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DEATH FOR DEALING IN DOLLARS

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Introduction

1961 has been the blackest year since he came to power for Khrushchev's record in the field of justice. The first seven months have witnessed a consistent retrogression towards a harsher form of "socialist legality" which is in stark contrast with the high hopes for greater leniency and the reform of prisoners through persuasion characteristic of the early years after 1954.

It was probably inevitable in a year of currency reform (Bulgarians in Sofia and Varna please note) that the trend should have started in February with confiscatory measures against currency by speculators.<sup>1</sup> In March the maximum permissible sentence for currency offenses was nearly doubled (from 8 to 15 years of imprisonment),<sup>2</sup> in May the RSFSR passed a decree allowing the banishment of "parasites" and other "anti-social" persons for up to five years to areas of virtual forced labor, and on May 6th the death penalty was reintroduced for counterfeiting, large-scale embezzlement of state property, and for attacks on prison camp guards. As a result of this last measure, the new class itself, the managers, the collective farm chairmen and Party officials, who are prominent in embezzlement cases clearly heard the crack of Khrushchev's whip.

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<sup>1</sup>See decree of February 24th, 1961.

<sup>2</sup>Decree of 25th March 1961.

Another decree hitting the new class followed on May 24th when a sentence of 3 years imprisonment for padding statistics and falsifying plan reports was authorized.

On July 1st the growing list of crimes to which the death penalty applies was again extended to cover repeated currency deals,<sup>3</sup> and two men, Y. Rokotov and V. Faibishenko, have now been sentenced to death at the hands of a firing squad (Moscow Radio, July 20th, 1961) despite the fact that on June 15th they were each given 15 years imprisonment for the same offense - "speculation in large sums of foreign currency."

The retrial was at the request of the Public Prosecutor of the USSR, R. Rudenko, who is reported to have found the initial sentence "lenient" and to have appealed against it. Although the sums involved are very large, about 13,000,000 old rubles, probably in no other country in the world would a sentence of 15 years be considered too lenient. Moreover in most other advanced and industrialized nations the buying and selling of foreign currency is legitimate, it can be done openly and easily through the banks or exchange bureaux. Why must the new class, the only segment of the Soviet social strata which has both the financial ability to buy dollars or deutschmarks and the privilege of using them, be so rigorously "protected" against the temptation?

Firstly, the possession of foreign currencies certainly adds to the ever-present danger of defection. Not every would-be defector is in the happy position of Nureyev, the famous ex-Leningrad dancer, who knew that he could at once obtain a well-paid job in his chosen field in the West. But secondly and more importantly at present the unsatisfied demand of the new class for pounds and francs, lire and krone, tends to produce a black market rate against the ruble which makes the official claim that the new heavy ruble is the "strongest currency in the world" quite untenable. Thirdly there is the fact that Rokotov and Faibishenko, while they lived and were at liberty, and the other private currency speculators in the big cities constituted a serious loss of foreign currency to the state, since had it not been for them foreign tourists would have had to change their money at much lower ruble rates through the official channels.

It is a harsh comment on the confidence of the Presidium in its ruble to recall that under Tsarist law there was no death penalty for economic crimes, and no need for it. The ruble of the Romanovs was certainly more convertible than Khrushchev's "heavy" coinage.

While the death penalty has been retroactively extended, in this case primarily for deterrent purposes, Khrushchev's lawyers have been busy finding ex-post facto legal justification for the intervention of the secret police (KGB) in currency crimes (decree of June 21st, 1961, see Radio Liberty Daily Information Bulletin, July 17th). Yet in May of this year the KGB brought three

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<sup>3</sup>Izvestia, 1 July 1961.



currency cases, all reported in the Soviet press, although it had no legal power to do so. No doubt it is a sign of the régime's consolidation that the KGB should now be so underemployed in its own sphere that it has acquired the authority to pursue the money-changers of Moscow. Yet when in eight days time the new draft program of the CPSU duly proclaims further steps towards "the withering away of the state", the Soviet people will be entitled to regret once again that the punitive organs and the firing squads, far from dying out, are once more showing their claws.

r.r.g.

June 1961

On May 7, Izvestia published a decree of the Presidium of the Supreme Soviet of the USSR amending various Articles of the Basic Criminal Code. This extends the death penalty in serious cases of embezzlement of public property, counterfeiting and attacks on staff or other prisoners in places of detention. Another decree, issued on May 24, laid down that falsification of State accounts would be regarded as an "anti-State act", punishable by up to three years' imprisonment.

The Russian Federation (RSFSR) also has enacted two new decrees. One, issued on May 5, "On intensifying the struggle against persons refusing socially useful work and leading an anti-social, parasitic way of life", prescribed new measures against such people, who include speculators, beggars and those living on unearned income. The other, issued on May 9, increased penalties for distilling and selling illicit liquor.

#### The new capital crimes

Until the latest decree, the death penalty<sup>1</sup> was applicable for crimes of treason, spying, sabotage, terrorism, banditry and certain classes of murder. Now, by the amendment of Article 22 of the Basic Criminal Code, the following categories of criminals are also liable to the death penalty:

- (a) those convicted of specially large misappropriations of State and public property;
- (b) those convicted of making or passing counterfeit coins or note on a commercial scale;
- (c) especially dangerous habitual criminals or persons sentenced for serious crimes, who in their place of detention terrorise internees, attack prison staff, or organize or take part in groups for such a purpose.

The decree also amended Article 44 of the Code so as to forbid remission of sentence in additional cases - e.g. of "especially dangerous State crimes", forgery, currency offences, serious cases of embezzlement of State property, bribery. An amendment to Article 24 of the Code (dealing with sentences of exile) declared that additional periods of two to five years' exile could be imposed on those convicted of anti-State crimes,

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<sup>1</sup>The death penalty was abolished in May, 1947, but re-introduced in January, 1950, for traitors, spies and saboteurs. In April 1954, it was extended to certain classes of murder and in December 1958, further extended to terrorists and bandits.



banditry, smuggling, forgery, etc.

The extension of the death penalty to embezzlers of State property is an obvious, if excessively harsh, attempt to curb the widespread abuses in State enterprises uncovered recently. Corruption and mismanagement in agriculture is a major domestic problem, and Mr. Khrushchev's marathon tour of agricultural areas in February and March was accompanied by a purge of senior party officials at both regional (oblast) and Republic level. Since January approximately 25 per cent of First Secretaries of the Regional Party Committees have been dismissed. Henceforth such cases which involve theft of State property will be punishable by death; cases of falsifying accounts may be tried under the decree of May 24, which stipulates relatively light penalties.

In its March issue, the Soviet legal journal, Sotsialisticheskaya Zakonnost, indicated the extent of economic crimes by giving a long list of recent cases of theft and speculation in the Kuibyshev region. The need to extend the death penalty to cases of counterfeiting is much less clear. Few such cases have been reported in the USSR recently (the reporting of criminal cases is usually an indication of the social importance the authorities attach to a certain crime rather than to their incidence.)

The especially dangerous habitual criminals are evidently now considered beyond reform by the Soviet authorities and under the new decree they can be conveniently removed. The introduction of the death penalty for those who terrorise other prisoners will certainly protect prisoners against the kind of thugs who in the past have controlled them through terror. On the other hand, there are serious possibilities of abuse in the application of the death penalty to prisoners hidden away from the public eye.

