of science, which frightens dogmatic, conservative thinking, is wholly justified and understandable. Life does not stand still. The changes and new phenomena in it cannot but be taken into consideration by science. The development of the Marxist-Leninist theory of the state may serve as graphic confirmation of this.

The CPSU Program enables us to review the entire historical path of the Soviet state with considerably greater thoroughness and depth than before, and to picture clearly the concrete stages of its development in the transition of society from capitalism to communism. Among the new propositions of the Program, one of the most significant is the conclusion that the Soviet socialist state is a state of the entire people.

The fraternal communist parties have responded very favorably to the CPSU Program, its new propositions and conclusions. At congresses of the Marxist-Leninist parties and in the press, communists abroad have emphasized that disclosure of the laws of transformation of the state of proletarian dictatorship into one of the entire people, the characterization of its nature and functions, and the determination of the paths whereby the system of power of the entire people will develop into communist public self-government constitute an important theoretical contribution of the CPSU to the treasure-house of Marxist-Leninist theory.

However, there are people, who call themselves Marxist-Leninists, for whom the conclusions of creative Marxism with respect to the law-governed expansion of socialist democracy, and the progressive development of the socialist state, which in our country has become an organization of the entire people, seem dangerous. Slandering the CPSU Program, the Chinese leaders declare that to call the Soviet socialist state one "of the entire people" is to replace the Marxist-Leninist theory of the state with the bourgeois theory.

Let us examine the essence of the conclusions of the CPSU Program on the paths of development

of the Soviet state and what, in actuality, is concealed behind the assaults of the Chinese leaders on these conclusions of creative Marxism.

1. Two Approaches to the State: Marxist and Left-Opportunist

In the polemic imposed by the leadership of the Communist Party of China upon the international communist movement, two approaches to analysis of the practical and theoretical problems of the present day may be clearly distinguished: one Marxist and creative, the other left-opportunist and dogmatic. These two approaches are also evident as regards problems of the theory of the socialist state.

The creative, Marxist approach undertakes, basing itself upon the facts of life, to interpret theoretically the processes in progress, to analyze the changes experienced by the socialist state, and to derive from this practical conclusions for the policies of the working class. It is this approach that characterizes the CPSU Program in its entirety, and, specifically, its propositions on the development of socialist statehood.

The dictatorship of the proletariat, given birth to by the socialist revolution, played a role of significance in world history by assuring the triumph of socialism in the USSR. The Soviet state, established by the working class under the leadership of V. I. Lenin and the Communist Party, developed along with society as a whole, and reflected in its organization those profound processes that occurred in the social structure of the country. Many aspects of this evolution of the socialist state were forecast in the writings of Marx, Engels, and Lenin. But it would be unreasonable, of course to expect that the founders of Marxism-Leninism would be able to explain in detail just how the state would change under the conditions of the complete and final triumph of socialism.

The life of the Soviet people, and the CPSU Program, provided the answer to this question. The socialist state, arising as a state of the dictatorship of the proletariat, begins, with the building of socialism, to develop gradually into a state of the entire people. It is precisely as a state of the entire people and as the spokesman for the interests and will of the entire people that it resolves the tasks involved in the comprehensive building of communism, and thereby prepares its own transformation into communist public self-government.

The dogmatic, left-opportunist approach is opposed to the Marxist. The dogmatist walls himself off from life by a fence of quotations. He does not wish to study reality. For him the entire problem resolves itself merely to assembling a pile of quotations, a record of statements confirming his current sectarian position. This technique is characteristic of the letter of the Central Committee of the Chinese Communist Party of June 14, 1963. Garbing themselves in the toga of defenders of the teachings of Marx and Lenin, swearing loyalty "to the universal truth of Marxism-Leninism," and at the same time displaying a lack of knowledge of the elementary facts of Soviet reality, the authors of the letter attempt to discredit creative Marxism under the pretense of protecting it. They assert that "the fundamental thought of Marx and Lenin consists of the following: throughout the entire historical period separating capitalism from communism, that is, until the elimination of all class differences and entry upon a classless society, until entry into the higher phase of communist society, the uninterrupted existence of the proletarian dictatorship is inevitable."

What, concretely, are the authors of the letter of the CPC Central Committee falsifying in having recourse to the authority of Marx and Lenin?

As we know, Marx employed the term "communism" to denote both the lower and higher phases of communist society. In the Critique of the Gotha Programme, he wrote: "Between capitalist and communist society lies the period of the revolutionary transformation of the one into the other. There corresponds to this also a political transition period in which the state can be nothing but the revolutionary dictatorship of the proletariat" (Soch., Vol. 19, p. 27). This is one of Marx's most important concepts,

and today, by a false, dogmatic interpretation, it is being employed by the Chinese theoreticians to justify an erroneous viewpoint.

Analyzing the Critique of the Gotha Programme, Lenin, in his State and Revolution, followed the example of Marx in employing the term "communism" to cover socialism as well. He writes: "The dictatorship of the proletariat, the period of transition to communism, will, for the first time, create democracy for the people, for the majority, in addition to the necessary suppression of the minority — the exploiters" (Soch., Vol. 25, p. 434). It is absolutely clear that, inasmuch as the discussion is of the suppression of the exploiters, what is meant by the transition to communism is the transition to its first phase — socialism. In a number of other writings in which he considers the concrete movement from capitalism to socialism, Lenin clearly sets the limits of the proletarian dictatorship to precisely this period. Asserting that the dictatorship of the proletariat is necessary for the elimination of exploitation of man by man, and for the creation of a socialist society, Lenin wrote: "This goal cannot be attained immediately. It demands quite a lengthy transition period from capitalism to socialism because time is needed for fundamental changes in all areas of life, and also because the immense force of the habit of petty-bourgeois and bourgeois 'bossing-it' can only be overcome in a lengthy and stubborn struggle. That is why Marx speaks of the entire period of dictatorship of the proletariat as a period of transition from capitalism to socialism" (Soch., Vol. 29, p. 358). This final thought is particularly important: Lenin explained with utmost clarity that Marx's "political transition period" from capitalism to communism is to be understood as the transition period from capitalism to socialism and that it is specifically for this period that the proletarian dictatorship is necessary.

Thus, as regards the essence of their views, both Marx and Lenin took as their point of departure the idea that the dictatorship of the proletariat is necessary for the transition from capitalism to the first phase of communism — to socialism, although both Marx and Lenin sometimes called the transition to socialism, the transition to communism. This latter circumstance is employed by the leadership of the CPC Central Committee to place another interpretation upon the statements of Marx and Lenin: that they had allegedly held that the proletarian dictatorship is necessary not only for the building of socialism, but also for the attainment of the second phase of communist society and for the elimination of all class differences, i.e., until the building of full communism.

How is one to explain this type of falsification of the Marxist-Leninist theory of the state by the leadership of the Chinese Communist Party? In similar situations, Lenin always demanded, first, that one dig down to the socio-economic, class roots giving rise to particular persistent lines of falsification of Marxism in the communist movement and, second, that one find the theoretical sources of the error, those initial erroneous postulates that are intentionally laid at the foundation of a particular pseudo-Marxist conception.

The most persistent lines of falsification of revolutionary Marxism in the communist movement are two: the right-opportunist and the left-opportunist. The present line of the leadership of the Chinese Communist Party is clear-cut left opportunism. It is manifested in an overrespectful evaluation of modern capitalism; in an adventurist attitude toward problems of war and peace (war will be followed by "a thousand-times-higher civilization," "the atom bomb is a paper tiger"); in baseless hopes of "communizing" the life of society at one fell swoop; in the pseudorevolutionary rejection of necessary compromises ("all or nothing"); in the employment of loud phrases calling for adventures in the name of a "truly beautiful future," with which the leaders of the CPC wish to "bless the peoples." It is not difficult to see that the leitmotif throughout is the pseudorevolutionary leftist tendency to "push" revolutionary transformations in the modern world, both inside and outside China, the desire to jump over inevitable phases of historical development, which can only lead to discrediting the very idea of communism.

Marxism requires that a materialist explana-

tion be given for the differences that have arisen, and that we see the objective basis for these differences, rooted in the socio-economic conditions of development of the individual countries and Marxist-Leninist parties. In a peasant country like China, with a very large urban petty bourgeoisie, the Party experiences particularly strong pressure from the ideology of the petty bourgeoisie and the many millions of peasants, with their fluctuation to extremes, their good intentions and demands for the most rapid improvement of life through equalitarianism, with their deep-rooted faith that socialism and communism can be "introduced" by decree "from above," without considering the objective, real conditions of a country that is not yet highly developed industrially. Lenin repeatedly warned communists against this danger.

It is precisely as a consequence of capitulation to the pressure of petty-bourgeois ideas that there have appeared in recent years in China "distinctive" concepts on a number of the cardinal problems of the day, centering on the central problem of the transition from capitalism to communism. It is specifically in the interpretation of the transition from capitalism to communism that there are contained the theoretical sources of erroneous views on the socialist state. It is particularly here that one may, in Lenin's words, "discover what led astray people who advance, as Marxism, something unbelievably inconsistent, confused, and reactionary" (Soch., Vol. 14, p. 8). In other words, the opportunist interpretation of the development of the state is based upon a more general left-opportunist conception of the transition from capitalism to communism.

As far back as 1960, the newspaper Jenmin Jipao, organ of the CPC Central Committee, began to propagandize intensively a "distinctive" concept of the transition period from capitalism to communism, its "own" interpretation of socialism. With the Chinese experience in mind, the paper wrote: "Conscientious generalization of this experience on the basis of the theory of Marxism-Leninism on the building of socialism, and the propagation of our understanding of the laws of the transition period from capitalism to communism...is our pressing task" (Jenmin Jipao, August 5, 1960).

The essence of this conception, which corresponds entirely to the demands of petty-bourgeois, peasant "socialism," consists of adventurist leaping over stages, and the denial that socialism is a qualitatively distinct phase of communism. According to this non-Marxist conception, socialism is not the first phase of the new social order, gaining establishment after a transition period, but is the transition period that leads from capitalism directly to communism. The newspaper Jenmin Jipao wrote precisely this: "Socialist society, i.e., the entire transition period from capitalism to communism...." In accordance with this, it was asserted that, since 1949, the "social nature of society in our country (China — A. B.) was, it should be stated, fundamentally socialist." Actually, the Chinese economy of that period was a mixture of many stages, and socialist society had just begun to be established. It is not surprising that in presenting the transition period from capitalism to socialism as a "socialist society," the Chinese theoreticians then disclose that this "socialist" society contains exploitative elements, strata against whom the proletarian power must be applied. A general conclusion is drawn from this: not only in China, where socialism is being built, but also in no other country, where socialism has triumphed wholly and finally, is cessation of the proletarian dictatorship permissible. It must be preserved for a considerably longer period, up to the triumph of communism. Quotations from Marxist writings, taken out of context, are cited to substantiate this conception.

These are the two approaches to problems of the socialist state. Let us see how their contradictoriness manifests itself concretely in analysis of the metamorphosis of the state of proletarian dictatorship into that of the entire people, and in evaluation of the essence of the state of the entire people.

2. The Law of Transformation of the State of Proletarian Dictatorship into the State of the Entire People

Marx, Engels, and Lenin established the principal laws of development of society from capitalism to communism. Their conclusion, confirmed by experience, resolves itself to this, that along this historical path there is first a transition of society from capitalism to socialism, constituting the first phase of the new socio-economic formation, followed by the transition from socialism to communism, which is the second phase of the new formation. The first and second phases of communism are established in very different social environments and under a completely different disposition of the class forces. Different tasks have to be solved to achieve them, and therefore they are inevitably established by different techniques and methods, and they give birth to different institutions and agencies. The historical mission of the working class and its Marxist-Leninist party consists in this, that, taking into consideration all the complexity of these changing circumstances and applying the appropriate techniques and methods, it leads society from capitalism to socialism and from socialism to communism.

The experience of the Soviet Union and other countries in building socialism has confirmed the correctness of the Marxist-Leninist understanding of the laws of development of society in the transition from capitalism to communism. This experience has made it possible to enrich the science of Marxism with new propositions. One of these propositions, based wholly upon the existing practice of socialist and communist construction, is the conclusion drawn by the CPSU Program on the fate of the dictatorship of the proletariat and the course of development of the socialist state. This new conclusion of creative Marxism, revealing the road from the state of proletarian dictatorship through the state of the entire people to communist public self-government, fully corresponds to the Marxist-Leninist understanding of the laws of development of society from capitalism through socialism to communism.

Despite the views of Marx, Engels, and Lenin, the Chinese theoreticians regard the entire transition from capitalism to communism as a "permanent revolution," and as "one integral transition period." Given this un-Marxist approach, socialism, as a society without exploitation and exploiters, disappears; the significant difference between the transition from capitalism to socialism and the transition from socialism to communism is totally erased; and socialist society itself emerges as a society of class struggle. "In view of the fact that the movement from capitalism to communism is one integral transition period, and the struggle between rising communism and dying capitalism runs through the entire period like a red thread," we read in Jenmin Jipao, "the principal contradictions in society during this period cannot but be class contradictions or of a class character." In accordance with this conception, the functioning of the dictatorship of the proletariat is extended, in the letter of the CPC Central Committee of June 14, 1963, until the building of communist society.

However, history is not a jumping horse, obedient to the will of whatever daredevil driver may come along. It is impossible to make a developing society jump over necessary stages, no matter how difficult a barrier they may seem to be to various leaders. Of course, one may proclaim the transition period itself to be socialism, one may attempt to "communize" the country at one fell swoop, but no one has ever succeeded, or will succeed, in outsmarting history and avoiding its imperative laws. These objective laws demonstrate that, from capitalism, society can proceed directly only to socialism, and only thereafter is the transition from socialism to communism possible. These two transitions differ from each other very substantially.

Socialism, as the first phase of the new society, is established as the result of the revolutionary transformation of capitalism, in the process of a decisive smashing of the pillars of bourgeois society, in an environment of acute class struggle conducted by the working people, under the guidance of the working class, against the exploiters. In order to destroy capitalism, eliminate class antagonisms and build socialism,

there is needed everywhere the state power of the working class, the dictatorship of the proletariat.

The experience of the Soviet Union, like that of the other socialist countries, has confirmed the correctness of the Marxist-Leninist conclusion to the effect that the socialist state can arise only as the state of proletarian dictatorship. When, in October 1917, the working class founded the Soviet socialist state and began to lay the path into the future, Russia contained features of several stages of development. It was a country in which the elements of emerging socialism were surrounded by a sea of bourgeois, petty-bourgeois, and patriarchal forms of life. Soviet society consisted of antagonistic social groups and classes. On the eve of the October Revolution, the exploiting classes — landlords, bourgeoisie, merchants and kulaks, together with their families — constituted 16.3 per cent of the population. Of the remaining 83.7 per cent, constituting the working population, the overwhelming majority were self-employed peasants and private craftsmen.

In order to bring the country to socialism, the working class had, by means of its dictatorship, to smash the resistance of the exploiters, the old traditions and customs, and to recast all the forms of social production and social life into socialism. It was the conditions of transition from capitalism to socialism as a period of revolutionary smashing of the pillars of capitalist society and of acute class struggle that defined the functioning of the Soviet socialist state as the state of proletarian dictatorship.

The principal characteristics of the state of the proletarian dictatorship were explained by V. I. Lenin, who demonstrated that they were conditioned precisely by the circumstances of the transition period from capitalism to socialism, the antagonistic nature of social contradictions in that period, and the exacerbated class struggle associated with them.

Lenin noted, above all, that the state of the proletarian dictatorship was the political dominance of the working class, which does not share its power with any other. Resting on the support of all working people, it employs its power to build socialism, abolish the exploitation of man by man, and reorganize the peasant economy on a socialist basis.

The Soviet socialist state, like every state of proletarian dictatorship under the conditions of the transition period, abolished private capitalist property in the means of production — the basis of the exploitation of man by man — and thereby assured the elimination of the exploiters. It served as a most important agency for suppressing the resistance of the exploiters, and the class nature of the Soviet state manifested itself in this as well. "A necessary characteristic and absolute condition of the dictatorship," wrote Lenin, "is the forcible suppression of the exploiters as a class..." (Soch., Vol. 28, p. 235). This was called forth not at all by class revenge, but by the fact that the exploiters displayed, from October 1917 to the mid-1930's, the most ferocious resistance to the revolutionary changes, and endeavored to prevent the triumph of socialism.

Finally, the Soviet state, under the conditions of the building of socialism, assured to the working class governmental leadership over the peasantry, without which achievement of socialist transformations in the countryside could not be attained. Conducting class war against the bourgeosie, the working class was also compelled, under the conditions existing in the transition period, to fight against the habits of petty-bourgeois and bourgeois management, which permeated the activity of the petty bourgeoisie and the peasantry. This tendency could be fought only by revolutionary reorganization of the entire economy, by transition from individual, isolated, petty-commodity production to large-scale collective economy. In order to solve this problem, wrote Lenin, "the proletariat, having triumphed over the bourgeoisie, must undeviatingly pursue the following major line in its policy relative to the peasantry: the proletariat must divide, wall off the working peasant from the property-owning peasant, the peasant toiler from the peasant merchant, the laboring peasant from the peasant speculator" (Soch., Vol. 30, p. 92). The entire essence of the building of socialism is found in this delimitation.

As a result of the socialist revolution and the

socialist transformations, the percentage of exploiting elements dropped, by 1928, to 4.6 per cent (as against 16.3 per cent in 1913), and these were, for the most part, kulaks, the last exploiting class existing in the country. As a result of the development of socialist transformations in the USSR and the triumph of socialist relationships in agriculture, this last exploiting class was also abolished by the mid-1930's. Socialism had triumphed in town and country by that time. The share of the socialist economy rose to 99.8 per cent in the gross output of industry, to 98.5 per cent in the gross production of agriculture (including the private subsidiary farming of collective farmers, workers and office personnel), to 100 per cent in the retail trade turnover of trade enterprises (including public catering), and to 99.1 per cent in the national income (including the private subsidiary farming of workers and office personnel). Socialist transformations in the economy changed the class structure of society. Workers and office personnel now comprised 45.7 per cent of the entire population, collective-farm peasantry and handicraftsmen in cooperatives comprised 48.8 per cent, while self-employed peasants and private craftsmen constituted 5.5 per cent.

The Soviet land was transformed into a mighty socialist power with advanced industry and mechanized agriculture. The war of conquest which it was compelled to withstand brought huge losses, but the Soviet people, making use of their socialist state, not only restored but greatly exceeded the prewar production level. As was noted by the 21st CPSU Congress, socialism in the Soviet Union had triumphed completely and finally. Socialist society immediately began to make the transformations required for communism. Thus, the proletarian dictatorship had fulfilled in our country those tasks for which it had been set up.

Communism, the second phase of the new society, does not arise as a consequence of the revolutionary smashing of the established socialist pillars of social life, but in the course of their further development and improvement.

The development of socialism into communism presumes the law-governed modification of the socialist state, which cannot but reflect the very significant changes in the nature of social contradictions and the class structure of society. Life itself transforms the system of proletarian dictatorship into a system of power of the entire people.

In carrying out the all-round building of communism, the Soviet people bases itself upon the socialist economy that holds undivided sway in town and countryside. In our society there are no antagonistic contradictions. The Soviet people constitutes an unprecedented community of classes and social groups united by a unity of interests, goals, and world-view. In 1962, workers and office personnel constituted 73.6 per cent of the population of the USSR, collective-farm peasants and craftsmen belonging to cooperatives numbered 26.3 per cent, and self-employed peasants and private craftsmen constituted 0.1 per cent.

The principal characteristics of the state of the entire people are outlined in the CPSU Program. One of its major features consists of the fact that today it is no longer the instrumentality of political dominance of a single class. "The state, which arose as a state of the proletarian dictatorship," the Program reads, "has been transformed in the new, present stage, into a state of the entire people, an organ for expressing the interests and will of the entire people." Previously, the Soviet socialist state could not express the interests of all classes in society: it was directed against the exploiting classes, and expressed, directly and immediately, only the interests of the working class (which at that time was the sole carrier of the socialist mode of production), while the interests of the peasantry, which had a dual nature, were expressed only in the aspect of its interests as toiler, and not as property-owner. Today society no longer contains exploiters, and the dual nature of the peasantry has disappeared. Both the working class and the collective-farm peasantry are carriers of the socialist mode of production, of the interests of all strata of the people. They move in a single socialist channel. These interests are expressed by the socialist state of the entire people.

The Soviet socialist state, having been transformed into one of the entire people, has ceased

to be a state of proletarian dictatorship, and therefore it no longer possesses the characteristic of suppression of the class of exploiters, which had been a necessary feature and absolute condition of dictatorship.

