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TOWARDS THE JURY SYSTEM

Under the watchful eye of Pravda's new editor, Zimyanin, the Party daily has just published one of the most conspicuously reformist articles¹ ever to appear in the Soviet press concerning the administration of justice.

R. Rakhunov, a Doctor of Law, is the author of the discussion article which seems likely to set off a vigorous and important debate. He advocates the introduction of a modified jury system as the major desirable reform:

The examination of the most important cases in the presence of two people's assessors does not, in our opinion, provide a full guarantee of the independence of judges and the attainment of justice in present conditions. It would be another question if the board consisted of 7-9 persons, including the permanent judge.

Rakhunov goes on to argue that in the early years of the Soviet regime, the courts consisted of a judge and six-to-twelve people's assessors. Then he adds:

Such an expansion of the board would raise the educational significance of sentences, which to a yet greater extent would rely on the wisdom and common sense of the people, and would increase the moral weight, strength and authority of verdicts in the eyes of the public and in the eyes of higher courts.

1) Pravda, 22 September 1965, p. 3.

As long ago as 1962 Professor Perlov was advocating the introduction of a modified jury system and a specific presumption of innocence, but at that time his proposals encountered vigorous resistance from the neo-Stalinist survivals among Soviet lawyers. In those days the movement in favor of the jury system could only be described in such elite periodicals as the Moscow University Herald (Economics and Philosophy series - August 1963) which is read by a small number of the scions of the new class. Now, only two years later, the move towards a jury system can be carried in Pravda itself, while the presumption of innocence is treated by Rakhunov as an essential and established part of "socialist legality." He writes:

In a socialist country the principle of the presumption of innocence is permeated with great social and political content, it is a guide for action which has the force of law.

[Emphasis supplied]

In fact the criminal statutes of 1958 and the criminal codes of the Republics do not contain the principle of the presumption of innocence, but in the past 18 months, it has been gradually introduced into judicial practice.

Izvestia (14 April 1964) wrote that:

Our law proceeds from the highly humane democratic idea that every citizen is presumed innocent until his guilt is proven.²

But that article was written by a revisionist Bachelor of Law who seemed to be indulging partly in wishful thinking and partly in agitation for the idea. However, on December 1st, 1964, A. Gorkin, the President of the USSR Supreme Court, made the same point implicit in an Izvestia article which criticized Vishinky's notorious theory that the courts only deal with criminals, and that their sole function is to determine the degree of guilt.³ Once Gorkin had officially proclaimed it, the presumption of innocence had indeed acquired the force of law, and

- 2) See Background Information USSR, "Izvestia Revives Presumption of Innocence," of 17 April 1964.
- 3) See C.A. papers of 16 December 1964 "Soviet Justice Under B and K."

now it is only a question of the time needed to eliminate the numerous cases of residual violation of the principle. Rakhunov points out that, while the principle is a guarantee of individual rights, it is also useful to society in that it avoids miscarriages of justice, increases the responsibility of investigators and judges, and is a stimulus toward the exposure of genuine criminals.

One of the most effective parts of Rakhunov's case is the passage in which he pleads for the democratization of the organization and work of the courts. Answering criticisms which have often been made by the neo-Stalinists, he denies that democratization weakens or undermines the strength of the law, and argues in an exceptionally forceful sentence that:

Justice and truth can triumph in court when there is a struggle of opinions, when the right to a defence is guaranteed, and the victim of the crime has the full right to take part.

[Emphasis supplied]

To find Pravda coming out openly as a champion of the clash of opinions, not merely in the West or in the tiers monde but in a Soviet context, is indeed a refreshing development. Once the principle is accepted in the legal field, many Pravda readers might wonder why it could not be extended into politics.

Pravda versus Izvestia Again

Rakhunov also intervenes in the current debate concerning "social custody," and once again he (and therefore Pravda) takes up the liberal cudgels. On 16 September Izvestia published an article by the Soviet Deputy Procurator, N. Zhogin, who argued in principle for an extension of "social influence" in the administration of justice, and therefore implied that the role of the courts should be reduced.

In particular Zhogin defends the status quo whereby "society" (i.e., the Party) decides whether the accused should be released on bail or not. At present the system works as follows: if "society" wishes it may send a petition to the courts, or to the procurator, or to the investigator for the accused to be released on bail. If the petition is granted, the administrative organs do not bring the case to trial, and criminal proceedings are replaced by "measures of social influence."

advantage, in that a jury of six or eight people would be far less likely to be overruled by a domestic judge, at least as regards questions of fact. Moreover, since the whole idea of a jury has

Rakhunov, like many of the other pro-liberal Soviet lawyers, objects strongly to the excessive influence which this procedure gives to the procuracy and investigators; these gentlemen, after all, have close ties with the police and state security organs. Rakhunov suggests an amendment to the criminal procedural codes of the union republics:

In our view it should be established that transfer on bail at the petition of a social organization cannot be accomplished individually by the investigator or prosecutor, but only by the court collectively. (Emphasis is in the original) With such a system there could be no more cases of unjustifiable bail. But still more important is the fact that in every case there would be a detailed examination, i.e., the whole gravity of the crime and all those who took part would be brought to light, as well as the conditions which contributed to it.

In effect, Rakhunov is pleading for a reduction in the arbitrary elements of the present law and for an expansion of the prerogatives of the courts. If he and his supporters win their point against the Zhogins of the USSR, another blow will have been struck at the ramshackle apparatus (which was introduced by Khrushchev) of what can best be described as "non-courts" (i.e., the comradely courts, the anti-parasite tribunals, etc.). Moreover the perpetual "Zukunftsmusik" of the withering away of the state will have to be played piano as a result.

Conclusion

One of the main defects of Soviet law at present is the "people's assessor" system, whereby cases are tried not by jury but by a judge assisted by two lay assessors. In theory these two can outvote the judge if they disagree with his verdict, but in practice they are usually overruled by his experience and knowledge of the law and tend sheepishly to support his ruling. Since an assessor sits for only ten days during his term of office, and is called upon to decide on all the questions of law and fact placed before him, his inferiority complex is understandable. But Rakhunov's proposal would constitute a major

advance, in that a jury of six or eight people would be far less likely to be overawed by a dogmatic judge, at least as regards questions of fact. Moreover, since the whole idea of a jury has been denounced in Moscow for decades past as "bourgeois", Rakhunov and Pravda, under its new editor, can be said to have taken a real step forward on the road to legal reform.

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