#### The death penalty - a "popular" move

While the death penalty, when it exists at all, is a subject of fierce public debate in Western countries, the Soviet jurist Shakhazarov asserted that its extension in the USSR had the "approval of the entire people". In reply to Western commentators, who had concluded that the extension was needed because of an increased volume of crime, Shakhazarov stated in Izvestia - without giving statistics - that "With our country's advance towards Communism, the number of people who break the law is diminishing steadily" He attempted to attribute the harsher measures to "purer" popular morality in a society which, "as it comes closer to a Communist mode of life...becomes more intolerant of everything that hampers and damages the people's work and public well-being."

#### Ideology and Practice

Writing in Izvestia of May 7 on the legal changes the Soviet Procurator-General, Rudenko, asserted that "As socialist statehood develops into Communist self-government, persuasion - the education of the masses - is gradually becoming the principal method of protecting public order and punishing its violators." But he followed this by the statement that "increasing the public's

role in safeguarding public order does not mean any lessening of the State's role in combating crime." In fact at the 21st Party Congress in 1959, Mr. Khrushchev had to admit that the "withering away of the State" foreseen during the period of the transition to Communism would only be a slow process. Moreover, the ineffectiveness of methods of persuasion and public pressure has been confirmed by the strengthening of State organs, even after the wide development of organs of social pressure.

### Measures against parasites

The decree of the RSFSR Supreme Soviet Presidium (May 5) empowers district or town courts to sentence people refusing socially useful work to deportation and compulsory labor for two to five years. Workers' collectives are also empowered to bring in the same sentence for similar offences. Any property which the accused acquired by non-laboring methods is liable to confiscation.

This decree follows similar decrees in other Soviet republics and in part enacts a draft decree of 1957. But the decree was opposed at that time by some jurists, who objected to the principle of trial by non-judicial organs such as public meetings and workers' collectives. For example, the Deputy Chairman of the Supreme Court of the RSFSR declared in October 1957, that "the functions of judicial organs should not be transferred to public organizations" and that the draft decree contradicted the principle of no arrest without the authority of the court or of a public prosecutor.

The power given to workers' collectives is particularly disquieting. There is no right of appeal to any judicial body, and the sentence is subject only to confirmation by the Executive Committee of the local Soviet of workers' representatives. There is also no right of appeal against the verdict of the district or town court for the offences covered by this decree. It aims particularly at wiping out private enterprise activities, such as deriving income from houses, land or cars, speculation and begging - "offences" that are not crimes at all in the free world.

In recent articles on the theme of "He who does not work shall not eat", the party journal Kommunist<sup>2</sup> continued to describe these "crimes" as relics of the old exploiting order and attributed them to abuses "under the influence of the personality cult" or to "shortcomings in legal, economic and educational work." In answer to readers who asked how private enterprise tendencies arose in people who grew up under Socialism, Kommunist stated that public morality and outlook changed more slowly than political views. But the organ rebuked "bourgeois ideologists" for suggesting that the continuing existence of "parasites and self-seekers" showed that human nature does not change.

<sup>2</sup>No. 14, 1960 and No. 3, 1961.



### Drunkenness

The new Russian Federation decree against home-brewers and their associates made those concerned in the distilling and sale of illicit liquor liable to periods of imprisonment from one to three years. Lighter sentences of imprisonment and fines may be imposed on people who distil illicit liquor, even without intent to sell, and on people who buy it.

This measure draws attention to the continuing problem of drunkenness in Soviet society. Despite the Large Soviet Encyclopedia's claim that "the social roots of alcoholism had been extirpated", it is apparent that the barrenness of the Soviet citizen's leisure continues to stimulate his thirst. This has led to restrictions on the sale of drink in restaurants and the closing of street liquor stands in towns. Now, following Mr. Khrushchev's suggestions to the Party plenum in January, the campaign against alcoholism is being carried into the country.

### Crime and Soviet Society

Crime and drunkenness are problems common to all societies, but they have special political overtones in the USSR, where it is claimed that the Socialist order has eliminated their social causes and their continuing existence is attributed to survivals of the capitalist past. Soviet spokesmen are careful to conceal any inconsistency between the theoretical dwindling of crime during the "advance to communism" and the practical reality which demands (or is said to demand) the introduction of harsher deterrents. Indeed, the extension of the death penalty, with its rejection of any possibility of rehabilitation, must be seen as retrogressive, whatever the extent of crime in the USSR. But it is particularly difficult to accept the Soviet jurists' attempts to justify it on the grounds of "popularity" in a country traditionally hostile to capital punishment.

The need to apply the death penalty to crimes involving theft of State property reflects the gravity with which the Soviet leaders view this continuing problem. At a time when the fulfilment of the Seven Year Plan demands maximum effort, valuable materials are still going astray. The 22nd Party Congress to be held in October is sure to proclaim further advances in the "transition to Communism" and to pay tribute to Soviet man's "advancing morality". But his instinct for private gain is still very much in evidence.

NEW APPROACHES IN THE FIGHT AGAINST CRIME

By A. Boiter  
Radio Liberty Daily Information Bulletin  
June 2, 1961

So much attention has been devoted to the recent extension of the death penalty to economic crimes in the USSR that some of the deeper and more far-reaching aspects of the new laws promulgated in May have tended to be overlooked. Two very important results of the new laws are the following:

1. A decided turning away from the recently popular theme of "strengthening the role of the public in the fight against crime" in favor of a stepped-up campaign through normal channels of police investigation and court sentences. This may prove to be a temporary measure (in view of the upcoming new Party Program), but that such a shift of emphasis has occurred is an unmistakable fact.

2. At the same time there has occurred a sharp reversal of the trend to lower the severity of punishment for various offences, a trend which Soviet propaganda has made much of for both domestic and foreign audiences in the last three years.

The all-union ukaz of May 5, 1961 which extended the death penalty was preceded by one day by an RSFSR ukaz which called for "strengthening the fight against persons who refuse to engage in socially useful labor and who lead an anti-social, parasitic way of life." (Sov. Rossia, May 5) There is an intimate connection between these two laws as was made clear by USSR Procurator-General Rudenko in an article published alongside the text of the USSR ukaz (Izvestia, May 7). After some introductory paragraphs paying lip-service to the use of "measures of social influence" and "persuasion" as a hallmark of a country which is building a communist society, Rudenko writes:

"However, raising the role of the public in the protection of the public order by no means signifies a weakening of the role of the state in the fight against crime, nor does it in the smallest degree mean an indulgent approach toward malicious criminals who commit heavy crimes which are a danger to society, toward recidivists, nor toward those who persist in not submitting to the rules (norms) of socialist society and are not amenable to education. Socialist society and the Soviet people cannot tolerate that a destructive section of the people -- loafers and parasites, malicious criminals -- violate the working lives of citizens, encroach upon their life, health and upon public and private property. On the contrary, the struggle against such vicious criminals should be carried out severely and measures of state compulsion and criminal law punishment should be employed toward them without reservation to the full severity of the law. This constitutes the most important task facing the organs of the procurators, the courts and the police (militia)."