This function was not abolished by someone's arbitrary decision, but withered away as a consequence of the law-governed development of socialism, in conjunction with the elimination of the exploiting classes. Nevertheless, the authors of the letter from the CPC Central Committee propose to maintain the proletarian dictatorship and not shut it down "at the half-way mark." The question arises: what class, then, is the working class to suppress? "It is impossible to refute the fact," we read in the Open Letter of the CPSU Central Committee, "that today Soviet society consists of two main classes — the workers and the peasantry, plus the intelligentsia, and that no single class in Soviet society occupies a position in which it is able to exploit other classes. Dictatorship is a class concept. Over whom do the Chinese comrades propose that the dictatorship of the proletariat be wielded in the Soviet Union: over the collective-farm peasantry or over the people's intelligentsia?"

After the triumph of socialism in the countryside, the working class no longer needs to maintain its dominance for the purpose of curtailing the private-property strivings of the peasantry as a class, for today the peasantry, too, is a class that has linked its future with socialism. To continue the political dominance of the working class under these conditions means to have no faith in the stability of the socialist changes that have occurred in the countryside.

The major function of the socialist state is to construct. But the socialist state fulfills this, its principal function, differently under different social conditions. In the transition from capitalism to socialism, in order to create the foundations of the new life, the working class has to suppress the resistance of the exploiters, cut short the private-property tendencies of the petty bourgeoisie. In other words, it must effectuate its dictatorship, reorganizing the life of society on its own, socialist basis.

In the transition from socialism to communism, the socialist state expands its primary, constructive activity even further. But now, inasmuch as communism develops out of socialism, in which there are no exploiting classes, the working class needs no dominance because there is no one to dominate: there are neither exploiters, classes or class trends resisting the development of socialism. In such a situation the socialist state no longer serves as a state of proletarian dictatorship, because the tasks of the latter are already fulfilled. It acts to express the interests and will of the entire people, i.e., as a state of the entire people.

3. The State of the Entire People and the Building of Communism

The Soviet state of the entire people is the world's first political organization that directs a society in which there are no exploiters and exploited, socialism has triumphed fully and finally, and the construction of communism is under way. Its main distinctive feature is that it expresses directly, and with no intermediaries, the interests of all social groups in society. It serves as an organization of the entire people to administer social affairs, as the organ of a political democracy that is developing constantly and most broadly, and as a most important stage on the road to the complete withering away of the state and its transformation into communist public self-government.

The transformation of the state of proletarian dictatorship into that of the entire people is not a passive reflection of socio-economic processes. It also involves changes in the state structure itself. No matter what area of state activity one considers, be it the sphere of economics or culture, the defense of law and order or education — in all fields of its life the Soviet state has undergone major changes in recent years. The soviets themselves have seen a turnover in membership; they have become more active, and their ties to the masses have become closer. The state apparatus has been reorganized, and some of its functions are being transferred to the public organizations. The people's control over the activ-

ities of state agencies has been reinforced. The role of the public has increased, and so forth. The general line in all these changes is an all-sided expansion and advancement of socialist democracy, an ever more active participation by all citizens in the administration of the country.

For the dogmatists, the very term "state of the entire people" seems to be inadmissible. In their opinion, "so long as the state exists, it cannot be 'of the entire people.'" In attacking the state of the entire people, they love to cite Friedrich Engels, who criticized the "free people's state." They do not understand that this slogan of the German social democrats of the 1870's was advanced for the conditions of capitalism and was therefore thoroughly opportunist, for it meant a prettying-up of bourgeois democracy and alleged that the "free people's state" could be brought about within the framework of capitalism, and under conditions of class antagonisms. V. I. Lenin had precisely the same circumstances in mind when, following Engels, he criticized the slogan of the "free people's state," and when he said that "every state is a 'special force for the suppression' of the oppressed class. Consequently, no state is a free or a people's state" (Soch., Vol. 25, p. 370). It is laughable to attempt, as the dogmatists are doing, to apply this formulation of Lenin's to the state in socialist society: the working class oppresses no one, and therefore a state as a "special force for the suppression" of an oppressed class is simply impossible. It is precisely in a society in which there are no exploiters and exploited, no oppressors and oppressed, that the state of the entire people is not only possible but, as the experience of the USSR has shown, becomes a reality.

But life and experience are not arguments for the doctrinaire. Despite reality, the left opportunists, dogmatists and sectarians proclaim the need to preserve the state of proletarian dictatorship in the USSR and the impossibility of the "state of the entire people." The authors of the letter of the CPC Central Committee advance two "arguments" in support of this: 1) the dictatorship of the proletariat must still be maintained in the USSR, for exploiting classes still exist there; and 2) the proletarian dictatorship is still needed to preserve the alliance of the working class and peasantry.

Let us examine each of these arguments.

First thesis: "Someone will even say, perhaps," we read in the letter of the CPC Central Committee, "that they already have a classless society. And we reply that the answer is no, and that in all the socialist countries without exception, classes and class struggle exist. Inasmuch as there are still elements there — remnants of the old exploiting classes — which attempt to bring about a restoration; inasmuch as parasites, speculators, loafers, rowdies, embezzlers, etc., still exist, how can it be claimed that there are no classes and no class struggle? How can it be claimed that the dictatorship of the proletariat has ceased to be necessary?"

Three different questions are confused here.

1) Do we have classes? Yes, but they are friendly classes: workers and peasants. Therefore, to struggle against those who claim that the USSR has a classless society means to fire at a straw man. No Soviet Communist contends that our society has already established a classless society. To establish such a society means to build communism, and the Soviet people is only now engaged in accomplishing that task.

2) Do exploiting classes exist in our society? Are "new bourgeois elements" coming into being in it? Nothing of the sort: every schoolchild knows that the exploiting classes in the USSR were eliminated in the course of the building of socialism. Seeking somehow to document their understanding of the social structure of Soviet society, the authors of the letter of the CPC Central Committee write of the "birth of new bourgeois elements," inasmuch as "parasites, speculators, loafers, hooligans, embezzlers, and the like exist" still in the USSR. In this connection, the Chinese press has begun to publish falsehoods about "a fever of selling for profit" in the USSR, "embezzlement on a mass scale," etc. There is no need to refute such insinuations: their unscrupulous nature is obvious. With respect to the efforts of the Chinese theoreticians to picture criminal elements as an "exploiting class," we cannot refrain from saying that such exercises are as far from Marxism as the incantations of a sorcerer are from scientific

research. There is no society in which criminals constitute a special class, and they are not a class in Soviet society.

Socialist ownership of the means of production rules out the appearance of exploiters. They lack in our country the objective, socio-economic basis for existence, which is privately-owned means of production capable of becoming the instrument of exploitation of man by man. Therefore the pronunciamento of the letter of the CPC Central Committee to the effect that hostile classes still exist in Soviet society is, to say the least, ludicrous.

3) Is there class struggle in the USSR? No! The existence of classes is not identical with the presence of class struggle. In order for class struggle to exist in a society, there must be more than the presence of different classes: their interests must clash; there must be a fundamental divergence of these interests, an antagonism between them compelling some class to mobilize its forces for struggle against its opponent. If we speak of the two classes in Soviet society, the workers and peasants, we find that after the entire peasantry also became a carrier of the socialist mode of production, the causes of class contradictions between these social groups disappeared.

In the course of the building of communism, Soviet society becomes increasingly homogeneous in its social structure. Consisting of groups and classes that have linked their destinies with socialism, it does not contain the soil for class struggle to grow on: there is no divergence of fundamental interests between the basic classes or among any of the groups constituting society. They are welded by a unity of goals and a community of communist ideology.

The renegades and antisocial elements — embezzlers, rowdies, buyers for resale at a profit, etc. — arouse a hostile attitude toward themselves on the part of the working people, but these antisocial elements, as has already been stated, do not constitute a class, and therefore the struggle against them is not class struggle. The state of the entire people is a most important stage on the road of the withering away of the state. It is the socialist state of the period when the need for the suppression of class by class and the need for a class dictatorship has already disappeared, while the need for organized suppression of excesses and the maintenance of public order still exists. The fact that the dictatorship of the proletariat has ceased to be necessary in the USSR does not at all mean any weakening of public order and legality. The struggle against peculators of public property, against loafers and rowdies, is conducted even more effectively under the conditions of the state of the entire people, when it has become a matter of concern for all working people and their organizations.

The second thesis of the authors of the letter of the CPC Central Committee is that the proletarian dictatorship continues to be necessary during the comprehensive building of communism as a means of effectuating leadership of the peasantry.

What emerges from this approach is that the working class is capable of providing leadership to the peasantry and other laboring elements only by dictatorship on its part. This denies the distinction between the hegemony of the working class and its dictatorship, and is a gross distortion of Marxism.

As we know, the working class is capable of exercising leadership both with a dictatorship and without it. Even prior to the conquest of power and for the very purpose of gaining power, the working class emerges as the leader of the revolutionary struggle, and unifies and organizes the laboring population to overthrow the bourgeoisie. The alliance between workers and peasants stood in need of the dictatorship of the proletariat for the construction of socialism and to transform the social nature of the peasantry. With the building of socialism, the major differences between the working class and the peasantry are erased, and society becomes more socially homogeneous. Therefore, here, too, no grounds for the exercise of class dominance remain. "After the complete and final triumph of socialism, the working class no longer exercises its role of leadership through the dictatorship of the proletariat," we read in the Open Letter of the CPSU Central Committee. "The working class

continues to be the most advanced class in society under the conditions of the comprehensive building of communism. Its advanced role is determined both by its economic position, the fact that it is directly associated with the higher form of socialist property, and by the fact that it has been most strongly steeled as a consequence of decades of class struggle and revolutionary experience."

The Soviet state of the entire people is a most important tool in the building of communism. Expressing the will and interests of the entire people, led by the Communist Party, the Soviet state concentrates its efforts upon establishing the basis for communism in materials and equipment, upon transforming socialist relationships, and upon developing a new man. The Soviet state of the entire people emerges as a powerful force which can be depended upon to assure the defense and security not only of our country but of all the socialist countries, and as a powerful factor for peace and social progress.

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THE STATE AND POWER

The historic decisions of the 22nd Party Congress, and the new Party Program adopted by that congress, have posed major and serious tasks before Soviet social science, particularly that of a comprehensive study of the paths of development from the socialist state to communist public self-government. In the solution of this task, Soviet philosophers and jurists inevitably encounter questions pertaining to the concept of power and its relationship to the state. (1)

In the past, the entire problem of the relationship between the state and power was reduced, in our science, to discrimination between these concepts in historical terms. The state was regarded as a phenomenon of class society, while power in the hands of society as a whole was believed characteristic of primitive and communist societies. Inasmuch as the existence of social power was associated with epochs either in the distant past or the remote future, study of the problem of power was not given the attention it deserved. In addition, creative treatment of many problems in the social sciences was obstructed by the dogmatism and phrasemongering due to the Stalin personality cult.

Now, when our country has entered the period of the all-out construction of communist society and communism has become the next stage in its development, we cannot confine ourselves merely to stating that power will be necessary under communism. A scientific treatment of the problem of power today becomes a pressing problem. Only if we base ourselves upon a scientific understanding of that social phenomenon will it be possible to establish the relationship between the state and power and to consider the question of power in a communist society.

A study of the relationship between the state and power will also facilitate a deeper and more rounded knowledge of the state and of law, as well as aid in perfecting the techniques of research into them. This is an essential prerequisite for the further development of the science of state and law, constituting, as A. I. Denisov correctly observed, "not only an expansion and enrichment of knowledge of the state and law of the past, present and future, but also a further development of the technique of research into state and law." (2) Perfection of the technique of research is particularly necessary in studying the development of the socialist state into communist public self-government, inasmuch as "the former categories are not adequate to characterize this complex dialectical process; new categories are needed to assist us in understanding and scientifically explaining the processes that are

going on." (3)

Naturally, all problems deriving from the problem of power and its relationship to the state are capable of successful solution only by the joint efforts of Soviet philosophers and legal scholars. Therefore the principal purpose of this article is to attract the attention of the scholarly community to this problem and to present for discussion the particular conclusions at which the authors have arrived.

* * *

In Soviet scholarship the concept of power has not been treated because, having concentrated attention upon the study of the state as a phenomenon of class society, philosophers and jurists have not made it their task to study the problem of power as a general social category. Suffice it to say that the very word "power" [vlast'] is absent from the philosophical and legal dictionaries, and from the Great and Small Soviet encyclopedias. The only conception of power in Soviet legal literature known to us was formulated as follows: "The characteristic of all power is, above all, the capacity of the wielder of power to compel those subject to power to obey his will. All power will be found to be encompassed within this general definition." (4) However, this concept of power cannot be accepted as satisfactory, as we shall see from what follows.

In the writings of the founders of Marxism-Leninism, we find not only general theoretical postulates that provide a basis for solution of the entire totality of problems of the state and power, but exceedingly rich material demonstrating concretely how individual questions of this problem should be posed and resolved.

A concept of power was provided by Engels in his article "On Authority" [Ob avtoriteme], directed against the anarchists who employed the term "authority" instead of the word "power." Engels wrote: "Authority in the sense in which it is here discussed means the imposition upon us of the will of another; on the other hand, authority presumes submission." (5) It is not by accident that Engels employed the expression "on the other hand" in this definition. The concept of power must be examined in two aspects, inasmuch as, like all phenomena, power is a unity of internal content (an act of will, "imposition of the will," and transmission of the will from the wielder of power to subjects) and an external manifestation ("submission," guidance of the acts and deeds of men, the management of men). It is this external manifestation of power that permits it to be defined in the broadest sense as management.

Proceeding from a profoundly scientific analysis of social life, Marxism-Leninism has established that there is a need for power in every society. This is due to the very nature of society, which constitutes the highest form of existence of associated and interacting individuals.

As we know, historical materialism postulates the work relation between members of society as the most important characteristic of society in the socio-economic meaning of the term. It is precisely through the example of the group associated in work that the need for power may be seen most clearly. Marx observed: "All directly social or joint labor... requires, to a greater or lesser degree, management that establishes coordination among the individual undertakings and carries out general functions arising from the motion of the entire productive organism, as distinct from the motion of its independent organs. A violinist playing alone directs himself, but an orchestra needs a conductor." (6)

Society, like any other group, needs power. It is essential to the regulation of man's social life, i.e., behavior and mutual relations. No matter what the stage of development at which social relations are found, society must always, as a joint will, subordinate individual wills to it, and must guide the acts and undertakings of individuals. (7) Therefore Engels said that "authority... subordination, regardless of the form of social organization, are required under the material conditions in which the production and circulation of products occurs." (8)

In antagonistic society, power takes on a special character. Marx wrote of the power of the individual capitalist: "Management by the capitalist is not only a special function arising out of the very nature of the social process of labor and pertaining to the latter; it is at the same time the function of

exploitation of the social labor process .... By its content, capitalist management is dual in nature, corresponding to the duality of the production process to which it is subordinated, which is, on the one hand, a social process of labor for the making of a product and, on the other, the process of growth of capital." (9)

From this it follows that in an exploitative society, power also bears a dual nature corresponding to the dual nature of the society itself, which links antagonistic classes together as components of a single society. "Just as in despotic states," wrote Marx, "labor under the supervision and the all-sided interference of the government embraces two factors: the performance of common undertakings deriving from the nature of every society, and specific functions deriving from the contradiction between the government and the masses of the people." (10) These two aspects of power in antagonistic society are indissolubly interlinked: "the performance of common tasks" serves purposes of exploitation, and exploitation presupposes "the performance of common tasks." (11)

Power, as a phenomenon in social life, is not a tangible material object, but a specific social function. In a work group, power is purely a labor function performed by the individual in power as distinct from the person under his power, inasmuch as there is no difference between managerial labor and managed labor when considered as expenditures of mental and physical energy. Power, which is management on the scale of society as a whole, may also be defined as a labor function, but in the broad sense of the term, considering work in its more general form and understanding it to mean every type of activity essential at a given period. (12) Therefore, power as a phenomenon of the life of society emerges as a definite and necessary social function.

Whereas the concept of power and its necessity and dual character in an antagonistic society is not new to scholarship in our country, the question of the exercise of power or, in other words, its mechanism, has not even been considered in our literature.

Inasmuch as we have considered power from the standpoint both of internal content and as an external manifestation, its exercise must also be investigated theoretically in these two aspects. Power, as the management of men, is necessarily associated with material circumstances, and power as the transmission of the will of the person in power to those under his power involves particular means of exercising this power.

"Force," wrote Engels, "is not merely an act of will, but demands very real prerequisites for its exercise, and, in particular, certain instruments." (13) This means that force must be considered not only as an act of will, but also as its external manifestation, for the exercise of which "real prerequisites," "instruments," are required. The term "instruments" may be employed to describe the material means for exercising power in any society. The instruments of power are the material means which enable the management of men in society to take place. But when we turn to the methods of exercising power as "an act of will," of which "force" is one, here one might employ the term "techniques of power." Consequently, power as management of men requires material means — the instruments of power — while power as transmission of the will of the person in power to those under his power requires particular methods — the techniques of power.

The instruments and techniques of power are concepts of the most general order. Therefore it is necessary to render them concrete in both their theoretical and historical aspects.

The instruments of power include, in the first place, the agencies of power. Society is incapable of exercising power over individuals without intermediaries. It selects particular persons and authorizes them, in its name, to administer all its members. "This," said Engels, "may be understood most easily in terms of the division of labor. Society gives rise to certain common functions which are indispensable to it. The people assigned to perform these functions constitute a new branch of the division of labor within society" (14): they constitute society's agencies of power. The nature of the agencies of power as instruments of power is explained by the social division of labor. Every society (and, in class society, the dominant class) entrusts administration to authorized persons who constitute, along with their apparatuses,

the agencies of power in that society. There is an administrative machinery in all societies, although, of course, the manner of its establishment, its structure and the duties of the agencies of power differ and are determined by historical conditions.

In every community of primitive society "there exist from the very outset certain common interests, the protection of which has to be placed upon particular individuals...the grouping of communities into a larger whole again results in a new division of labor" (15) and the establishment of new agencies.

In communist society, the administration of society will also be assigned to particular persons. The agencies of administration will be organized on the principle of representation, and their functioning will be conditioned by the division of labor. The nature of elections, wrote Marx, depends upon their economic foundations and, from the moment when these functions cease to be political, the distribution of common functions acquires a businesslike character. (16) Consequently, in communist society the functions of administration will become labor functions and will be exercised along with other labor functions, each of which requires special knowledge, experience, and inclinations.

Also in the category of instruments of power are the norms established by society, the appearance of which is conditioned by the need for rational employment of the forces at the disposal of society. The agencies of power administer both the public and individuals therein, but by the instrumentality of binding orders given singly and thus isolated in form. Regulation of social relationships by means only of the orders issued by agencies of power would have significant shortcomings, inasmuch as the forces of society would be expended unproductively and the purposeful activity of the agencies of power themselves would be made more difficult. As a consequence, "at a given, very early stage in the development of society the need arises to embrace in a general rule the acts repeated from day to day in production...and to be concerned that the individual person subordinate himself to the common conditions of production ...." (17) Carrying this need into reality, society replaces the large number of individual orders of the agencies of power with a single social norm. And the division of labor requires that social norms as instruments of power generally be established by society (a class) not directly, but through the agencies of power.

A social norm is not merely the expression of the will of society, but also an instrument for exercising that will. The establishment of such a norm is not limited to formulating the will of society in the form of a "general rule." It is also necessary to take steps to make sure that man subordinates himself to that rule. Therefore society, rendering its will objective in general rules of behavior, supplements the rules by indications on the need to observe them and on the consequences of not observing them. It is this that constitutes the chief difference between such social norms and morality, which consists solely of rules of behavior.

Whereas the rules of morality regulate social relations primarily by their "authority" and do not presuppose concrete sanctions for their enforcement, the regulatory actions of other social norms are sharply reinforced by providing the above mentioned supplementary elements along with their stipulations. This difference is predetermined by their purpose and degree of obligation: the rules of morality establish desirable behavior, while the rules of other social norms set forth behavior that is compulsory for all members of society.

In primitive society, a number of writers assert, social relations were regulated solely by custom. (18) In fact, men's conduct was regulated not only by custom but by consciously established and continually perfected rules, which were transformed into customs only in subsequent use, as a consequence of the slow rates at which life changed. Among them were both moral rules and rules established by the agencies of power. The latter included, in particular, rules regulating marriage and questions having to do with the origin, inheritance, and

filling of posts of authority.

In communist society, along with customs and rules of morality, other social norms will certainly exist as well. N. G. Aleksandrov, in our opinion, correctly criticizes the view expressed in the legal literature to the effect that the withering away of the state under communism will be manifested, in particular, by the complete replacement of legal norms by moral norms, and notes the indubitable erroneousness of underestimation and, even more, negation of the significance of regulation under communism by binding norms. (19) In a number of areas of social relations (family, daily life), legal norms will doubtless be replaced by rules of morality. At the same time, other social norms will be needed, which will be established by the agencies of communist public self-government. The need for regulation by legal norms will be retained not only in the sphere of production (allocation of the labor force and material resources, organization of the work, safety regulations, and the like) but also in the organization of cultural and everyday services for the population (utilization of social consumption funds, the functioning of service institutions, etc.).

