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PROFESSOR PERLOV ATTACKS TRIAL BY NEWSPAPER

Now that the storm of neo-Zhdanovism aroused by the Sinyavsky-Daniel trial has died down, the revisionist forces in the USSR are returning to the charge in the fields of both literature and justice. The latest issue of Soviet Literature (6 July 1966) has come out with a ringing defense of Tvardovsky, the editor-in-chief of Novy Mir, who has been under constant criticism from a host of second-rate dogmatists for months past.

Moreover a week ago Professor Perlov, one of the USSR's leading "liberal" lawyers, reopened the intermittent battle against trial by newspaper, with a two-column broadside aimed at reasserting the principle of an independent judiciary. Perlov began his argument by reminding readers that the independence of judges and their subordination solely to the law are principles laid down by Article 112 of the Constitution.

Perlov nowhere refers to the Sinyavsky-Daniel trial, but it seems likely that he has it in mind when he writes of the need for judges to resist outside influences and "pressures," however strong they may be and from whatever quarter they may come. (Izvestia itself, the paper in which Perlov's articles appear, was one of the worst culprits in the pre-judgement by the press of the two Soviet authors).

Perlov has even discovered a quotation from Marx, which reads:

A judge has only one superior to whom he should defer, and this sole superior is the law.

1) Izvestia, 30 June 1966.

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He regrets the fact that in the USSR judges are sometimes reproached for refusing to give way to a local leader's opinion as to how a case should be settled, and that the judge concerned is then labelled a "formalist," told he is opposing public opinion and not following the "line," etc.

There are fewer such cases than there were, but they still occur, and therefore Perlov quotes Lenin as having written:

Local influence is one of the greatest, if not the greatest, enemies of the establishment of justice and of the build-up of culture.²

One of Perlov's main antagonists in this debate is I. Galkin, who is the chief of the Criminal Investigation Department of the RSFSR. Galkin recently misinterpreted the letter from which the statement above by Lenin was taken as applying solely to the organization of the Prosecutor's Office, and not to the courts,³ which on his reading are subject to local influence. But Perlov replies that Galkin is confusing two separate concepts: firstly the court's duty to take heed of local considerations when passing sentence and secondly the local influences on the court. It was the first of these two ideas which Lenin sanctioned, not the second.

Returning to the present, Perlov writes that:

The constitutional clause providing for the independence of judges is addressed to all state agencies and to all social organizations, to all officials and all citizens. It follows that no one has the right to intervene in the examination of cases by the courts.

The wording, "all state agencies," clearly includes the Criminal Investigation Department of the RSFSR as well as the KGB, while the phrase "all social organizations" includes the Party and Komsomol. Perlov is perfectly specific in his bid for freedom for the judiciary.

He reminds his readers of a serious miscarriage of justice in Ufa recently, when "public opinion" was so strong in one case that the accused was sentenced to death although the law does not provide for a death sentence for this

2) 20 May 1922, "On 'Double' Subordination and Legality."

3) Izvestia, 17 April 1966.

particular crime. But the peoples' assessors overruled the judge by a simple majority vote, and it was not until the case was examined by the Supreme Court, RSFSR, that the death sentence was repealed.

Perlov points out that "public opinion" can be wrong as well as right. "Social organizations" may be misinformed (it is not often that a Soviet professor tells the Party, even indirectly, of its fallibility), and sometimes individuals with a personal interest in the case present it as "public opinion."

Perlov concedes that individuals must be allowed to express their views, but he feels that once "collectives" or organizations become involved there is a serious danger of inflaming passions rather than furthering justice.

Moreover Perlov does not deny that the press has an important part to play: it may provide grounds for initiating a trial, it has the right to report the progress of a trial, and it should announce the sentence. But the trouble begins when the press prejudges the outcome. As Perlov says:

Often authors assert too categorically that the accused is guilty or innocent. But it is well-known that the accused is not yet guilty. Only the judge has the right to declare him so ... Unfortunately some authors too frequently forget this.

Having reminded his readers of the presumption of innocence, Perlov points out that it is in no way annulled by the preliminary investigation, since the court may pass sentence, stop the case, or send it back for further investigation. Here he clearly refutes Galkin's recent attempt in Izvestia to argue that when the C.I.D. examination is ended, guilt is already sufficiently well-established for there to be no further need to delay in the manipulation of "public opinion."

Perlov also notes that by no means all the newspapers see fit to print a rehabilitation, after the acquittal of an accused whom they have previously described as "guilty."

Perlov ends his article by reminding Galkin and others of his kind that on December 1st 1964, the Chairman of the Supreme Court USSR, A.F. Gorkin, laid down the principle of the presumption of innocence in Izvestia and castigated efforts by the press to prejudge trials. The Chairman presumably

regrets as much as Perlov that these principles were broken by the mismanagement of the Sinyavsky-Daniel trial, which brought Soviet justice into even more disrepute than the disgraceful case of Josif Brodsky in Leningrad during the Khrushchev era.

The draft of the new Soviet Constitution is still under discussion, and will probably be completed next year. Article 112 of the existing Constitution, which asserts the independence of the judiciary, evidently needs to be strengthened by a clause outlawing prejudgment by newspaper, by the C.I.D., or by the Party, and Perlov's latest article may well be directed to that end.

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