For the past four years the Soviet press has carried on a campaign against "loafers and parasites" but almost always accompanied by the idea that such people should be combatted by voluntary social organizations, such as the people's druzhiny (voluntary militia) and the informal social courts (comradely courts and workers' kollektivs). Rudenko not only calls for the regular militia, procurators and people's courts to play the main role against such people, he insists upon designating the "parasites" as criminals in the legal sense of the word (even lumping them together with murderers, rapists, embezzlers and traitors -- see, for example, the editorial in the latest issue (No. 5) of the journal issued by Rudenko's office, Sotsialisticheskaya Zakonnost, page 5.) Rudenko thus brushes aside a distinction which some Soviet legal theorists have tried to build up in recent years between offenses which must be tried in the regular courts and less serious offenses for which criminal law culpability may be avoided, thus permitting the offender to be tried in a social court.

### The Failure of "Social Influence"

It appears, therefore, that Procurator-General Rudenko has played the leading role in (and now has won) a running debate with supporters of the movement to "increase the role of the public" and to make increasing use of "measures of public influence" rather than "state compulsion." Rudenko's most convincing argument seems to be that many categories of anti-social, parasitic elements are not amenable to reform through "social influence." (See Sovetskaya Yustitsia, No. 7, for report on a plenum of the RSFSR Supreme Court in which Rudenko participated).

The shift from "public influence" to "state compulsion" in the handling of parasitic elements becomes even clearer upon comparison of the new RSFSR decree of May 4, with a draft decree of a similar intent for the RSFSR in 1957 (Sovetskaya Rossia, August 21, 1957). That draft decree also was directed mainly against persons "refusing to engage in socially useful labor" and it also made the punishment "exile for a period of 2 to 5 years with compulsory engagement in labor at the place of exile." The main difference is that the 1957 decree made such a sentence the prerogative of a "public assembly" of persons at the accused person's place of work or residence. The latest decree makes the sentence primarily the prerogative of the regular people's court and only alternatively through a "social sentence" for which no machinery is further indicated in the decree. (Incidentally, the 1957 draft decree was never officially enacted into law in the RSFSR, although it became law in 12 other republics. The new RSFSR decree has been issued in identical form already in Belorussia (May 15) and in Uzbekistan (May 17). The latter is an interesting case because Uzbekistan actually enacted into law the earlier anti-parasite law (on May 27, 1957) and the new decree in Uzbekistan does not specifically repeal the earlier decree.)

The turning away from "measures of social influence" in the spring of 1961 (even if it proves to be a temporary measure

designed to support a short, but intensive drive to bring Soviet crime under control) apparently is an admission that the use of social or public organizations has so far proved a failure and perhaps even led to an increase in the incidence of crime. The abuse of social warranty (*peredacha na poruki*) both by the courts and by social organizations has been repeatedly attacked in the Soviet press. And at the end of 1960, even Pravda noted that the people's *druzhiny* and comradely courts had gone into an apathetic decline in recent months. (See Pravda, December 28, 1960, about a "raid" by the newspaper's correspondents on the struggle against loafers in Dnepropetrovsk.)

If it is correct to assume that the Soviet leaders have become convinced that the various experiments in use of "social organizations" to maintain public order are a failure, this fact naturally will have direct influence upon the decisions and laws adopted by the party and government with regard to these problems. The measures adopted in May seem to reflect such considerations.

### Punishment for Crimes Becomes More Severe

An even more far-reaching development which the latest laws represent is the adoption of an overall policy of making the legal penalties in the criminal codes much more severe, thus reversing the tendency to reduce punishment which has dominated during the last four years while new criminal codes were being drafted.

All union republics have not yet succeeded in getting the new criminal codes adopted by their supreme soviets, and even the RSFSR Criminal Code and Criminal Trial Procedure Code were adopted only on 27 October 1960 and went into effect at the beginning of 1961. The codification of Soviet Criminal law (and other branches of law) is a process with history going back more than 30 years. Nevertheless, the new codes barely have time to get into print before the process of basic revision sets in for the purpose of reflecting a policy shift.

The USSR decree of May 5, 1961, instructed the union republics, for example, to make the necessary changes in their criminal codes to reflect the extension of the death penalty. But that decree not only extended the severity of punishment (longer prison terms, exile, and the death penalty), it also took a tougher attitude toward the treatment of prisoners, and in particular it extended the list of persons who cannot be included in the new Soviet system of "conditional release and parole."

This single law does not, of course, demonstrate that a general policy has developed of making criminal law penalties more severe. But this is demonstrated by the whole series of decrees issued recently on criminal affairs. Let us look only at the all-union decrees. (Since legislation on crime is the constitutional prerogative of the union republics, the only direct all-union criminal legislation which can be altered by an



all-union decree is the "Law on State Crimes" and the "Law on Military Crimes" -- both of which were adopted in their present form by the USSR Supreme Soviet on December 25, 1958 (Pravda, December 26, 1958). From its adopting in 1958 until February 1961 there were no changes in the all-union "Law on State Crimes." In the last three months, however, there have been a whole series of changes:

A decree of February 24, 1961 changed Art. 25 (currency violations) to include as an additional measure of punishment the confiscation of the convicted person's own property. That decree also added a new article (Art. 27) to make it a crime to withhold information about a state crime.

A decree of March 25, 1961 again increased the punishment under Art. 25 of the Law on State Crimes, raising the prison sentence to a range of 5 to 15 years instead of the previous 3 to 8 years. (See Vedomosti 1961, No. 13, Item 137)

The decree of May 5, 1961 still further alters the Law on State Crime: It adds "exile for a period of 2 to 5 years" as an "additional punishment" for crimes covered by articles 1-10, 14, 15, 23-25, and 27. It also changed Art. 24 (counterfeiting) to carry a prison term of 10 to 15 years, instead of the more loosely-worded paragraph which provided a term of 3 to 15 years. (Izvestia, May 7)

On May 24, 1961, an all-union decree instituted a 3-year prison term for the "anti-state crime" of padding figures and falsifying reports to the government, thus fulfilling a threat made by Khrushchev several months ago. (Pravda, May 25, 1961).

These all-union edicts have been matched at the union republic level by a stiffening of penalties for a number of "violations of public order" of a less serious nature (illegal distilling, petty hooliganism, sale of privately slaughtered meat, etc.)

This trend is in sharp contrast to Soviet propaganda claims that criminality is gradually dying out in the USSR and, therefore, it is possible to lower the punishment. For foreign audiences this claim is still being made. For example, in a talk on Radio Moscow in English (May 16, 21:30 GMT) the Soviet legal expert Nikiforov said:

"The field of state compulsion is narrowing, and the forms of compulsion are being softened -- quite considerably in a number of cases...the death penalty must (continue to) be regarded as an exceptional punishment..."

Nikiforov also provides reason to believe that the present eclipsing of the "measures of social influence" is regarded as a temporary development. He said:

"A characteristic innovation with an important future, I believe, is the principle that punishment may be replaced by measures of public influence on the offender...Legal

practice and results obtained from the application of these provisions (so far) show that public pressure has a wonderful effect."

This is the long-range Soviet propaganda line. The short-term reality as pointed out in this article, however, is a rejection of the social organizations as ineffective and the concomitant raising of the punishment to be exacted in the articles of the criminal law codes.