Power as an act of will is exercised by two techniques: persuasion and compulsion. Despite the frequent employment of these terms in our scholarship, their content has not yet been established. Even in special articles and works on the subject of persuasion and compulsion, there have been no attempts to explain these concepts. Here we have the same situation as with the concept of power: a concept is employed without its meaning being established.

The delimitation of persuasion and compulsion must be based on the relationship between the wills of the wielder of power and the individual subject to it. The subject may accept the will of the empowered individual as right or a matter of duty, may agree with it and carry it out as if it were his own desire. On the contrary, the subject may regard the will of the individual in power as foreign to him and implement it while retaining his own, opposed, desires. The transformation of the will of the empowered individual into that of the subject is persuasion, while subordination of the will of the latter to carry out the will of the former is compulsion.

Persuasion as a technique of power consists of the exercise of the influence of the individual in power upon the consciousness of the subject directly by explaining to the latter the correctness or desirability of carrying out the will of the former, the consequence of which is acceptance by the subject of the will of the individual in power. Even if the subject had his own desires on the matter in question, and these differed with that which is willed by the person in power, they disappear and are replaced by the wishes of the latter. When persuasion is employed, the will of the individual in power becomes the will of the subject himself and is implemented by the latter as his own will.

Our philosophical and legal literature generally recognizes compulsion as characteristic of class society alone. It is indissolubly associated with the existence of the state and, as a consequence, the need for any compulsion in communist society is denied. (20) The denial of the need for any compulsion in communist society is supported by reference to the highly developed social consciousness of its members, completely excluding any need for compulsion, and making the regulation of social life possible by persuasion alone. However, the exercise of power on the basis of persuasion alone assumes unanimity of the members of society (or of any group) on every question on which a decision has been taken, for it is this that is the end result of persuasion. In the first place, the most serious doubts arise as to the practical possibility of employing persuasion as the sole technique of power (due to the great, unproductive expenditures of time this requires, and the impossibility of deciding matters demanding immediate solution). Moreover, and most important, the attainment of complete unanimity on many questions in any group or society is possible, but the consistent use of this method as the sole means of resolving all questions means the equality of the members of the group as to knowledge, opinions, and capacities. The assumption that there will be such an intellectual "leveling" of personalities in communist society distorts the concept of communism. That is why, said Lenin, "we do not expect the coming of a social

order in which the principle of subordination of the minority to the majority will not be observed." (21)

One of the reasons why compulsion is identified with the state is the underestimation of the exceedingly important fact that compulsion as a technique of power is of two types: physical and psychological. In the literature, however, it is only physical compulsion that is thought of when compulsion is discussed and physical compulsion certainly is inherently characteristic of antagonistic society; its existence is indissolubly associated with the existence of the state, and it will most certainly be lacking in communist society. (22)

Physical compulsion existed in primitive society in the form of blood vengeance and other acts of physical force. However, it was not inherently characteristic of that society, but was a manifestation of its savagery and low level of culture. In communist society, physical compulsion may continue to exist, but only in exceptional cases. Thus, for example, physical compulsion would obviously be a possibility where measures of a medical nature are concerned. However, this type of compulsion cannot be regarded as a technique of power. Physical compulsion as a technique of power in class society consists of coercion by persons in power against the physical side (body or possessions) of the existence of the subject so as to cause him to carry out the will of the former. The nature of physical compulsion may differ in different historical circumstances. In some cases, physical coercion (bodily punishment or a fine) produces the desired response in human behavior: the subject suppresses his desires and carries out the will of the person in power. In others, the subject is deprived of the opportunity to carry out his own will (imprisonment).

Psychological compulsion consists of the suppression by the subject of his will and the implementation of the will of the individual in power so as to avoid the consequences that might ensue if this is not done. It offers the subject the alternative of implementing the will of those in power or of allowing certain consequences of nonfulfillment to ensue. However, it is mistaken to regard the threat of punishment as the only form of psychological compulsion. Both the motives compelling the subject to make a choice and the nature of the consequences may vary. Friedrich Engels, in describing primitive society, remarked that it had no "means of compulsion other than public opinion." (23) This means that an unwillingness to merit the condemnation of society also serves as a form of compulsion for some of its members. The consequences of nonfulfillment of the will of those in power may, for example, be negative results in the practical activity of the person subject to their power, and the latter, suppressing his own wishes, carries out the will of the former in order to attain positive results in his activity. Moreover, the consequences need not affect the subject directly, i.e., they may be not only subjective but objective in nature (they may be harmful to society). In antagonistic society, the most common form of psychological compulsion is the threat of physical compulsion.

In taking note of the various forms of psychological compulsion, the manifestation of which is determined by historical conditions, it must be emphasized that, in communist society, compulsion as a technique of administration can exist, of course, only in the psychological form and will be distinct in nature from the psychological compulsion of class society, including socialist society. In communist society, no "means of compulsion other than public opinion will exist," and the compulsion of that society, in Lenin's figure of speech, will resemble the mild guidance exercised by the conductor of an orchestra. (24) This means that psychological compulsion under communism will not differ greatly from persuasion, although a difference between them will doubtless be preserved.

Thus, persuasion and compulsion as techniques of power (administration) are necessarily inherent in every social system. The exercise of power by the technique of persuasion alone is impossible. At any stage of development, there exists in society, along with the technique of persuasion, that of compulsion. However, whereas physical compulsion is generally associated with class society, psychological compulsion is

necessary in any society. This is the proper way to understand Lenin's precept that it is completely mistaken to see the distinguishing characteristic of the state in its power of compulsion, that power based on compulsion exists in every human society. (25)

Study of the problem of power demands a delimitation of the instruments and techniques of power. The instruments of power disclose the exercise of power as administration, and the techniques of power reveal it as transmission of the will of the persons in power to those subject to it. But inasmuch as power constitutes a unity of administration and the transfer of wills, the instruments and techniques of power are indissolubly associated. The agencies of administration in society may act by such techniques as persuasion and physical and psychological compulsion, while social norms regulate social relationships by the techniques of persuasion and psychological compulsion. The instruments and techniques of power are general concepts. But inasmuch as the significance of general concepts lies in the fact that they are devices for isolating essentials that assist in better understanding of the concrete, to that degree it is possible and necessary to demonstrate how the general (the instruments and techniques of power) serves to increase knowledge of the concrete (state and law).

In class society, power acquires a political character, i.e., it is concentrated in the hands of the economically ruling class. As a consequence, the instruments of power of primitive society no longer fit the need, and are replaced by others. Under the new historical conditions, state and law emerge as the instruments of power.

The state is the agency of power of the economically dominant class. However, the concentration of power in the hands of the dominant class cannot be understood as meaning that it exercises that power directly. Whereas, as a consequence of the division of labor in society, power goes to the economically ruling class, the division of labor within the class causes the direct exercise of power to be transmitted by this class to its representatives. A distinguishing feature of the state is that it is an agency of the power of a single class but administers all of society.

Inasmuch as administration in class society is of a dual nature, the instrument of this administration — the state — is equally necessary for the suppression of the exploited class and for the management of the affairs of society. Therefore, S. L. Fuks was right in observing that "contrary to the view dominant in our legal and philosophical literature, but not in accord with the views of the founders of Marxism-Leninism, it is impossible to eliminate from the essential characteristics of the state the fact that it is the historically necessary and only possible form of organizing class societies to carry out the common functions deriving from the nature of all society!" (26)

Law as the instrument of power in a class society has the same specific nature as the state. Whereas, in primitive society, the social norms expressed the will of society as a whole and regulated the behavior of its individual members in the interests of society, legal norms express the will of the ruling class and are binding upon all of society. Like the state, law is intended both to suppress the class antagonist and to "execute common affairs."

The view of state and law as instruments of power in a class society demands that they be studied in relation to the techniques of power. The division of society into classes gave rise to a change in these techniques which may be formulated in general terms as follows: there was a substantial decline in the sphere of persuasion and a sharp rise in the role of compulsion in general and of physical compulsion in particular.

The state functions with the assistance of techniques of compulsion (physical and psychological) and of persuasion. For the state in antagonistic society, the principal technique is that of compulsion, and, moreover, physical compulsion, inasmuch as the antagonistic contradictions between classes cannot be resolved by other means. Hence, the most important elements in such a state are the army, police, courts, and other agencies of compulsion, and it may therefore be described as an organization for the ex-

ercise of physical compulsion. The external difference between the state and agencies of power at other stages in the development of society consists specifically of its employment of physical compulsion. The physical compulsion wielded by the state against the actual violator of the will of the ruling class simultaneously constitutes psychological compulsion against potential violators. Persuasion as a component of the functioning of a state based on exploitation consists of the exercise of ideological influence on the masses essentially in order to veil the existence of class rule and to depict the state as an organization above classes.

Whereas the interrelation between the state and techniques of power has been noted in our literature, however inadequately, this approach has been completely absent in the treatment of law. As a result, jurisprudence has left untreated to this day most important questions in the theory of state and law — those involving the social role of law and its relationship to the state.

The role of law, and consequently its relationship to the state, can be established only in terms of the concepts of the instruments and techniques of power in society. This will be one of the examples of how the general (instruments and techniques of power) makes it possible to understand the concrete (state and law) correctly and profoundly.

Every social norm, as an instrument of power, regulates social relations by techniques of persuasion and psychological compulsion. Norms contain justifications and motivations that directly influence the consciousness of individuals and help to demonstrate to them the correctness, desirability, or necessity of carrying out the demands expressed in the legal norm. Psychological compulsion is effectuated by stating alternatives in the law itself: carry out the rule or accept the specified undesirable consequences.

A legal norm, as one historical variety of social norms, also acts by the techniques of persuasion and psychological compulsion, but it naturally has its specific features. The persuasive effect of a legal norm in an antagonistic society is expressed fundamentally in intentional distortion of the actual reasons for it, as a consequence of which voluntary execution of the given norm is not uncommon. The psychological compulsion exercised by a legal norm is even more distinctive. Failure to adhere to the requirements of a legal norm necessarily induces, above all, consequences of a subjective nature, i.e., consequences undesirable for the individual himself. Moreover, psychological compulsion is sharply intensified by the statement, in the norm, of threats of physical compulsion. Therefore, a legal norm may be described vividly, if not sufficiently accurately, as a social norm containing psychological compulsion in the form of the threat of physical compulsion.

The essence of law consists not only in that it expresses the will of the ruling class in rules of conduct, but in that it effectuates it. Law is an instrument for effectuating rules of conduct expressing the will of the ruling class by techniques of persuasion and psychological compulsion.

All this becomes more evident if we examine the relation between a rule of conduct and a legal norm. These concepts are treated as identical by our legal literature in its presentation of general categories. (27) At the same time, it is noted that the structure of a legal norm contains three elements: the hypothesis, the rule [dispozitsiia], and the sanction. As we know, the rule constitutes the expression of the will of the ruling class in the form of a general rule of behavior, and is an "indicator" of suitable behavior. Thus, in our jurisprudence, a rule of behavior is regarded, on the one hand, merely as an element in a legal norm, while, on the other, there is an identification of the legal norm with the rule stated therein, paradoxical as this may be.

The rule of a legal norm, like a rule of morality, to some degree assures its own fulfillment, inasmuch as the view of it as the objectivized will of the ruling class itself exercises powers of conviction and compulsion. But inasmuch as this is utterly inadequate, the rule is supplemented by hypothesis and sanction. The hypothesis is employed to persuade (it contains not only an indication of the conditions of application of the

rule, but a justification of it) and the sanction is employed for psychological compulsion (by reference to the consequences of nonobservance). The hypothesis and sanction serve to effectuate the rule, and all together serve to carry out the will of the ruling class. Therefore, to elevate the will of the ruling class into law means to formulate this will in the form of a rule of behavior, i.e., to establish a rule and provide it with hypothesis and sanction.

Despite the persuasion and even the special nature of psychological compulsion in a legal norm, taking the form of the threat of physical compulsion, the legal norm is incapable, in certain situations, of preventing manifestation of the will of the subjects, and its stipulations may not be fulfilled. If a legal norm fails to attain its object, its role is terminated (28) and the other instruments of power — the state and its pertinent administrative or judicial agencies — come into operation. By the technique of physical compulsion, the state compels those subject to its power to carry out the will of the ruling class contained in the legal norm, which the latter itself was incapable of effectuating.

The interaction of law and the state as instruments of power occurs as follows. To begin with, the state employs the technique of persuasion upon its subjects, raising them in the spirit of obedience to the will of the ruling class. Next come persuasion and psychological compulsion through the medium of the legal norm. Then comes physical compulsion by the appropriate agencies of the state. Finally, there is psychological compulsion as a consequence of physical compulsion by the state. (29)

Inasmuch as the state and law are instruments of the power of a class society, they must be studied in their interrelation with the instruments of power preceding and following them, and investigated as historical varieties of the latter. Yet in our social science, state and law, as distinct from other parts of the superstructure, are regarded as having developed in the superstructure of class society in addition to the existing elements of the superstructure of classless society. Thus, for example, M.A. Arzhanov has written: "The state and law are phenomena solely characteristic of class society. They differ from other parts of the superstructure — science, religion, morality and art, etc. — which, although class-motivated in their specific content, their very origin and existence, are not dependent upon the division of society into classes and its class structure. Some of them (religion, morality, art) arose in preclass society, and those which will be retained in the future classless communist society will attain a higher development, modifying their specific content and forms accordingly." (30)

However, the state and law, like the other component parts of the superstructure of class society, also constitute historical varieties of the component parts of the superstructure, which "change in content and form" as they develop. The question arises in this connection of introducing greater precision into the concept of superstructure, because the concept now current is one that applies only to class society and is not a universal concept of superstructure. Whereas the concept of superstructure in class society includes the state and law, the universal concept of superstructure should include the instruments of power (the agencies of power and social norms) and the corresponding forms of social consciousness.

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Footnotes

1) Thus, for example, P.S. Romashkin has written: "The development of the socialist state into communist public self-government poses a number of questions. Is it possible to regard power and the state as identical? If the state withers away, will some sort of power exist under communism?" ("Voprosy razvitiia gosudarstva i prava v proekte Programmy Kommunisticheskoi partii," Sovetskoe gosudarstvo i pravo, 1961, No. 10, p. 34).

2) A.I. Denisov, Nekotorye voprosy predmeta

marksistsko-leninskoi teorii gosudarstva i prava. Tezisy doklada, Moscow, VIuZI, 1962, p. 7.

3) "Perspektivy razvitiia sovetskoi nauki prava na sovremennom etape," Editorial, Sovetskoe gosudarstvo i pravo, 1960, No. 1, p. 11.

4) Teoriia gosudarstva i prava, M. P. Kareva, ed., Moscow, Gosiurizdat, 1949, p. 94.

5) K. Marx and F. Engels, Soch., Vol. 18, p. 302.

6) Marx and Engels, Soch., Vol 23, p. 342.

7) Unfortunately, Engels' colorful expression to the effect that under communism "the administration of men will be replaced by the administration of things and management of the processes of production" is sometimes taken literally in our country. This inevitably results in counterposing the state as an organization for the administration of men to communist self-government as an organization for the administration of things, and to a denial of the need for power in communist society.

8) Marx and Engels, Soch., Vol. 18, p. 304.

9) Ibid., Vol. 23, p. 343.

10) Ibid., Vol. 25, Part 2, p. 422.

11) The erection of one aspect of power in antagonistic societies into an absolute, and the denial of the other has been employed by opportunists to conceal the class nature of the state and to depict it as eternal, while anarchists have used it to validate the argument that power is a phenomenon limited in time and that it should be eliminated.

12) See Marx and Engels, Soch., Vol. 20, p. 651.

13) Ibid., p. 170.

14) Marx and Engels, Soch., Vol. XXVIII, p. 257.

15) Ibid., Vol. 20, pp. 183-84.

16) Ibid., Vol. 18, p. 616.

17) Ibid., p. 272.

18) See, for example, N. G. Aleksandrov, F. I. Kalinychev, D. S. Karev, A. L. Nedavnii, V. A. Tumanov, and A. F. Shebanov, Osnovy teorii gosudarstva i prava, Moscow, Gosiurizdat, 1960, pp. 48 and 56; M. P. Kareva, S. F. Kechek'ian, A. S. Fedoseev and G. I. Fed'kin, Teoriia gosudarstva i prava, Moscow, Gosiurizdat, 1955, pp. 28-29; Teoriia gosudarstva i prava, P. S. Romashkin, M. S. Strogovich and V. A. Tumanov, eds., Moscow, Izd. AN SSSR, 1962, pp. 65-67; Osnovy marksistskoi filosofii. Uchebnik, 2nd ed., Moscow, Gospolitizdat, 1962, p. 432.

19) See N. G. Aleksandrov, "Razvitie sotsialisticheskogo prava v normy kommunisticheskogo obshchestva," Sovetskoe gosudarstvo i pravo, 1961, No. 9, p. 29.

20) Many examples of this may be cited. We confine ourselves to but a few, illustrating each of the points cited: "Communism goes further, creating for the first time conditions under which the need for compulsion disappears completely .... For thousands of years, social conditions obtained that rendered inevitable irreconcilable contradictions and conflicts of interests among individual human beings and entire classes. This cleavage in society is what gave rise to compulsion.... Communism will provide a complete merger of the socio-economic interests of all members of society. As a result, the grounds for any measures of compulsion whatever will disappear" (Osnovy marksizma-leninizma. Uchebnoe posobie, Moscow, Gospolitizdat, 1962, p. 751).

"The organizations that will exist under communism to manage the affairs of society will not have a political, compulsive character" (Teorii gosudarstva i prava, 1949, p. 495).

"The state will wither away when it becomes unnecessary, i.e., when there will be no one against whom to exercise compulsion" (S. A. Golunsky and M. S. Strogovich, Teoriia gosudarstva i prava, Moscow, Iurizdat, 1940, p. 145).

"The norms of the communist community... will be observed by all citizens as a moral duty and without any compulsion. With the passage of time, persuasion and upbringing will be the sole techniques for regulating the life of society" (V. I. Laputin, "Programma KPSS i dal'neishee ukreplenie sotsialisticheskoi zakonnosti i pravoporiadka," Sovetskoe gosudarstvo i pravo, 1961, No. 11, p. 15).

21) V.I. Lenin, Soch., Vol. 25, p. 428.

22) The concept of psychological compulsion and, consequently, of the need for compulsion in all societies does exist among crim-

inal jurists (see for example, M.D. Shargorodskii, Nakazanie po ugolovnomu pravu, Part I, Moscow, Gosiurizdat, pp. 5-7; Part II, 1958, pp. 19-22). In other fields of jurisprudence, the concept of psychological compulsion is encountered with extreme rarity (see A.E. Mushkin, Marksistsko-leninskaia kritika ideologii anarkhizma po voprosam gosudarstva, Dissertation for the Candidacy, Moscow, 1956, p. 3; T.V. Suvorova, "Ob osobom kharaktere gosudarstvennogo prinuzhdeniia v SSSR," Gosudarstvo i kommunism, a collection of articles edited by D.A. Kerimov, Moscow, Gosiurizdat, 1962, p. 41).

23) Marx and Engels, Soch., Vol. 21, p. 168.

24) See V.I. Lenin, Soch., Vol. 21, p. 239.

25) Ibid., Vol. 1, p. 399.

26) S.L. Fuks, "K teorii obshchenarodnogo gosudarstva," Sovetskoe gosudarstvo i pravo v period razvernutogo stroitel'stva kommunizma, (summaries of papers and scholarly reports), Khar'kov, 1962, p. 9.

27) See, for example, Golunsky and Strogovich, op. cit., p. 159; Teoriia gosudarstva i prava, 1955, p. 71; Osnovy teorii gosudarstva i prava, 1960, pp. 24 and 309.

28) It may be objected that the sanction in a legal norm is a rule of behavior and, therefore, the action of the legal norm does not cease. Actually, although a sanction is a rule of behavior, it is not one for the given norm or for the given individual, but for another norm and another individual (an officer of the law). In other words, every sanction in a legal norm functions also as a rule in another norm, which also has its hypothesis and sanction.

29) Inasmuch as it is only physical compulsion that is meant, generally, when our literature refers to compulsion, the concept of psychological compulsion is actually absent and therefore its role in regulating social relationships is not considered. This creates a mistaken idea as to the relationship between the techniques of persuasion and compulsion in socialist society. Exclusion of psychological compulsion from the sphere of compulsion artificially narrows the latter.

30) M.A. Arzhanov, Gosudarstvo i pravo v ikh sootnoshenii, Moscow, Izd. AN SSSR, 1960, pp. 32-33.

Party Organization

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P. Pigalev

THE VOLUNTEER PRINCIPLE IN PARTY ACTIVITY

The Communist Party is, by its very nature and principles of organization, a democratic and independent organization that bases its activity on voluntary public service. Lenin repeatedly emphasized this aspect of the matter. He wrote: "All the party's affairs are conducted, directly or through representatives, by all members of the party, enjoying equal rights and with no exceptions" (Lenin, Soch., Vol. II, p. 396).

The volunteer principle has been applied in party activity on a particularly large scale in recent years. This has been a consequence of the restoration of Leninist standards of party activity and the principle of collective leadership, and of the overcoming of the harmful consequences of the personality cult. The party deems it necessary to continue steadily to reduce its paid staff and to involve communists more extensively in civic work on an unpaid basis, so as to strengthen party guidance to the masses, and so that party organizations become examples in the development of public self-government.

Comrade N. S. Khrushchev points out that "the greater the development of volunteer work in our life, the higher the level of party and state leadership must be, the more flexibly and efficiently the agencies of party and state must function." Party and state leadership, their forms and methods, must contribute as much as possible to the development of the people's activity and initiative. The need for further extension of the volunteer principle in party work becomes particularly pressing in the light of the decisions of the November Plenum of the CPSU Central Committee on reorganization of the party bodies in accordance with the production principle, and the decisions of the June Plenum on the current tasks in ideological work. In order for the new party bodies to have a real influence on the education of people and upon production, and in order for them to have a real knowledge of the resources in any branch of the economy and to be able to get them into action, they should involve the largest possible number of communists in party work and rely on them in all their activities. Nor can they ignore the fact that provision has been made for comparatively small paid staffs in the new party committees. The reorganization has led to a 10 per cent reduction in the total paid personnel of the party.

The new party agencies — the party committees of the collective farm-state farm production administrations, the industrial-production party

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committees, and the industrial and rural regional and territorial committees of the party — have the function of providing truly vital and concrete leadership. Most important is everyday organizing activity with people directly at industrial enterprises, construction sites for industry and housing, in mines, and in the teams, sections, and livestock divisions of the collective and state farms. At present every condition and opportunity for this exists. There has been an improvement in the quality of staff personnel and of the party committees themselves. The structure of the apparatus is better suited to its purposes. The party agencies have come considerably closer to production, to the working people, to those who directly create material values. Everything now depends upon the organization of the work of the party committees, and upon the degree to which they are able to base themselves on work by the primary party organizations and the general party membership.

In recent years, particularly since the 22nd Party Congress, the party organizations have acquired much experience in involving the active membership in work on a volunteer basis. Certain forms have already crystallized and have been verified by life, while others are only taking shape and being checked. Prompt generalization and dissemination of the experience accumulated is particularly important in this process of creative search.

The principle of independent volunteer work must permeate all the activities of the committees. The members of elective party agencies, the entire elected active membership of the party, must serve as an example to all communists of active volunteer work in the party organizations. For it is this elective personnel that has been called upon, by the will of the party membership, to give practical leadership and to direct party work in the intervals between report-and-election meetings, conferences, and congresses. It is impossible to achieve the development of the volunteer principle in party work without concerning ourselves with increasing the role and responsibility of the communists elected to party committees, with developing their activity to the utmost.

There are now about 27,000 members and candidate members of the central committees of the communist parties of the union republics, territorial and regional party committees, and 208,000 members of city committees, district committees within cities, and members of party committees of production administrations and industrial production party committees. We have more than 17,000 primary party organizations with elected party committees and over 162,000 primary and 133,000 shop party organizations with bureaus; 125,000 primary and 93,000 shop party organizations are headed by secretaries and assistant secretaries, and 235,000 party groups are headed by party group organizers.

Thus, the elective agencies of the primary party organizations alone number over 2,000,000 persons, while for the CPSU as a whole there are 2,300,000. A correct and able organization of their activity, in which each knows, has a good understanding of, and actively fullfills his responsibilities and his role — this would assure true volunteer public service in party work.

In recent years the activity of the elected active membership has changed considerably, has become more meaningful and purposeful. We should work tirelessly to perfect it, to achieve a situation in which each active member conducts diverse organizational and political work day in and day out. Unfortunately, one still encounters party committees in which the role of the communists elected to them still consists of merely attending plenary sessions, and even there they do not participate in the discussion. This testifies to serious shortcomings in the work of the committees and the fact that very little is demanded of the members of the elective agencies.

The party agencies of the present day have come to include more communists engaged directly in production and working in the very midst of the laboring population. They should be more boldly involved in active organizational and political work in verious groups; they should be given assignments and instructed and helped in carrying out these assignments. Communist party members should be regularly informed at meetings of the functioning of the agencies they have elected, while elected com-

mittee members should be informed on the work of the bureaus, the decisions of higher bodies, the current tasks to be fulfilled, etc.

Particular attention should be given to the secretaries of the primary and shop party organizations and to party group organizers. There are, after all, over 750,000 of them. This is a volunteer force whose role and significance in improving party direction of the economy and in educating the people would be hard to overestimate. It must be emphasized that virtually this entire army of active party members work on a volunteer basis, inasmuch as only 7 per cent of the primary party organizations have paid party personnel.

One of the serious errors of a number of the former rural district committees of the party lay specifically in the fact that they did not base themselves firmly on the primary party organizations, party bureaus and secretaries, and did not maintain contact with them in their practical activities. The personnel of certain district committees, when visiting collective farms, dealt primarily with the collective-farm chairmen and brigade leaders, and might not even meet with the secretaries of the party organizations, not to speak of the members of the party group bureaus or of the party organizers. The secretaries of the primary organizations were remembered, so to speak, only when they were to be punished for shortcomings in the work of the collective farm or the enterprise. Our experience thus far indicates that the new party bodies have taken the proper direction in their work, that of acting primarily through the primary party organizations, consulting with the party members first, making inquiries through them, and increasing the demands made upon secretaries and the active membership.

Those party committees are functioning properly that, in seeking to elevate the role of the primary party organizations, place special emphasis upon improving their work with the secretaries and members of the party committees and party bureaus, establish contact with the party groups, organize the study of positive experience, and do not begrudge the time needed for careful instruction of the active membership. The need for this work has become even greater now that the membership of elective bodies is to be regularly rotated.

In conjunction with the decision of the November Plenum of the Central Committee on the establishment in the country of a single all-embracing system of party-state control, a new and powerful impetus has been given to the development of the volunteer principle in the party's work. Groups and posts for assistance to party-state control, involving more than 3,000,000 persons, have been established at each plant, factory, mine, construction site, collective farm, state farm, and institution.

An important form of party work on a volunteer basis is that of councils of secretaries of party organizations. Such councils are being established by city committees and industrial-production party committees in towns and workers' settlements, and also at certain railway junctions. These councils unite all the secretaries of primary party organizations in the given town or settlement and coordinate their activities in conducting political campaigns and in ideological work among the population in the given residential area, and participate in resolving problems involving cultural and everyday services to the working people, trade, the strengthening of public order, civic improvement in towns and workers' settlements, as well as various other problems that are common to all party organizations.

These councils are advisory bodies and function under the leadership of the city committees or zonal industrial-production party committees. Depending upon the nature of the questions under discussion, party, economic, and soviet personnel participate in the work of these councils (which usually meet about once a month). The suggestions and recommendations of the council are brought to the attention of the party membership through the secretaries of the party organizations, and a report is made at the next meeting on what has been done to carry them out. The councils do not take written decisions and do not keep official minutes. Their work is set down in a journal kept by the chairman. The councils of secretaries base them-

selves upon the large active membership of the party, involve the public in carrying out various assignments, and arrange joint meetings of related party groups, at which questions of general interest to all party organizations of the town or workers' settlement are discussed.

Recent years have seen the spread of many other forms of involvement of rank-and-file party members in the party's work. Communists are involved, on an unpaid basis, in work as instructors, propagandists, lecturers, seminar leaders, and members of various commissions and councils. There are unsalaried departments in the party committees and newspaper editorial boards. In many places "houses of political education," "offices of party organizational work," libraries, and "people's culture universities" are functioning with volunteer staffs. There can be no doubt that the party committees will work even more persistently to develop these forms.

Examples such as the following enable one to judge the scope acquired by the volunteer principle in the work of many party organizations. More than 1,000 persons participate on a volunteer basis in the work of the Moscow City Committee of the party, which is five times the number of the paid staff. They include 187 unpaid instructors to departments, 276 lecturers and speakers, and others. The following adjuncts to the city committee have been established on a volunteer basis: a division on trade union activity, a division on Komsomol activity, a methods council on party organizational work, a commission on ideological work, a group of unsalaried correspondents for the newspaper Moskovskaia pravda and Vecherniaia Moskva, a commission on the popularization of progressive production methods, a division to deal with letters and statements from the working people, and certain others.

The district committees within the city of Moscow have involved over 12,000 communists in volunteer work as members of commissions and councils. Functioning now at industrial enterprises in the city are 740 volunteer design and technology bureaus, 300 volunteer economic analysis bureaus, and dozens of volunteer bureaus concerned with work quotas. Some 120 enterprises have councils of production innovators.

In the Ukraine, tens of thousands of activists are participating in the work of the district, town, and regional party committees on an unpaid basis. There are 241 volunteer workers in the Il'ichev District Committee in the city of Odessa. Of these, 27 are in a commission on ideological work, 20 are in a commission on party organizational work, 8 in a commission for preliminary consideration of acceptance for party membership and on the personal affairs of party members, 31 in a standing commission to study, generalize, and introduce advanced experience into production, 20 in a council of propagandists, etc. Unsalaried divisions concerned with industry, construction, and the schools are functioning in the district committee on a volunteer basis.

Many party committees have volunteer technical and economic councils or commissions, and councils to further technological progress. These councils and commissions have not come into being in any uniform way; nor is there uniformity as regards size or even name. Each committee establishes the commissions or councils it needs. The governing consideration should be that of improving party guidance to production and ideological work and of conducting the organizational work involved in carrying out party decisions more skillfully, without shunting aside the pertinent economic and other agencies.

Volunteer technical and economic councils and commissions are very useful to party organizations; they help them to make better use of the appropriate public organizations at the enterprises: councils of innovators, design bureaus, economic analysis bureaus, etc. For example, the technical and economic council of the First of May District Committee of Moscow organized and carried out a volunteer inspection of the quality of industrial production, in the course of which more than 5,000 proposals were collected. A preliminary estimate of the annual savings from these suggestions comes to 1,500,000 rubles. The Council for Assistance to Technical Progress associated with the Bauman District

Committee of the Party has organized and conducts regularly, at the Moscow House of Scientific and Technical Propaganda, scientific conferences on questions of modern machinery and technology. Recently there have been three such conferences, in which nearly 2,000 engineering and technical personnel and production innovators participated and 67 papers were presented and discussed. The council is organizing work to implement the recommendations adopted at the conferences. In particular, the members of the council, jointly with the personnel of the research and design institutes, have assumed patronage over twelve enterprises, and are giving them practical assistance in the mechanization and automation of production processes.

Those party members who are being involved on a volunteer basis as instructors and members of commissions and councils are experienced, knowledgeable, and leading workers, collective farmers, engineers, technicians, agricultural experts, teachers, doctors, and workers in science and culture. The selection and assignment of these people is based on consideration of their experience, knowledge, and skills, their organizational and other qualities, and the tasks which these workers have been called upon to fulfill.

As already noted, the reorganization of party agencies in accordance with the production principle created more favorable conditions for the further development of the volunteer principle in party work. The possibility arose to make better use of people's experience and knowledge and to apply their strength more purposefully. This is manifesting itself in the practical activity of the new party agencies. Here are some examples.

The previous Minsk Regional Committee of the Communist Party of Belorussia did not have a single unsalaried instructor, and now the Minsk Industrial Regional Committee alone has already approved 32 individuals as nonsalaried instructors for divisions. Nor did the Kiev Regional Committee of the Communist Party of the Ukraine formerly have nonsalaried instructors. Now, however, 49 unsalaried instructors have been chosen and approved in the Kiev Industrial Regional Committee, and a commission on problems having to do with patronage assistance to the collective and state farms and an unsalaried division on chemistry and chemical equipment industry have been established.

The Nikolaevsk Industrial Regional Committee has established a technical-economic council, the most important task of which is to study the fundamental problems of technical progress and ways of accelerating it, the drafting of recommendations to the regional committee on this matter, and the rendering of assistance to enterprises in introducing the new technology. A standing commission on construction has been established under the regional committee, headed by the secretary of the latter, Comrade Vasil'ev. Its responsibility is to introduce advanced work techniques, progressive materials and designs, and economic analysis into general practice. In addition, an ideological commission and a commission on party organizational problems have been established.

The same is to be seen in the practice of the party committees of production administrations and of industrial-production party committees.

Take as an example the party committee of the Ust'-Labinsk Production Administration in Krasnodar Territory. We know that the working people of the collective and state farms of that administration took a splendid initiative, which won the approval of the CPSU Central Committee, in increasing grain production. The party committee here is playing a major organizing and mobilizing role in agriculture. In order to reach the primary party organizations as much as possible, the party committee has, from the very beginning of its activity, set its sights on involving the unsalaried active membership in the work. Toward this end a group of unsalaried instructors has been approved. The organization bureau, which has five salaried instructors, has seven more on a volunteer basis, while the ideological bureau, with four paid people, has five volunteers. An unpaid commission has been established for preliminary consideration of acceptance for party membership and on the personal affairs of party members. An unsalaried department on the schools and an ideolog-

ical commission have been established under the party committee. The composition of these commissions has been approved at a full meeting of the party committee.

Along with the appointment of volunteer instructors, the party committees of the production administrations also establish various unsalaried departments and commissions in accordance with the specificic circumstances. And this is correct. It would, in our opinion, be irrational to transfer mechanically to the new agencies all the organizational forms of involving the active membership that existed previously in the rural district committees of the party. The present party committees differ fundamentally in status from the former district committees. They are qualitatively new bodies in structure, content, style and methods of work.

Until the reorganization of the administration of agriculture, the district party committees exercised direct guidance over the collective and state farms. Toward this end, many district committees established auxiliary bodies such as volunteer departments of agriculture. At present direct guidance over collective farm-state farm production is the responsibility of the production administrations. It would be incorrect, under these conditions, to establish various commissions, councils, unsalaried departments on, let us say, questions of the mechanization of labor in livestock raising or on farm practices in the raising of field crops (even though these are problems of the greatest importance).

However, some party committees have taken that course. They have begun to establish volunteer bodies which in practice must either replace or duplicate the work of the production administrations. For example, the party committee of the Samtredia Production Administration in Georgia established a department on the production of farm produce and increasing labor productivity. In some places, unsalaried departments on the mechanization of agriculture have been established. All this testifies to the fact that certain local personnel are attempting to operate under new conditions by the old methods.

The task of party agencies is to provide able guidance to the process of development of the volunteer principle in our life and, first of all, obviously, in the work of the party organizations. A resolute effort must be made to avoid stereotyped methods, a campaigning and competitive approach, the desire to be in fashion, which result in the establishment of volunteer bodies regardless of whether there is a practical need for them, whether they are purposeful or not. Isn't this why we encounter committees which apparently have everything — volunteer instructors, departments, and commissions — but which prove to do no good at all because they do not function and exist only on paper, for the record? If a party committee has deemed it necessary to have certain auxiliary agencies on a volunteer basis, it must take the steps necessary to make sure that they function and do not discredit a good idea. Decisive steps must be taken to straighten out people who love to make noise, who organize a campaign to promote the volunteer principle and then forget about the matter until the next campaign.

The development of the volunteer principle is a reliable indicator of the level and scope of a committee's work, and is testimony to the degree to which the organizing work of the committee corresponds to the demands now being made upon party leadership. But it cannot be regarded as correct when there is a mechanical inflation of the unsalaried apparatus. This may result in the volunteer agencies becoming obstacles in some degree for the party committee, instead of helpers, by diverting too much attention and time from vital organizing work directly among the personnel of enterprises and collective farms.

In other words, it is necessary to involve only as many unsalaried personnel, and to establish only as many volunteer departments and commissions as are required for the work, and not for the record. Excesses in this regard may result in confusion and parallelism in the work, and may divert people to activities of little value. There are a great many instances of this.

For example, fifteen unsalaried divisions have been established in the Andizhan City Committee of the Communist Party of Uzbekistan.

There is one for propaganda as such and, in addition, others for lecture propaganda, anti-religious propaganda, the press, agitation among the masses, and cultural work among the masses. A piling up of all sorts of divisions, groups, and sections creates only the appearance of broad involvement of volunteer workers, but is of no value.

Another example. In the Karaganda City Committee and five district committees of the party in that city, in addition to unsalaried commissions for preliminary consideration of questions of membership in the CPSU and on the personal affairs of party members as well as ideological commissions and commissions on party organizational work, another forty-four unsalaried divisions and commissions have been established, or an average of eight to ten per committee. The unsalaried department on the coal industry under the city committee includes divisions for planning, production costs, automation, the organization of labor and wages, and the introduction of new technology. In other words, what we have here is a kind of miniature "party economic council."

This is borne out by the practical work of the department. The divisions sometimes attempt to deal with purely technological problems and to arrive at decisions in the technical field, in other words, to do that which is the responsibility of the economic council. There is much in the activity of the divisions that is for show. Comrade Kravchenko, Chief Mechanic of the Karaganda Coal Combine, serves as unsalaried head of the Division of Automation. The city committee reports that he is successfully carrying out the duties of chief of this division because "by the nature of his regular job, he often visits the various enterprises." All his activity in this post actually amounts to his conscientiously performing his duties in his salaried position. But the city committee records it as the activity of an unsalaried worker. What is the need of this display? Whom does it help?

Concrete practical deeds constitute the main criterion in evaluating the activity of any party committee, including all its unsalaried agencies. It would be utterly false and bureaucratic to follow a policy under which the development of the volunteer principle is accompanied by an increase in the amount of speechifying. The involvement of activists as civic workers, and the various forms of unsalaried work are needed not for the purpose of holding more meetings and discussions, but for meaningful activity.

Success in the activity of the volunteer agencies depends in decisive measure upon the skillful selection of the people needed, that is, of personnel who are not only equipped for and know the work assigned to them, but enjoy it. Those party committees are functioning properly which draw into volunteer work communists from the production sphere, specialists in various branches of the economy, science and culture, and real enthusiasts for civic work.

Naturally, the party committees can always find assignments for retired people, with their great experience in life. They should be involved on a large scale; their experience and knowledge should be employed to instruct the youth. It is desirable, in all unsalaried work, to combine experienced people with youthful, growing personnel — to think of the morrow.

It is wrong to involve as unsalaried workers communists who are overloaded with other civic duties, depriving them of the opportunity to devote all their capacities to their responsibilities. At one time, for example, Comrade Kachkus, manager of a sugar refinery, who was also a member of the city committee, a propagandist, vice-chairman of the standing commission of the city executive committee on matters of industry, member of the food industry commission of the economic council, chairman of a technical section of the Knowledge Society, member of the staff of the volunteer public order squads of the city, and so forth, was also involved as an unsalaried staff member of the Panevezhis City Committee of the Communist Party of Lithuania.

Unsalaried work requires considerable time and effort, and it is done after a strenuous day of work at a plant, in a collective farm, or in an office. Moreover, everyone has a family, and has to read a book, a paper, go to the theater or the movies. Therefore, it is important that party members not be overloaded.

We all know the firm party principle that all civic work must be done outside working hours. But there are some party committees that do not reckon with this, and send volunteer personnel out on assignments or call them to meetings or for instruction during the working day, whenever they please, not concerning themselves at all about the individual's job duties. One encounters in some places instances in which the head of an enterprise or its chief engineer are named as unsalaried instructors or commission members, and are taken away from their work during the working day. This sort of "volunteer" activity is wholly intolerable.

There is a tendency in the city committees of the party in Zhitomir Region to staff various unsalaried commissions with none but members of the party city committee, heads of enterprises and offices, and secretaries of party organizations, that is, with people who already carry heavy job and civic loads and have long since been part of the active group of the party committees. Many of them are physically incapable of handling all the assignments they are given. For example, the party organization and ideological commissions and economic councils of the Berdichev and Novograd-Volynsk party city committees consist entirely of economic and party leaders of various organizations.

In order for party volunteers to handle their responsibilities more successfully, to develop more quickly the qualities required of mature party personnel, and to master a Leninist style of work, they must be taught patiently. Seminars, conferences and meetings for exchange of experience, detailed instruction before an assignment is undertaken, the hearing of reports on what has been accomplished — these and other forms of work with the activists must be the absolute rule in the work of party committees.