PREVENTIVE AND ADMINISTRATIVE DETENTION IN THE USSR

By Vladimir Gsovski  
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Protective custody or administrative detention, as distinguished from the serving of a penalty under a court sentence, have varied in different periods of the Soviet regime. Examination in historical perspective through the successive stages of the Soviet regime may facilitate assessment of its present status. Such a study is offered on the following pages.

### I. EARLY PERIOD (1917-1923)

Throughout the early period from 1917 to 1923 there were practically no courts in the Soviet Union. By one of the earliest decrees issued on November 23 (December 7, new calendar), 1917, all existing courts were abolished, public prosecutors were dismissed and the organized Bar was destroyed.<sup>1</sup> The newly created lower courts were under constant reorganization and it was not until 1923 that a definite court system emerged. Up to then there was no definite provision for higher courts.

The activities of the Vecheka and of "revolutionary tribunals" overshadowed the court action.

#### A. Vecheka, Cheka

From almost the very inception of the Soviet regime an administrative body came into being with unlimited power to impose not only confinement but also the death penalty. This was the Cheka, a name derived from the first letters of the Russian word Chrezvychainaia Kommissiia meaning Extraordinary Commission, also called the Vecheka, the first letters of Vserossiiskaia Chrezvychainaia Kommissiia, Extraordinary Commission of All Russia.

The exact date of its establishment cannot be ascertained nor can the specific decree creating it be located. When the necessity arose to find it in connection with the twentieth anniversary of the institution the only thing that was printed was a short note on the discussion of the matter at the session of the Council of People's Commissars. To quote the relevant passage:

The question of the fight against counterrevolution and sabotage was brought up by Lenin at the session of the Council of People's Commissars Cabinet on December 6 (December 19 of new Calendar) 1917. The question was

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<sup>1</sup> RSFSR Laws 1917-1918, Text 50.

deliberated by the Council the next day, December 7 (December 20 of new Calendar), when a report by F. E. Dzerzhinsky concerning the organization and composition of the Commission on the fighting of sabotage (Vecheka) was heard.

The draft of a decree on speculation and fighting counter-revolution was "afterwards discussed several times at the sessions of the Council of People's Commissars during December 1917 and January 1918, but because it was not sufficiently worked out it was never promulgated. It seems that the draft of the decree was written on December 7 (20) or 8 (21) when the question first came up."<sup>2</sup>

The recent semi-official history of Soviet criminal law expressly stated that "the decree concerning the organization of the Vecheka was not published."<sup>3</sup> Moreover, the same source relates that the "Extraordinary Commission of All Russia and the local extraordinary commissions exercised their activities for a year without any 'statute'."<sup>4</sup>

It may be stated that although three statutes appeared later, November 2, 1918, February 17, 1919, and March 18, 1920,<sup>5</sup> the power of the Vecheka remained broad and unlimited.

...the Vecheka performed not only tasks of intelligence and counterintelligence but also the task of checking crimes and rendering summary justice to the enemies of the people. The Vecheka did not have any generally established rules of criminal law at its disposal.<sup>6</sup>

<sup>2</sup> 20 let Vecheka-OGPU-NKVD (Twenty Years of Vecheka-OGPU-NKVD), Moscow, 1938, p. 10, note 1. Italics supplied.

<sup>3</sup> Gertsenson, A. And others. Istoriia sovetskogo ugolovnogo prava (History of Soviet Criminal Law), 1948, p. 83.

<sup>4</sup> Ibid., pp. 98-99. A collection of documents entitled "From the History of the Vecheka" appeared in 1958. It contains, under the title "Excerpt from the Minutes of the Council of People's Commissars No. 21 on the Creation of the Vecheka" a highly informal record dated December 7, 1917. It states that "the report by Dzerzhinsky on the organization and composition of the commission to fight sabotage was heard" and it was resolved "to name the commission the All-Russian Extraordinary Commission attached to the Council of People's Commissars to fight counterrevolution and sabotage, which confirmed its composition." The rest of the record consists of abbreviated words outlining the tasks of the commission and limiting its power to investigation. It looks more like notes taken of the meeting rather than a final formal record. This book also contains an excerpt from Izvestiia of December 10, 1917, No. 248, consisting of some four lines stating that the Council of People's Commissars established the Commission, and its address. There is not a word about its powers.

<sup>5</sup> RSFSR Laws 1917/1918, Text 842; id., 1919, Text 130; id., 1920, Text 75.

<sup>6</sup> Op. cit., note 3, pp. 98-99.



Krylenko, former Commissar of Justice, characterized the Cheka activities as follows:

The Cheka established a de facto method of deciding cases without judicial procedure... In a number of places the Cheka assumed not only the right of rendering final decisions but also the right of control over the courts. Its activities had the character of tremendously merciless repression and complete secrecy as to what occurred within its walls... Final decisions over life and death with no appeal from them...were passed...with no rules establishing the procedure or jurisdiction.<sup>7</sup>

One of the decrees dealing with the powers of the Cheka stated among other things that the Cheka had the power to confine in a concentration camp for not over 5 years "violators of labor discipline and the revolutionary order, and parasitic elements of the population if no evidence sufficient for a judicial procedure is disclosed against them by investigation" (*Italics supplied*).<sup>8</sup>

Order No. 48 of April 17, 1920, of the Cheka Presidium, printed in a Cheka publication, stated:

The law gave the Cheka power to imprison by an administrative procedure those...whom any court, even the most severe, would always, or in the majority of cases, acquit. (*Italics supplied*).<sup>9</sup>

Latsis (Sudrabs), one of the Cheka leaders, wrote two books giving popular accounts of Cheka activities: Two Years of Fighting, published in 1920, and The Extraordinary Commission for Combatting Counterrevolution, published in 1921.<sup>10</sup> The activities of this institution are characterized there in terms which leave no doubt that they were not limited by any law, that is, they were extralegal from every point of view. To quote:

Not being a judicial body the Cheka's acts are of an administrative character... It does not judge the enemy but strikes... The most extreme measure is shooting... The second is isolation in concentration camps. The third measure is confiscation of property... The counterrevolutionaries are active in all spheres of life... Consequently, there is no sphere of life in which the Cheka does not work. It looks after military matters, food supplies, education...etc. In its activities the Cheka has endeavored

7 Krylenko. Sudoustroistvo RSFSR (The Judiciary of the RSFSR), Moskva, 1923. pp. 97, 322-323.

8 Decree of March 18, 1920, RSFSR Laws 1920, text 75.

9 Appendix to Krylenko, op. cit., note 7, p. 371.

10 The titles in Russian read Dvo goda Bor'by, 1919 and Chrezvychainaia Komissiiia po bor'be s kontrrevolutsiei, 1920.

to make such an impression on the people that the mere mention of the name Cheka will destroy the desire to sabotage, to extort, and to plot.<sup>11</sup>

The same report also contained statistics on the penalties meted out by the Cheka and other security measures taken by it. The figures given there are qualified in the report as being "far from complete and relating only to 20 provinces for 1918 and 15 provinces for 1919" out of a total of about 80 controlled by the Soviets. "This picture," says the report, "is incomplete." In 1918 and the first six months of 1919 a total of 14,480 persons were executed by firing squad, 9,498 were sent to prison camps, 34,334 were imprisoned, 15,111 were taken as hostages, and 86,895 were arrested.<sup>12</sup>