The development of effective forms of volunteer work in party activity is a complex and difficult task. It requires thought and time. There must be careful analysis to determine which of the new forms are useful and applicable and which are clearly artificial, unsupported by experience or contrary to the Rules of the CPSU, and should therefore be rejected. In the creative searchings in which the party organizations are now engaged, what is needed is by no means found at once. Therefore, it is all the more important to popularize widely and by all available means whatever has justified itself. But it must not be forgotten for a moment that the development of the volunteer principle in party work does not diminish but increases the demands upon party leadership.

The further development of internal party democracy and the enhancement of the initiative and activity of the party masses will raise even higher the organizing role of the party organizations in the building of communism, and will constitute a most important means in the successful implementation of the tasks posed by the 22nd Congress.

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Judicial Practice

Sovetskoe gosudarstvo i pravo, 1963, No. 7

V. V. Kulikov

ENHANCING THE EDUCATIONAL ROLE OF SOCIALIST JUSTICE AND REINFORCING LEGALITY IN THE ACTIVITIES OF JUDICIAL AGENCIES

The party regards the education of people in the spirit of communism as a component part of the building of communism, and as important and pressing as the establishment of the basis for communist society in material production and technology. The Party Program discloses the profound meaning of educative, ideological work, and notes that the significance of such activity is today of increasing importance. This is confirmed by the discussion, at the June Plenary Session of the Central Committee of the CPSU, of the problem of "Current Tasks in the Ideological Work of the Party." Improvement and reinforcement of ideological work are regarded by the party as a most important condition for success in all its practical activity.

People must be educated in a manner that strengthens their ideological conviction as to the correctness and ultimate triumph of the progressive theory of Marxism-Leninism. Their education must promote both a rise in the creative efforts of the people, which are the guarantee of the triumph of communism, and an overcoming of vestiges of the capitalist past as manifested in the behavior of some individuals. The problem now before us, N. S. Khrushchev has said, is one of educating the entire people in the spirit of communist consciousness, in the spirit of the scientific Marxist-Leninist world view and the principles, enunciated in the CPSU Program, of a new morality. The latter includes: conscientious work for the welfare of society, concern for the safeguarding and growth of the public wealth, irreconcilability toward violations of public interests; irreconcilability toward loafing, dishonesty, and money-grubbing. The moral code of the builder of communism contains many other rules of lofty morality, a retreat from which often develops into violations of the law, into crime. Therefore, that view of the responsibilities of socialist justice and the work of the judicial agencies which regards them as constituting merely a mechanical application of the laws and a specification of measures of punishment must be considered as false and profoundly erroneous. Educative activity and prevention are a very important aspect of the work of the courts.

The CPSU Program has posed the task of assuring rigorous adherence to socialist legality, of uprooting all violations of law and order, and

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of eliminating crime. The task is to make Soviet laws inviolable, to have citizens feel secure in their rights and succeed, together with the agencies of government, in cleansing our society of rogues, crooks, hooligans, and other morally depraved persons and criminals.

The work of the courts is not unrelated to the shaping of the new social relationships, the shaping of the man of communist society. In the report on the Program of the CPSU, N.S. Khrushchev stated: "The molding of the new man is occurring under the influence not only of the educative work of the party, the Soviet government, the trade unions, the Komsomol, but of the entire way of life of our society: the mode of production, form of distribution, everyday services, socio-political activities, legal norms, and court practice. All the levers of the economy, of society and the mode of life, of politics and law must be utilized to develop a communist consciousness in man and to uproot vestiges of bourgeois psychology and morality."

These propositions of our party constitute a further development of Lenin's brilliant ideas. We know that it was none other than Lenin who repeatedly pointed to the great importance of the work of the courts in educating the working people for communism. (1)

The indication that the shaping of the new man is promoted by, among other factors, legal norms and court practice testifies to the urgency of further improvement of all the activities of the judicial agencies and reinforcement of socialist legality. All court activity does not have an educative effect — only that which rests upon strict observance of legality in the activities of the courts, realization of the principle of the equality of all citizens before the law and the courts, and adherence to the requirement that court decisions be just, that is, severe with respect to malicious criminals, but lenient toward the individual who has accidentally strayed. All these are component, indispensable conditions for true socialist justice. Consequently, Soviet justice can fulfill its tasks successfully only if it adheres most rigorously to the demands of the law.

In developing in men qualities such as a high consciousness of public duty, intolerance toward violations of the interests of society, honesty and truthfulness, moral purity, irreconcilability toward the hostile bourgeois ideology, toward loafing, dishonesty, money-grubbing and litigiousness, it is necessary to demand a precise adherence, undeviating even in details, to Soviet law and to the demands of communist morality by the judicial personnel themselves — by those whom the people have entrusted with protection of their rights and defense of the public interest, by those in whom they see the champions of justice. Therefore, complacency and self-satisfaction, and inadequate reaction to cases of violation of legality in judicial agencies are particularly intolerable today.

However, there should not be a one-sided approach to consideration of problems of the struggle against crime. Measures of an educational character must be combined with effective application of the measures of compulsion established by law. More attention must be given to the prevention of crime. Crimes are still being committed. Despite a general decline in recent years, their number is still considerable. Constant improvement and perfection are needed here on the basis of strict adherence to legality in the work of the state agencies called upon to struggle against crime and law violations and, in particular, in the work of the agencies which administer justice.

Further reinforcement of socialist legality is consequently a serious task, to the solution of which the efforts of both legal scholars and practicing jurists must be bent. Therefore, it is now especially important to expand further the ties between jurisprudence and practical activity. Moreover, strict adherence to socialist legality is generally impossible without the complete elimination of violations of legality by the agencies that conduct the struggle against crime and lawbreaking.

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Recently, and particularly in 1962, the courts have been more consistent and unswerving in applying the severe measures of punishment provided by law for particularly dangerous habitual criminals and persons committing such crimes

as stealing state and public property, bribery, murder with malice aforethought, rape, robbery, and other dangerous crimes. The public has come to take a more active part in the struggle against violators of law and order. The courts have become more active in crime prevention work and in eliminating the causes giving rise to lawbreaking. There has been some improvement in the work of the supreme courts of the union and autonomous republics, of the territorial and regional courts, in guiding the work of the lower courts.

These and other measures have, to a certain degree, improved the work of the courts in criminal trials and have increased the stability of the sentences they hand down. However, one still encounters violations of provisions of the material and procedural law in criminal cases, violations involving the application of the wrong law or the sentencing of a convict to punishment not appropriate to the crime and the personality of the criminal. Sometimes one even encounters verdicts in direct violation of the law. This occurs more frequently in convictions, less frequently in acquittals. Instances of illegal conviction of innocent persons constitute the greater danger. There is no need to demonstrate how much harm is done by each such instance, even if it be an isolated one. An illegal conviction always reflects severely not only upon the convict himself, but upon those near and dear to him. Such instances undermine the authority of Soviet law and faith in the fairness of socialist justice.

Soviet laws safeguard society and state against criminal attack. At the same time, their provisions bearing upon personnel of the militia, the procurator's office and the courts warn that no single innocent individual shall be convicted. These requirements of the law are, unfortunately, not always taken into consideration, as is demonstrated by concrete facts. Thus, in Bukhara Region certain individuals, including one Tukhtaev, violated the rules for listing persons subject to military service (removal from the list was delayed in some cases; in others, persons were listed later than they should have been). This occurred in 1961 and the first half of 1962, when the law provided no criminal responsibility for such acts (it was provided by a decree of the Presidium of the Supreme Soviet of the Uzbek SSR, August 2, 1962). Despite this, Tukhtaev was indicted, and his acts were groundlessly charged as draft evasion. A people's court sentenced Tukhtaev to eighteen months' deprivation of freedom. Moreover, the regional court upheld the sentence. Later, of course, the verdict against Tukhtaev was struck down, and the case quashed due to lack of the elements of a crime, but Tukhtaev had been confined for more than eight months. The persons guilty of violating the law in this case were punished. However, certain leading members of the judiciary still unfortunately hold to the view that a judge cannot be held personally responsible for an illegal verdict. There is no need to demonstrate that this is wrong. The law obligates all chairmen of court proceedings to take measures to assure all-round, complete, and objective investigation of the circumstances of the case, and this guarantees that the decision will be valid. For judges to be freed of responsibility for failure to fulfill this duty, or for doing so improperly, gives rise to an irresponsibility that is intolerable under our conditions and that must be brought to an end most decisively.

Law must always be observed. At the June 1959 Plenary Session of the CPSU Central Committee, N.S. Khrushchev observed: "A decisive struggle is necessary against violations of party and state discipline, no matter what form they take.... Proposals to change a given law may be made, but so long as it is in force, no one has the right to violate it."

If we analyze the violations of law encountered in practice, it will be seen that they are, to a considerable degree, of a pattern.

In the first place, the stipulations of law with respect to classification of a crime are not always observed. Under the false impression that such violations of legality are permissible in the interests of the struggle against crime, certain personnel of the investigative agencies and the judiciary sometimes unjustifiably apply criminal laws involving more severe punishment. Thus, in cases of automobile accidents and catastrophes, courts, impressed by the serious

consequences arising from the resulting deaths, have in some instances charged the guilty with deliberate murder, despite the fact that this did not follow from the circumstances of the cases. The laws covering punishment for intentional murder are sometimes applied to persons who have killed out of negligence or necessary self-defense.

Violations of legality also occur in other cases, particularly in deviations from the provisions of law covering responsibility for stealing state and public property. In such cases, the investigators, prosecutors, and courts sometimes confine themselves to proving the existence of shortages of things of value in the hands of responsible parties to whom they were entrusted for sale or storage. Establishment of this fact is often regarded as sufficient grounds for an indictment for stealing and misappropriation of valuables, while the actual causes leading to the shortages remain undiscovered. On the other hand, as a result of superficial investigation of the circumstances, persons responsible for stealing are often indicted for malfeasance or negligence rather than for stealing socialist property.

In practice there are still cases of violation of the stipulations of criminal procedure with respect to all-round, complete, and objective investigation of all the circumstances of every case, and as regards the discovery of both exculpating and inculpating evidence, and of circumstances both aggravating and alleviating guilt. In the Kirgiz SSR, for example, appeals courts quashed a considerable number of cases in 1962 primarily for this reason. The total number of such cases was greater than in 1961. This necessitates that concrete steps be taken to eliminate the causes of violations of legality.

There are still a considerable number of cases in which verdicts are set aside and sent back for further pre-trial investigation, particularly in crimes such as stealing, intentional murder, rape, and crimes of office. Of all the verdicts set aside in 1962, with cases returned for further investigation and retrial, crimes in this category constituted about 50 per cent, according to a survey of court experience. In Turkmenia, 63 per cent of all verdicts in cases of stealing of state and public property alone were set aside and sent down for further investigation. In many cases, erroneous verdicts in cases of crimes of office result from the lack of a clear-cut and correct understanding of the concept of what constitutes an official. Jurisprudence bears a considerable share of the responsibility for this, for it has not studied the particular question in the light of the new legislation.

In a number of cases the errors could have been prevented if the judges had adhered strictly to law in approaching problems of indictment. However, an irresponsible and bureaucratic attitude toward the resolution of issues is sometimes manifested even at this stage. Here is an example. People's Judges of the Marneul' District People's Court in the Georgian SSR, Comrades Mamedov and, subsequently, Kazarov, delayed for a year and a half consideration of the indictment of Simanian and Merabeshvili for criminal traffic violations. They postponed these cases repeatedly. In deciding the question of indictment, Comrade Mamedov did not, in his finding, cite the article of the Criminal Code under which the accused were being indicted, and did not order translation of the indictment from Georgian into Armenian, although Simanian did not know Georgian. These errors resulted in the lower court verdict being set aside by a higher court. After the case was returned to the same court, it was not heard for seven months because no steps were taken to assure the presence at the trial of persons essential to it.

Nor have violations of the rights of defendants to legal defense been eliminated as yet: there is incomplete verification of the defendant's explanations, unjustified rejection of petitions that witnesses be called and that documents of significance to the case be acquired, etc., all of which may result in the issuance of illegal decisions.

As has been noted, violations of legality sometimes occur in the imposition of sentences. Errors involving excessive leniency to dangerous criminals are now incomparably fewer. But there are still many errors involving excessive punishments for crimes that do not constitute a great danger to society.

When a verdict is set aside by way of appeals or review procedure because of excessively mild punishment, it is most important, in each instance, to weigh all the conditions and analyze all the considerations that led the court to set the sentence in the verdict, and not a more severe one, particularly when the sentence is within the limits properly provided under law. Courts of second instance should not forget that the correct decisions in the majority of cases are those which are based upon detailed familiarization with the specific circumstances of the case, upon direct verification and first-hand perception of specific evidence in the trial, and of all the data characterizing the criminal. As we know, it is the judges who try the case in courts of first instance who are in a position to acquire such information. When punishments not in accord with the crime are found to have been issued against persons who have committed less dangerous crimes, and who can be corrected without isolation from society, the courts must take decisive measures to prevent the recurrence of such errors.

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All the work of the USSR Supreme Court is subordinated to the reinforcement of legality. In March 1963, a special discussion of this problem was held at a Plenum of the USSR Supreme Court. The Plenum called upon all courts to adhere to legality most strictly and vigorously criticized violations of legality occurring in the work of certain judicial bodies. It noted that these violations did great harm to the Soviet state, to the struggle against crime, as well as to the rights and legal interests of citizens, and that they weakened the faith of the working people in the force of Soviet laws and the fairness of Soviet justice.

In the resolution it adopted, the Plenum emphasized that fullfillment of the task, posed in the CPSU Program, of eliminating crime in the country is achievable only if there is rigorous and unswerving observance of the laws. Violations of legality can never be justified by reference to the need to strengthen the struggle against crime. Every criminal case, irrespective of the nature and seriousness of the crime involved or of the official or public status of the accused, should be resolved in full accord with the requirements of criminal law and the law of criminal procedure.

The Plenum gave major attention to determining the causes of violations of legality in judicial bodies, and to the measures required to eliminate them. In this connection, stress was placed upon the need to eliminate all manifestations of a contemptuous attitude toward adherence to the stipulations of the law and every attempt to by-pass it, as well as any underestimation of the harmful consequences resulting from violations of legality and from attitudes on the part of leading personnel in the judiciary condoning such actions.

In order to secure more effective results in eliminating violations of legality, the work of the supreme, territorial, and regional courts must be further improved. Toward this end, they should inquire into all the details of the case and should concern themselves with instances of violation of legality not only when drawing conclusions from court experience and summarizing the work done, but constantly. The responsibilities of these courts include all-round verification of every instance of violation of legality. It is important that, as this is done, major attention be concentrated upon finding and eliminating the actual causes of violations of due process, and increasing the responsibility of judges for fulfillment of the duties placed upon them by the Soviet state.

Such an approach to the solution of this important task presupposes an all-round improvement in the quality of the work done not only by people's courts but by higher courts, for we know that erroneous verdicts and decisions sometimes stem from the incorrect practices of courts of appeal and review. Courts having the function of supervision and guidance should bear this in mind and not forget that the uprooting of violations of legality, and the introduction of greater stability in verdicts and decisions, are advanced by decisions on their part that are distinguished for high general and legal scholarship, as well as for precision in illuminating the factual circumstances of the case. On the other hand, care-

lessly drafted decisions, written without the citation of specific laws and with inaccurate or distorted treatment of the circumstances of the case, not only do not promote these ends but sometimes even give rise to new violations of legality and errors in the work of the lower courts.

Elimination of violations of legality in the activities of the people's courts is directly associated with the elimination of such violations in the regional, territorial, and supreme courts. As the administration of justice improves in the courts of second instance, it improves in the courts of first instance as well. Only a proper understanding of this interrelationship, and thorough study of each case of violation of legality can eliminate a mechanical shifting of responsibility for errors by higher courts onto the shoulders of lower courts, and enable them to suggest the particular measures that would result in a real improvement in the work of all judicial agencies.

A study of the work of certain supreme territorial, regional and people's courts, and discussion of this question in the Plenum demonstrated that the causes of violations of legality are not only rooted in a continuing failure of certain judges to understand, or understand clearly, the laws. Many of the violations of legality in criminal cases stem from the fact that some judges do not fully appreciate that law is the sole basis for the administration of justice or understand the role of the court as the one agency which has been entrusted with deciding on the guilt or innocence of the defendant and on the application or nonapplication of the measures of punishment provided by the law.

In court practice one still encounters instances in which decisions are influenced by officials, who interfere with court work and bring about either a protection of criminals against responsibility or the conviction of persons whose guilt has not been proved. The Plenum of the USSR Supreme Court, recalling the emphases of the November (1962) Plenary Session of the CPSU Central Committee, explained the importance of rigorous adherence to the principle of the independence of judges and their subordination only to the law.

However, this does not exhaust the measures to be taken to reinforce legality. A most important condition for strengthening it is assurance that the law will be properly applied to persons held to criminal responsibility. But this is only one aspect of the matter. The other is complete disclosure of all aspects of a crime and exposure of all those who took part in it. It is therefore important that each judge understand thoroughly that the laws protect equally the rights both of the individual citizen and of socialist society as a whole, and that these rights, under the conditions of a state policy of "all for man, all for the welfare of man," are interrelated and cannot be counterposed to each other. In their practical activities, the judges must take as their point of departure the fact that the requirements of Article 2 of the Principles of Criminal Procedure of the USSR and the Union Republics apply in full measure to them, that they are required to take all steps not only to see to the proper application of the law in a manner that excludes conviction of the innocent and unjust punishment for persons who have committed crimes, but also to ensure that there is complete exposure of all aspects of crimes and that all guilty persons are convicted.

Solution of the problem of uprooting all violations of law and order, and elimination of crime presume the active participation not only of the agencies of police investigation, preliminary hearing, prosecution and the broad Soviet public, but also of such an agency of state authority as the court. This is why the Plenum of the USSR Supreme Court, recognizing as erroneous the views of those members of the judiciary who see the task of the courts as limited to the trying of cases, has repeatedly pointed to the need to stimulate the participation of judicial agencies in discovering and eliminating the causes and conditions giving rise to criminal manifestations, and to intensify preventive and prophylactic work.

In considering the question of the causes of violations of legality, it is impossible not to take note of the fact that the courts have not yet eliminated entirely an erroneous approach to evaluation of evidence. Some judges adhere to the views

of Vyshinsky and his supporters, which have been condemned by the party and the legal profession as pseudo-scientific and harmful to the cause of justice. They draw conclusions on guilt based not upon the totality of the evidence verified in court, but only upon the testimony of the defendant in the stages of police investigation or preliminary hearing, or in court. Sometimes they fail to consider subsequent repudiation of such testimony by the defendant. It was precisely an overestimation of the significance of confession that resulted in an erroneous verdict by the Kuibyshev Regional Court in the Salanov and Adamov case which was discussed in the press, and in a number of other cases.

The degree to which confession still influences the work of investigative and judicial agencies may be seen from the following specific instance. On April 24, 1962, a worker in the shipbuilding-and-repair division of the Caspian Steamship Line, Shiniaev, appeared in the office of the procurator of Shaumian District in the city of Baku and declared that he had stolen roofing iron belonging to his division and had sold it to a truck driver he did not know. On the basis of this statement, a criminal case was initiated on May 3, 1962, and the superintendent of the division, Aliev, was questioned. He recalled that when he had released a particular job, a shortage of iron was found, but the quantity of the shortage was not known. However, according to the records of the shipbuilding-and-repair division, there was no shortage of iron for which superintendent Aliev was responsible, nor was any recorded for another job. Inasmuch as Shiniaev had confessed to the stealing of iron under questioning, although he was unable to say where he had stolen it, how much he had stolen, or to whom he had sold it, he was indicted for stealing iron. The indictment stated that 380 sheets of roofing iron, valued at 264 rubles, had been stolen, although there was no such data in the case. At the trial, Shiniaev repudiated his testimony and explained that because of family troubles he had decided to leave his family and, when drunk, went to the procurator's office and made this deposition, which he also confirmed under interrogation. Despite the fact that the very occurrence of a crime had not been proved, the people's court of Shaumian District, Baku, presided over by People's Judge Comrade Akhundov, sentenced Shiniaev to three years' deprivation of freedom for stealing iron. The Supreme Court of the Azerbaijan SSR, hearing the case on appeal by the defendant, set aside the sentence and quashed the case.

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The discovery of error and the elimination of violations of legality in the courts are primarily the responsibility of the judiciary itself. However, elimination of errors and improvement of the functioning of the courts should also be promoted by jurisprudence by means of helpful recommendations and proposals based upon a more profound study of court experience. Yet even today the approach to court experience in many legal studies is confined purely to commentary. This does not help to overcome error and does not teach a principled attitude in the struggle for legality. Nor does it promote improvement of court practice or of legislation.

Legal scholars could take a more active part in posing and resolving the problems posed in practice so as to enhance the effectiveness of their participation in the reinforcement of legality.

We know that with the adoption of the Principles of Criminal Legislation of the USSR and the Union Republics, and of the new criminal codes of the union republics, problems of complicity and of criminal responsibility for stealing are resolved variously, depending upon the forms and methods of commission of such crimes. These laws also resolve differently problems of circumstances aggravating guilt, as well as certain other problems. Theoretical study of these problems would assist practical workers in properly understanding and applying legislation, and would help achieve stability in court decisions. Yet scholars are still giving inadequate attention to these important problems. In certain cases, a traditionalist approach to the study of completely new provisions in law and their practical application causes the new provisions to become garbed in the old theoretical dress.

The initiative of the team of writers who undertook to treat the subject of legal guarantees in the USSR is to be welcomed. However, one cannot agree with everything they write. For example, in their section on the guarantees of legality in court work, the question at issue is dealt with one-sidedly — from the standpoint of guarantees of the rights of citizens. The role of the court is reduced, in this connection, to "investigation of the facts and circumstances, on the basis of which there is then determined beyond reasonable doubt whether or not the event occurred that gave rise to the question of applying the law, i.e., an infringement of the law." (2)

It is indubitable that consideration of this question is important, but it is hardly proper to center all attention solely on this and to give no consideration to those legal guarantees whose purview is the protection of the interests of society as a whole, the uprooting of crime and the causes giving rise to it. Unfortunately, the authors ignored this very serious question, and offered no recommendations whatever to courts on improving their work in preventing criminal manifestations.

The study also suffers from other shortcomings. While correctly emphasizing the significance of the activities of the courts, the authors regard the role of the agencies of police investigation and prosecution as an auxiliary, albeit important, one. But to classify the role of these agencies as subsidiary does not accord with the law. In addition, judgments of this nature denigrate the significance of the agencies of police investigation and prosecution, and tend to divide the criminal trial into "major" and "minor" stages. Intentionally or not, this reveals a tendency to revivify the contention that trial is an adversary proceeding, in which the court is a dispassionate arbitrator between the disputing parties. But a Soviet court cannot be dispassionate either with respect to violations of citizens' rights or those of state and public organizations. Soviet courts, being agencies of active struggle to reinforce legality and to implement the will of the Soviet state of the entire people, do not merely resolve disputes between parties, but participate as agencies of justice, by the methods specific to them, in the struggle against crime and, along with other state agencies, take all the steps provided by law to identify the events of a crime and the persons guilty of committing it, to punish them, and to eliminate the causes and conditions facilitating the commission of crimes.

It was not by accident that the lawmaking body refrained from use of the concepts "party" and "criminal prosecution," for the procurator participates in the trial not as the "prosecuting party," not as the "agent of criminal prosecution," but above all as the upholder of the law, who is called upon "at all stages in criminal procedure, promptly to take measures provided by law to eliminate all violations of the law, no matter from whom they issue" (Art. 20, Principles of Criminal Procedure of the USSR and the Union Republics). The procurator, like all other state agencies participating in a trial, bears the responsibility "of investigating the circumstances of the case in all its aspects, completely and objectively." Therefore, it is difficult to agree with those, for example, who regard the functioning of the agencies of the court, the procuracy, the investigative agencies, and the defense only in terms of the existence of three mutually independent functions which allegedly determine the entire essence of the criminal process: prosecution, defense, and decision. (3) In our opinion, such a theory does not enrich jurisprudence and can introduce confusion into the practice of the judiciary and the procuracy.

Certain theoretical problems have already been settled by legislation and jurisprudence. To reopen them offers nothing but the loss of material and intellectual resources. Among these is the question of the nature of court orders of the Plenum of the USSR Supreme Court. The Regulations on the USSR Supreme Court state precisely that the Plenum issues only guiding clarifications on matters pertaining to application of the legislation in force. Yet certain scholars have only recently returned in their writings to this settled question, and they defend the erroneous view that the court orders of the Plenum of the USSR Supreme Court are a source of law.

One of the important problems requiring elaboration is that of assuring a stable, steady policy as regards the fixing of punishment for crime by the courts. The fact that jurisprudence has not dealt with this problem is one of the possible causes of the vacillation in the practices of the courts. Solution of these problems requires that scholars as well as practical workers engage in study of the shaping of decisions by judges, how the courtroom and public opinion respond to verdicts and sentences, etc. All this will require no little effort on the part of scholars and practical workers, the development of special questionnaires, the carrying out of surveys, etc., but subsequently it will yield positive results.

The closer association between jurisprudence and court practice raises the question of improving the forms of this collaboration. Some such forms are already being actively introduced into life. Thus, a number of scholars are participating, on a volunteer basis, in checking specific and very complex cases; others have enrolled as unsalaried consultants and are regularly carrying out these responsibilities on a scale that does not interfere with their creative work. Some measures are being taken by courts and procurator's offices to establish closer contact with legal scholars. The USSR Supreme Court, for one, has established a scientific consultative council which includes more than twenty distinguished legal scholars of Moscow. The extension of ties of this type, and the participation of members of the scientific consultative council in the preparation of questions submitted for examination by the Plenum of the USSR Supreme Court held in March 1963, as well as the participation of certain members of the council in the work of the Plenum, were fruitful and helpful both to the scholars and the legal personnel. Nor can we fail to record the fact that there is participation in the drafting of the guiding clarifications of the Plenum of the USSR Supreme Court by legal scholars not only of Moscow but of other cities, particularly Leningrad and Sverdlovsk. All this is a good beginning. However, such ties must be expanded and strengthened in the future.

Participation of legal scholars in the work of territorial, regional, and city courts would be very useful. It would be desirable that they themselves manifest initiative in establishing ties with the judiciary, respond to requests from the latter, and take part in discussing and drafting decisions on all the more complex questions arising in the work of the local judiciary. This can lead to real collaboration between jurisprudence and practical experience. Fruitful collaboration of this type promotes the reinforcement of legality and the strengthening of the authority of socialist justice.

In this connection, it should be emphasized that collaboration between scholarship and practical experience should occur only on a principled basis. As N.S. Khrushchev has pointed out, "In science, time-serving is intolerable ..., and for the scientist it is his death." (4) Scholarship must not reduce its role merely to commentary on legislation and practical work. Its responsibility consists of elaborating, even more energetically, scientifically substantiated recommendations, of assisting in the elimination of shortcomings in practice, and of more boldly advancing new and important questions.

One cannot agree, however, with certain scholars who have erroneously held that the task of jurisprudence is the critique of practical experience. Or, as they put it, it is the duty of scholarship to say "nay" to experience. Certainly, mistaken and erroneous practices that are not in accord with what is required to strengthen legality should be subjected to decisive criticism. Yet it must not be forgotten that condemnation of the shortcomings found in practice is only one aspect of the matter. What is most important is that legal scholars, having revealed shortcomings, should assist not only in eliminating them but in writing more perfect laws and in developing more effective forms and methods of activity on the part of the judiciary and the procurator's offices. In our view, it is precisely in this positive aspect of the matter — in promoting the development of a correct approach in practice — that the most important task of jurisprudence is to be seen.

Footnotes

1) V. I. Lenin, Soch., Vol. 27, p. 191.

2) See Pravovye garantii zakonnosti v SSSR, Gosiurizdat, Moscow, 1962, p. 163.

3) See, for example, R. D. Rakhunov, Uchastniki ugolovno-protsessual'noi deiatel'nosti, Gosiurizdat, Moscow, 1961.

4) Pravda, December 25, 1961.

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International Law

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V. Nilin

SIXTH ANNUAL MEETING OF THE SOVIET INTERNATIONAL LAW ASSOCIATION

The regular meeting of Soviet international lawyers opened with introductory remarks by the president of the association, G. I. Tunkin. He emphasized that the ending of the crisis in the Caribbean Sea was a major triumph for the foreign policy of the Soviet Union. It provided a convincing demonstration of the correctness of the proposition propounded by the 22nd CPSU Congress to the effect that the forces of peace are today capable of restraining the forces of war.

M. I. Lazarev delivered a paper on "International Legal Questions of the Peoples' Peace Movement." Taking note of the major importance of the peoples' movement for peace and disarmament under present-day conditions, the speaker concluded that this movement is valid from the viewpoint of international law and the constitutions of various states.

In his opinion, the time has long since come to provide a definition under international law of the concepts "struggle for peace" and "fighters for peace."

The speaker held that the struggle of peoples for disarmament and for the establishment of "disarmed zones" facilitates the adoption by governments of new norms of law governing disarmament. The recognition by peoples that aggressive international treaties and steps in the arms race are invalid is in accord with the fundamental principles of international law and leads to a greater responsibility of governments to their peoples.

The actions of the movement for peace and disarmament reflect the consciousness of international law attained by this movement. The movement not only assists in the reinforcement of international law, but poses the question of enriching it with new democratic norms, i.e., it manifests initiative in the field of international law. Engendered by the will of the people, the acts of the peace movement express its sovereignty and require observance not only by the peoples but by all governments. Inasmuch as the movement of the peoples for peace rests, in all its decisions, upon the basic principles of contemporary international law and the UN Charter, the peoples, along with the states, are guarantors of the norms of present-day international law.

A paper by A. P. Movchan was devoted to codification of the principles of international law covering peaceful coexistence. Under the conditions of today when, as the CPSU Program observes, "the real possibility is being created that the new principles advanced by socialism will triumph over the principles of aggressive imper-

ialist policy," codification of international law is not merely a technical legal device for establishing and systematizing the principles and norms now in effect.

It can and does serve as one of the means of bringing their content into accord with the laws of contemporary social development and, consequently, promotes the progressive development of present-day international law.

The Czechoslovak delegation to the United Nations drafted and submitted to the 17th Session of the General Assembly a Declaration of Principles of International Law Relative to Friendly Relations and Cooperation Among States. The draft contains a description and formulation of these principles: the duty to take steps to uphold peace and international security; peaceful solution of disputes; prohibition of the threat or use of force; prohibition of weapons of mass annihilation; universal and total disarmament; prohibition of hostile propaganda; collective security; respect for state sovereignty; inviolability of territory; respect for the independence of states; sovereign equality; the right of a state to participate in the international community; noninterference; the right of peoples to self-determination; elimination of colonialism in all its forms; respect for the rights of man; cooperation in the economic, social, and cultural spheres; consistent fulfillment of international obligations; the responsibility of states.

The discussion, at the 15th through 17th sessions of the General Assembly, of the question of codification of the principles of peaceful coexistence demonstrated that such codification would hamper the implementation, in international relations, of foreign policy steps in contravention of law by the imperialist powers, and that it constitutes one of the means for assuring the observance of international law by states, and thereby for assuring peaceful coexistence.

Despite the attempts by the United States to replace codification by the elaboration of various measures involving extensive interference by "international" agencies in the internal affairs of states, the 17th Session of the General Assembly adopted unanimously a resolution on the codification of the international legal principles of peaceful coexistence.

In the combined discussion of the papers of M. I. Lazarev and A. P. Movchan, all who spoke observed with a single voice that the decisions of the 20th through 22nd party congresses and, especially, the CPSU Program constitute the theoretical basis that makes it possible to raise Soviet international jurisprudence to a new level.

V. N. Durdenevskii, F. I. Kozhevnikov, D. B. Levin, L. A. Modzhorian, A. I. Poltorak, B. M. Melekhin, I. P. Blishchenko, P. G. Denisov, A. N. Talalaev, M. K. Korostarenko, V. E. Semenov, and P. I. Lukin emphasized the exceptionally pressing nature of the subject and agreed with the basic thesis of Lazarev's report to the effect that the movement of peoples for peace is an important factor in international politics and the development of international law. At the same time, it was noted in the speeches that, although this movement is making a contribution to the solution of problems of contemporary international life that are ripe for solution, it is incapable of solving them by itself. This contribution is made not apart from the acts of governments, but by the exertion of effective pressure upon them by the peoples, pressure that compels the governments to take various steps that are in accord with the interests of the peoples.

In the opinion of A. I. Poltorak, P. G. Denisov, A. N. Talalaev, D. B. Levin, L. A. Modzhorian and others, the decisions of international organizations for peace are not a legal, but a moral and political source of international law, shaping the legal consciousness of the broad masses of the people and extending broad support to the generally recognized norms and principles of international law.

In this respect they did not agree with the speaker's view that the peoples may declare particular treaties to be invalid, that the decisions of advocates of peace are binding upon a government, inasmuch as such an approach leads to underestimation of the role of public influence upon governments and is not in accord with the actual situation. Doubts were also expressed about the desirability of giving legal forms to the peoples' movement for peace.

F. I. Kozhevnikov and I. P. Blishchenko were

in agreement with Lazarev's thesis that documents of the various forms of the peoples' peace movement may, in the final analysis, express the legal consciousness of the masses on problems of war and peace and promote the appearance of new norms of international law. Analyzing the statement of the Tenth Pugwash Conference on the use of automatic stations as a supplementary means at the disposal of each nation to disclose nuclear explosions, Kozhevnikov came to the conclusion that it is not only the organized movement of peace advocates that can contribute to the development of international law, but other forms of public movements as well.

In the discussion of A. P. Mochvan's report, E. A. Korovin and I. P. Blishchenko did not agree with his thesis that the principles of friendly relations among states are identical with those of peaceful coexistence, since, in their opinion, such an identification ignores the nature of the relationships between socialist and capitalist states as a form of class struggle. The untenability of this argument was demonstrated by V. M. Koretskii, P. E. Nedbailo, D. B. Levin, L. A. Modzhorian, K. V. Adzharov, A. N. Talalaev, and others. They stated that one must not confuse the question of the essence of peaceful coexistence as a historical category constituting a form of class struggle, and that of the principles of peaceful coexistence as principles of international law. The socialist countries will never agree to peaceful coexistence with the capitalist states in the sphere of ideology. There have not been, nor can there be, any concessions in the definition of the essence of the concept of peaceful coexistence of states with different socio-economic systems. But when practical matters are at issue, such as the principles of peaceful coexistence in international law, concessions and compromises are permissible for the purpose of reaching agreements aimed at the strengthening of peace. Under the conditions of peaceful coexistence of states with different socio-economic systems, it is necessary, if our purpose is to attain agreements on a democratic basis, to reckon not only with our intentions but with our possibilities, inasmuch as agreement is attainable only on the basis of mutual compromise. This is precisely the point of departure of the Czechoslovak draft declaration. It does not at all mean abandonment of the principle of peaceful coexistence, inasmuch as the principles of friendly relations and cooperation among states contained in the declaration are directed toward strengthening peace and ensuring the peaceful coexistence of states with different social systems.

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E. A. Fleishits emphasized in his paper that the Principles of Civil Legislation are of considerable significance for the further development and consolidation of the economic and cultural ties of the USSR with the lands of the socialist camp. The categories of civil law are utilized in intergovernmental, trade, payments, and other agreements, which provide, as is noted in the Fundamental Principles of the Socialist Division of Labor approved by the Council on Mutual Economic Assistance, "the scale and conditions of deliveries of the products of specialized fields, as well as the responsibility of the parties for fulfillment of obligations for the delivery of these products, at appropriate technological levels, quality, and delivery dates."

Improvement of the civil legislation of the socialist countries is also of primary importance for the development of all other economic relations among these countries, involving or not involving deliveries of goods. The greater the degree to which the provisions of internal legislation regulating such relationships satisfy not only the internal economic needs of the given country, but the goal of reinforcing its ties with other socialist countries, and thereby of strengthening the socialist camp as a whole, the easier it will be to attain coordination of the corresponding sections of the civil legislation of these countries.

At the same time, the Principles contain a number of norms directly aimed at regulation of the foreign economic and cultural ties of the USSR or of primary significance for these ties (Part VIII of the Principles). The granting to foreign citizens of equal status before the law with

Soviet citizens means that foreigners in the USSR can not only acquire the broad range of various property rights which Soviet citizens can acquire to satisfy their material and cultural needs, but personal nonproperty rights as well. These provisions of the Principles provide additional evidence that socialist society upholds personal rights in every possible way, and does not ignore the interests of man, as anticommunist propaganda seeks to demonstrate. In this connection, Fleishits provided a critical analysis of comments published in the bourgeois countries in which attempts have been made to distort the content and denigrate the significance of the Principles of Civil Legislation.

In the discussion on this paper, N. V. Orlova, T. P. Krivtsova and A. S. Bakhov emphasized that the norms in Section VIII of the Principles, established for the first time in USSR-wide Soviet legislation, would play an important role in carrying out the Leninist policy of peaceful coexistence. In Orlova's opinion, the Principles of Legislation on Marriage and the Family, which are now being drafted, should contain detailed norms pertaining to family relations involving foreigners.

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Reports were presented by O. S. Radbil' on "The Problem of International Medical Law," B. M. Meleknin on "The Role of World Public Opinion in the Shaping and Reinforcement of International Law," K. V. Adzharov on "The Principles in International Law of Relations Between Socialist and Newly-Emergent States," and M. K. Korostarenko on "The Concept of the Principle of Peaceful Coexistence."

E. T. Usenko, in a polemic against the propositions put forth V. M. Shurshalov (Sovetskoe gosudarstvo i pravo, 1962, No. 7), emphasized, in particular, that the principle of peace in the interrelations among socialist states manifests itself as the principle of socialist internationalism, while the principle of the guiding role of the communist and workers' parties is effectuated not through the medium of relations in international law but in that of intragovernmental relations.

P. E. Nedbailo reported on the participation of the Ukrainian delegation in the work of the UN's 6th Committee, and R. A. Tuzmikhamedov presented information on the Second Conference of Jurists of Asia and Africa.

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The meeting discussed G. I. Tunkin's report on the work of the executive committee of the association for 1960-1962. At present, the association unites virtually all the country's scholarly and practical workers in the field of international law. In accordance with its rules, the association is taking steps to carry out its principal tasks — assistance to the development of international law in the direction of reinforcing those of its principles and norms that promote the peaceful coexistence of states regardless of their social and state systems, and the development of Soviet international jurisprudence.

The principal aspects of the work of the association are scholarly-civic and publishing, as well as participation in the undertakings of the International Association for International Law.

The major form of scholarly-civic activity consists of the annual meetings, the purpose of which is to pose and discuss pressing problems in international law. The association has responded actively to the most important international events, and has added its voice to the cause of the struggle for peace and against the instigators of war. The association's publishing activity consists of the preparation and issuance of the Soviet International Law Annual [Sovetskii ezhegodnik mezhdunarodnogo prava], which is one of the largest such journals in the world in terms of the number of articles it contains; it has won a firm place in the world literature on international law. In 1961, the association also published a collection of articles by prominent scholars of the socialist countries: Problems in International Law [Problemy mezhdunarodnogo prava]. A new edition of the bibliographic collection Soviet Literature on International Law [Sovetskaia literatura po mezhdunarodnomu pravu] is being prepared. The executive committee has adopted a resolution to publish, in

the English language, a collection of articles on the principal problems in international law.

The Soviet association is an active participant in the work of the international association, and is also considering problems of communication with the Academy of Law at The Hague.

Under present conditions, the association faces the task of assisting in the expansion of the scope of scholarly research in the USSR in the field of international law, and of developing collaboration with jurists of the socialist lands.

In the discussion which developed after this report, all participants agreed that the work of the executive committee deserved a positive evaluation. However, criticisms were also offered. The need for some reorganization of the annual meetings was indicated by A. S. Bakhov, N. M. Minasian, L. A. Modzhorian, and A. D. Keilin; they advocated that general theoretical problems should subsequently be discussed at plenary sessions, and more concrete ones at section meetings.

V. M. Shurshalov called upon the executive committee to involve the active membership in its work to a greater extent, and, in particular, to report at general meetings on the activity of our delegations at the conferences of the international association. Minasian and Modzhorian indicated that there was a need to improve the theoretical level of the articles in the Annual.

I. I. Lukashuk advanced a proposal for an annual on the international law of the socialist countries. V. I. Losovskii, I. I. Lukashuk, R. O. Khalfin, and Keilin reported, as a supplement to the president's report, on the activity of the Soviet delegation at the conference of the international association in Brussels in 1962, and proposed that preparations begin now for the next conference in Tokyo in 1964.

Many of the speakers emphasized the need to expand connections with the associations in the fraternal socialist lands.

In his concluding remarks, Tunkin expressed his agreement with a number of the criticisms directed at the executive committee, and indicated his wish that the new executive committee would consider them in its work.

The meeting approved the work of the executive committee during the preceding period and adopted a resolution on the general report.

The new executive committee consists of G. I. Tunkin, V. M. Koretskii, R. L. Bobrov, L. A. Aleksidze, G. I. Morozov, G. P. Kaliuzhnaia, O. V. Bogdanov, I. I. Lukashuk, V. S. Semenov, A. D. Keilin, and M. I. Lazarev. V. N. Durdenevskii, who announced that he would not, for reasons of health, be able as before to participate actively in the work, was elected an honorary member of the executive committee.