#### B. Revolutionary Tribunals

The so-called Revolutionary Tribunals, the only rival of the Cheka, were courts in name only. According to Krylenko, "in the jurisdiction of the revolutionary tribunals complete freedom of repression was advocated while sentencing to death by shooting was a matter of everyday practice."<sup>13</sup> There were no provisions guaranteeing suspects the right of defense in the tribunals. With reference to the words of Karl Marx that political adversaries may be shot but not tried, Stuchka, the Commissar of Justice of that time, wrote that Revolutionary Tribunals "were not even intended to be courts."<sup>14</sup>

It was decreed on June 16, 1918, that "the Revolutionary Tribunals are not bound by any limitations in the selection of measures for combatting counterrevolution, sabotage, etc., with the exception of cases where the laws set the punishment in terms of 'not under' a certain punishment."<sup>15</sup> It was confirmed by later decrees that the tribunals "are not bound by anything in the selection of punishment."<sup>16</sup> The tribunals were instructed to render their judgments, being guided "exclusively by the interests of the revolution,"<sup>17</sup> or "exclusively by the circumstances of the case and the revolutionary conscience."<sup>18</sup>

The summoning of witnesses as well as the admittance of a counsel for the defense was left to the discretion of the

<sup>11</sup> Latsis, Chrezvychainaia Komissia, pp. 8, 15, 23, 24.

<sup>12</sup> Latsis, Dva goda bor'by, p. 75-76.

<sup>13</sup> Krylenko. Op. cit., note 7, p. 205.

<sup>14</sup> Quoted from Krylenko, op. cit., note 7, p. 52.

<sup>15</sup> RSFSR Laws 1917/1918, Text 553.

<sup>16</sup> Id. 1919, Text 130, Section 4; Text 132, Section 1; id. 1920, Text 115, Section 1.

<sup>17</sup> Id. 1919, Text 504, Sections 1,5; Text 549, Section 53; id. 1920, Text 115, Section 24.

<sup>18</sup> Id. 1919, Text 132, Section 25; id. 1920, Text 115, Section 24, Re Military Tribunals, id. 1919, Text 151.



tribunals.<sup>19</sup> With regard to some special tribunals it was stated that they were "not bound by any form of judicial procedure."<sup>20</sup> Otherwise the decrees mentioned the necessity of an open trial in the presence of the prisoner if he was available.<sup>21</sup>

### C. Courts under the New Code

A new era seems to have been inaugurated in 1922 under the more liberal policies of the NEP (New Economic Policy). Together with the limited admission of private enterprise into economy came also a recognition, though with reservations, of private rights. More or less definitely established courts made their appearance and were supposed to follow a Criminal Code and a Code of Criminal Procedure enacted in 1922.

A judiciary act of 1923 established a uniform definitive system of courts which has, in the main, survived to the present. The offices of public prosecutors (government attorneys -- prokuratura) were also restored. The revolutionary tribunals came to an end although some of their particular features were carried on by the new courts. The courts were established as obedient instruments of the policy of the government and the Communist Party. The establishment of courts did not carry with it any separation of the judicial branch from the executive. The doctrine of the separation of powers is repudiated by Soviet ideologists in general and that of the separation of the judicial power from the executive in particular. This attitude was the guiding principle when the courts were established and the same is true of the present time. Thus Krylenko stated in his lectures in 1923:

No court was ever above class interest and if there were such a court we would not care for it... We look upon the court as a class institution, as an agency of government power, and we erect it as agency completely under the control of the vanguard of the working class... Our court is not an agency independent of governmental power... therefore it cannot be organized in any other way than dependent upon and removable by the Soviet power.<sup>22</sup>

The same idea was stated by Vyshinsky in 1936:

The court of the Soviet State is an inseparable part of the whole of the government machinery... This determines the place of the court in the system of Soviet administra-

<sup>19</sup> Id. 1919, text 130, Section 4 (c); text 132, Sections 17, 20; id. 1920, text 115, Sections 17, 19.

<sup>20</sup> Id. 1919, text 504, Sections 1, 3.

<sup>21</sup> Id. 1917/1918, text 170, Sections 4, 6; id. 1919, text 130, Section 4 (c); text 132, Section 19; text 549, Section 25; id. 1920, text 115, Section 8.

<sup>22</sup> Krylenko, op. cit., note 7, pp. 27, 42, 177, p. 14, 15.

The general Communist Party line forms the basis of the entire government machinery of proletarian dictatorship, and also forms the basis of the work of the court... The court has no specific duties, making it different from other agencies of government power, or constituting its 'particular nature.'<sup>23</sup>

This was reiterated in more recent treatises on the judiciary:

The independence of judges from local influences in no way signifies that judges are cut off, separated from other agencies of government administration, that, in their work, they are free from carrying out the general line of the Communist Party or from carrying out the general government policy.<sup>24</sup>

The new codes bore the birthmark of the practices of the early period. According to Stuchka, then Commissar of Justice, the new Criminal Code was a "codification of revolutionary practices consolidated on a theoretic basis."<sup>25</sup> Again the Soviet rulers did not intend, in the words of Krylenko,<sup>26</sup> "to have their hands bound." Consequently, the Criminal Code left ample room for the arbitrary imposition of punishments. Likewise, Lenin stated that "the courts shall not do away with terrorism; to promise such a thing would mean to deceive ourselves and others."<sup>27</sup> Thus, the newly created Soviet courts departed from several principles of the administration of justice of Western and Imperial Russian judicial bodies.

The term of office of judges was very short, one year for the lower court, and it was made easy to remove judges before the end of their term. The new Criminal Code allowed the application of a penalty not only for an act exactly defined by the Code but also for an act merely resembling the statutory definition. The application of a penal provision of the Code by analogy was expressly allowed (Section 12 of the Code of 1922 and Section 16 of the Code of 1926). A striking feature of the Code of Criminal Procedure was that the provincial (later regional)

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23 Vyshinsky and Undrevich 308, 1936. Kurs ugolovnogo protessa. Tom. 1, Sudoustroistvo (Course in Criminal Procedure, Vol. 1, The Judiciary). 1936, pp. 7, 8, 23, 24, 28, 29.

24 40 let sovetskogo prava, (Forty Years of Soviet Law), Leningrad, 1957, vol. 2, p. 568.

25 Stuchka, Kurs sovetskogo grazhdanskogo prava tom 1. Vvedenie (Course in Soviet Civil Law, v. 1. Introduction), 1931, p. 85.

26 Krylenko. "Proekt ugolovnogo kodeksa" (Draft of a Criminal Code) in Sovetskoe gosudarstvo No. 1 (1935), p. 86.

27 Lenin. Sochineniia (Works), 3d Russian ed., vol. 27, p. 296.



courts could refuse "to admit as a counsel for defense any formally authorized person if the court considers such person not appropriate for appearance in the court in a given case depending upon the substance of the special character of the case."<sup>28</sup> Moreover, a provincial court could hear a case in the absence of both the prosecution and the defense. Section 281 of the same Code reads:

Admission of prosecution and defense at a trial in a provincial court shall not be mandatory and shall be decided in each case in an executive session of the court depending upon the complexity of the case, upon the extent to which the crime is proven, and upon the special political or public interest in the case.

The provincial court must admit or appoint the counsel for the defense if a prosecutor is admitted.