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Criminal Law

Biulleten' Verkhovnogo Suda SSSR, 1963, No. 3

COURT ORDER NO. 3, USSR SUPREME COURT PLENUM, MARCH 18, 1963

(On Fulfillment by the Judiciary of the Order of the USSR Supreme Court Plenum, No. 6, of September 12, 1961, "On the Application by the Judiciary of the Legislation on Intensifying the Struggle Against Persons Refraining from Socially Useful Labor and Leading an Antisocial and Parasitic Way of Life")

Having heard and discussed the reports of the Chairman of the RSFSR Supreme Court, Comrade L. N. Smirnov, the Chairman of the Lithuanian Supreme Court, Comrade A. L. Likas, and the Chairman of the Criminal College of the USSR Supreme Court, Comrade G. Z. Anashkin, on the fulfillment by the judiciary of the USSR Supreme Court Plenum's Order No. 6 of September 12, 1961, and having examined materials summarizing the practice of the courts in cases involving antisocial parasitic elements, the Plenum of the USSR Supreme Court takes note that the judiciary of the RSFSR, Lithuania and other union republics have recently somewhat improved their consideration of such cases, and have begun to apply more correctly the legislation on intensifying the struggle against persons refraining from socially useful labor and engaging in an antisocial and parasitic way of life.

The supreme courts of the RSFSR, Lithuania, Kazkhstan, Azerbaijan, and Estonia have reviewed the fulfillment by the courts of those republics of the USSR Supreme Court Plenum's order of September 12, 1961, have discussed the results of these check-ups at meetings of their plenums, and have issued guiding clarifications to lower courts. Many courts have begun more frequently to study and draw conclusions from their experience in the consideration of these cases and to submit representations to the appropriate agencies to eliminate the causes and conditions encouraging individuals to lead an antisocial mode of life.

At the same time, the Plenum takes note that certain district (or city) people's courts do not give sufficient attention to such cases, and permit persons who have committed crimes and are subject to criminal punishment to be held only to administrative responsibility.

The preliminary review of materials and examination by the courts of cases in this category do not always reveal the possession by the individuals brought before them of illegally acquired property, and the sources thereof, with the consequence that there is no confiscation of valuables acquired by means other than work.

Certain members of the judiciary have not drawn all the necessary conclusions from the legislation of the union republics and the USSR Supreme Court Plenum's order of September 12, 1961. Contrary to the requirements therein,

they apply administrative measures not only to able-bodied persons who persistently refuse to engage in socially useful labor and continue to lead a parasitic mode of life despite educative measures taken, help given in finding jobs, and warnings from state or public agencies, but also to persons with respect to whom such preventive measures have not been taken. In court practice there have been cases in which administrative measures have not been taken against persons who are temporarily unemployed and have done nothing to indicate that they pursue antisocial, parasitic ways of life.

Some courts underestimate the preventive significance of the legislation on intensifying the struggle against persons refusing socially useful labor and leading an antisocial and parasitic way of life, and incorrectly see their task as consisting solely of banishing persons brought before them, the consequence being gross violations of legality.

Despite the clarifications previously issued by the USSR Supreme Court Plenum, the people's courts do not make use of their right to grant individuals brought before them additional time to find work and change their behavior. The causes giving rise to an interruption in work are not always taken into consideration, and this too results in unfounded orders providing for banishment.

Individual instances still occur of the application of administrative measures to persons unable to work, particularly to persons who have attained pension age, who fall into some category of incapacitation, permanent or temporary, to women having young children, to persons suffering from illnesses that prevent them from working and who are in need of special treatment, as well as to persons who are engaged in self-employed undertakings not prohibited by law, and who are licensed to do so.

People's courts often accept cases in which there has been insufficient clarification of the circumstances, the character of the individual, his past work record, his state of health, the reasons for dismissal from his last employment, and in which there has been no determination of the opinion of management and public organizations as to the possibility of returning this individual to productive work, of assigning him to re-education by the personnel of his place of work. Courts also accept cases in which other significant particulars have not been clarified and, in their trial of these cases, they oversimplify the procedure, do not call the necessary witnesses, and confine themselves merely to enunciating the findings of the militia and hearing the explanations of the defendant. With respect to persons who extract income from the exploitation of plots of land, housing, etc., the scale of the monies thus acquired is not always determined, nor whether this income is a source of enrichment.

The courts do not react to such illegal behavior by persons in authority as the unfounded indictment of citizens, the withdrawal of internal passports, work-record books, and other documents needed to get jobs, and the illegal arrest and imprisonment of citizens in the absence of data indicating that the individual being called to account has refused to appear in court.

In determining the period for which an individual is to be banished, courts do not always take into account the family status of the lawbreaker, the causes giving rise to his antisocial behavior, and the possibility of re-educating and correcting him. As a consequence, in setting the term of banishment, the courts in some cases adopt an indulgent attitude toward malicious antisocial elements and, at the same time, unjustifiably set long terms of banishment for persons whose correction does not demand this.

Many district (or city) people's courts do not observe the maximum term within which cases must be heard. This diminishes the effectiveness of the struggle against antisocial elements.

The orders issued by certain people's courts are poorly drafted. They do not disclose just what the antisocial behavior of the individual consists of, or, if they do, these acts are not put in specific terms, and the individual's explanations of his behavior are not refuted.

Many district (or city) people's courts underestimate the educative significance of trials in such cases, and rarely conduct them before

broad audiences in public places, with the participation of representatives of the public.

Sometimes it is not considered that the rehabilitation of the persons banished depends to a considerable degree on the creation of the appropriate conditions of work and everyday living, and upon the skill with which the work of re-education is conducted. The district people's courts, in considering representations on the refusal of banished persons to work and cases of unauthorized departure from the places to which they were sent, do not study the causes of these and other violations of law and do not take measures to eliminate the conditions encouraging them.

These shortcomings in the work of the district (or city) people's courts in the trial of persons refraining from socially useful labor and conducting an antisocial and parasitic way of life are primarily due to the underestimation, by certain members of the judiciary, of the need for strict observance of legality in considering cases of administrative violations, and also to the still weak supervision of the work of the people's courts by the supreme, territorial, and regional courts.

With the purpose of further improving the court consideration of cases and establishing uniformity in the application by the courts of the legislation on intensifying the struggle against persons who refrain from socially useful labor and lead an antisocial parasitic way of life, the USSR Supreme Court Plenum decides:

1. To direct the attention of the courts to the fact that, while not weakening their struggle against antisocial parasitic elements, they must try such cases in accordance with the most rigorous adherence to legality so that persons who have deliberately refrained from socially useful labor and who lead an antisocial parasitic way of life are held to the responsibility provided by law, while citizens not guilty of this are not subjected to administrative punishment.

To instruct the courts to eliminate the above-mentioned shortcomings in deciding cases involving parasitic elements, with effectuation of the USSR Supreme Court Plenum's Order No. 6 of September 12, 1961.

To explain to the courts that the basis for the application of the measures of administrative influence provided by the decrees of the presidiums of the supreme soviets of the union republics is a finding that an able-bodied person has engaged in an antisocial parasitic way of life which permits him to live at the expense of society without working.

2. To recommend to district (or city) people's courts that cases involving antisocial elements be heard more often directly at industrial enterprises, state farms, collective farms, and in housing developments, with the participation of representatives of the public.

In order to enhance the educative influence of court decisions with respect to banished persons, representations to shorten their terms of enforced residence as well as to assign them to corrective labor if they refuse employment in their places of enforced residence, and to order deprivation of freedom if they refuse corrective labor, as well as cases of crimes committed by such persons, should, as a rule, be heard at the places of enforced residence.

3. Courts must not accept cases in which the verification of data has been superficial. If it is impossible to obtain the missing information while the case is being prepared for hearing and during the trial, the court shall issue an order returning the case for further verification of data.

In accepting a case for decision, a court must make sure that the findings of the militia or procurator's office contain a detailed presentation of all the circumstances of the case: facts on the antisocial parasitic way of life led by the individual, sources of income and antisocial acts performed, personal data on the individual (age, health, family status, previous work record, previous convictions), as well as conclusions on the culpability of the individual.

The file must contain data confirming the facts and circumstances set forth in the findings.

4. Courts shall be required to improve their handling of cases involving persons who have refrained from socially useful labor and are leading a parasitic way of life.

The courts shall consider these cases by a procedure which assures that a proper and jus-

tified order will be issued. The individual brought before the court shall be given the opportunity to familiarize himself with the materials of the case, and to petition for the subpoenaing of further data, including documents, and the calling of witnesses. The trial should provide careful investigation of all the proofs collected, and should hear and verify the explanations of all persons called to the trial. After the questioning of witnesses and the investigation of the evidence available, the defendant must be given the right to offer the court a further explanation.

In cases in which the procurator participates in the trial or the defendant petitions for legal defense, the court must admit a defense attorney to the case.

Persons called to trial as witnesses should be informed by the court of their obligation to give truthful evidence, and of the responsibility they bear for false testimony.

The term of banishment must be set strictly in accordance with the circumstances of the individual case, with consideration of the character of the transgressor, his age, the nature and degree of danger to society of his illegal act, and circumstances in the case tending to exacerbate or mitigate his responsibility.

Orders issued by the courts must be validated in detail. They must contain specific data testifying to the antisocial, parasitic way of life of the individual to whom measures of administrative influence are applied.

5. On the basis of the concrete circumstances of the case and the personality of the person brought before the court, courts shall discuss whether a guilty individual shall be given an additional period in which to change his behavior and find work, particularly in cases in which a public organization or the personnel of a place of work petitions for this and undertakes to find work for the party and to rehabilitate him.

6. The supreme courts of the union and autonomous republics, and the territorial and regional courts shall reinforce their supervision over the legality of the decisions taken by people's courts with respect to antisocial parasitic elements, and periodically review court practice, conduct check-ups on the spot, and take effective action to eliminate and prevent shortcomings and errors in the work of the people's courts.

A. Gorkin, Chairman, USSR Supreme Court;
I. Grishanin, Secretary, USSR
Supreme Court Plenum.

Biulleten' Verkhovnogo Suda SSSR, 1963, No. 4

COURT ORDER NO. 7, USSR SUPREME COURT PLENUM, JULY 3, 1963

(Court Practice in Applying the Legislation on Responsibility for Attacks on the Life, Health, and Dignity of Militia and Volunteer Public-Order Personnel)

A decree of the Presidium of the USSR Supreme Soviet of February 15, 1962, "On Increasing Responsibility for Attacks on the Life, Health, and Dignity of Militia and Volunteer Public-Order Personnel," established responsibility for malicious failure to obey a legal order or demand of militia and volunteer public-order personnel, for insulting them, for resistance to them, and for the use of force and threats against such persons. The decree also increased the criminal responsibility for attacks on the lives of militia and volunteer public-order personnel in conjunction with their official or volunteer duties in the maintenance of public order.

A study of the experience of application of this decree has shown that the courts are, for the most part, deciding cases in this category correctly. However, the Plenum takes note that errors and serious shortcomings are also to be seen. In considering such cases, courts sometimes do not take into account the social danger presented by attacks by criminal and other antisocial elements upon the life, health, and dignity of militia and volunteer public-order personnel.

The courts do not maintain a uniform approach in defining the concept of attacks upon life, do not clearly differentiate resistance involving force or the threat of force from resistance without exacerbating circumstances, criminally punishable acts from disobedience constituting violation of administrative rules. Actions expressed in resistance are sometimes unjustifiably considered merely as malicious disobedience.

Crimes expressed in hooliganism accompanied by resistance to a militia or volunteer public-order person are not uniformly categorized. Some courts classify resistance merely as evidence of malicious hooliganism, while others regard it as a distinct and separate crime. As a result, the acts of persons guilty of resistance in the course of hooligan activity are in some cases found to fall only under Article 206, Part 2, of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other union republics, while in other cases they are classified both under these articles and also under the articles of the criminal code covering responsibility for resistance to militia or volunteer public-order personnel. Yet resistance without force is fully covered by the provisions of Article 206, Part 2, and does not require charging under other headings.

When finding a party guilty of offering resis-

tance or threatening the use of force, courts do not always indicate in their verdicts the specific forms in which these acts were manifested. Certain courts do not take into consideration that, in order to charge a crime under Part 2 of Article 191-1 of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other union republics, it does not suffice merely to establish the fact that the defendant addressed a threat of force to the injured party; it must be shown that there was basis to fear that it would be carried out.

In their trial of cases, the courts sometimes do not pay sufficient attention to the fact that, in accordance with the stipulations of the above-mentioned decree of the Presidium of the USSR Supreme Soviet, there is responsibility under the crimes covered in articles 191-1 and 192-1 of the RSFSR Criminal Code and the corresponding articles of the criminal codes of other union republics, for resistance to the legitimate acts of militia and volunteer public-order personnel.

There are also shortcomings in the consideration by people's courts of information relative to administrative responsibility for malicious disobedience. Insufficient attention is given to cases in which the evidence offered the court is improperly drawn. The circumstances of the event are not investigated fully enough. Nor are the explanations of the defendants verified, although these explanations often contain serious objections to the accusation, and should be verified.

The verdicts of people's judges often do not indicate wherein the malicious character of the disobedience was manifested.

Some courts underestimate the role of the public in the struggle against such violations. They do not conduct trials at the lawbreakers' places of work, and rarely send data on malicious disobedience to public organizations, the personnel of places of employment, and comrades' courts so that measures of public influence may be brought to bear.

With the object of eliminating shortcomings in the activity of the courts in dealing with cases of attacks on the lives, health, and dignity of militia and volunteer public-order personnel, the USSR Supreme Court Plenum orders:

1. That the attention of the courts be directed to the need for a decisive struggle against attacks on the lives, health, and dignity of militia and volunteer public-order personnel, against malicious failure to obey their legal orders and instructions in the performance of their duties in the maintenance of public order.

Courts must assure exact and undeviating adherence to the stipulations of the decree of the Presidium of the USSR Supreme Soviet of February 15, 1962, "On Increasing Responsibility for Attacks on the Life, Health, and Dignity of Militia and Volunteer Public-Order Personnel," and the corresponding articles of the criminal codes of the union republics. In setting punishment for an individual found guilty, the court is required, in every instance, to consider not only the fact of commission of the dangerous crime in question, but also the concrete circumstances of the case, the consequences of the crime, the motives governing the acts of the injured party and the defendant, the personality of the latter, and other mitigating and aggravating circumstances.

Courts must not apply criminal punishments to persons whose acts of malicious disobedience are such as involve penalties of an administrative order.

2. On the basis of the stipulations of socialist legality, the courts are required to assure careful, all-round, and objective examination of each case.

The courts must bear in mind that responsibility for the crimes listed in articles 191-1, 191-2, and 192-1 of the RSFSR Criminal Code and the corresponding articles of the criminal codes of other union republics arises only when they constitute resistance to legitimate acts of militia and volunteer public-order personnel in maintaining public order. Therefore, in considering cases in this category it is necessary to establish whether or not the militia or volunteer public-order personnel acted in accordance with their authority and observed the procedures established by law, and also what precisely constituted the acts of the guilty party.

3. To direct the attention of the courts to the

fact that responsibility for the crimes specified in articles 191-1, 191-2, and 192-1 of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other union republics assumes knowledge by the guilty individual that he was making an attack upon the life, health or dignity specifically of a militiaman or volunteer in the performance, or in connection with the performance, of his duties in defense of public order. Moreover, it must be borne in mind that responsibility under these articles of the criminal code exists regardless of whether the injured party was on duty or whether, on his own initiative or at the request of a citizen, he took measures to prevent a disturbance of public order or to stop a crime.

4. To explain to the courts that:

a) malicious disobedience shall be understood as refusal to carry out insistent, repeated instructions or orders by a militiaman or volunteer, or disobedience expressed in insolent form, testifying to manifestation of clear disrespect for the agencies maintaining public order;

b) offering of resistance, as distinct from malicious disobedience, is to be understood under Article 191-1 of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other union republics as active oppositon to the exercise by militia or volunteer public-order personnel of the authority with which they are invested for the performance of duties in maintaining public order.

In this connection, it must be borne in mind that resistance accompanied by force, covered in Part 2 of the abovementioned article of the criminal code, assumes the performance of active deeds expressed in malicious dealing of blows, beatings, bodily injuries and the like, in the course of the performance by the militia or volunteer public-order personnel of their duties in maintaining public order.

Resistance not accompanied by these acts and expressed only in obstruction of the legal use of force by a militiaman or volunteer (for example, an attempt to break away when detained) is to be charged under Part 1 of Article 191-1 of the RSFSR Criminal Code and the corresponding articles of the criminal codes of other union republics;

c) threat of use of force shall be understood to mean acts or statements by the guilty party expressing a real intention to apply force against the militiaman or volunteer;

d) attack on the life of the militiaman or volunteer shall be understood as the murder or attempted murder of a militiaman or volunteer in connection with their activity in maintaining public order.

The threat of murder, negligent infliction of death, and the dealing of bodily injury in the absence of intent to kill, which are covered under other articles of the criminal code, must be charged not as attack on the life of the militiaman or volunteer, but under the articles of the criminal code specifying responsibility for crimes against the person.

5. In conjunction with questions arising in the identification of the specific legal violations committed in crimes against persons maintaining public order, to explain to the courts that:

a) responsibility, under the decree of the Presidium of the USSR Supreme Soviet of February 15, 1962, is borne only for crimes specified therein against militiamen or volunteers and is not to be broadly interpreted. Similar acts committed against other representatives of authority or of the public shall be charged under the pertinent articles of the criminal code;

b) crimes committed against militia or volunteer public-order personnel as a result of personal relationships or conflicts shall be regarded as crimes against the person and charged under the pertinent articles of the criminal code;

c) in cases in which the acts of the guilty person have been expressed in simultaneous commission of different types of attacks against militiamen or volunteers (insult and resistance, resistance and attack on life, etc.), the courts should, if all these acts actually consitute elements of a single crime, charge it under the article of the criminal code providing responsibility for the most serious of the infringements.

Acts of the type under discussion shall be charged as constituting several crimes when committed at different times and not covered by

a single intent;

d) the infliction of minor or less severe bodily injury as the result of resistance to a militiaman or volunteer, and the employment of force against these persons with the object of compelling them to perform clearly illegal acts, are covered by the crime described in Article 191-1, Part 2, of the RSFSR Criminal Code and by the corresponding articles of the criminal codes of the other union republics, and do not require further charges under other articles inasmuch as the infliction of bodily injury in this case is a means of committing another, more dangerous crime, consisting of an attack upon the health of a militiaman or volunteer in the performance of his duties in maintaining public order.

The infliction, under the indicated circumstances, of serious bodily injury or less severe bodily injury, if the latter, under the law of the union republic, involves more severe punishment than that envisaged in Article 191-1, Part 2, of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other union republics, shall be charged for both crimes;

e) an attack on the life of a militiaman or volunteer, regardless of whether a criminal result ensues, is to be regarded as a crime that has been committed and charged only under Article 191-2 of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other union republics (attack on life) without further charge under Article 102 or articles 15 and 102 of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other union republics.

6. In order to assure a uniform approach to the charging of crimes expressed in hooliganism associated with resistance to a representative of governmental authority or of the public in the performance of duties for the maintenance of public order, to explain to the courts:

a) resistance, unaccompanied by force, to a militiaman or volunteer performing duties for the maintenance of public order, when offered in the performance of hooligan acts and related directly thereto, is, under Part 2 of Article 206 of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other union republics, a qualifying attribute of hooliganism, is covered completely by the provisions of that article, and requires no further charging.

Resistance associated with force exercised upon commission of acts of hooliganism, as well as any resistance, if the legislation of the union republic does not stipulate it as a qualifying attribute of hooliganism, must be charged in addition to the other crime;

b) resistance offered after the cessation of acts of hooliganism and, in particular, in conjunction with subsequent detention of the guilty person, is not to be regarded as a circumstance aggravating the hooliganism and is to be charged in addition to the latter;

c) petty hooliganism, subject to administrative penalties or under Article 206, Part 3, of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other union republics, and associated with resistance to a militiaman or volunteer in the performance of his duties in defense of public order, if the resistance does not in itself constitute malicious hooliganism, should not be charged under Part 2 of Article 206 of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other union republics.

In accordance with this, criminally punishable petty hooliganism associated with resistance to a militiaman or volunteer is to be charged under articles 206, Part 3, and 191-1 of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other union republics. In case of commission of petty hooliganism for which penalties of an administrative order may be inflicted, such hooliganism being accompanied by resistance, the actions of the guilty individual shall be charged under Article 191-1 of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other union republics.

7. In conjunction with the fact that Article 10 of the Principles of Criminal Legislation of the USSR and the Union Republics limits the criminal responsibility of minors between 14 and 16 years of age solely to a stated list of crimes, not including attacks upon the life, health, and

dignity of militia and volunteer public-order personnel, it should be explained to the courts that minors in this age group who have committed attacks against militiamen or volunteers shall not be held responsible under articles 191-1, 191-2, and 192-1 of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other union republics, but shall answer for specific acts committed if they fall within the list in Article 10 of the Principles of Criminal Legislation of the USSR and the Union Republics.

8. That the attention of the courts be directed to the need to improve the consideration of materials on the application of administrative responsibility for malicious failure to obey the orders and instructions of militiamen or volunteers carrying out duties in defense of public order.

A people's judge who has accepted for consideration an information on a violation subject to administrative penalty is required to determine the actual circumstances of the happening by reference to the data contained in the information submitted, and to the explanations of the person being called to account, and shall when necessary call witnesses or require presentation of the necessary materials.

Courts should ensure that there is broad involvement of the public in the consideration of cases on violations subject to administrative penalties, and shall when necessary transmit information on malicious disobedience to public organizations, the personnel of places of work, and comrades' courts so that measures of public influence may be brought to bear.

9. On the basis of the fact that Part 1 of Article 1 of the decree of the USSR Supreme Soviet Presidium of February 15, 1962, "On Increasing Responsibility for Attacks on the Life, Health, and Dignity of Militia and Volunteer Public-Order Personnel," provides administrative responsibility for malicious failure to obey legitimate instructions or orders of militiamen or volunteers in the course of their performance of duties associated with maintaining public order, the courts, in considering information on persons brought before them under that article, are required to determine what order or instruction had been disobeyed, whether this instruction or order was legal, and whether the disobedience was malicious.

In this respect it must be borne in mind that malicious failure to obey an instruction or order issued other than in the maintenance of public order cannot be charged under Article 1, Part 1, of the decree of the USSR Supreme Soviet Presidium of February 15, 1962 (for example, refusal to appear at a militia station in response to a summons, etc.).

10. To explain to the courts that upon simultaneous commission of petty hooliganism involving administrative responsibility, and malicious disobedience, the guilty party must be called to account under Article 1, Part 1, of the decree of the Presidium of the USSR Supreme Soviet of February 15, 1962.

11. Courts must carefully clarify the causes of law violations expressed in attacks on the life, health, and dignity of militia or volunteer public-order personnel, and must take active measures to eliminate the circumstances facilitating these violations. In all their work, they must promote the education of citizens in the spirit of respect for public order and the persons safeguarding it. When it is established that the violation was due to improper acts by particular persons wielding constituted authority or persons performing duties in the preservation of public order, the courts are required to issue special findings to eliminate the shortcomings discovered and, when appropriate, to bring the guilty to account.

A. Gorkin, Chairman, USSR Supreme Court;
I. Grishanin, Secretary, USSR
Supreme Court Plenum.

State Arbitration Procedures

Sovetskaia iustitsiia, 1963, No. 16

THE NEW RULES FOR CONSIDERATION OF ECONOMIC DISPUTES BY STATE ARBITRATION AGENCIES

A proper and prompt resolution of disagreements and disputes arising in the conclusion and fulfillment of contracts, and for other reasons, is of great importance for the regulation of economic relationships among enterprises, organizations and institutions, and for maintenance of plan, contractual, and financial discipline.

Successful fulfillment of this task is furthered by the Rules for Consideration of Economic Disputes by State Arbitration Agencies, approved on July 1 of this year by the State Arbitration Agency under the USSR Council of Ministers, by agreement with the councils of ministers of the union republics. The rules reflected everything positive and tested to be found in the former governing acts regulating the process of arbitration, took into consideration the long years of experience in arbitration, and made the necessary changes in the procedure for consideration of disputes now in effect.

Until the adoption of the new rules, the procedure for consideration of disputes by state arbitration agencies was determined by the 1934 Rules for the Consideration and Resolution of Property Disputes by State Arbitration Agencies, which played a positive role in regulating the procedures followed by the state arbitration agencies. However, having been issued nearly thirty years ago, they fail, under present-day conditions, to meet the tasks facing the arbitration agencies. As is evident from the very title of the former rules, they did not regulate questions pertaining to the procedure for considering disputes arising in the conclusion of contracts. A directive was issued in 1940 for the purpose of regulating the procedure for examination of that most important category of disputes. The incompleteness of the norms provided by the rules and the directive, and the need to regulate new problems arising on the basis of practical experience, compelled the State Arbitration Agency under the USSR Council of Ministers to issue a number of directives bearing on the arbitration process. Thus, arbi tration procedure came to be governed by a considerable number of normative acts, and this created certain difficulties for the personnel of the arbitration and economic agencies. In this connection, the need arose to adopt new rules that would unify the normative acts regulating the process of arbitration and would reflect the demands made upon the arbitration agencies and economic bodies under contemporary conditions.

In drafting the rules, it was borne in mind that the Principles of Civil Procedure of the USSR and the Union Republics, and the drafts of the civil procedural codes of the union republics, do not provide norms that regulate the consideration of disputes in state arbitration.

Therefore, the rules resolve the most important questions of the arbitration process and embody all the multifarious procedural norms developed in practice. The rules take into account the specifications of the Regulations on State Arbitration Agencies, in which a number of procedural questions of major importance are resolved.

The rules regulate questions that either were not treated at all or were hardly treated in the 1934 rules and the directives of the State Arbitration Agency under the USSR Council of Ministers — questions involving the contending parties, proofs, time limitations in procedure, etc.

The rules are divided into the following sections: I. General Provisions; II. Adjustment of Disputes Prior to Recourse to State Arbitration; III. Jurisdiction; IV. Parties Participating; V. Proofs; VI. Costs of Arbitration; VII. Procedural Time Limitations; VIII. Filing an Action; IX. Preliminary Preparation of the Case for Examination; X. Hearing Procedure; XI. Decisions and Findings; XII. Execution of Decisions; XIII. Verification of Decisions and Findings, Review Thereof, and Suspension of Execution; XIV. Reports on Shortcomings in the Activity of Enterprises, Organizations and Institutions.

The sections are arranged in sequence of the development of the process of arbitration and the stages through which a case passes. The general provisions for all points in the rules are grouped in the first section, in which the major principles of the process are defined. All the provisions of the remaining sections follow from the standards of the first section.

The rules, as stated under point 1, are binding upon the agencies of state arbitration and the enterprises, organizations, and institutions participating in the case. One of the objectives of the rules is to establish a unified procedure for consideration of economic disputes in the agencies of state arbitration.

On the basis of the need for observing socialist legality, the rules provide that in the resolution of disputes, the state arbitration agencies shall be guided by the laws and other normative acts.

The rules offer substantial rights to enterprises, organizations, and institutions participating in cases as parties. At the same time, they require the parties to make conscientious use of all the rights they enjoy, to seek the all-sided and objective resolution of a dispute, and to respect each other's property rights and legitimate interests.

Of importance is the procedure established in the rules for settling disputes before recourse to the state arbitration agencies. As we know, the decision of the USSR Council of Ministers of July 23, 1959, "On Improving the Functioning of State Arbitration Agencies," envisaged rigorous adherence to the claims procedure in all actions submitted to the state arbitration agencies. The USSR Council of Ministers decreed that, prior to presentation of a claim to the agencies of state arbitration, enterprises and organizations are required to present their claim to the other party and to take the necessary measures to settle the disputes that arise. The heads of enterprises and organizations are required to secure prompt examination of claims and the satisfaction of valid claims, and to provide explanations where claims are rejected.

Despite these demands, a considerable number of disputes reach the state arbitration agencies that could have been resolved by the parties without the intervention of the arbitration agencies. This testifies to serious shortcomings as regards the presentation and consideration of claims. The rules establish, for the first time, a procedure for direct settlement by the parties concerned of all disputes arising from the conclusion and execution of contracts and on other grounds. This procedure applies unless another compulsory method for the settlement of disputes has been established.

The rules, whose purpose is advancement of the democratic fundamentals of the arbitration of disputes, are based upon the need for maximum democratization of the arbitration process. Democratization should provide a dependable guarantee of legality and of the validity of the decisions of the state arbitration agencies.

The duty to assure defense of the property rights and legitimate interests of enterprises, organizations, and institutions in the resolution of disputes is one of the basic tasks of the state arbitration agencies. Its fulfillment will be promoted, in particular, by those points in the rules that provide a procedure whereby these agencies can institute cases on their own initiative if they come into possession of data on violations, by enterprises (or organizations), of plan and contract discipline and the demands of cost accounting. The state arbitration agency may, depending upon the circumstances emerging upon consideration of the case, go beyond the claims made by the plaintiff in its decision, if this is required by the public interest or is necessary to protect the rights and legal interests of the parties.

Guided by the instructions of the party, the state arbitration agencies shall, in their activity, base themselves upon public opinion in the enterprises and organizations. In this connection, it is important for the arbitration agencies to consider cases directly at the enterprises, organizations, and institutions. The rules establish that representatives of the public and of the active membership of the economic unit may participate in meetings of the state arbitration agency.

The new rules provide detailed regulation of questions pertaining to jurisdiction in disputes and thereby fill in a blank spot in the rules formerly operative. This is the more necessary because, in determining which arbitration agency shall have jurisdiction, errors are very often committed that involve transferring the data of an action from one agency to another, and, as a consequence, delays occur in the resolution of disputes.

The institution of an action is one of the forms of protecting the property rights and the legal interests of the enterprises (or organizations). The rules provide that every enterprise, organization, or institution concerned, constituting a legal entity, has the right to turn to state arbitration for protection of its rights and interests. In practice, there were frequent cases of unjustified refusal to accept action. One of the reasons for such errors was the lack of a specific and complete list of the grounds on which a state arbitrator had the right to refuse to accept an action. This lacuna is also being eliminated. The rules also cover cases in which the petition for action may be held immobile by the state arbitration agency. As distinct from the rules of 1934, the new rules provide that when the plaintiff carries out the demands of the state arbitration agency to eliminate errors in the petition, it may then be considered to have been submitted on the date of its first presentation to the arbitration agency. If this is not done, the petition is considered not to have been submitted and is returned to the plaintiff.

The importance of the preliminary preparation of cases for examination in state arbitration agencies is often underestimated, and therefore a considerable portion of the errors in arbitration practice result from unskilled or careless preparation of cases for consideration. As a consequence, the rules contain a special section on the steps that the arbitrator must take in preparing the case so as to assure resolution of the dispute at the first hearing.

The central stage in the arbitration process is the arbitration session. The principle that the case is to be considered by a state arbitrator and the authorized representatives of the parties is fundamental to arbitration procedure. The rules provide that the arbitration session is directed by the state arbitrator and that the sessions must be conducted under a procedure providing all-round and objective elucidation of the rights and duties of the parties, all circumstances of the dispute, and the causes giving rise to it. The decision of the arbitration agency must be legal and valid. An agreement arrived at by the parties is entered into the record. An agreement in accord with law has the force of a decision. In a case in which the agreement between the parties is not in accordance with law, and in cases of disagreements among the parties, a decision is handed down by the state arbitrator.

For the first time, the rules specify grounds for dismissal or postponement of cases, and list the situations in which the arbitration agency

shall issue a decision and determination. For the first time, too, there is regulation of questions pertaining to the issuance of supplemental decisions, clarification of decisions, and correction of arithmetical mistakes and slips of the pen.

Characteristic of the state of execution of state arbitration decisions is the voluntary principle. The rules take this as a point of departure in establishing norms pertaining to the execution of decisions. At the same time, the rules provide the possibility of compulsory execution of decisions if they are not carried out in the period established by arbitration.

Should this happen, the state arbitration agency issues to the interested party (on petition) an order for compulsory execution of the decision. In issuing the order, the state arbitrator is required to discuss the question of exacting a fine from the party that has not carried out the decision on time, as provided by the regulations governing the particular arbitration agency.

The orders of state arbitration agencies have the force of acts of execution and are carried out, by established procedure, through a bank. Orders (except for orders to deduct sums of money from the accounts of enterprises, organizations, and institutions) may also be carried out through court officers. Under Article 58 of the Principles of Civil Procedure, the execution of decisions of state arbitration agencies occurs through court officers by the same procedure provided for the execution of court orders.

The rules regulate in detail questions involving the verification of the correctness of decisions and findings, review and postponement, and execution. Under the Regulation on State Arbitration Agencies, the decisions of state arbitration are final. They are subject to review only on grounds of illegality or failure to accord with the documentation and circumstances of the case. In practice, cases are encountered in which the need for review of a decision arises as a consequence of new evidence, i.e., evidence of significance to the case which had not been and could not have been known when it was decided. The rules provide for the possibility of review of decisions in such cases as well.

Verification of the validity of decisions takes place not only in accordance with the petitions of the interested enterprises, organizations, and institutions, but also on the initiative of the chief arbitrator or his deputy.

The rules establish a procedure for reviewing decisions in cases considered on the instruction of the State Arbitration Agency under the USSR Council of Ministers, and the corresponding agencies under the councils of ministers of the union republics. This procedure is the only one available and assures prompt and complete review of the correctness of decisions by the chief arbitrator of the arbitration agency on whose instructions the case was dealt with.

The Regulations on the State Arbitration Agency of the USSR Council of Ministers, as well as those of a number of the union republics, have provided the procedure of postponement of decisions on cases outside the jurisdiction of these agencies. The rules regulate the procedure for stopping execution of such decisions.

In considering a case, the state arbitration agencies not only resolve disputes that have arisen, but are also required to react to significant shortcomings discovered in the functioning of enterprises, organizations, and institutions. The rules, in accordance with the Regulations on State Arbitration Agencies, require these agencies to report on such shortcomings to the appropriate bodies.

In view of the fact that the rules could not encompass a variety of specific questions having to do with the procedure for consideration of all categories of disputes, they stipulate that the procedure for handling particular categories of disputes is determined by the directives of the State Arbitration Agency under the USSR Council of Ministers, issued on the basis of the Regulations on the State Arbitration Agency under the USSR Council of Ministers.

The rules go into effect as of September 1, 1963.

Personnel of the arbitration agencies, enterprises, organizations, and institutions should make a careful study of the rules so as to avoid errors in the consideration of disputes.

Court Costs

Biulleten' Verkhovnogo Suda SSSR, 1963, No. 3

COURT ORDER NO. 4, USSR SUPREME COURT PLENUM, MARCH 18, 1963

(Eliminating Shortcomings in the Recovery of Court Expenditures in Civil Cases and Court Costs in Criminal Cases)

A review of the practice in recovering court expenditures [raskhody] in civil cases and court costs [izderzhki] in criminal cases has demonstrated that courts do not always observe the laws in effect with regard to this matter, that they commit significant errors. Frequently, in accepting the filing of suits and appeals in civil cases, courts do not exact payment of the state fee provided by law, or else they determine it inaccurately. They do not always take into consideration the fact that expenditures caused the court in connection with the trial and the state fee, from which a plaintiff has been exempted, are to be recovered from the respondent for the state in proportion to the satisfied portion of the claim in the suit. In violation of Article 45 of the RSFSR Code of Civil Procedure and the corresponding articles of the civil procedural codes of the other union republics, many courts do not demand that the parties make advance payment of the sums needed to meet the costs of calling witnesses and experts, as well as the expenditures involved in on-site examinations.

In trying criminal cases, courts often do not discuss the question of recovering costs from convicts, do not always require that data on court costs incurred in the preliminary hearing and police investigation be appended to the record, and often recover court costs from convicts in solido, which is not in accordance with law.

Another significant shortcoming in the work of the courts is that they are weak in supervising the execution of decisions and judgments on recovering court expenditures and costs.

In order to eliminate shortcomings in the practice of recovering court expenditures in civil cases and court costs in criminal cases, the USSR Supreme Court Plenum decides:

1. That the attention of the courts be directed to strict execution of the stipulations of the law on recovering court expenditures in civil cases and court costs in criminal cases.

2. Court expenditures in civil cases consist of the uniform fee and procedural expenditures, i.e., the sums needed to pay the expenses of witnesses and experts and the expenses involved in on-site examinations.

3. That the attention of the courts be directed to fulfillment of the stipulations of Article 45 of the RSFSR Code of Civil Procedure and the corresponding articles of the civil procedural codes of the other union republics, in accordance with which a party petitioning the

court for a witness or expert to be called or for an on-site examination to be made must provide in advance the sums needed to meet the expenses of witnesses and experts.

4. In the cases envisaged by Article 23 of the Principles of Civil Procedure of the USSR and the Union Republics, and also by other legislation of the USSR and the union republics, no fee and reimbursement of government expenditures in conducting civil cases are exacted. At the same time, the courts must bear in mind that they do not have the right to exempt the plaintiff or respondent from the court expenditures that are subject to recovery in favor of one of the parties.

The question of exempting parties in a civil case from court expenditures is settled when the suit is filed or, when necessary, when the decision in the case is handed down.

5. In divorce cases the court has the right to determine the sum to be paid by one or both spouses upon issuance of a certificate of divorce. In exceptional cases, on the basis of the individual's material situation, the court may exempt one or both parties from payment of the sums provided by law when the certificate of divorce is issued.

6. To make clear that the state fee shall be calculated, under Article 36 of the RSFSR Code of Civil Procedure and the corresponding articles of the procedural codes of other union republics, on the following bases:

a) in all suits for support payments, on the basis of the total payments for a year, and in suits to absolve persons from accumulated support-payment obligations, to diminish or increase such payments on the basis of the sums by which they are diminished or increased, but not more than the total payment for a year;

b) in suits for lifetime and indefinite periods of payment to make good the damage due to incapacitating injury or other damage to health, and also for payments for not less than three years — on the basis of the total payments for a three-year period if not otherwise provided by the legislation of the union republic; in suits to diminish or increase the size of a payment of damages for a given term — on the basis of the sum by which it is increased or decreased, but not more than the total payments for three years;

c) in suits to have purchase-and-sale contracts, gifts, and wills declared invalid — on the basis of the value of the property in dispute;

d) in suits to divide (or apportion) property — on the basis of the value of the property sought.

In suits to determine the order of utilization of property in the absence of any dispute as to the right of ownership — the fee is thirty kopecks.

7. In property disputes between collective farms and inter-collective farm associations, and also in disputes between collective farms and associations thereof, on the one hand, and state, cooperative, and public organizations on the other, the fee is 1 per cent of the sum sought, but not less than ten kopecks.

In disputes between collective farms and citizens, the fee is set on the usual basis except for cases in which citizens are, by law, subject to exemption from payment of court expenditures.

8. To make clear that, in the meaning of Articles 105, 106, and 206 of the Code of Criminal Procedure of the RSFSR and the corresponding articles of the criminal procedural codes of the other union republics, court costs in criminal cases consist of the following: sums paid out by agencies of police investigation, preliminary hearing, and the courts to material witnesses, injured parties, attesting witnesses, experts and interpreters, for traveling expenses and the rental of housing, within the limits prescribed by law, and also sums paid to nonemployed witnesses of all types and to injured parties by virtue of their being diverted from their usual occupations; sums expended upon the storage, shipment, and search for tangible evidence; and other expenditures incurred in handling a given case, including, among others, the expenditures involved in carrying out investigative experiments.

9. Court costs in criminal cases do not include: the continued payment to material and attesting witnesses, injured parties, experts, and interpreters of their average earnings in their normal employment, as is provided by law,

for all the time they spend as a consequence of being called by the police investigator, the examining magistrate, the procurator or the court; the sums paid to experts or interpreters for their fulfillment of duties in court or police investigative and preliminary hearing agencies as part of their normal duties; office and postal expenditures involved in the processing of the given case in the police investigative agencies and in court.

10. To make clear that, in the meaning of Article 107 of the Code of Criminal Procedure of the RSFSR and the corresponding articles of the criminal procedural codes of the other union republics, court costs are reimbursed, in the cases provided by law, at the expense of convicted individuals in shares based on the guilt, degree of amenability, and property status of each criminal party.

In cases involving minors, the costs may be levied on their parents or guardians, when this is provided by law.

As each criminal case reaches the court, the judges are required to demand that the agencies of preliminary hearing and police investigation present reports on the types and sums of costs incurred during those stages.

11. In cases in which the question of court expenditures has not been resolved with the issuance of the judgment, this question shall be settled by the court that has issued the judgment by the procedure envisaged under Article 368 of the RSFSR Code of Criminal Procedure and the corresponding articles of the criminal procedural codes of the other union republics.

12. In the consideration of civil and criminal cases on appeal and by judicial supervision, higher courts must give attention to the correctness of the exaction of court expenditures in civil cases and court costs in criminal cases by the court of first instance.

13. To direct attention of the courts to the need to assure supervision of the execution of decisions and judgments as this pertains to recovery of court expenditures and costs.

A. Gorkin, Chairman, USSR Supreme Court;
I. Grishanin, Secretary, USSR Supreme Court Plenum.

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