The renouncement by the defendant of counsel shall not prevent the admission of the prosecutor.

Thus a flexible and obedient tool of repression was at the disposal of the newly established courts. The question of the abolition of the Vecheka was raised. The first decree on the subject, December 30, 1921, officially promised that "the fight against violations of the laws of the Soviet Republic shall be entrusted to the judicial bodies."<sup>29</sup>

The same was restated in the decree of February 6, 1922, which abolished the Vecheka:

In the future all cases involving crimes which are directed against the Soviet regime or violate the laws of the RSFSR shall be subject exclusively to trial in Court.<sup>30</sup>

The last promise was not carried out and the abolition of the Vecheka was not followed by the courts' monopoly of penal prosecution. Various successors to the abolished Vecheka appeared side by side with the courts, and a dual system of criminal prosecution came into being. Along with the courts there has been an administrative security agency with broad undefined powers the name of which has varied: 1922-1934 it was called GPU (State Political Administration)<sup>31</sup> and OGPU (Federal State Political Administration); in 1934-1946 it was the NKVD (People's Commissariat of the Interior);<sup>32</sup> from 1946-1954 it was the MVD (Ministry of the Interior)<sup>33</sup> and MGB (Ministry of State Security)<sup>34</sup>

<sup>28</sup> RSFSR Code of Criminal Procedure, Section 382.

<sup>29</sup> RSFSR Laws 1921, text 92.

<sup>30</sup> Id., 1922, text 160.

<sup>31</sup> Gosudarstvennoe politicheskoe upravlenie.

<sup>32</sup> Narodny Kommissariat Vnutrennikh Del also Narkovnudel.

<sup>33</sup> Ministerstvo Vnutrennikh Del.

<sup>34</sup> Ministerstvo Gosudarstvennoi bezopasnosti.

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and since 1954 it is known as the KGB (State Security Committee).<sup>35</sup>

Regardless of its name, this agency's powers and activities were defined by law only to a very limited extent. The very fact of its existence seems to have given this agency by implication all the powers needed for the accomplishment of its task -- the protection of the security of the regime. That there is continuity between the activities and powers of the Vecheka and those of the current security agency has been plainly recognized in a comparatively recent Soviet study of the history of Soviet criminal law.

The first year of its [the Vecheka's] activities served for working out the principles of the chekist work [and] traditions which, for a quarter of a century, have secured the repressive activities of the Vecheka-OGPU-NKVD-MVD-MGB.<sup>36</sup>

## II. OGPU AND THE COURTS

Let us now look at the legal provisions dealing with the security agencies. The immediate successor to the Vecheka was the OGPU. It was established in the individual Soviet republics as a part of their People's Commissariats of the Interior prior to the formation of the Soviet Union in 1923. When the Union was formed no federal Commissariat for the Interior was established and the GPU became an independent federal agency, the OGPU attached directly to the Cabinet. The pertinent constitutional provisions (1924 Constitution, Sections 61-63) were silent on the powers of the OGPU, its task having been defined in the most general terms such as "uniting the revolutionary efforts of constituent republics in their fight against the political and economic counterrevolution and banditry." The OGPU obviously inherited the powers of the GPU. The pertinent Statute of February 6, 1922,<sup>37</sup> provided for certain powers of the GPU agents. All these agents could make an arrest, a house search or seize objects within 48 hours after an act was committed. After 48 hours a written permission from the GPU office was required. The charge had to be presented to the prisoner within two weeks. After the expiration of two months the prisoner had to be turned over to the court or released, or a warrant for further "isolation" had to be requested from the Central Executive Committee and not the court. Again the GPU was expressly required to transfer only cases of "ordinary crimes" to the courts for judgment, which implied that judgment of extraordinary, i.e., more important, crimes remained in the jurisdiction of the GPU.<sup>38</sup> Moreover, the Decrees of August 10 and October

<sup>35</sup> Komitet Gosudarstvennoi bezopasnosti.

<sup>36</sup> Gertsenson, op. cit. note 3, p. 98-99.

<sup>37</sup> RSFSR Law, 1922, item 160.

<sup>38</sup> RSFSR Laws, 1922, text 160.



16, 1922<sup>39</sup> authorized the GPU "to exile and confine at the place of exile in a camp of forced labor" for a period of up to 3 years "active members of anti-Soviet parties" and criminals tried twice for banditry, counterfeiting, smuggling, rape, hooliganism, larceny, robbery, forgery of documents, falsification of commodities, and possession of firearms. It may be noted that the mere fact of former trials was sufficient for confinement in a camp of forced labor, and exile could be applied for a great variety of political activities and non-political crimes. The Decree of October 16, 1922 authorized the agencies of the GPU to shoot to death on the spot bandits and holdup men caught in the act. The Statute in the OGPU of November 15, 1923<sup>40</sup> was silent on the death penalty with the exception of a reference to the above-mentioned Decree of October 16, 1922. But any doubts in this respect were removed when an ex post facto interpretation was issued by the Central Executive Committee on March 14, 1933, confirming the right of the OGPU "to apply all measures of repression depending on the nature of the crime."<sup>41</sup> Two days before this date Izvestiia printed an announcement "from the OGPU" stating briefly that in the case of 80 prisoners, 36, whose names were given, were shot and the rest were given various terms of imprisonment.<sup>42</sup>

Thus the OGPU appeared as the true successor of the Vecheka. Its investigative activities were also mentioned in the Code of Criminal Procedure designed for courts. The Code expressly mentioned that some cases are investigated not by investigation authorities subordinate to the public prosecutors but by security agencies, i.e., the OGPU, later NKVD, MVD, MGB and KGB (supra). The Code reserved to special regulations, which have never been enacted or have remained secret, the determination of "cases in which the investigation of crime" is reserved for security agencies (RSFSR Code of Criminal Procedure, Section 108, para. 2). "The procedure in the confirmation of arrests made by agencies of the GPU" is also reserved to the same regulations (id., Section 104, note). Krylenko stated in 1928 that it was regulated by a secret instruction which "must legally remain unknown to the broad masses of the population."<sup>43</sup> It has never been made public (see also infra the recent federal law on criminal procedure). In other words, the provisions of the Code of Criminal Procedure on pretrial arrest are not binding upon security agencies. The same is true of the procedure of security agencies in conducting pretrial investigations (id. Section 107). Thus even the guarantees for a suspect afforded by the Code do not have

<sup>39</sup> Ibid., Texts 646 and 844.

<sup>40</sup> Vestnik, 1923, 6, item 225.

<sup>41</sup> USSR Laws, 1933, text 108.

<sup>42</sup> For the text of the announcement and more details on the ex post facto interpretation see Gsovski, Administration of Justice. Soviet Union. Chapter 15, title 8 in Gsovski and Grzybowski, joint ed., Government, Law and Courts in the Soviet Union and Eastern Europe. Atlantic books, London and New York, 1959, p. 570 ff.

<sup>43</sup> Krylenko op. cit.

to be followed by the security agencies conducting investigations in cases designed to be tried by courts.

During the period of the OGPU one of its activities was especially developed, viz., the forced labor camps, later called camps of correctional labor. Court sentences for periods exceeding three years had to be also served in these camps. They were finally transformed into large scale projects of convict labor which was of the utmost importance to the Soviet economy.<sup>44</sup> The vastness of such projects may be illustrated by the officially published figures on amnesties and reduced terms after completion of two such projects. After the construction of the canal between the Baltic Sea and the White Sea 72,000 prisoners were either pardoned or received a reduction of their terms, and after the completion of the Moscow-Volga canal 50,000 prisoners were pardoned.<sup>45</sup>

### III. NKVD -- MVD -- KGB

A new legal regulation was applied to the powers of the security agency when it was transformed into the People's Commissariat of the Interior in 1934 (NKVD), renamed the Ministry of the Interior (MVD) in 1946. At that time several laws, enacted in the form of resolutions of the Central Executive Committee, extended the jurisdiction of the NKVD beyond that of the OGPU. The new Commissariat was charged, as was the OGPU, with "the security of the revolutionary order and the safety of the State," "protection of public (socialist) property," and the "guarding of the frontiers." It also had additional duties such as the keeping of vital statistics, responsibility for all penal institutions, and taking care of the passport system, with the power to refuse permission to reside in large cities, etc.

For our purpose the most important are two acts, one of June 10, and the other of November 5, 1934.<sup>46</sup> These acts authorized the NKVD-MVD to apply to persons whom the agency considered "socially dangerous" one of the following: confinement in a camp of correctional labor for up to five years with unlimited possibility of prolongation; exile in a definite locality with or without forced labor; prohibition to reside in certain places for the same period, or banishment from the Union. Such persons did not have to be charged with any particular crime. The law required only that they be considered "socially dangerous" by the NKVD (later MVD). To apply these measures a Special Board was set up in the Ministry consisting of high-ranking employees of the NKVD (MVD) and the General Procurator.

The imposition of the death penalty was not mentioned in any resolution dealing with the NKVD-MVD.

<sup>44</sup> For more details see id., p. 572.

<sup>45</sup> USSR Laws 1933, text 294; id. 1937, text 187.

<sup>46</sup> USSR Laws 1934, texts 283, 284; id. 1935, text 84.

<sup>47</sup> USSR Laws 1934, text 283.



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During World War II the NKVD and later the MVD were subdivided interchangeably into two departments and then fused again. One continued to bear the old name and the other was called the Commissariat for (the Ministry of) State Security. The power to exile remained with the Ministry of the Interior. In 1954 a State Security Committee (KGB)<sup>47</sup> was created with Serov, a high-ranking MVD man, at the head. This Committee is, as was the OGPU in its time, directly attached to the Council of Ministers. The powers and jurisdiction of the Committee have never been defined by law or decree. A university textbook on the judiciary made it plain that all investigation agencies of the MVD were transferred under the State Security Committee.<sup>48</sup> The Committee also has local offices and there are similar committees in the individual republics.<sup>49</sup> From all this it may be inferred that all security agencies of the MVD have now become agencies of the Committee and that for all purposes the Committee is a successor to the MVD as it is described in university textbooks.<sup>50</sup>

Thus it may be concluded that up to December 1958 there were broad possibilities for the detention of citizens as a protective or preventive measure. The application of such measures was regulated by law to a very limited extent and remained largely within the discretion of the executive authorities.

### IV. AFTER THE REFORM OF 1958

A radical reform of criminal law and procedure took place on December 25, 1958.<sup>51</sup> To assess its significance, a few technical remarks on Soviet federalism are needed.

The Soviet Union is a federation of 15 Soviet states called republics. According to the latest amendment to the federal Constitution in 1957,<sup>52</sup> the federal authorities enact only "basic principles" of criminal law and procedure. The issuance of codes is reserved to the authorities of individual Soviet republics. The republics may also issue their own penal statutes in addition to codes. Prior to December 1958, the Soviet criminal law was essentially a uniform body of penal provisions contained in "basic principles" enacted in 1924 by the federal authorities

<sup>47</sup> Vedomosti 1954, text 212.

<sup>48</sup> Karev, D. S. Organizatsiia suda i prokuratury SSSR (Organization of the Court and Government Attorneys in the USSR). Moscow, 1954. pp. 170-171.

<sup>49</sup> Vlasov, V. A. and S. S. Studenkin. Sovetskoe administrativnoe pravo (Soviet Administrative Law). Moscow, 1959. p. 263.

<sup>50</sup> Ibidem.

<sup>51</sup> Vedomosti 1959, texts 6, 8, 10, 11, 15.

<sup>52</sup> This amendment in fact restored the provisions which were in force from 1924 to 1956.

and in the uniform codes enacted at various times in the individual Soviet republics. On December 25, 1958, only the federal "basic principles" on criminal law and criminal procedure were enacted, and these are to be followed by new codes to be issued by individual republics.<sup>53</sup>

The new Principles of Criminal Law and Criminal Procedure enacted on December 25, 1958, bluntly declare the monopoly of courts in the imposition of penalties. They state categorically that "criminal punishment may be imposed only by a court sentence" (Section 3 of the Principles of Criminal Law) and that "no one may be declared guilty of committing a crime and be subjected to punishment except by a court sentence" (Section 7, phrase 2 of the Principles of Criminal Procedure). The Principles show a complete break with the forty-year-old practice in the Soviet Union of imposing penalties out of court. But the new Principles need implementation in the federal legislation, in the codes of individual republics and in the penal statutes enacted by them.

This is not the first time that Soviet statutes have gone on record promising that the power to impose punishment shall be reserved to the court. It may be recalled that when the Vecheka was abolished in 1922 it was officially promised that, in the future, criminal cases would be handled by the courts (see supra p. 10, 11). The same was implied in the legislation on the GPU, the OGPU, and the NKVD, but these promises never materialized, and these agencies continued to impose detention and even to exercise wide penal jurisdiction despite the penal powers of the courts.

It may be noted that the reform laws of 1958 are couched in careful and rather technical language. The imposition of "criminal punishment" alone is reserved to the courts. What does the word "criminal" mean? It suggests that there may be other penalties which do not come under the provisions of the new laws. This is, of course, true of penalties imposed by disciplinary action. But it means more than that. Sufferings and the abridgment of rights to which citizens were subjected by administrative agencies in the past were never technically called punishment but were designated as "repressions," "measures of social defense," or even were given no designation whatever, although for all practical purposes they were punishments. To be conclusive, the declaration of the monopoly of courts for the imposition of punishment should have been followed by the repeal of all the laws which are in conflict with the declared principle, since they allow the MVD to take steps tantamount to punishments. This has not been done. Simultaneously with the reform of December 25, 1958, the USSR Presidium was commissioned "to approve a list of laws and decrees which are no longer in force because of" the reform. Such a list was approved on April 13, 1959, and made public in Vedomosti, 1959, item 91. However, one looks in vain in this list for the Acts of 1934 which

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<sup>53</sup> Criminal codes have been enacted thus far in the Uzbek and Kirghiz republics but, not being regularly promulgated, were not available to the writer.



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bestowed upon the NKVD and its successor, the MVD, the broad power to confine "socially dangerous persons" in a corrective labor camp for up to 5 years and other powers (supra, p. 144). On several occasions the Soviet high officials stated orally that the Special Board which applied such confinement had been abolished. However, it was never stated that the Ministry of Interior (MVD) had been deprived of such powers. The federal MVD was abolished in January 1960 but its jurisdiction was transferred to the Ministries of the individual republics.<sup>54</sup> Thus all the laws which provide for such power remain on the statute book although their application may have been shelved.

Finally why have the powers of the State Security Committee not been legally defined thus far? The new Federal Basic Principles of Criminal Procedure expressly reserve the conduct of pre-trial investigation in political cases to the "agencies of state security" (Section 28), by which are meant, evidently, the agencies of the State Security Committee. Whether such investigations are exempt, as they were before the reform, from the codified provisions of law (pp. 14-15 supra) it will only be possible to state after the RSFSR Code and the codes of the republics are enacted. It is more than likely that the agencies of the new State Security Committee, like, in their time, those of the OGPU, continue to exercise all the powers needed for the fulfillment of its function of providing for the security of the State.

Thus the situation on the federal level remains ambiguous and is fraught with possibilities of arbitrary arrest. The discussions in the Soviet university textbooks on administrative law concerning the difference between "arrest" technically so called, which is subject to the provisions of the Code of Criminal Procedure and the Constitution, and mere "detention," open to the discretion of the administrative authorities, lead to pessimistic conclusions. Such discussions appeared in a textbook of 1946, were repeated in its 1950 edition, and were restated essentially in the 1959<sup>55</sup> edition which appeared after the reform. The latter passage reads:

The detention of a person by competent agencies does not have the character of administrative arrest... Administrative agencies are not granted the right to make arrests in administrative action. An exception is made only in areas placed under martial law....

By its essence as well as its form an arrest is sharply distinct from detention. In the first place, arrest is an act which defines in advance, in accordance with the law,

<sup>54</sup> Vedomosti 1960, text 25.

<sup>55</sup> Evtikhiev and Vlasov, Administrativnoe pravo SSSR (Administrative Law of the USSR). 1946, p. 238; Studenikin, Vlasov and Evtikhiev, Sovetskoe administrativnoe pravo, 1950, pp. 184-185; Vlasov and Studenkin, Sovetskoe administrativnoe pravo (Soviet Administrative Law). 1959, pp. 166-167.

the deprivation of liberty of a certain citizen for distinct, definitely established reasons. An arrest may be made only by a court order or with the approval of the public prosecutor. But the usual detention by agencies of the Ministry of the Interior, State Security Committee and other agencies has a preventive character. It may be done for a variety of reasons, but their basis is always of a preventive significance, aiming to preclude the commission of a violation endangering public order and security, the security of the person and property of citizens (resistance to the orders of police agencies, hooliganism, rioting, state of intoxication, etc.) and protecting socialist property.<sup>56</sup>

The treatises indicate also that agencies of the Ministry of the Interior and the State Security Committee, i.e., the regular and security police, may likewise "detain persons accused of definite crimes," (i.e., persons whose cases are intended for court action. The treatises emphasize that only for such cases is the length of detention stated in the Code of Criminal Procedure. Consequently, whenever the prosecution of a "socially dangerous person" outside of court is intended, no legal provision establishes the length of time for his preliminary confinement before he may have recourse to a court because the entire proceedings, including sentencing, take place out of court.

A much more pessimistic picture is presented by the penal laws of the individual republics. As late as 1957 and 1958, when the reform was under discussion, laws against "parasites" were enacted in the Uzbek, Latvian, Kazakh, Turcoman, Azerbaijan, Tadjik and Armenian Soviet Republics.<sup>57</sup> These laws were practically uniform and are directed not only against "adults able to work, citizens who carry on a parasitic way of life [or] maliciously evade socially useful work" but also against "those who live on unearned income" (Section 1). Such persons may be deported for a period of two to five years with the duty to work at the place of deportation. In cities they are sentenced by the "popular judgment" of an assembly of "adult citizens residing in the area of a house management, a street committee, or a precinct committee," and in rural localities, by the "residents of the village." A general meeting of the majority of such residents passes judgment by simple majority in an open ballot, and this judgment is then "submitted for approval to the competent executive committee" of the district (equivalent to a county) or city, i.e., local, purely administrative agencies. The decision of these committees is final and subject to immediate execution. There is no appeal to a court.

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<sup>56</sup> Vlasov and Studenkin, op. cit., 1959, pp. 166-167.

<sup>57</sup> A draft of such law was made previously for all the republics of the Soviet Union, but in the Ukraine and the RSFSR it was criticized in the press and has not been enacted thus far.



By "persons who live on unearned incomes" are meant persons who actually earn their own living, but not in a manner in tune with the current Soviet economic policy. "Some of them," says the preamble to the law, "are working by employment but actually are not living on the income from their employment." This law was applied, for example, to members of collective farms who worked hard on their private garden plots but failed to attain the required credit for participation in the collective work of the farm.<sup>58</sup> In Latvia a person who earned a living by purchasing broken second-hand musical instruments, repairing and reselling them privately, was exiled for two years.<sup>59</sup>

The law makes it clear that such deportation shall apply only in instances where no crime punishable under Soviet criminal law and entailing a more severe penalty is involved (Section 3). The law also provides that true parasites, i.e., "persons engaged in vagrancy or begging" are not subject to deportation by the above-mentioned administrative procedure but only by a judgment of the People's Court (Section 4).

The law does not call the incriminating behavior a "crime" or its older equivalent a "socially dangerous act," nor is exile called a "criminal punishment" but only a "public censure." It is obvious that exile is a punishment, and the laws should have been repealed to bring the legislation of the above-mentioned republics into conformity with the newly enacted Federal Principles of Criminal Law and Criminal Procedure. However, not only were the antiparasitic laws not repealed but a new law of that type was enacted, after the reform, on January 15, 1959, in the Republic of Kirghizia.<sup>60</sup> Moreover, a slightly different law was enacted in Georgia as late as September 5, 1960,<sup>61</sup> i.e., more than a year and a half after the reform. This law states as follows:

Sec. 1. Able-bodied adult citizens residing in the cities and urban settlements of Georgia, who maliciously evade socially useful work and carry on a parasitic mode of life, may be evicted by a decision of the executive committee of the local soviet concerned on the petition of a general meeting of citizens, public organizations or police agencies for a period of from 6 months to 2 years.

Attention should be drawn to the fact that instead of "exile" the term "eviction" is used, a Russian word hitherto used exclusively for eviction from premises, as the word is used in English. The "evicted" person is sent to rural localities where he must "join the labor activities," i.e., is subject to forced labor. Thus, according to the Georgian law the parasite is exiled directly by the executive committee of the local soviet, a

<sup>58</sup> Pravda Vostoka, July 13, and 16, 1957.

<sup>59</sup> Sovetskaia Latvia, December 15, 1957.

<sup>60</sup> Sovetskaia Kirghizia, January 20, 1959.

<sup>61</sup> Zaria Vostoka, September 6, 1960.

purely administrative body, and there is no appeal to a court or to higher administrative authorities. The same authority may allow an exiled person to return after he has served half of his term if he has reformed, and place him in "mandatory socially useful work" (Section 3). If the exiled person leaves the place of exile without authorization he must serve the remaining term in prison.

Finally, it may be stated that while on the federal level there exist only possibilities of administrative detention based on the absence of legal provisions prohibiting it and on established practices not specifically repudiated, some of the republics have enacted special laws providing for exile with forced labor in administrative procedure.